

# John Carroll University Sexual Harassment and Interpersonal Violence Complaint Resolution Process 2018-19

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## I. Introduction

John Carroll University (“University”) will act on any formal or informal complaint or report of an alleged violation of the University’s Sexual Harassment and Interpersonal Policy that is received by the Title IX Coordinator. These actions will include, as appropriate, steps to eliminate the harassment, prevent its recurrence and address its effects.

Title IX Coordinator contact information:

Sherri Crahen, Ph.D.  
Interim Title IX Coordinator & Investigator  
Associate VP for Student Affairs & Dean of Students  
John Carroll University  
Administration Bldg. Room 128  
1 Carroll Blvd.  
University Heights, OH 44118  
(216) 397-4423  
[scrahen@jcu.edu](mailto:scrahen@jcu.edu)

This Complaint Resolution Process described below applies to all complaints brought within the scope of the University’s Sexual Harassment and Interpersonal Violence Policy regardless of the status of the parties involved, who may be:

- members or non-members of the campus community
- students
- student groups, organizations, and teams
- staff, or
- faculty

This Complaint Resolution Process is the exclusive process for resolution of sexual harassment and interpersonal violence complaints brought under the University’s Sexual Harassment and Interpersonal Violence Policy.

While all complaints involving employees of a third-party contractor will be investigated, alternative procedures to the use of a Complaint Review Process may be utilized to respond to such complaints. Complaints by an employee of a third-party contractor where a faculty, staff or student is the responding party will be handled via this Complaint Resolution Process. In cases in which an employee of a third-party contractor is the responding party, the University may use alternative procedures and coordinate the resolution with the procedures of the third-party contractor.

## II. Confidentiality

Allegations that the University's Sexual Harassment and Interpersonal Violence Policy has been violated cannot be kept confidential if they are reported to the Title IX Coordinator and/or a Deputy Title IX Coordinator, or other University personnel with a duty to report these matters. For a list of confidential resources and further information regarding confidentiality, please consult the University's [Mandatory Reporting Policy](#) or Section VII of the University's Sexual Harassment and Interpersonal Violence Policy.

## III. Pre-Complaint Resolution Efforts

In the Jesuit spirit of community, before pursuing the Complaint Resolution Process, every reasonable effort should be made to constructively and amicably resolve issues among the parties. Whenever possible and safe, the University encourages anyone experiencing an issue to first attempt discussing the issue with the party(ies) involved. Such discussions also may help prevent tense situations from escalating to an actual hostile environment. The Title IX Office can facilitate such discussions, upon request, and monitor them for safety.

You are encouraged to contact the Title IX Coordinator if, prior to taking the step of filing a formal complaint, you have questions regarding the process, you are uncertain as to whether your problem is appropriate for pre-complaint resolution efforts, or you are interested in advice on ways to discuss the issue with the other person, etc.

Pre-complaint resolution procedures are voluntary, and the parties have a right to end the process at any time and initiate the formal complaint process. The University does not require a party to contact the person involved if doing so is impracticable, or if the party believes that the conduct cannot be effectively addressed through informal means. Additionally, some reports of sexual harassment or interpersonal violence – such as reports involving violent behavior – may not be appropriate for pre-complaint resolution, and all cases involving allegations of non-consensual sexual intercourse generally are not appropriate for pre-complaint resolution, even on a voluntary basis.

If satisfactory resolution is not reached after discussion with the other individual(s), the University complaint process may be initiated.

Individuals should not wait to contact the Title IX Coordinator or another University official until behavior becomes sufficiently serious (i.e., severe, pervasive, or persistent) to create a hostile environment. The University will take a proactive approach to preventing and addressing sexual harassment and interpersonal violence, including stopping the harassment if it is found to have occurred, remedying its effects and preventing its recurrence.

## IV. The Community Review Board

Allegations brought forward under the University's Sexual Harassment and Interpersonal Violence Policy are resolved using this Sexual Harassment and Interpersonal Violence Complaint Resolution Process. An important part of this resolution process is the Community Review Board ("the Board"). Members of the Board are announced as part of an annual distribution of

the University's Sexual Harassment and Interpersonal Violence Policy. The list of Board members can be found at: <http://sites.jcu.edu/title-ix/>.

