

Utica University
Sexual Harassment and Sexual Misconduct Policy
Guide to the Informal Resolution Process

A. What is an Informal Resolution Process?

An informal resolution process is a voluntary process in which a trained facilitator assists the parties in resolving the allegations made by a Complainant. An informal resolution prioritizes educational and conciliatory approaches over more adversarial contestation of the facts. One objective of the informal resolution is to provide to the parties an opportunity to learn and understand each other's concerns and address them as collaboratively and usefully for the parties as possible, with the assistance of the facilitator.

The intent of an informal resolution process is for the parties to undertake a facilitated dialogue regarding the matters at issue related to the allegations to see if they can reach agreement on a resolution that leaves both parties feeling satisfied with that resolution.

The informal resolution process is not available if the Respondent in a sexual misconduct complaint is a faculty or staff member of the University and the Complainant is a student. The informal resolution process is also not available in a complaint involving more than two parties unless (a) all parties voluntarily consent to use the informal resolution process, (b) there is an understanding among all parties about what happens when the right of any party to stop the informal resolution process and commence (or return to) the formal grievance process is invoked, and (c) there is an understanding among all parties about whether some parties, but not all, can agree to a resolution. No party should feel intimidated, coerced or threatened to participate in an informal resolution process, and the Title IX Coordinator will not authorize use of the informal resolution process where there is reason to believe that a party's consent to use the process is not truly voluntary.

The informal resolution process may also be used if the Respondent wishes to accept responsibility for all or part of the alleged policy violations. If the Respondent indicates an intent to accept responsibility for all or part of the alleged misconduct, the formal grievance process will be paused, and the Title IX Coordinator will determine whether informal resolution can be used according to the criteria above. If so, the informal resolution process will be used to determine whether all parties and the University are able to agree on sanctions and/or remedies. This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution.

Supportive measures are available to both parties in the same manner as they would be if the formal complaint were proceeding under the formal grievance process.

B. Steps Prior to the Informal Resolution Process

The Title IX Coordinator will offer the informal resolution process to the parties after a formal complaint is filed by a Complainant if the Title IX Coordinator believes informal resolution may be appropriate. Both parties must consent to use the informal resolution process. Either party in an informal resolution process may terminate it at any time and the complaint will proceed (or return) to the formal grievance process. In some instances, as detailed below, the facilitator in the informal resolution process may terminate the process as well.

If both parties consent to participate in the informal resolution process, the University will assign a facilitator who will act in an independent, impartial manner to facilitate a resolution between the parties. The facilitator will be trained on how to perform the role. The facilitator will also be screened to ensure that such person is free from conflicts of interest and bias.

C. How the Process Works - General

The facilitator will schedule one or more meetings with the parties. The facilitator will assist the parties in communicating information and opinions to the facilitator and each other regarding the allegations in an effort to find common ground and a resolution of the allegations that is satisfactory to all parties. The facilitator may meet separately with each party to explore the party's views about the allegations and desired outcome from the process. Either party can elect to have any meeting occur so that the parties are in different locations and the facilitator "shuttles" between the parties.

Informal resolution may be appropriate if the parties are willing to openly exchange views and reach a resolution acceptable to both parties. The parties to this process should have a clear understanding of the allegations in the complaint and the issues that are in dispute since the investigation phase of the formal grievance process will not occur (or resume) if an informal resolution is reached.

D. Role of the Facilitator

The facilitator's role is to conduct the informal resolution process in a way that is impartial and does not favor one party over the other. If the facilitator believes at any point in the informal resolution process that one party is not behaving in a way that allows for a productive resolution between the parties, the facilitator will discuss the matter in confidence with the Title IX Coordinator, and either another facilitator will be appointed or the University will require that the informal resolution process be cancelled and the complaint will be addressed through the formal grievance process.

E. Confidentiality

For the informal resolution process to have the best chance for success, the parties should be free to express themselves. As a result, the information received from both parties during the informal resolution process will be kept confidential by the facilitator but the facilitator may share information with the Title IX Coordinator as necessary to enable the Title IX Coordinator to oversee the process in accordance with University policy.

In addition, the facilitator will not be available as a witness in any hearing that may occur should either party or the University terminate the informal resolution process before a resolution. This is in keeping with the concept that the facilitator is impartial and is only facilitating the interaction between the two parties.

Should the formal complaint proceed or be returned to the formal grievance process, the parties and any support persons may not disclose information shared by the other party during the informal resolution process in the hearing. This confidentiality protection does not apply to information that is learned outside the informal resolution process through the investigation or otherwise (but not learned through a violation of the foregoing confidentiality requirement).

F. Support Persons During Informal Resolution Process

Each party may have a support person accompanying them to any informal resolution meeting. A support person is someone who provides support to a party during the informal resolution process. This role should be distinguished from the role of an advisor under the formal grievance process of this procedural document. For instance, the support person will not be permitted to question the other party.

A support person can help a party understand or explain the issues under discussion or simply help the party feel more comfortable during the informal resolution process. A support person should be someone with

whom the party feels comfortable. A party may need to tell their support person sensitive things related to the facts and circumstances surrounding the allegations. The support person may be a friend or relative or any other person the party trusts.

A party must let the facilitator know in advance if they would like a support person to attend any informal resolution meeting and the name of the support person and that person's relationship to the party. A support person cannot be someone who has been involved in the facts and circumstances in the allegations in any way. The facilitator can also exclude a support person if their presence is disruptive during the informal resolution process.

Support can be provided in several ways. Support people do not necessarily have to be present in an informal resolution session. Support people can be available to offer support in a nearby area and the facilitator can schedule breaks so that a party can talk with their support person outside the meeting. The support person can attend the informal resolution meeting but may not participate or speak during it. The support person can ask for a break if the person wishes to confer with the party.

G. Possible Outcomes of the Process

A resolution is reached only if both parties agree and if the resolution is accepted by the Title IX Coordinator. The facilitator will not impose an outcome, although they may assist the parties in suggesting resolutions that appear to meet the parties' needs. If there is no agreement on a resolution, the complaint will proceed (or be returned) to the formal grievance process. A party may terminate the informal resolution process at any time before the final written resolution is signed.

The University imposes no restrictions on the possible outcomes reflected in a resolution so that the parties are free to fashion a resolution that meets their needs, subject to acceptance by the Title IX Coordinator. A resolution may include discipline, up to and including expulsion/termination of employment, if the parties agree.

The facilitator will draft a document reflecting the agreement between the parties that becomes final once it is signed by the parties and accepted by the Title IX Coordinator. This written and signed resolution indicates that the complaint has been resolved under this process without the need to pursue the formal grievance process.

After a written resolution has been finalized, the University will keep a record of the parties' written consent to the informal resolution process and the written resolution. Results of complaints resolved by informal resolution are not appealable and are not subject to further review or appeal under other Utica University policies or procedures.

H. What Happens if the Informal Resolution Process Does Not Result in an Agreed-Upon Resolution?

Once a formal complaint has been filed, the informal resolution process should proceed with due promptness. The University imposes no specified timeframe for the process but the facilitator may choose to terminate the informal resolution process (and either party may elect to terminate the process) if insufficient progress is being made.

If an informal resolution process does not result in an agreed-upon resolution, investigation of the allegations in the complaint will commence (or resume) and the formal grievance process will proceed from there.