

**Year 2 Public Description of Work for
Action Collaborative on Preventing Sexual Harassment in Higher Education**

Vanderbilt University

**Creating and Implementing an Informal Resolution Process for Sexual
Misconduct Claims**

Relevant Rubric Area(s):

Response: Improved Policies: Implementing Alternative Means of Resolutions

Description of Work:

On August 14, 2020, when the Department of Education's Title IX Final Rule went into effect, there was much trepidation in the higher education community. Title IX personnel and other higher education administrators were concerned that the highly prescriptive, legalistic process that the Final Rule requires, and specifically its inclusion of a mandatory live hearing with cross-examination, would dramatically chill reporting by those who have experienced sexual misconduct due to the potential re-traumatization of having to participate in an adversarial hearing process to reach a determination for Title IX claims.

There was, however, a silver lining to this cloud of a Final Rule: Informal Resolution.

Previous federal administrations had discouraged or in some situations prohibited institutions of higher education (IHEs) from using informal methods to resolve Title IX claims. They feared that allowing informal resolution of claims would incentivize IHEs to direct all claimants into this process rather than allowing a claimant to have agency over how a sexual misconduct claim would be investigated and resolved by the Title IX Office.

With the adoption of the Final Rule, however, the Department of Education acknowledged the advisability of permitting flexibility in the process of achieving resolution of a Title IX claim. There is, however, very little in the Final Rule to aid IHEs in the development and implementation of an informal resolution process, beyond the requirement that for cases involving complaints of "sexual harassment" as defined under Title IX: (1) a formal complaint must be filed before informal resolution may be offered; (2) both the complainant and respondent must voluntarily agree to participate in the process and must be allowed to withdraw from the process at any time before reaching an agreement, in which case the formal investigation will resume; (3) the IHE must approve of the case as appropriate for informal resolution; (4) the IHE must give the parties a written notice describing certain information about the informal resolution process; and (5) informal resolution can never be allowed for cases with a student complainant and an employee respondent. It is thus up to each IHE to develop, memorialize, and implement an informal resolution process if it chooses to offer informal resolution.

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Following publication of the Final Rule, we at Vanderbilt quickly determined that informal resolution could be a valuable tool for parties to reach a mutually acceptable outcome in a complaint. Informal resolution offers an alternative for members of the Vanderbilt community who may be concerned about participating in a (sometimes lengthy) formal investigation and have themselves and witnesses be subject to live cross examination in order to reach a resolution of their case.

Because informal resolution is a new option at Vanderbilt, we had to construct the process, determine how to document the parties' agreement to participate and the standard terms and conditions that would be included in any resolution agreement, and decide how to guide the parties through the process. We then began to develop a plan to publicize the availability of the process to all qualified parties, so that members of the Vanderbilt community are aware of the choices that exist for resolution of Title IX complaints. Specifically, we want people to know that a formal hearing with cross examination is not necessarily their only option if they engage with the Title IX Office. We also want our community to be aware that a potential benefit of the information resolution process is a reduction in time between report and resolution as it can be quicker than the typical formal investigation/hearing/cross-examination process.

Vanderbilt has increased its Title IX Office staff to include a full-time employee who serves as our Informal Resolution Manager. The Informal Resolution Manager's professional experience includes significant work in administrative law and alternative dispute resolution. We currently offer mediation and facilitated settlement as our primary forms of informal resolution and, in the future, may expand to include restorative justice or other transformative justice options. The latter methods generally are more nuanced and benefit from facilitators with specialized training, so we are exploring opportunities to gain experience in facilitating restorative justice before offering that as an option to participants in our process.

To facilitate implementation of the new informal resolution process at Vanderbilt, we have developed forms that will shepherd participants through the informal resolution steps while providing transparency about our approach and expectations for the parties. Use of these standard forms also enables us to comply with our regulatory obligations, supply sufficient information to the parties for them to provide informed and voluntary consent to participate, memorialize any resolutions reached, and track the flow of cases through our process. Examples of these forms can be found at <https://www.vanderbilt.edu/title-ix/informalresolution.php>. We anticipate these forms will continue to evolve as we incorporate feedback from participants, identify process improvement steps, and respond to changes in the regulatory environment.

We trained hundreds of students and employees between January and July 2021 and are participating in many of the new student and staff orientation sessions this fall, with the

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aim to educate all faculty, staff, and students on Vanderbilt's new sexual misconduct policies, including the availability of informal resolution. We want community members to be aware that our Title IX Office can offer a range of options to resolve claims and thereby counteract the potential chilling effect of the hearing/cross examination requirements in the Final Rule.

Once our Informal Resolution Manager began offering informal resolution in May 2021, we saw parties immediately seek to avail themselves of the process. Nearly half of our active, open cases have accessed the informal resolution process, meaning that both parties agreed to participate. Some of these cases were resolved through informal resolution, while others returned to the formal investigation process. Of the other half, we regularly saw interest from parties in the informal resolution process, but either the case itself was not eligible for informal resolution or the other party was not willing to participate in the process.

Evaluation of the Program's Effectiveness

We are hopeful that, as we continue to publicize the informal resolution process to campus stakeholders, we will see an increase in the use of the informal resolution process by parties, resulting in an increased number of resolved cases in the Title IX/sexual misconduct space. Informal resolution can provide parties with greater certainty regarding the outcome of a case as compared with formal resolution, increasing the likelihood the parties will feel a sense of agency and satisfaction vis-à-vis the resolution process.

We track all our cases internally and have a separate workflow for those that have moved into informal resolution. This system will give us good data regarding how many cases are going to informal resolution, how many are successfully resolved using informal resolution, and what proportion of cases that go into informal resolution move back into the formal resolution process.

Next steps for us include building out the section of our website that addresses informal resolution so that people who are interested in the process can find information about the process quickly and easily. We will also continue to evaluate internally the effectiveness of the process and adjust as necessary to assure this process is a robust and effective alternative to the formal, hearing-based resolution process mandated by the August 2020 Final Rule.

Website for further information (in progress): <https://www.vanderbilt.edu/title-ix/>

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