Members of the Board receive regular training in sexual harassment investigatory and resolution procedures as required by law and appropriate to provide necessary knowledge and skills to serve on the Board. Members of the Board may serve as members of an investigatory team, Complaint Review Panel ("CRP") or appellate review panel. The President or designee, in consultation with the Title IX Coordinator, appoints the members of the Community Review Board. The Board is made up of representatives from faculty and staff and includes several individuals who can serve as chair.

## V. Filing a Complaint and Mandatory Reporting

Any member of the University community (student, faculty, staff, volunteer or contractor), guest or visitor who believes that they have been the recipient of sexual harassment, interpersonal violence or some other form of discrimination prohibited by the Sexual Harassment and Interpersonal Violence Policy and wishes to make a complaint should contact the Title IX Coordinator in person, by email, by phone, or electronically by using the Online Reporting Form located at: <http://sites.jcu.edu/title-ix/>.

Most University employees receiving reports of a potential violation of this policy are responsible employees with a mandatory duty to report and are therefore expected to contact the Title IX Coordinator promptly after becoming aware of a report or incident. Only employees acting in their professional role and with a legal obligation to maintain confidentiality, such as counselors, doctors, nurses acting at the direction of a doctor, and clergy acting in those roles, are expected to maintain confidentiality consistent with their professional and legal obligations; those individuals are exempt from the reporting requirement. For further information, please see the [University's Mandatory Reporting Policy](#).

All reports and complaints will be treated with privacy and shared only with those with a need-to-know. Subject to the University's obligation to take action regarding violations, a reasonable effort will be made to maintain the privacy of those initiating a complaint or report of a possible violation. In all cases, the University will give consideration to the reporting party with respect to how a possible violation is pursued, but the University reserves the right, when necessary to protect the community and the University or fulfill other legal obligations, to investigate and pursue a resolution when the reporting party chooses not to initiate or participate in a formal complaint.

No person shall make an allegation that one knows to be untrue or knowingly provide false information during the course of an investigation. Making a false complaint or giving false information is a violation of the Sexual Harassment and Interpersonal Violence Policy and may be a basis for discipline, including dismissal or termination. Evidence of false complaints or false information shall be referred by the Title IX Coordinator to Human Resources, Provost's Office or the Dean of Students, depending on the identity of the person who submitted the false information.

## VI. Complaint Intake and Inquiry

All complaints and reports will be reviewed and/or investigated and acted upon promptly. The scope of the investigation will be at the discretion of the Title IX Coordinator. An initial investigation in the form of an inquiry or review will be conducted promptly to determine if the complaint on its face alleges a policy violation, and, if so, which policy violations are alleged in the complaint. If the complaint does allege a possible policy violation, the reporting party and responding party (if known) will be notified in writing and informed as to the next steps under the policy. If the complaint does not allege a policy violation, the case will be closed, and the reporting party and responding party (if known) will be so notified in writing. The Title IX Coordinator then may refer the complaint to the appropriate Academic Dean, Human Resources or Dean of Students' Office for a determination as to whether the conduct may violate another University policy depending on the constituency of the responding party.

The University's ability to move forward in reviewing or investigating any matter depends on a number of factors including, but not limited to: knowledge of the reporting party's and/or responding party's identity and/or the reporting party's willingness to initiate and pursue a formal investigation. If the complaint is filed anonymously, the University's ability to investigate will be limited, and an investigator(s) likely will not be assigned. Additionally, if the reporting party does not wish to proceed, an investigation will not follow unless the safety and well-being of the University community or legal compliance would be jeopardized if an investigation is not undertaken. In considering such requests by reporting parties for anonymity or to not proceed with a complaint process, the Title IX Coordinator must weigh the request against the University's obligation to provide a safe, non-discriminatory environment for all members of our community, including the reporting party.

Typically, the informal complaint and resolution procedure involves a basic fact-finding inquiry (see Section VIII of this Complaint Resolution Process) while the formal complaint and resolution procedure involves a more extensive inquiry into the facts and circumstances (see Section IX of this Complaint Resolution Process).

In cases where a police investigation also has been conducted or is being conducted, law enforcement may be able to provide some information to the Title IX Coordinator. The University's investigation may be delayed for a short period of time upon a request from law enforcement, but it will promptly resume the investigation as soon as possible.

