

# Sexual Misconduct Policy

Case Western  
Reserve

University



DIVISION OF STUDENT AFFAIRS  
CASE WESTERN RESERVE  
UNIVERSITY

**SEXUAL MISCONDUCT POLICY**  
Case Western Reserve University  
Table of Contents

	Page
Introduction _____	3
Definition and Examples _____	4
Sexual Harassment _____	4
Sexual Exploitation _____	5
Non-Consensual Sexual Contact or Activity _____	5
Forced Sexual Contact or Activity _____	5
Non-Consensual Sexual Intercourse _____	6
Forced Sexual Intercourse _____	6
Intimate Partner Violence _____	6
Stalking _____	6
 Additional Applicable Definitions _____	 7
Unwelcome Behavior _____	7
Consent and Incapacitation _____	7
Coercion _____	7
Force _____	8
 Relevant Considerations _____	 8
Relationships Involving Authority or Power _____	8
Intention vs. Impact _____	8
Academic Freedom _____	8
Reporting _____	9
Designated Reporting and Confidential Support Resources _____	9
Role of Designated Reporting Representatives _____	9
Role of Confidential Support Resources _____	10
Police Resources _____	11
Anonymous Reports _____	11
Confidentiality & Retaliation _____	11
Confidentiality and Privacy _____	11
Retaliation _____	12
Responsibilities of the University Community _____	12
Reporting Responsibility _____	12
Cooperating with Investigations _____	13
Police Responsibility _____	13
Support of Witnesses and Bystanders _____	13
University’s Investigative Responsibility _____	13
University’s Responsibility to Support a Fair Process and the Rights of the Complainant and Respondent _____	14
Notifications _____	14
Parental/Legal Guardian/Partner Notification _____	14
Federal Timely Warning Obligations _____	14
Federal Statistical Reporting Obligations _____	14
Student, Faculty & Staff Sexual Misconduct Complaint Process (Flow Chart) _____	15
University Complaint Processes _____	16
Time Table _____	16
Initial Inquiry _____	16
Interim University Actions _____	16

Role of the Designated Reporting Representative and/or Sexual Misconduct Investigator(s)	17
Informal Process	17
Step 1 – Facilitate Resolution	17
Step 2 – Document Informal Resolution	18
Formal Process	18
Determination of Administrative Hearing vs. Board Hearing	19
University Role to Address Violations of Policy via Formal Process	19
Formal Process: Administrative Hearing	20
Administrative Hearing Procedure	20
Administrative Hearing Appeal Process	20
Formal Process: University Community Standards Board	21
Pre-Hearing Procedure	21
Hearing Procedure	22
Report of Findings	23
Appeal Process	24
Additional Faculty Sanctions	24
False Allegations	25
Support Resources	25
Alternative Housing & Academic Accommodations	25
Counseling	25
Emergency Room Examination/Preservation of Evidence	25
University Health and Counseling Services	25
Retention of Documents	26
Informal Complaints	26
Formal Complaints	27
Annual Report	27
Prevention, Education & Training	27
Appendix A	28
Position Descriptions	29
Title IX Coordinator	29
Deputy Title IX Coordinator	29
Designated Reporting Representative	29
Title IX Investigator	29
Other Sources for Information	29

## **ACKNOWLEDGEMENT**

Significant portions of this policy have been adapted from the National Center for Higher Education Risk Management Group, LLC (*NCHERM*) *Model Title IX Compliance Policy, Grievance Process and Civil Rights Investigation Protocol* (2014) and are used as permitted by NCHERM.

## Introduction

Case Western Reserve University is a community based upon trust and respect for its constituent members. Sexual misconduct is a violation of that trust and respect and will not be tolerated. Members of the Case Western Reserve community, guests and visitors have the right to be free from sexual misconduct, as well as domestic violence, dating violence and stalking. All members of the community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The purpose of this policy is to define sexual misconduct and the procedures the university uses to investigate and take appropriate action on complaints of sexual misconduct. When complaints are reported, the university will act to end the discrimination, prevent its recurrence, and remedy the effects on both individuals and the university community. This policy and the accompanying procedures shall serve as the only internal university forum of resolution and appeal of sexual misconduct complaints.

