

# **Grievance Procedures for Reported Sexual Offenses Updated May 2015**

## **Introduction**

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. The University does not discriminate on the basis of sex against students or applicants for admission, or employees or applicants for employment or in the administration of its policies or in any aspect of its operations in accordance with its Non-Discrimination Policy/Equal Opportunity Policy (<http://policies.cua.edu/EEO/affirmact.cfm>).

The Catholic University of America's Sexual Offenses Policy (<http://policies.cua.edu/StudentLife/studentconduct/assault.cfm>) affirms its intolerance for sex discrimination and promotes respect for persons' bodily integrity, the virtues of chastity and the sacredness of human sexuality.

The University will conduct prompt and thorough investigations into all reported instances of sexual offenses. Students who report sexual offenses shall be informed of and encouraged to use all appropriate University, law enforcement, and community resources. Students accused of sexual offenses shall be informed of and encouraged to use all appropriate University and community resources and shall receive due process in accordance with University policies and procedures.

Actual or threatened retaliation, or any act of intimidation to prevent or obstruct the reporting of sexual offenses or the participation in proceedings related to sexual offenses, is prohibited pursuant to the University's Non-Retaliation Policy (<http://policies.cua.edu/governance/nonretaliation.cfm>) and will result in disciplinary action regardless of the outcome of the underlying complaint of sexual offenses.

## **Prohibited Conduct and Definitions**

A. **Sexual Offenses** are prohibited in all forms. "Sexual Offense" is a broad term encompassing a range of behaviors including, but not limited to sexual assault; sexual harassment; dating violence; domestic violence; stalking; indecent exposure; sexual exhibitionism; use of communication systems to send unwanted sexual material and messages; prostitution or the solicitation or employment of a prostitute; peeping or other voyeurism; allowing others to view consensual sexual activity; the non-consensual video or audio recording or sexual activity; or any conduct prohibited by applicable law.

1. **Sexual assault** is sexual intercourse or sexual contact with another person without consent. Sexual assault is a criminal offense defined by D.C. law and includes the following:
  - Oral, vaginal, or anal penetration, no matter how slight, with any object or body part without consent.
  - Non-consensual touching of another person in a sexual manner. This includes, but is not limited to, the touching either directly or through clothing, of another

person's genitalia, breasts, inner thigh, or buttocks with a clothed or unclothed body part or object.

2. **Sexual Harassment** means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when either:
  - Submission to such conduct is made either explicitly or implicitly a term or condition of employment, education, on-campus living environment, or participation in a University activity or program; or
  - Submission to or rejection of such conduct is used or threatened to be used as the basis for decisions affecting employment, education, on-campus living environment, or participation in a University activity or program; or
  - Such conduct has the purpose or effect of unreasonably interfering with an individual's work or educational performance or creating an intimidating, hostile, or offensive environment for employment, education, on-campus living, or participation in a University activity or program.

Sexual harassment can occur between and among supervisors or managers and subordinates, faculty and staff or students, peers, vendors/subcontractors/visitors and employees or students, or any combination thereof. Often, but not always, the harasser is in a position of authority, trust, or influence that provides the opportunity to take advantage of the unequal positions of the parties.

3. **Dating Violence** means violence committed by another person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: a) the length of the relationship, b) the type of relationship, or c) the frequency of interaction between the persons involved in the relationship.
4. **Domestic Violence** means violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of D.C. (including past or present marriage, domestic partnership, romantic, dating, or sexual relationship), by a former spouse or similarly situated person against a victim who is in a subsequent relationship with a former spouse or similarly situated person, or by any other person against a victim who is protected from that person's acts under the domestic or family violence laws of D.C.
5. **Stalking** means purposely engaging in a course of conduct directed at a specific individual that would cause a reasonable individual to fear for his or her safety or the safety of another person, feel seriously alarmed, disturbed or frightened, or suffer emotional distress.

A student can face significant disciplinary sanctions, including expulsion, as well as criminal prosecution or other legal action, for committing a sexual offense.

