



THE CATHOLIC UNIVERSITY OF AMERICA

Sex Offenses Grievance Procedure for Employees

Revised January 4, 2018

Introduction

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex at educational institutions 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 Sex Offenses Policy for Employees.

Any community is born of a shared commitment to core values. The Catholic University of America (“University” or “CUA”), guided by reason and the light of Catholic faith, is a community dedicated to the cultivation of knowledge, skills, wisdom, and virtue. Catholic teaching requires respect for the dignity of others. Membership in the University community brings with it the obligation to conduct oneself in ways that promote these goals and build up the community, and the obligation to refrain from activity inconsistent with our shared goals and commitments. Consequently, CUA expects a higher standard of behavior than the law requires.

The University will conduct prompt and thorough investigations into all reported instances of sexual offenses. Individuals who report sexual offenses shall be informed of and encouraged to use all appropriate University, law enforcement, and community resources. Employees 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.

The University’s Non-Retaliation Policy prohibits actual or threatened retaliation, or any act of intimidation to prevent or obstruct the reporting of sexual misconduct or participation in proceedings related to sexual misconduct. Retaliation will result in disciplinary action regardless of the outcome of the underlying complaint of sexual misconduct.

Scope

These grievance procedures apply when a sexual offense, as defined in the University Sex Offenses Policy for Employees, is alleged against any faculty or staff employee or a third party (such as a vendor, independent contractor, visitor, or guest) who participates in a University-sponsored activity or program. The grievance procedures apply to on-campus offenses and off-campus offenses connected to a University-sponsored activity or program. They also apply to off-campus conduct that may adversely affect campus life or a university activity or program. These grievance procedures apply to respondents who are all full-time employees, even if they are part-time students. They do not apply to respondents who are full-time students. If a respondent is a part-time student and part-time employee, these procedures will apply if the alleged offense occurred while the respondent was acting in an employment capacity. In cases where it is unclear whether the university should follow its student or employee grievance procedures, the University’s Title IX Coordinator will decide.

Privacy

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 require 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 complainant's request for confidentiality, the University will consult with that individual and keep the complainant 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. 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

I. Informal resolution

In cases of sexual harassment and sex discrimination the University's Equal Opportunity Officer (EEO) may suggest informal resolution with the concurrence of the Chief Human Resources Officer (CHRO). Informal resolution will not be used in cases of sexual assault, stalking, dating violence, or domestic violence. Participation in informal resolution is voluntary, and either party may withdraw at any time. The informal resolution options available under this policy are intended to recognize the following:

- Sexual misconduct affects complainants, respondents, reporters, community members, family members, and others (collectively "affected parties");
- Affected parties often benefit when resolution processes and outcomes are tailored to meet their unique needs and interests;
- Complainants and other affected parties may find it useful to meet with a respondent who acknowledges the substance of the underlying events and who acknowledges that the complainant or other affected parties have reported experiencing harm as a result;
- Participants in informal resolution processes must be protected from secondary victimization and other potential harms.

Informal resolution may be used during any phase of the process with the consent of both parties. Any agreements reached in an informal process must be approved by either the CHRO or the Provost, depending on whether they involve staff or faculty.

Interim Measures

While a complaint is pending, the university may take interim measures including but not limited to no contact orders, reassignment, change in work duties, suspension with pay, or suspension without pay. The burden of interim measures should not fall on the complainant, and any changes made to the work duties or assignment of the complainant should only be made with the written consent of the complainant.

Investigation Process

The EEO or Title IX Coordinator will investigate cases of alleged sexual harassment by an employee. The University's Deputy Title IX Coordinator will investigate cases of alleged sexual assault, stalking, or dating violence by an employee. If the Deputy Title IX Coordinator is unavailable, the Director of Public Safety will designate an alternate investigator with experience handling such cases. Either party may raise conflict of interest concerns. If a conflict of interest exists, the CHRO will designate an alternate investigator.

The investigator will conduct an intake meeting with the complainant, interview witnesses, and issue a report to the CHRO. The complainant and respondent will be given equal opportunity to meet with the investigator and identify witnesses and evidence. The investigator will determine whether a sexual offense occurred using the preponderance of the evidence standard. If the respondent is a faculty member, the CHRO will forward the report to the Provost. If the respondent serves in both faculty and staff functions, the CHRO and Provost will consult to determine who should receive the report.

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 by the University's Title IX Committee, which shall weigh all factors and ensure that there has been direct communications with the off-campus law enforcement agency.

Disciplinary Action

The Provost or CHRO will decide on disciplinary action for violations of the Sex Offenses Policy and may consult with other university officials as long as those officials do not have a conflict of interest. Disciplinary actions may include but are not limited to the following:

Reprimand or Censure – A written statement that the respondent has engaged in appropriate behavior or a violation of the sex offenses policy.

Probation – A designated period of time in which the employee's actions will be monitored or expected to improve.

Removal of responsibilities - A decrease in an employee's responsibilities because of a violation of the policy.

Demotion – Movement of the employee to a lower position, often with a decrease in pay or title.

Withholding of merit increases – Ineligibility for normal pay increases for a designated time period.

Reduction in compensation - A temporary or permanent decrease in pay or benefits.

Suspension – Removal of the employee from the workplace for a designated time period.

Termination – Ending the employment relationship with the university.

Revocation of tenure – Removal of a faculty member's tenured status in accordance with the procedures outlined in the faculty handbook.

Right to An Advisor

Each party has a right to an advisor, such as a peer or attorney, at meetings or investigative interviews. The party may consult with his or her advisor, but the advisor may not speak in the meeting or on behalf of the party. An advisor also may not consult so frequently with a party that the advisor is, in effect,

speaking on behalf of the party. An advisor that violates these restrictions will first be warned and may be required to leave the meeting if the behavior continues.

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 such as local law enforcement activity, the completion of criminal forensic testing, or the availability of witnesses. The investigative process will normally be completed within 45 days. The entire process, including a determination of discipline, will normally be completed within 60 days of the complaint. The 60 day time-frame does not include appeals. When an estimated timeline cannot be adhered to, the investigator shall ensure that all parties are notified of the delay and provided an anticipated completion date. The decision of when to conclude an investigation 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.

Notification

The parties will be notified in writing by either the Provost or the CHRO of the outcome of the investigation and any disciplinary action. The investigator may also verbally notify the parties of the outcome of the investigation with prior consent of the Provost or CHRO. If the Provost decides that dismissal of a faculty member for cause is justified, the procedures outlined in Part II-G-7 of the [Faculty Handbook](#) will be followed in lieu of the appeals process below.

Right of Appeal

Each party may appeal the finding by submitting a letter of appeal within seven calendar days of receipt of notification of the outcome. A staff member may appeal to the University's Chief Compliance Officer. A faculty member may appeal to the University's President. The University President or Chief Compliance Officer may designate an alternate person to decide the appeal.

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 either significant procedural error that changes the findings of fact of the proceeding or new evidence that significantly alters the findings of fact.

The appeal decision-maker may consult other University officials as appropriate before making his/her decision, but shall not gather additional evidence. If the appeal decision-maker believes that the Provost or CHRO should consider additional information, he or she may return the case to the Provost or CHRO to gather more evidence. However, an appeal may not be returned solely for the purpose of reconsidering the original decision.

One appeal is permitted. The decision on the appeal is final and shall be conveyed in writing to both parties, normally within 10 business days of receipt.

The imposition of sanctions may be deferred while the appeal process is pending unless, in the discretion of the CHRO or Provost, the continued presence of the respondent on the campus poses a serious threat to self or others, or to the stability and continuity of normal University functions.