This policy applies to all members of the university community including all students, Post-Doctoral Fellows and Post-Doctoral Scholars, faculty, staff (including administrators), and other university officials, whether full or part-time, and guest lecturers, volunteers, contractors and visitors. This Policy is applicable to a student on the date on which the student accepts admission to the University.

This policy governs university-sponsored activities occurring both on and off university property and applies to non-university sponsored or related events that occur off university property that may have a demonstrable and significant disruptive impact on a university community member or on the campus. The work or educational environment includes, but is not limited to: offices, classrooms and clinical settings; residence halls and Greek Houses; on-campus or off-campus interactions between university community members, whether personal or virtual; and all university-sponsored activities, programs, or events (including off-campus activities such as international travel programs).

Sexual misconduct may involve the behavior of a person(s) regardless of the person's gender identity or expression against a person(s) of the opposite or same gender or against a person who is transsexual or transgender.

The university does not discriminate on the basis of sex in its educational program and in other activities operated by the university and is required by Title IX, and specifically 34 C.F.R. Part 106.9, as well as Title VII, not to discriminate in such a manner. This extends to employees of and applicants for employment or admission to the university. Inquiries concerning the application of Title IX may be directed to the Title IX Coordinator for the university or to the Assistant Secretary for the Office of Civil Rights of the Department of Education.

The Title IX Coordinator is:

Darnell T. Parker, Ed.D.  
Senior Associate Vice President of Equity  
University Title IX Coordinator  
Adelbert Hall 110  
10900 Euclid Avenue  
Cleveland, Ohio 44106  
216-368-2020  
[darnell.parker@case.edu](mailto:darnell.parker@case.edu)  
<http://www.case.edu/equity/>

The role, names and contact information for the Title IX Coordinator, Designated Reporting Representatives, and Investigators are listed in Appendix A, along with contact information for the Office of Civil Rights of the Department of Education.

## Definitions and Examples

Misconduct that falls within this policy includes:

### **Sexual Harassment**

Sexual harassment is defined as any unwelcome verbal or non-verbal sexual advances, requests for sexual favors, other verbal or physical conduct of a sexual nature, and/or conduct directed at an individual(s) because of gender when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or student status; or
2. Submission to or rejection of such conduct is used as the basis for decisions affecting that individual with regard to employment (raises, job, work assignments, discipline, etc.) or to student status (grades, references, assignments, etc.); or
3. Such conduct has the purpose or effect of unreasonably and objectively interfering with an individual's work performance or educational experience or creates an intimidating, hostile, or offensive work and/or educational environment. Such conduct generally involves more than one incident and must be severe, persistent or pervasive (or may be severe, persistent and pervasive). Depending on the nature of the incident, more than one action or incident is typically necessary to constitute this form of sexual harassment.

Acts that constitute sexual harassment take a variety of forms and may include but are not limited to the following unwelcome actions:

- a. Propositions, invitations, solicitations, and flirtations of a sexual nature.
- b. Threats or insinuations that a person's employment, wages, academic grade, promotional opportunities, classroom or work assignments, or other conditions of employment or academic life may be adversely affected by not submitting to sexual advances.
- c. Verbal expressions of a sexual nature, including sexual communications about a person's body, dress, appearance or sexual activities; the use of sexually degrading language, name calling, sexually suggestive jokes, or innuendoes; suggestive or insulting gestures, sounds or whistles; sexually suggestive phone calls.
- d. Sexually suggestive objects or written materials, such as social media, e-mail or internet communications, pictures, photographs, cartoons, text messages, videos, or DVD's.
- e. Inappropriate and unwelcome physical contact such as touching, patting, pinching, hugging or other sexually suggestive contact.
- f. Stalking of a sexual nature (i.e. persistent and unwanted contact of any form whether physical, electronic or by any other means). For stalking to fall within this policy, the content or the nature of the stalking must have a sexual component.
- g. Stereotyping or generalizing about a group based on gender. These types of comments typically constitute sexual harassment when associated with other sexual behavior or comments.