- B. **Consent** is informed, freely given, mutually understandable words or actions that indicate a willingness to participate in sexual activity. Effective consent may never be obtained when there is a threat of force or violence, or any other form of coercion or intimidation. A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent cannot be obtained from a minor, someone who is mentally disabled, or someone who is unable to understand or who cannot communicate a lack of consent. This includes someone who is unconscious or asleep, or who is incapacitated due to drugs, alcohol or some other condition. Silence or lack of active resistance does not imply consent.
- C. **Responsible Employee** means an employee who has:
1. The authority to take action to address sexual violence or other sexual offenses; or
  2. Been given the duty of reporting incidents of sexual violence or other sexual offenses to the Title IX Coordinator, or who a student could reasonably believe has this authority of duty.

At the University, Responsible Employees are listed at:

<http://policies.cua.edu/StudentLife/studentconduct/assault.cfm>.

### **Privacy and Confidentiality**

The University is committed to protecting the privacy of all individuals involved in a reported sexual offense. Information related to a reported offense, aside from information disclosed to persons in legally protected roles as described below, will only be shared with individuals whose duties requires access to such information. No other persons will receive any information related to the report or investigation absent a valid subpoena or court order.

If a reported sexual offense discloses an immediate threat to the campus community, the University shall issue a timely notice of the incident in the interests of the health and safety of the campus community.

The University also recognizes that an individual reporting an alleged sexual offense may desire confidentiality and may not want the University to investigate or attempt to resolve the incident. While the University will make every reasonable effort to honor the individual's request for confidentiality, the University must balance this request against its responsibility to protect the community. In light of this responsibility, the University reserves the right to investigate and to take whatever steps are necessary to ensure a safe and nondiscriminatory environment for all students. When the University cannot comply with a student's request for confidentiality, the University will consult with that individual and keep the student informed throughout the process.

If an individual desires to seek confidential assistance without a report to the University, that individual may speak with certain persons in legally-protected roles. Information disclosed about the alleged sexual offense to persons in legally-protected roles acting in their professional capacities may not be revealed to any other person without the express permission of the disclosing individual, unless there is an immediate threat to health or safety, the conduct involves

the abuse of a minor or there is another basis for disclosure permitted or required by law. Legally-protected roles include professional mental health counselors (including but not limited to those in the University Counseling Center), physicians (including but not limited to those in Student Health Services), clergy when the communication is made in their professional capacity of giving religious or spiritual advice, and appropriately licensed rape crisis/sexual assault counselors. Note: If the employees listed in the categories above are made aware of crimes or offense *outside of* their professional capacities, those employees may be considered responsible employees for reporting sexual offenses.

### **Reporting Sexual Offenses**

To report a sexual offense, contact the **Department of Public Safety (DPS)** at tel. (202) 319-5111. DPS is available 24 hours a day, 7 days a week, and will contact the D.C. Metropolitan Police Department (MPD) or other local law enforcement agencies as necessary. An individual who have been subjected to a sexual offense is always free to report it directly to local law enforcement, but should contact DPS, who will assist them in contacting the appropriate authorities.

If a sexual offense is reported to DPS, DPS shall notify the Title IX Coordinator and the Dean of Students (“Dean”) of the report, normally within 48 hours. The Title IX Coordinator will work with the Dean so that the student can immediately receive support, be informed of available services, and, if necessary, be protected (e.g., no contact order, class rescheduling). The Title IX Coordinator will track all investigations for the University, and advise participants in the process as appropriate.

Reports of sexual offenses may also be made to the **Dean of Students** at tel. (202) 319-5619, [sawyerj@cua.edu](mailto:sawyerj@cua.edu), Pryzbyla Center, Suite 353. The Dean shall notify DPS and the Title IX Coordinator of the report, normally within 48 hours.

Reports of sexual offenses may also be made to the **University's Title IX Coordinator** at tel. 202-319-4177, [vinik@cua.edu](mailto:vinik@cua.edu) Leahy Hall 170. The Title IX Coordinator shall notify DPS and the Dean of the report, normally within 48 hours.