The investigation and resolution, not including appeals, shall be completed as promptly as possible. The Title IX Coordinator will consider whether extenuating circumstances interfere with such timely completion. During the course of an investigation, typically the parties will be notified at regular intervals and/or upon request of the status of the investigation.

## VII. Interim Remedies/Actions

At any time during the process, the Title IX Coordinator may recommend that interim protections or remedies for the reporting party, responding party, or witnesses be provided by

appropriate University officials. These protections or remedies may include, but are not limited to: separating the parties; placing limitations on contact between the parties; imposing interim suspensions; referring parties to counseling or health services (for students) or referring to the Employee Assistance Program (for employees); making adjustments in academic deadlines or course schedules; or making alternative workplace or student housing arrangements. Failure to comply with the terms of interim protections may be considered a separate violation of the University's Sexual Harassment and Interpersonal Violence Policy.

The University will share information regarding interim actions or protective measures with those with a need-to-know in order to implement the interim remedies or protective measures effectively.

## VIII. Informal Complaint Resolution Procedure

The University encourages informal resolution options when the parties desire to resolve the situation cooperatively and expeditiously. The reporting party may seek assistance in informally resolving certain alleged violations of the University's Sexual Harassment and Interpersonal Violence Policy. The Title IX Coordinator will determine if informal resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the ability to address the conduct by informal resolution.

Informal resolution procedures may involve a multitude of interventions and remedies. Some of these may include mediation, targeted or broad-based educational programming or training for relevant groups or individuals, one-on-one discussions with the responding party, and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the Sexual Harassment and Interpersonal Violence Policy.

Regardless of whether the informal resolution or formal resolution procedure is utilized, the responding party will be advised of the substance of the allegations made against them. Where the parties opt to attempt informal resolution, and the parties have failed to achieve resolution via the informal resolution procedures promptly, a formal investigation will begin to be conducted simultaneously with the ongoing informal process.

The informal resolution process is completely voluntary, and a reporting party has the right to end the informal resolution process at any time and initiate the Formal Complaint Resolution Procedure. Also, some complaints of sexual harassment or interpersonal violence, particularly complaints involving violent behavior, may not be appropriate for informal complaint resolution and may require use of the Formal Complaint Resolution Procedure described below. Additionally, cases involving allegations of non-consensual sexual intercourse typically cannot be addressed through informal complaint resolution procedures.

## IX. Formal Complaint Resolution Procedure

In response to reports of policy violations in cases where the reporting party does not wish to engage in informal resolution, where informal resolution is not appropriate, or in cases where attempts at informal resolution are unsuccessful, the Title IX Coordinator will utilize the formal

complaint resolution procedure, which will consist of two parts: the investigation and the disposition/resolution.

A. Investigation

1. Investigator(s)

The Title IX Coordinator will appoint one or more investigators to conduct a thorough, reliable and impartial investigation of the complaint. The number of investigators assigned to a particular matter is at the discretion of the Title IX Coordinator. The investigator(s) may be: 1) the Title IX Coordinator or a Deputy Title IX Coordinator, 2) members of the Community Review Board; or 3) an external investigator appointed by the Title IX Coordinator. Any real or perceived conflict of interest between an investigator and a party must be disclosed by the named investigator or any party to the Title IX Coordinator; whether an investigator with a real or perceived conflict of interest can nonetheless serve as an investigator will be assessed by the Title IX Coordinator on a case-by-case basis. The investigator(s) will act under the direction of the Title IX Coordinator and/or a Deputy Title IX Coordinator.

2. The Formal Investigation

The investigator(s) serve as the investigatory body. The investigator(s) is tasked with investigating the complaint and preparing a written investigatory report.

The investigation generally will include interviews with the parties, if available; interviews with other witnesses as needed; and a review of relevant information as appropriate. Participants in an investigation are encouraged to maintain the privacy of the investigation so as to protect the integrity of the investigation; however, this is not meant to impinge on any legal rights they may have otherwise.

The responding party shall be provided a copy of the written complaint, if any, or otherwise informed of the substance of the allegations. If the responding party cannot be located, attempts at notification shall be documented. The reporting party shall be provided with a copy of the written response provided by the responding party, if any, or otherwise informed of the substance of the response to the allegations.