While a particular interaction must be offensive to both a reasonable person and to the complainant to be defined as harassment, faculty and staff members and other persons of authority should be sensitive to questions about mutuality of consent that may be raised and to the conflict of interests that are inherent in personal relationships that result from professional and educational interactions. Harassment is particularly damaging when it exploits the educational dependence and trust between students and faculty/staff. When the authority and power inherent in faculty/staff relationships with students, whether overtly, implicitly, or through misinterpretation, is abused in any way, there is potentially great damage to the individual student, to the accused individual, and to the climate of the institution.

## **Sexual Exploitation**

Occurs when an individual takes non-consensual, unjust or abusive sexual advantage of another; for his/her own advantage or benefit; or to benefit or advantage anyone other than the one being exploited; and that behavior does not otherwise constitute non-consensual sexual contact, non-consensual sexual intercourse or sexual harassment. Sexual exploitation includes, but is not limited to:

- a. Non-consensual digital, video or audio recording of any form of nudity or sexual activity
- b. Knowingly exposing a person to an STI or HIV to another person
- c. Engaging in Voyeurism
- d. Non-Consensual sharing or distribution of digital, video or audio recording of nudity or sexual activity
- e. Prostituting another person by offering a person for sexual activity in exchange for payment.
- f. Invasion of sexual privacy, including exposing one's sexual body parts or exposing another's sexual body parts
- g. Child pornography as defined in federal, state or local law.

## **Non-Consensual Sexual Contact or Activity**

Non-Consensual Sexual Contact is contact that involves all of the following:

- a. Any intentional sexual contact or sexual activity;;
- b. with any object or body part;
- c. by a person upon another person; and
- d. without consent

Sexual Contact includes: Intentional contact with the breast(s), buttock(s), groin or genitals, or touching another with any of these body parts; making another person touch you or themselves with any of these body parts; and/or any intentional bodily contact in a sexual manner.

Sexual Activity includes: Intentional bodily activity that is sexual in nature and involves the breast(s), buttock(s), groin or genitals, or touching another with any of these body parts; or making another person touch you or themselves with any of these body parts.

## **Forced Sexual Contact or Activity**

Forced Sexual Contact is contact that involves all of the following:

- a. Any intentional sexual contact or sexual activity;
- b. by force or against the will of the victim. Force includes: the use of physical means, violence, threats, intimidation or coercion;
- c. with any object or body part; and
- d. by a person upon another person.

Sexual Contact includes: Intentional contact with the breast(s), buttock(s), groin, or genitals, or touching another with any of these body parts; making another person touch you or themselves with any of these body parts; and/or any intentional bodily contact in a sexual manner.

Sexual Activity includes: Intentional bodily activity that is sexual in nature and involves the breast(s), buttock(s), groin or genitals, or touching another with any of these body parts; or making another person touch you or themselves with any of these body parts.

### **Non-Consensual Sexual Intercourse**

Non-Consensual Sexual Intercourse is intercourse that involves all of the following:

- a. Any sexual intercourse (anal, oral or vaginal);
- b. with any object or body part;
- c. by a person upon a person; and
- d. without consent.

### **Forced Sexual Intercourse**

Forced Sexual Intercourse is intercourse that involves all of the following:

- a. Sexual intercourse (anal, oral or vaginal);
- b. with any object or body part;
- c. by a person upon another person; and
- d. by the use of force, including physical force, threat, intimidation or coercion

### **Intimate Partner Violence**

Intimate Partner Violence, defined as violence or abuse between those in a close romantic, or intimate relationship to each other. Intimate Partner Violence can consist of intimidation, harassment, physical abuse, sexual abuse, or interference with personal liberty of any person by someone in an intimate relationship, as described below.

These actions may include, but not limited to:

- a. Physical abuse: hitting, slapping, shoving, grabbing, pinching, biting, or hair pulling.
- b. Sexual abuse: attacks on sexual parts of the body, forcing sex after physical violence, treating one in a sexually demeaning manner, coercing or attempting to coerce any sexual contact or behavior without consent.
- c. Psychological or emotional abuse: a pattern of behavior undermining an individual's sense of self-worth or self-esteem, constant criticism, diminishing one's abilities, name-calling.