A student also has the option of contacting the **Office for Civil Rights** regarding sex discrimination issues at: Washington D.C. (Metro), Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-1475, Telephone: (202) 453-6020, FAX: (202) 453-6021; TDD: 800-877-8339, e-mail: [OCR.DC@ed.gov](mailto:OCR.DC@ed.gov).

If a report of a sexual offense is made to any staff or faculty member of the University who is a “Responsible Employee” (defined above) the faculty or staff member must contact the Title IX Coordinator who shall inform DPS and the Dean as appropriate. All other members of the University community, except those designated as confidential resources in legally-protected roles, are strongly encouraged to report sexual offenses in accordance with the reporting processes above.

Filing a report of an alleged sexual offense does not obligate a student to participate in the disciplinary process. A student always has the option to pursue a criminal complaint with the

appropriate law enforcement agency, to pursue the University's disciplinary process, or to pursue both processes simultaneously.

The University has the responsibility to provide a safe campus and learning environment. In light of this responsibility, the University will address all reported sexual offenses regardless of the participation of the individual reporting the incident.

### **Jurisdiction of the University**

Disciplinary procedures for sexual offenses complaints apply to conduct by a student while a student, even if it occurs outside of an academic term or when the student is not otherwise enrolled at the University and even if the University does not learn of such conduct until after the student graduates, withdraws, takes leave, or is otherwise absent from the University. It applies to conduct that occurs on University-owned or leased property, at University-sponsored events, and off-campus.

Decisions regarding a student's responsibility – or lack thereof – for a violation of the sexual offenses policy will be based upon careful consideration of all available information and evaluated using a preponderance of the evidence standard (it is more likely than not that the violation occurred).

### **University Procedure after Receiving a Report of a Sexual Offense**

#### **A. Referral to the Dean of Students**

A student who has reported an alleged sexual offense shall be referred to the Dean, who will appoint a trained resource person to help explain and navigate the available support services. This includes information regarding counseling, educational support, pastoral care, medical treatment, and information about filing a complaint under the *Code of Student Conduct* for University disciplinary action.

Upon receipt of a report of an alleged sexual offense in which the accused is a current Catholic University student, the Dean shall issue no-contact orders, as appropriate, to the student alleging a sexual offense (complainant) and the student accused of a sexual offense (respondent.)

The Dean shall also provide assistance to the affected students in rearranging class schedules and housing; every effort will be made to accommodate all reasonable requests, to protect the students and the campus community, and to minimize the impact on the students' educational programs.

#### **B. Title IX Investigations**

The Title IX Coordinator is responsible for oversight of the investigative and adjudicative processes for sexual offense complaints and for conducting investigations when a complaint of sexual harassment has been made to the University. The Deputy Title IX Coordinator in DPS is responsible for conducting investigations when a report of all other sexual offenses has been made to the University and to coordinate as appropriate with MPD or other local law enforcement. Ordinarily, this administrative investigation will include a review of statements obtained from either party, interviews with both parties, interviews with witnesses and review of documentary evidence. The University may be obligated to conduct an investigation regardless

of the complainant's requests. The University should be particularly careful while an active law enforcement investigation is ongoing and it should not ordinarily conduct independent interviews or gather evidence while off campus law enforcement is actively interviewing witnesses or gathering evidence on the matter that concerns the University.

A decision whether to actively investigate a case that is under investigation by off campus law enforcement should be the product of a discussion among the Title IX Coordinator, Public Safety, Student Affairs, and the General Counsel, who shall weigh all factors and ensure that there have been direct communications with the off campus law enforcement agency.

In the course of the administrative investigation, the Title IX Coordinator, Deputy Title IX Coordinator, the Dean and the General Counsel shall periodically update each other and share pertinent information, careful to maintain confidentiality and investigative integrity. The General Counsel should be consulted throughout the process.