Both the reporting and responding parties will be provided the opportunity to provide oral (through an interview) and written statements. A party may opt not to participate at all in the investigation or to provide a written statement in lieu of or in addition to any interview(s) with the investigator(s). However, it is important to note that any decision by the parties not to participate, or to limit participation, in turn limits the ability of the University to discover facts that may support their version of the key events as the investigation results will be based on the facts available to the investigator(s) at the time of the investigation.

Both the reporting and responding parties will be asked to provide a list of possible witnesses as well as any written or physical evidence (e.g., texts, social media, emails, photos, medical reports, etc.) that they wish to be considered by the investigator(s). Each party will have the opportunity to suggest questions they wish the investigator(s) to ask of the other party and

witnesses. No audio or video recording of any kind is permitted during meetings with the investigator(s) or other campus officials.

### 3. Prior Sexual History

The prior sexual history of a reporting or responding party will never be used to demonstrate character or reputation. Questions about a party's sexual history with anyone other than the other party involved will not be permitted unless directly relevant to the specific facts or evidence in the current matter. Moreover, evidence related to the prior sexual history of either of the parties is generally not relevant to the determination of a Policy violation and will be considered only in limited circumstances. For example, if the existence of consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether consent was sought and given during the incident in question. However, even in the context of a relationship, consent to one sexual act does not, by itself, constitute consent to another sexual act, and consent on one occasion does not, by itself, constitute consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report. The Title IX Coordinator will determine the relevance of this information, and both parties will be informed if evidence of prior sexual history is deemed relevant.

### 4. Support Persons

Both the reporting party and the responding party have a right to be accompanied by one support person of their choosing during any meeting or interview.

The support person may be a friend, mentor, advocate, family member, attorney or any other person a party chooses; however, the support person cannot be someone who may be called as a witness.

The role of the support person is to serve as an advisor. The support person may be present at interviews and any other proceedings, but may not speak on behalf of the advisee. The parties are expected to ask and respond to questions on their own behalf, without representation by their support person. Support persons may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process.

Support persons are expected to refrain from interfering with the investigation and resolution. Any support person who steps out of their role in any meeting will be warned once and only once. If the support person continues to disrupt or otherwise fails to respect the limits of the support person role, they may be asked to leave the meeting.

The University expects that the parties will wish the University to share documentation related to the allegations with their support person. The University provides a consent form that authorizes such sharing. Each party must complete this form before the University is able to share records or information with a support person. The parties are not otherwise restricted from discussing and sharing information with others who may support or assist them in preparing and presenting during the process. Support persons are expected to maintain the

privacy of the records shared with them by the University, which may include legally protected educational records. Support persons may not share records with third parties, disclose records publicly, or use records for purposes not explicitly authorized by the University.

The University may seek to restrict the role of any support person who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

The parties must advise the investigator(s) of the identity of their support person at least one (1) business day prior to the date of their first meeting with the investigator(s). The parties must provide subsequent timely notice to the investigator(s) if they change the support person at any time.

#### 5. The Investigation Report

At the conclusion of the investigation, the investigator(s) will prepare a written investigation report. The investigation report will include a statement of the allegations and issues; a description of the applicable standards; a summary of the information considered; a description of the contested and uncontested facts, as applicable; credibility determinations, as applicable; and findings of fact when necessary.

General character or reputation evidence will not be considered relevant and typically will not be included in the investigation. The investigator(s) may choose not to interview character witnesses and/or not to include information from character witnesses in the investigation report. Also, information obtained through evidence based methods found to be unreliable or likely to be unreliable, (i.e. lie detector test results, independent interview summaries prepared by support persons or other interested parties, etc.) typically will not be permitted or considered.

Before the investigation report is finalized, the parties will each have the opportunity to meet with the investigator(s) to review and discuss a redacted copy of the draft investigation report. After the parties have reviewed the draft investigation report, the parties then will have three (3) business days to provide the investigator(s) with any additional information, evidence, or witnesses they wish to be considered, as well as the opportunity to submit a written statement in response to the content of the draft report that was reviewed and discussed. Prior to finalizing the investigation report, the investigator(s) may incorporate into the report any additional information or evidence provided by the parties or additional witnesses, as appropriate.