Close, romantic, or intimate partner relationship includes:

- a. Persons who have or have had a dating relationship
- b. Persons who have or have had a social relationship of a romantic or intimate nature

### **Stalking**

Stalking can be in two different forms:

Stalking 1: A course of conduct:

- i. Directed at a specific person;
- ii. On the basis of actual or perceived membership in a protected class;
- iii. That is unwelcome; and
- iv. Would cause a reasonable person to feel fear.

## Stalking 2:

- i. Repetitive and menacing behavior; or
- ii. Pursuit, following, harassing and/or interfering with the peace and/or safety of another.

## **Additional Applicable Definitions**

### **Unwelcome Behavior**

Unwelcome behavior is an action that is not solicited or invited and is undesirable or offensive to the recipient. Behavior that is perceived to be voluntary does not necessarily mean that it is welcome. Power relationships, incapacitation, intimidation and/or fear of consequences may be contributing factors in this determination.

### **Consent and Incapacitation**

Consent is the equal approval, given freely, willingly, and knowingly, of each participant to desired sexual involvement. Consent is an affirmative, conscious decision – indicated clearly by words or actions – to engage in mutually accepted sexual contact. A person forced to engage in sexual contact by force, threat of force, or coercion has not consented to contact.

- Lack of mutual consent is the crucial factor in any sexual misconduct matter.
- Consent to some form of sexual activity does not necessarily constitute consent to another form of sexual activity.
- Consent to past sexual activity does not imply consent to future sexual activity.
- Consent can be withdrawn at any time.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- Silence without demonstrating permission does not constitute consent.
- Consent CANNOT be given if a person's ability to resist or consent is incapacitated because of a mental illness or physical condition or if there is a significant age or perceived power differential.
- Sexual activity with someone who the respondent should know to be, or based on the circumstances should reasonably have known to be, mentally or physically incapacitated (by alcohol or other drugs, unconsciousness, sleep, or blackout) is sexual activity without consent.

Incapacitation is a state in which someone cannot make rational, reasonable decisions because the person lacks the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). Examples include, but are not limited to, being:

- a. unconscious,
- b. asleep
- c. frightened,
- d. physically or psychologically pressured or forced,
- e. intimidated,
- f. incapacitated because of a psychological or intellectual health condition or disability,
- g. incapacitated because of voluntary intoxication due to use of drugs or alcohol, or
- h. incapacitated because of the deceptive administering of any drug, intoxicant or controlled substance.

### **Coercion**

Coercion is unreasonable pressure for sexual activity.



## **Force**

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.

## **Relevant Considerations**

### **Relationships Involving Authority or Power**

When one party has any professional responsibility for another's academic or job performance or professional future, the university considers sexual relationships between the two individuals to be a basic violation of professional ethics and responsibility. This includes but is not limited to sexual relationships between faculty (including teaching assistants and laboratory supervisors) and their students or between supervisors and their employees, even if deemed to be mutually consenting relationships. Because of the asymmetry of these relationships, "consent" may be difficult to assess, may be deemed not possible, and may be construed as coercive. Such relationships also may have the potential to result in claims of sexual harassment. For more information, see Consensual Relationship Policy at <http://www.case.edu/finadmin/humres/policies/standards/cr.html>. or <http://www.case.edu/president/facsen/frames/handbook.htm>.

Although sexual harassment often takes place when the alleged harasser is in a position of power or influence (e.g., a faculty advisor to a student, supervisor to supervisee), other types of sexual misconduct are also possible e.g., peer to peer.

### **Intention vs. Impact**

The fact that someone did not intend to engage in sexual misconduct against an individual is not considered a sufficient explanation to a complaint of sexual misconduct. For example, in some instances, cultural differences may play a role in the interpretation of behavior, by either the complainant or respondent, which may result in a complaint of sexual misconduct. It is expected that all members of the university community are knowledgeable about what constitutes sexual misconduct under this policy. Although the respondent's perceptions will be considered, in most cases, it is the effect and characteristics of the behavior on the complainant, and whether a reasonable person in a similar situation would find the conduct offensive that determine whether the behavior constitutes sexual misconduct.

