

Grievance Procedures for Non-Title IX Sexual Offenses Involving Students

Effective September 1, 2022

Introduction

The Catholic University of America is committed to creating and maintaining a community in which students, faculty, and staff can work and study in an atmosphere free from all forms of harassment, exploitation, or intimidation. At Catholic University, we value the inherent dignity of each person and their right to live without fear of violence or harassment of any kind. The Church teaches that violence against another person, including sexual violence, is never justified for any reason. Sexual offenses outlined in the *University's Sexual Offenses Policy (Students)* and the *Code of Student Conduct* are unlawful behaviors that will not be tolerated; violations can result in disciplinary sanctions including expulsion, as well as criminal prosecution or other legal action.

These grievance procedures supplement the University's Sexual Offenses Policy (Students) and apply to reports of sexual offenses by students that are not under the scope of Title IX.

Privacy and Confidentiality

The University is committed to protecting the privacy of all individuals involved in a reported sexual offense. Information related to a report of an offense, aside from information disclosed to persons in legally protected roles (i.e., professional mental health counselors, licensed physicians, clergy when the communication is made in their professional capacity of giving religious or spiritual advice, and appropriately licensed rape crisis/sexual assault counselors) 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.

The University also recognizes that a student 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 such requests for confidentiality, the University must balance this request against its responsibility to protect the community. 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.

Amnesty

The University encourages reporting of sexual offenses and seeks to remove any barriers to making a report. At times, students may be hesitant to report a sexual offense to University officials because they are concerned that they may be subject to student conduct action for lesser policy violations (such as visitation or alcohol violations) that occurred during the incident. These behaviors are not condoned by the University, but the importance of dealing with an alleged sexual offense is the paramount consideration to the University. Consequently, students who report a sexual offense in good faith, as a complainant or witness, will not be subject to student conduct action for other policy violations that occurred during the incident as long as such violations did not place the health and safety of any other person at risk. The University may, however, require students to participate in educational activities or health interventions for any conduct that comes to the University's attention as deemed appropriate.

Jurisdiction of the University

Disciplinary procedures apply to conduct by a student while a student. The University may investigate and/or resolve any report of alleged misconduct that occurs from the time an individual first attends the University until the individual graduates (or otherwise completes a university program), permanently withdraws or is permanently dismissed, even if the conduct occurs between academic terms.

In a case where a student requests to withdraw or take an academic leave while a student conduct action is pending, the University reserves the right to proceed with the University student conduct process or keep the matter open, at the University's discretion. At any time, the University may place an administrative hold on the student's account preventing future registration. If a student seeks to re-enroll after withdrawing or taking an academic leave, all open matters may be adjudicated under the *Code of Student Conduct*.

University Procedure after Receiving a Report of a Sexual Offense

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, to pursue the University's disciplinary process, or to pursue both processes simultaneously.

A student who has reported an alleged sexual offense shall be referred to the Dean of Students ("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. Staff members will help the student assess services such as academic support, class schedule changes, and housing relocation.

A student who is accused of a sexual offense will also be appointed a trained resource person to explain and navigate the available support services. This includes information regarding counseling, educational support, pastoral care, medical treatment, and information about the *Code of Student Conduct* and University disciplinary action. Staff members will help the student assess services such as academic support, class schedule changes, and housing relocation.

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. The Dean is authorized to issue No Contact Orders (NCO) to limit contact between students.

Investigations

The University will investigate when a complaint of sexual offenses has been made to the University or when the University determines that a reported sexual offense requires further review. The investigation will be conducted by qualified professionals. Ordinarily, this administrative investigation will include a review of statements obtained from either party, interviews with both parties, interviews with witnesses, and a review of documentary evidence.

The University may delay temporarily the fact-finding portion of an investigation in cases that are actively under investigation by off-campus law enforcement. In these cases, the University will generally not 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.

The University endeavors to conduct timely investigations of an alleged sexual offense. The University cannot control all factors that might contribute to delays including, e.g., local law enforcement activity, the completion of criminal forensic testing, University closings, semester breaks or the availability of witnesses. 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.

At the conclusion of the investigation, an investigative report shall be issued by the investigator to the Dean of Students. The report shall contain all relevant and appropriate facts and material collected during the investigation, whether by university personnel or others, and may contain the investigator's evaluation of the credibility of witnesses but shall not include determination of responsibility or a recommendation as to disposition. The investigative report should summarize the events leading up to the investigation, including (1) the date of the report and/or formal complaint; (2) the date that report and/or complaint was shared with the Department of Public Safety, Dean of Students, and Title IX Coordinator, (3) the means by which the report and/or formal complaint was made and documented, (4) whether the investigation was requested or deemed necessary by the University, and (5) substance of the allegations.