The parties also may submit a written impact statement to the investigator(s). The impact statement will only be reviewed by the Complaint Review Panel if a finding of "Responsible" is made.

Should a responding party accept responsibility for the alleged misconduct at any point before the investigative report is finalized, the investigative report will include a signed statement by the responding party that they have accepted responsibility, and the Complaint Review Panel will review the matter to make a determination on sanctions only as discussed in Section IX (B)(2)(b) below.

## B. The Disposition/Resolution

Once the investigation report is finalized, the Title IX Coordinator will forward the report and accompanying evidence to a Community Review Board Co-Chair if the responding party is an employee, or the Associate Dean of Students or designee if the responding party is a student, to convene a Complaint Review Panel (“CRP”) as described below in Section IX(B)(1). Both the reporting party and the responding party will be notified in writing by the Title IX Office on the date that the investigation report is forwarded to the CRP for review.

Only relevant information (e.g. statements, witness lists, physical evidence, etc.) that was first presented to the investigator(s) will be forwarded to the CRP for consideration

### 1. Complaint Review Panel

Promptly after receiving the investigation report from the Title IX Coordinator, the Co-Chair of the Complaint Review Board or the Associate Dean of Students will convene a Complaint Review Panel (“CRP”) to determine responsibility and sanctions, if applicable. On the date that the CRP is convened, the investigator(s) will be present and available to answer any questions the CRP may have regarding the investigation report, but will not be present during any deliberations when the CRP determines responsibility or sanctions, if applicable. Typically, the reporting party and the responding party will have the opportunity to appear, separately, before the CRP to provide a statement and address the CRP regarding the investigation report. The appearance before the CRP is voluntary and optional, and the CRP shall not consider the reporting or responding party’s decision not to appear before the CRP as relevant evidence in making a determination and imposing sanctions, if applicable. The CRP may ask questions of the reporting party and responding party, if the parties appear before the CRP. Other witnesses do not appear before the CRP, but their statements contained in the investigation report are considered by the CRP in making its determination. Parties may not use their appearance before the CRP to introduce new evidence that was not previously shared with investigator(s) or attempt to introduce evidence that was excluded due to relevance, reliability or other considerations under this process.

#### a. CRP for Student Matters

When a student is the responding party, the CRP will be made up of a three-person panel consisting of the Dean of Students or designee and two members of the Community Review Board who have not participated in the investigation.

#### b. CRP for Employee Matters

When an employee is the responding party, the CRP will be made up of a three-person panel consisting of a Co-Chair from the Community Review Board (or another appropriate Deputy Title IX Coordinator or Community Review Board member who can serve as Chair) and two (2) members of the Community Review Board and/or a Deputy Title IX Coordinator who have not participated in the investigation.

## 2. Determining Responsibility and Sanctions

### a. Preponderance of the Evidence Standard

When determining responsibility, the CRP will base its finding on a preponderance of the evidence, that is, whether it is more likely than not that the responding party violated the policy as alleged. The possible findings are:

Responsible – Finding that evidence/information available to the University indicates that it is more likely than not that the responding party violated the policy as alleged.

Not responsible – Finding that evidence/information available to the University indicates that it is more likely than not that the responding party did not violate the policy as alleged.

### b. Sanctions and/or Responsive Actions

Sanctions or responsive actions to resolve the complaint may include, but are not limited to: educational programs; counseling/coaching; mediation; verbal or written reprimand; suspension; dismissal; termination; and remedies for the reporting party, as appropriate. Factors considered when determining a sanction or responsive action may include:

- The nature, severity of, and circumstances surrounding the violation;
- An individual's conduct history;
- Previous allegations or allegations involving similar conduct;
- Any other information deemed relevant by the investigatory team;
- The need for sanctions or responsive actions to bring an end to the discrimination, harassment, and/or retaliation;
- The need for sanctions or responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation;
- The need to remedy the effects of the sexual discrimination, harassment and/or retaliation on the reporting party and the community.

Generally speaking, the University considers Non-Consensual Sexual Intercourse violations to be the most serious and therefore typically imposes the most severe sanctions on such violations, including suspension or dismissal for students and termination for employees.