### **C. Dean's Review**

At the conclusion of the investigation, an investigative report shall be issued by the investigator to the Dean, the Deputy Title IX, the Title IX Coordinator, and General Counsel. The report shall contain all material collected during the investigation, whether by University personnel or others, and may contain the investigators evaluation of the facts revealed during the investigation. The Dean will review the investigative report and may consult with any other officials the Dean considers appropriate during this review. The Dean may also return the investigation to the investigator with any additional questions.

As part of this review, the Dean will determine, based on the information contained within the investigative report, whether there is sufficient information available to charge the respondent with an alleged violation of the University policy. Should the Dean determine that there is sufficient information to charge the respondent, the Dean will refer the case for a hearing under the **Disciplinary Procedures for Sexual Offenses Complaints**. Should the Dean determine that there is not sufficient information to charge the respondent, the Dean will document the matter as closed. This determination by the Dean will generally be made within 5 business days.

The respondent will be found in violation only if the Hearing Board ("Board") determines, by a preponderance of the evidence, that the respondent has committed a violation of the University policy.

The Dean will provide written notification of the determination of the review to the complainant and respondent. The complainant may appeal the determination that there is not enough information to charge the respondent by submitting a letter to the Vice President for Student Affairs ("Vice President") outlining all reasons for the appeal. The appeal must be submitted to the Vice President within 5 business days of receipt of the outcome letter. The Vice President will evaluate the appeal and notify the complainant and respondent in writing of his decision. This determination by the Vice President will generally be made within 5 business days of when the appeal has been received. That determination is final and may not be further appealed.

In all cases, the Dean will inform the Title IX Coordinator, Deputy Title IX Coordinator, General

Counsel and the Vice President of the determination of the review.

#### **D. Estimated Timelines**

All parties have an interest in the speedy resolution of an alleged sexual offense, and the following timelines are designed to accomplish that. The University cannot control all factors that might contribute to delays including, e.g., local law enforcement activity, the completion of criminal forensic testing, or the availability of witnesses. An administrative investigation will normally be completed within 21 calendar days of receipt of a reported sexual offense. If a complaint is referred to a student conduct disciplinary process (discussed below), that process will normally be held within 21 calendar days of the disciplinary referral. When an estimated timeline cannot be adhered to, the Dean shall ensure that all parties are notified of the delay and provided an anticipated completion date. The decision of when to conclude an investigation or to refer a case to a hearing board will be case-specific; for example, it is not necessary to wait for the conclusion of a criminal investigation, but University officials must decide when there is sufficient information and evidence available that moving forward would be in the interests of justice, neither premature nor unduly delayed, both of which could frustrate achievement of a just result.

#### **Disciplinary Procedures for Sexual Offenses Complaints**

The following procedures shall apply in student conduct proceedings for complaints of a sexual offense. Formal rules of process, procedure, and technical rules of evidence, such as applied in criminal or civil court, are not used in student conduct proceedings. Deviations from prescribed procedures shall not necessarily invalidate a decision, unless significant prejudice to an accused student, complainant or the University results.

Because a hearing is a fact-finding proceeding and does not recommend or adjudicate punishments, the Dean may decide to forego a hearing if the respondent accepts responsibility in writing, in which case the Dean may proceed to consider the appropriate sanction. The complainant shall be informed and consulted during this process.

1. The complainant and respondent shall receive at least seven (7) calendar days written notification of the specific charges and the date, time, and location of the scheduled proceeding and their rights as outlined in these procedures.
2. The complainant and respondent may request a reasonable extension of time to prepare for the proceeding. Requests for an extension will not be granted for a period to exceed two business days except in unusual circumstances where the party can demonstrate the necessity for a longer delay. All requests for extension of time should be made in writing at least 24 hours prior to the scheduled proceeding, except in cases of documented serious illness or emergency.
3. The complainant and respondent shall be afforded reasonable access to review the case file prior to and during the proceeding, and may request a copy of a redacted incident report from the Dean. "Case file" means the file containing those materials pursuant to the Family Educational Rights and Privacy Act (FERPA) of 1974. If additional

information becomes available and is relevant, it will be discussed and reviewed at the proceeding. The personal notes of University staff members and investigators and privileged information of other students are not included in the case file and thus are not accessible.