Review by the Dean of Students

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 a student with an alleged violation of University policy. Should the Dean determine that there is sufficient information to charge the student with a sexual offense, the Dean will refer the case for a hearing under the Disciplinary Procedures for Sexual Offenses Complaints contained herein.

Should the Dean determine that there is not sufficient information to charge a student with a sexual offense, the Dean will document the matter as closed or recommend further review to determine if student conduct action under the *Code of Student Conduct* is warranted. This determination by the Dean will be made on a timely basis after receipt of the investigative report.

The Dean will provide written notification of the determination of the review to both the individual who files the complaint ("complainant") and the accused student ("respondent"). If there was insufficient information to charge a student with an alleged violation, the matter may be reopened if additional information becomes known to the University that would warrant further review.

Informal Resolution

Some allegations of sexual offenses may be resolved by informal resolution. The Dean will determine if informal resolution is an option. The informal resolution process will be managed by the Dean of Students Office and may involve mediation. The availability of an informal process is not intended to discourage anyone from filing a formal complaint. The informal resolution process

is only available when both the complainant and the respondent agree to it. Either party who has agreed to an informal resolution may return to a formal process at any time before a resolution is reached. Informal resolution occurs when both parties expressly agree to an outcome that is also acceptable to the Dean. Informal resolution is generally not available for situations involving violence, nor is it available for allegations of sexual assault that involve penetration without consent.

Disciplinary Procedures for Sexual Offenses Complaints

The following procedures shall apply in student conduct proceedings for formal 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. At the Deans' discretion, a case involving more than one respondent may be addressed in a single proceeding.

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 may be consulted during this process.

Both the complainant and the respondent will be offered the opportunity to meet with a representative of the Office of the Dean of Students to review these disciplinary procedures prior to the hearing.

1. The complainant and respondent shall receive at least seven calendar days written notice of the specific charges and the date, time, and location of the scheduled proceeding and their rights as outlined in these procedures. Generally, once scheduled, a hearing will not be delayed unless due to a serious documented illness of the complainant or respondent, the introduction of new evidence (as outlined in paragraph 3), or University closing.
2. 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. The notes of University staff members and investigators are not included in the case file and therefore are not accessible. Names and other information of students may also be redacted in the investigative reports as appropriate for confidentiality.
3. Both parties shall have the opportunity to provide to the Dean additional and relevant information that is not contained within the investigative report to be considered by the Board. Any such additional information must be submitted to the Dean in writing at least three business days prior to the proceeding. The Dean will ensure that such information, if relevant, is provided to both parties. The Dean has the sole discretion to delay the proceeding to allow parties additional time to prepare to respond to new information.
4. During the proceeding, evidence 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 evidence may be relevant to the issue of consent.

5. During the proceeding, testimony or evidence regarding any party's mental health will not be permitted absent written authorization from the Dean prior to the hearing.
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. Both parties may provide the names of witnesses from the University community who have relevant and material information pertaining to the incident. Any additional witnesses must be submitted to the Dean in writing at least three business days prior to the proceeding. These individuals may be invited at the discretion of the Dean to participate in the proceeding. The Dean may also invite witnesses. Ordinarily, witnesses who are not members of the University community will not be invited to participate in the proceeding and expert witnesses will not be invited.
9. The complainant shall have an opportunity to present and the respondent(s) shall have the opportunity to respond to the evidence related to the alleged violation(s). The proceeding agenda is normally as follows, although the hearing chair may make reasonable alterations as necessary to ensure a prompt, thorough, and equitable hearing for all parties:
 - a) The hearing chair reads instructions and procedures to the parties and witnesses, and reviews the alleged violation(s) of the *Code of Student Conduct*.
 - b) The complainant may make an opening statement. The statement should be no more than ten minutes in length and address the facts surrounding the alleged offense. The Board will then ask the complainant questions. After the Board has concluded asking questions, the respondent then has the opportunity to submit written questions to the hearing chair to be asked of the complainant.
 - c) The respondent may make an opening statement. The statement should be no more than ten minutes in length and address the facts surrounding the alleged offense. The Board will then ask the respondent questions. After the hearing board has concluded asking questions, the complainant then has the opportunity to submit written questions to the hearing chair to be asked of the respondent.
 - d) Invited witnesses may then provide statements. After each witness statement, the Board will then ask that witness questions. After the Board has concluded asking questions, both the complainant and respondent then have the opportunity to submit written questions to the hearing chair to be asked of the witness.
 - e) The complainant may make a closing statement. The statement should be no more than ten minutes in length. The Board may then ask the complainant questions. After the Board has concluded asking questions, the respondent then has the opportunity to submit written questions to the hearing chair to be asked of the complainant.
 - f) The respondent may make a closing statement. The statement should be no more than ten minutes in length. The Board may then ask the respondent questions. After the

Board has concluded asking questions, the complainant then has the opportunity to submit written questions to the hearing chair to be asked of the respondent.