Prior to making a final determination on sanction(s), the CRP typically will consult with the Title IX Coordinator and with one or more of the following offices regarding the effectiveness, consistency and practical application of any proposed sanction(s) to the responding party in those circumstances:

For sanctions related to staff: The Assistant Director of Human Resources, or designee.

For sanctions related to faculty: The Academic Vice President, or designee.

For sanctions related to students: The Dean of Students, or designee.

Should a responding party withdraw or separate from the University while a formal investigation is pending, the resolution process will continue, and the individual will not be permitted to return to the University until the matter has been fully resolved and all sanctions (if any) have been satisfied.

Once the CRP has made a determination on responsibility and sanctions, if applicable, it will typically forward a written decision to the Title IX Coordinator within five (5) business days of the CRP's determination, including rationale for the decision.

Any sanction resulting from this Complaint Resolution Process, following any appeal, that involves the dismissal for cause of a faculty member can be appealed through the corresponding Faculty Handbook procedures, so long as an adequate remedy for any violation determined under this process remains in place. Such an appeal can only consider whether the finding from the Complaint Resolution Process constitutes cause for the recommended sanction under the Faculty Handbook and cannot include a rehearing on the finding of whether a violation of the Sexual Harassment and Interpersonal Violence Policy occurred. The factual findings and conclusions from the Complaint Resolution Process, including any appeal, shall be determinative as to whether the University's Sexual Harassment and Interpersonal Violence Policy has been violated. The Faculty Handbook procedures shall be limited to a determination of whether the finding constitutes cause for dismissal of the faculty member. All other sanctions involving faculty can only be appealed using the process outlined in this policy.

### 3. Notice of Outcome

Once the Title IX Coordinator receives notice of the determination on responsibility and sanctions, if appropriate, and/or responsive actions from the CRP, the parties then will be informed, in writing, by the Title IX Coordinator or designee via a "Notice of Outcome." The Notice of Outcome will specify the finding on each alleged policy violation, any sanctions that may result, and the rationale supporting the essential findings to the extent the University is permitted to share them under state or federal law. The notice also will include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and any appeal options that are available.

If the CRP makes a finding of "responsible" and includes accompanying sanctions, the appropriate University official depending on the constituency of the responding party - the Dean of Students (students), the Assistant Vice President for Human Resources (staff) or the Provost (faculty) - will be responsible for implementing the sanctions.

Any accommodation or remedy will be consistent with the seriousness of the offense and will be designed and imposed in a manner reasonably calculated to end the harassment, to prevent recurrence, and remedy the effects.

In instances where a violation of the Sexual Harassment and Interpersonal Violence Policy has been found to have occurred, the Title IX Coordinator and/or Deputy Title IX Coordinator will document and monitor the implementation of any accommodation or remedy. As appropriate,

the Title IX Coordinator and/or Deputy Title IX Coordinator also may follow-up with the parties to ensure that the accommodation or remedy is effectively preventing recurrence of the harassment and serving as the proper remedy for any discriminatory effects on the reporting party and others. All complaint resolutions are subject to follow-up after a period of time to ensure that accommodations, remedies and any other resolution measures have been implemented effectively.

#### 4. Issues Outside of Sexual Harassment and Interpersonal Violence Policy or Complaint Resolution Process

Where an issue arises in a matter that is outside the scope of the policy or this process – i.e., an issue not related to misconduct involving sex/gender or interpersonal violence – those matters will be referred to the appropriate office to address under other appropriate University policies. If such issues arise, staff employees may contact Human Resources at (216) 397-1905; faculty may contact the Provost’s office at (216) 397-4762; and students should contact the Dean of Students Office at (216) 397-3010.

Any visitor to campus who experiences perceived misconduct outside the scope of the policy or process should consult with the appropriate office on campus, or contact the Office of Legal Affairs at (216)-397-1590 or the Office of Regulatory Affairs and Risk Management at (216) 397-1982. In any situation where an emergency exists, contact the JCU Police Department at (216) 397-1234 or call 911.

## X. The Appeal Process

### A. Filing an Appeal

Any party may request an appeal of the findings by completing and submitting an Appeal Request Form. The appealing party must submit the Appeal Request Form and all supporting documentation within five (5) business days of receiving notice from the Title IX Coordinator of the outcome of the investigation.