4. Both parties shall have the opportunity to provide to the Dean additional and relevant information to be considered by the Board. Any such additional information must be submitted in writing at least two business days prior to the proceeding to the Dean. The Dean will ensure that such information, if relevant, is provided to both parties, and may grant delays as the Dean considers appropriate to permit parties to prepare to respond to additional information or documents.
5. During the proceeding, testimony regarding any party's past sexual conduct will ordinarily not be permitted, except in those instances where there was a prior sexual relationship between the parties and the testimony may be relevant to the issue of consent. If the respondent is found responsible for the conduct alleged in the complaint, his or her past University disciplinary history, if any, may be considered by the Dean in determining the appropriate sanction.
6. Proceedings will be closed to non-participants and to the public, including friends and University personnel without an official interest in the case. The complainant and the respondent may choose to permit either or both parents or guardians to observe the proceeding.
7. Either party will be provided options for reasonable alternative arrangements if he or she does not want to be present in the same room as the other party during the proceeding.
8. The complainant shall have an opportunity to present and the respondent shall have the opportunity to respond to the information related to the alleged violation; both parties may provide the names of witnesses from the CUA community who have relevant and material information pertaining to the incident. These individuals may be invited at the discretion of the Dean to participate in the proceeding, but are not required. Character witnesses and character evidence will not be heard. Ordinarily, witnesses who are not members of the CUA community will not be invited to serve as witnesses in the proceeding and expert witnesses generally will not be invited.
9. During the proceeding, the parties shall have an opportunity to have questions posed to each other and witnesses through the presider of the Board, and to address the information related to the alleged violation; questions from the complainant to the respondent or from the respondent to the complainant should be submitted in writing to the Dean no less than two business days prior to the scheduled proceedings; the parties may also submit questions during the hearing, based on information that arises during the hearing. The presiding officers will examine the questions and ensure relevance and propriety. **These questions will be asked by the presiding officer.** At no time will either party be permitted directly to ask the other questions. Doing so could result in removal from the proceeding.

10. Both complainant and respondent may be accompanied by one advisor. The role of the advisor shall be limited to support and consultation; the advisor may not speak during any proceeding except privately to the party being advised, nor shall the advisor question or address witnesses. Violation of this expectation will result in the advisor being removed from a proceeding at the discretion of the presiding officer. In consideration of the limited role of an advisor, and of the interest of the University to expeditiously conclude the matter, a proceeding will normally not be delayed if an advisor is unavailable.
11. A student conduct administrator may be present at the hearing to provide procedural clarification as needed for the Board or parties. The Office of General Counsel shall make available a legal advisor for the proceeding. The advisor may be present for the proceeding and the presiding officer and the student conduct administrator may recess the proceeding and consult with the legal advisor as necessary.
12. A respondent who fails to appear at a scheduled proceeding without good cause (e.g., serious illness), after proper notice of such a proceeding, may be adjudicated in absentia, and forfeits all rights to an appeal unless it is for lack of proper notice, as required herein. In such cases, decisions will be based solely on witness testimony and other information presented during the proceeding.
13. Proceeding outcomes must be supported by a preponderance of evidence. Preponderance of evidence means that a greater weight of evidence has been demonstrated in order to decide in favor of one side over the other, to determine whether a fact is true, or to establish that an event occurred. A preponderance of the evidence does not necessarily mean the greater *amount* of evidence but rather the greater quality of evidence – making it more likely than not that the matter in question is true. A respondent may be found in violation of any prohibited conduct (including sections of the *Code of Student Conduct* (“*Code*”) for which he or she was not originally charged) when behaviors that were previously unknown are discovered during the course of the student conduct proceeding or if it is determined that a different section of the *Code* more appropriately addresses the conduct in question.
14. The outcome of the proceeding shall be conveyed to the parties in writing by the Dean normally within five business days.