- g) The hearing chair concludes the proceeding and the Board deliberates in private.
 - h) The Board determine the outcome based upon the preponderance of the evidence standard described in #15.
10. Information or testimony that does not directly relate to the facts at issue, but instead reflects upon the character, reputation, personality, qualities, or habits of an individual should not be presented and, if offered, may be excluded.
 11. During the proceeding, the parties shall have an opportunity to have questions posed to each other and witnesses through the hearing chair of the Board, and to address the information related to the alleged violation. The parties may submit questions prior to and during the hearing. The hearing chair will examine the questions and ensure relevance and propriety. The hearing chair shall have the discretion to determine whether to ask a question, rephrase the question, or not ask the question at all. At no time will either party be permitted directly to ask the other party or witnesses questions. Doing so could result in removal from the proceeding.
 12. 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 hearing chair. In consideration of the limited role of an advisor, and of the interest of the University to expeditiously conclude the matter, a scheduled proceeding will normally not be delayed if an advisor is unavailable.
 13. 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 may also make available a legal advisor for the proceeding. The legal advisor may be present for the proceeding and the hearing chair and the student conduct administrator may recess the proceeding and consult with the legal advisor as necessary.
 14. A respondent who fails to appear at a scheduled proceeding without good cause (e.g., documented 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 information available during the proceeding.
 15. Proceeding outcomes must be supported by a preponderance of evidence. Preponderance of evidence means that a greater weight of evidence supports the conclusion that 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* 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 of Student Conduct* more appropriately addresses the conduct in

question.

16. The outcome of the proceeding shall be conveyed to the parties in writing by the Dean normally within five business days.
17. An audio or audiovisual recording of the hearing will be made by the Dean of Students Office. No other individuals present at the hearing are permitted to make a recording of the proceedings. The deliberations of the hearing board will not be recorded. The recording is property of the University and will remain in the Dean of Students Office. A party that is preparing an appeal may listen to the recording but may not duplicate it. The recording will be preserved for three years after the conclusion of the University conduct process. The hearing chair will facilitate the recording; however, issues that result in no recording, a limited recording, or an inaudible recording are not considered procedural errors for the purposes of an appeal.

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 disciplinary record, and rehabilitative potential of the respondent. The Dean may also consider any mitigating factor, consequences, or post-violation conduct or actions of the respondent that the Dean finds relevant.
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 of Student Conduct* 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 of Student Conduct* include:
 - a. *Censure*: An official written reprimand for violation of specified regulations.
 - b. *Disciplinary 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 of Student Conduct* during the period of probation, may result in eviction from residence halls, suspension or expulsion from the University. While on disciplinary probation, the student is not in good disciplinary standing with the university.
 - c. *Restitution*: Repayment to the University or to an affected party for damages resulting from a violation of the *Code of Student Conduct*.
 - d. *Denial of Access to Specific Areas*: Ban from certain University-owned or controlled areas or University-sponsored events 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 required to live on campus 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. In the case of a student who has graduated but the violation occurred while a student, the Dean may consider whether the University should take steps to restrict the individual from participating in any University program or activity and/or restrictions on the presence on University premises.
- g. *Suspension*: Exclusion from classes and other privileges or activities, including access to University premises or University-sponsored events or activities off campus, as set forth in the notice of suspension, normally for at least one semester. 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 relationship 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 trainings, counseling, and education regarding sexual assault and misconduct.

Appeals Process

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

1. A letter of appeal shall be submitted to the Office of the Dean of Students by the student within three 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 student conduct proceeding.
 - b. New evidence that significantly alters the findings of fact, that was previously unknown to the respondent, has been discovered and is available during the appeal process.
4. The appeal agent 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 provided evidence or testimony at the hearing. If the appeal agent believes that new evidence, previously unknown to either party, significantly alters the finding of fact, the case may be returned to the original Board or, at his/her sole discretion, a Board with some or all new members, to hear more evidence. Such hearing shall occur in the presence of the complainant and respondent when possible. The appeal agent 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 the student.
6. The imposition of sanctions may be deferred while the appeal process is pending unless, in the discretion of the Associate Vice President, 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.

Procedural Alterations

These policies and procedures will be periodically reviewed and edited. The University will adjudicate cases based upon the procedures in effect at the time of the hearing and the policy that was in effect at the time of the offense.