The three grounds for appeal are as follows:

1. A procedural error or omission occurred that significantly impacted the finding (e.g., substantial bias, material deviation from established procedures, etc.). The appeal request must cite specific procedures and how they were in error; and/or
2. To consider new evidence, unknown or unavailable during the original investigation, that could have substantially impacted the original finding or disciplinary sanction. A summary of this new evidence and its potential impact must be included in the request. (Note: Failure to participate or provide information during an investigation, even if based on concern over a pending criminal or civil proceeding, does not make information “unavailable” during the original investigation.)

3. The disciplinary sanction(s) imposed are substantially outside the parameters or guidelines set by the University for this type of violation or the cumulative conduct record of the responding party.

A properly filed and timely appeal will generally stay any sanction(s) imposed unless doing so would be inconsistent with the University's Title IX obligations and/or it is determined by the Title IX Coordinator, in consultation with others involved in monitoring University safety matters, that this action would present an unreasonable danger to any person or property or be disruptive to the University's living, learning or work environment.

#### B. Appeal Review Panel

Upon receiving an appeal request, the Title IX Coordinator will designate a three-member Appeal Review Panel ("ARP"), which will consist of the following:

##### 1. Appeals where responding party is a student

(1) Vice President for Student Affairs or designee; (2) a Deputy Title IX Coordinator who did not participate in the investigation or CRP; and (3) a member of the Community Review Board who was not involved in the investigation or CRP.

##### 2. Appeals where responding party is an employee

(1) Co-Chair of the Community Review Board (or another appropriate CRP member or a Deputy Title IX Coordinator who could serve as Chair) who did not participate in the CRP; (2) a Deputy Title IX Coordinator who did not participate in the investigation or CRP; and (3) a member of the Community Review Board who was not involved in the investigation or CRP.

#### C. Appeal Outcomes

Generally, within five (5) business days after receipt of a request for appeal, and depending on constituency of the responding party, the Vice President for Student Affairs/designee (for students) or a Co-Chair of the Community Review Board (for employees) appointed to the ARP will conduct an initial review of the appeal request(s) to determine whether the appeal is timely and satisfies the grounds for appeal. Should the time to review a party's request for appeal require more than five (5) business days, the parties will be notified in writing. If the appeal request is not timely or does not satisfy the grounds for appeal, the appeal request will be denied, the individual who submitted the appeal request will be notified, and the finding and sanction or responsive action will stand. The decision not to accept an appeal request is final and is not subject to further appeal.

If the appeal request is timely and meets the grounds for appeal, the Title IX Coordinator will notify both parties that the appeal has been accepted. The Title IX Coordinator will then share the appeal request with the other party (reporting or responding), and that individual may file a response within three (3) business days. The response (if any) will be shared with the other party.

The ARP will then convene to deliberate over the issues presented in the appeal (or appeals) and any response. Appeals are not full re-hearings of the allegation(s). The ARP can take one of five possible actions:

(1) Affirm the original findings;

(2) Remand the case to the original investigator(s) or CRP for consideration of new evidence or to remedy a procedural error or omission;

(3) Remand the case to a new investigator(s). In a rare case where an error or omission cannot be cured by the original investigator(s) (as in a case of bias), the ARP may order a new investigation with a new investigator(s); or

(4) Administratively alter the finding if new evidence, unknown or unavailable during the original investigation, substantially impacts the original finding, and the associated sanctions or responsive actions.

(5) Administratively alter the sanction if the sanction is substantially outside the parameters or guidelines set by the University for this type of violation or the cumulative conduct record of the responding party.

The ARP also may refer the assigning of sanctions or responsive actions to the investigator(s), with advisement, who in turn will adjust their report (if applicable) and forward such modified report to the University official who received the original report.

Decisions rendered by the ARP or actions taken following the ARP's decision are final and not subject to further appeal. Cases that are sent back to the investigator(s) or CRP are not eligible for a second appeal.

Both parties will be informed, in writing and at approximately the same time, of the outcome of the appeal.