### **Sanctions**

In the event the Board determines that a sexual offense or other student conduct violations occurred, sanctions may be imposed by the Dean.

1. The imposition of sanctions is based on the nature of the violation and the severity of any damage, injury, or harm resulting from it, and the character, disciplinary record, and rehabilitative potential of the student respondent.
2. In some cases, a sanction may be held in abeyance for a specific period. This means that,

should the respondent be found in violation of the *Code* during the stated period, he or she may be subject to the deferred sanction in addition to the student conduct action appropriate to the new violation.

3. Sanctions that may be imposed in accordance with the *Code* include:
  - a) *Censure*: An official written reprimand for violation of specified regulations.
  - b) *Probation*: A period of time in which a student is expected to demonstrate positive behavioral change and may be excluded from participation in privileged or extracurricular institutional activities. Additional restrictions or conditions for behavioral changes may be imposed. Violations of the terms of student conduct probation, or any other violation of this *Code* during the period of probation, may result in eviction from residence halls, suspension or expulsion from the University.
  - c) *Restitution*: Repayment to the University or to an affected party for damages resulting from a violation of this *Code*.
  - d) *Denial of Access to Specific Areas*: Ban from certain non-academic area(s) for a specified length of time.
  - e) *Eviction from Residence*: Termination of the residence hall agreement and exclusion from visiting within certain or all residential facilities, as set forth in the notice of eviction, for a specified period of time. A student who is evicted is not entitled to a refund of room fees. A student who is a freshman or sophomore and is evicted from residence halls is unable to fulfill residency requirements and may be suspended, upon review.
  - f) *Revocation of Privileges*: Restrictions placed on activities and/or use of University services and facilities for a specified period of time.
  - g) *Suspension*: Exclusion from classes and other privileges or activities, including access to University premises or University-sponsored activities off campus, as set forth in the notice of suspension,. A student who is suspended is not entitled to any tuition or fee refund and is banned from University premises for the duration of the suspension.
  - h) *Expulsion*: Termination of student status, and exclusion from University premises, privileges and activities. A student who is expelled shall not be entitled to any tuition or fee refund and is banned from University premises permanently.
  - i) *Discretionary Sanctions*: Other sanctions that bear a reasonable relation to the violation for which the student has been sanctioned may be imposed instead of or in addition to those specified above. Discretionary sanctions include, but are not limited to: service hours, fines, educational reflection assignments, and participation in alcohol or drug awareness programs, and training, counseling, and education regarding sexual offenses.

### **Appeals Process**

The outcome of a student conduct proceeding for a sexual offense case may be appealed by either party subject to the following guidelines:

1. A letter of appeal shall be submitted to the Vice President by the student within five business days of receipt of the outcome of the student conduct proceeding.

2. A student adjudicated in absentia forfeits all rights to an appeal process unless it is proven that it is for lack of proper notice, except in an extraordinary circumstance.
3. The appeal must specify grounds that would justify consideration. General dissatisfaction with the outcome of the proceeding or an appeal for mercy are not appropriate grounds for appeal. The written appeal must specifically address at least one of the following criteria:
  - a. Significant procedural error that changes the findings of fact of the proceeding.
  - b. New evidence that significantly alters the findings of fact, that was previously unknown to the either party, has been discovered and is available during the appeal process.
4. The Vice President may consult other University officials as appropriate before making his/her decision, but shall not gather additional evidence or speak to any of the individuals who appeared at the hearing. If the Vice President believes that the Board should consider additional information, the Vice President may return the case to the Board to hear more evidence in the presence of the complainant and respondent when possible, but the Vice President may not return the case to the Board only for the purpose of reconsidering its original decision.
5. One appeal is permitted. The decision on the appeal is final and shall be conveyed in writing to both parties, normally within five business days of receipt.
6. The imposition of sanctions may be deferred while the appeal process is pending unless, in the discretion of the Dean, the continued presence of the student on the campus poses a serious threat to her/himself or to others, or to the stability and continuance of normal University functions.