

Appendix A

SUNY Adirondack Title IX Informal Resolution Procedure

On May 19, 2020, the U.S. Department of Education issued Final Rules governing the Title IX grievance process, effective August 14, 2020. The Final Rule requires that all colleges and universities hold a live hearing before making any determination regarding responsibility for covered reports of Title IX sexual harassment, including sexual violence. This hearing must provide for live cross-examination by the parties' advisors.

However, under section 106.45(b)(9) of the Final Rule, colleges and universities may offer and facilitate informal resolution processes, as long the parties involved are students and the parties voluntarily agree to the process through an informed, written consent. Complaints of sexual violence will not be resolved by using informal resolution. This option is a change for long-standing Departmental guidance discouraging the use of informal procedures to address sexual harassment. In the Preamble to the Final Rule, the Department states that it views informal resolutions as a way to resolve sexual harassment allegations in a less adversarial manner than the investigation and adjudication procedures that comprise the Grievance Process.

Elements of an Informal Resolution Process

Consistent with the process for Informal Resolution conducted by the Affirmative Action Officer outlined in policy # 3009 Discrimination and Sexual harassment Complaints, the complainant may elect to have the matter dealt with in an informal manner, the Title IX Coordinator, or designee, will attempt to reasonably resolve the complaint to the mutual satisfaction of the parties.

The Title IX Coordinator may determine that an informal resolution is not appropriate under the circumstances. Factors that the Title IX Coordinator may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the respondent is a repeat offender and whether the parties are participating in good faith. This determination is not subject to appeal.

In seeking an informal resolution, the Title IX Coordinator, or designee, will review all relevant information and interview pertinent witnesses.

The time limitations may be extended by mutual agreement of the complainant and respondent with the approval of the Title IX Coordinator. Such extension will be confirmed in writing by the complainant and respondent. The Title IX Coordinator has the discretion to reasonably extend the deadlines if an investigation is deemed complex.

At any time after the commencement of the informal resolution process, the complainant may elect to end the informal resolution process and proceed to the formal procedure.

At any time after commencement of the informal resolution process, Title IX Coordinator may determine that the informal resolution process is not an appropriate method for resolving the matter and may require that the matter be resolved through the formal process. This determination is not subject to appeal.

Role of Facilitator

Informal resolution processes are managed by facilitators, who may not have a conflict of interest or bias regarding the parties in the matter. The Title IX Coordinator may not serve as the facilitator. All facilitators must have training in the definition of sexual harassment as defined in the Title IX Grievance Policy, the scope of the College's education program or activity, how to conduct an informal resolution process, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest or bias.

Confidentiality

In entering the informal resolution process, the parties agree that any statements and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the complaint is confidential, while the parties are participating in the process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, though any party to the informal resolution process may generally discuss the allegations under investigation with a partner, friend, advisor, or other source of emotional support, or with an advocacy organization. If the parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process may be incorporated into the formal investigation and live hearing, provided that this information is disclosed and reviewed by the parties under the investigatory and hearing procedures described in the Title IX Grievance Process and Procedure.

Informal Resolution Options

The College may offer informal resolution options, including but limited to:

- **Administrative resolution:** parties mutually agree to enter the informal resolution process and the respondent accepts responsibility for the allegations in the complaint at any point during the process, the College may resolve administratively; the parties receive simultaneous written notification of the acceptance of responsibility and a decision-maker will determine the respondent's sanction and other remedies as appropriate and consistent with the College's Student Code of Conduct; the parties will be given an opportunity to be heard at the sanctions hearing, including but limited to the submission of impact statements, the parties may be accompanied by their advisor, but questions of parties or witnesses will be prohibited. The parties receive simultaneous written notification of the decision regarding sanctions and remedies.
- **Mediation:** with the assistance of a trained mediator, the parties identify the implications of a student's actions and points of agreement and appropriate remedies to address them. Either party can request mediation to seek resolution but will only be used with the consent of both parties, who will be asked not to contact one another during the process. Mediation requests may be denied based on the facts and circumstances of the particular case. Either party can terminate the process and choose or resume another option for resolution at any time. During mediation, any potential investigation will be pause and calculations for time frames will be stayed. The mediator will guide discussion between the parties, either face to face or with the mediator separately. Each party can be accompanied by

their advisor. If the mediation results in a resolution, the mediator will document the agreement that was reached between the parties. The Dean for Student Affairs, or designee, will monitor adherence to the agreement and close the matter when compliance is satisfactory. If a resolution cannot be reached, other options for resolution, including investigation will be provided.