## **XI. Records**

In implementing this process as the means of enforcing the University's Sexual Harassment and Interpersonal Violence Policy, records of all reports, complaints, investigations, and resolutions will be maintained by the Title IX Coordinator as appropriate for the constituencies of the parties and in accordance with applicable laws, including the Family Educational Rights and Privacy Act ("FERPA"). Records of all reported complaints, regardless of whether resolved through formal or informal processes, will be kept by the Title IX Coordinator. Records maintained by Human Resources, Office of the Provost and the Dean of Students Office will be kept by those offices consistent with the practices, obligations and requirements of those particular offices.

## **XII. Statement of Rights of Reporting and Responding Parties**

1. To be treated with respect by University officials.

2. To an investigation and appropriate resolution of all complaints of sexual discrimination and/or sexual harassment made in good faith to the appropriate University official(s).
3. If a reporting party, to receive written notification that the responding party has been officially notified of the allegation of violating the University's Sexual Harassment and Interpersonal Violence Policy. If a responding party, to receive written notification if officially accused of violating the University's Sexual Harassment and Interpersonal Violence Policy.
4. If a responding party, to be notified of the substance of the allegations made by the reporting party. If a reporting party, to be notified of the substance of the responding party's response, if any, to the allegations
5. To be informed of and have access to campus support resources (such as Campus Ministry, the University Health and Counseling Centers, and the Violence Prevention and Action Center [VPAC]), as well as off-campus support services.
6. To experience a safe living, educational and work environment.
7. To bring a support person of their choosing, including, but not limited to, a friend, mentor, parent, advocate, or licensed attorney, during any meeting or interview. The support person cannot be someone who may be called as a witness. The role of the support person is to serve as an advisor. They may be present at any meeting or interview, but are not permitted to speak.
8. To decline to participate in conflict resolution procedures as the means for resolving an allegation.
9. To receive amnesty for minor student misconduct (such as alcohol or minor drug violations) that is ancillary to the incident.
10. To be free from retaliation for filing a complaint or otherwise participating in an investigation in good faith.
11. To have complaints resolved in a manner that is substantially consistent with these procedures.
12. To full participation in this process, whether the injured party is the actual party or the University has brought the complaint, if desired.

13. To be informed in writing of the outcome/resolution of the complaint, sanctions where permissible, and the rationale for the outcome where permissible.
14. If a reporting party, the right to be informed by University officials, when appropriate, of options to report sexual harassment to proper law enforcement authorities and the option to receive assistance in notifying those authorities, if the individual so chooses.
15. To request accommodations or interim remedies/actions, as appropriate, including, but not limited to, academic accommodations. For residential students, the ability to request housing and living accommodations, if appropriate.
16. To put in place a “no contact directive,” if appropriate. A no contact directive is an order from a University official to have no contact with a particular person or persons.

Contact is considered any verbal, written, electronic, non-verbal gesture, third party messages, indirect loud talking in the vicinity of the person and could include indirect actions that appear to the University to be intimidating. The University may add to the terms of a no contact directive within the context of the reported incident that preceded the order or concerns that have arisen during the investigation.

17. The right to submit an impact statement in writing to the Investigative Team. The impact statement will be reviewed by the Sanction Review Panel, only if a finding of “Responsible” is made.

18. The right to regular updates on the status of the investigation and/or resolution.

### **XIII. Revision**

This Complaint Resolution Process, along with the Sexual Harassment and Interpersonal Violence Policy, will be reviewed and updated annually, if necessary, by the Title IX Coordinator with appropriate input from senior leaders including but not limited to the Vice President of Student Affairs, the Dean of Students, Assistant Vice President for Human Resources, and the General Counsel, or their designees. Typically, such review and update will be concluded each summer, based on appropriate review and input from the preceding academic year. In addition, the Title IX Coordinator may make minor modifications to the Complaint Resolution Process at any time and during the academic year that do not materially jeopardize the fairness owed to any party. The Title IX Coordinator may also vary procedures materially at any time and during the academic year with notice (on the University’s website, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Policy and procedures generally will be effective as of the date of implementation. Policy and procedures in effect at

the time of the offense will apply even if the policy or procedure is changed subsequently, unless the parties consent to be bound by the current policy.

#### **XIV. Discretion**

Where an issue is encountered during a case that is not addressed specifically by this Complaint Resolution Process or the Policy, the University has the discretion to determine, in a good faith effort to comply with the Policy and applicable legal requirements, how to address such an issue.