### **Academic Freedom**

Case Western Reserve University adheres to the principles and traditions of academic freedom. As stated in the Faculty Handbook, academic freedom is a right of all members of the university faculty and applies to university activities including teaching and research. See <http://www.case.edu/president/facsen/frames/handbook>. Each faculty member may consider in his or her classes any topic relevant to the subject matter of the course as defined by the appropriate educational unit.

Case Western Reserve University also recognizes, however, that these freedoms must be in balance with the rights of others not to be sexually harassed. It is therefore understood that the principles of academic freedom permit topics of all types, including those with sexual content, to be part of courses, lectures, and other academic pursuits. If there are questions about whether the course material or the manner in which it is presented falls within the definition of sexual harassment, the concerned party(s) should contact a Designated Reporting Representative (See: Designated Reporting Offices section in this policy).

## Reporting

The university strongly encourages persons who experience sexual misconduct to report the misconduct, to seek assistance and to pursue university action for their own protection and that of the entire campus community.

Anyone who has experienced sexual misconduct may choose to use this university process as well as a criminal process. Choosing not to pursue university or criminal action, however, does not remove the responsibility of the university to investigate and/or take action. If pursuing a criminal process, see section on Emergency Room Examination/Preservation of Evidence, as applicable.

Reports can be submitted anytime following an incident of sexual misconduct, although the university's ability to take action may be limited by the timeliness of the report and the status of the alleged respondent. Generally, complaints should be brought to the attention of the university within two years of the alleged incident. The university reserves the right to utilize the sexual misconduct policy and procedures to take action concerning a complaint filed after this period of time.

When conducting the investigation under this policy, the university's primary focus will be on addressing the sexual misconduct. Other policy violations discovered may be referred to another process.

### **Designated Reporting and Confidential Support Resources**

A person wishing to pursue university action must report the conduct to one of the three University Designated Reporting Representatives (See Chart I). Taking this action does not prevent reporting the matter to the CWRU Police and Security. To contact the CWRU Police and Security Services, call **216-368-3333**. A person who has experienced sexual misconduct also may seek advice and guidance from confidential support resources, as discussed below (see Chart IIa and IIb).

### **Role of Designated Reporting Representatives**

- a. To hear the initial complaint/statement by the complainant and the respondent, and to make safety and support arrangements as appropriate.
- b. To receive initial complaint(s) regarding alleged sexual misconduct and to make the complainant aware of the university obligation to take action if the respondent is identified or identifiable.
- c. To provide the complainant and the respondent information about the policy and process, including the rights of the complainant and the respondent under this policy.
- d. To determine if the complaint falls within the Sexual Misconduct Policy and if so, to determine appropriate next steps.
- e. To conduct an inquiry into reports from anonymous sources. In such instances, the university may be limited in its ability to conduct an effective inquiry and to take action concerning the report

<b>Chart I. Designated Reporting Representatives</b>
<b>For Faculty, Staff, Student and Third Parties: Office of Equity</b>
Thwing 318 (216)368-3066 -- (M-Fri) 8:30 a.m. to 5:00 p.m.
Adelbert 110 (216)368-2020 -- (M-Fri) 8:30 a.m. to 5:00 p.m.

**Role of Confidential Support Resources**

Confidential resources are those members of the university who are licensed or designated by law as professionals who can receive privileged communication, and receive information regarding possible sexual misconduct in the context of a professional relationship with the reporter of that information.

Confidential resources are not required to report allegations of sexual misconduct to Designated Reporting Representatives unless required by law such as the duty to report an imminent threat to self or others (see Charts IIa. and IIb.). Confidential resources provide advice, support, and guidance about how to manage the situation without initiating university action. Discussions with a confidential source are not considered a report to the university or a request that any action be taken by the university in response to any allegation.

<b>Chart IIa. Student Confidential Support Resources</b>	
<b>On-Campus Resources</b>	<b>Off-Campus Resources</b>
<p><b>(SAFE) Line</b> (216) 368-7777 – Anytime 24 / 7 For privileged and confidential conversations about sexual assault and relationship violence.</p> <p><b>University Health and Counseling Services</b> Sears 201 (216) 368-5872 – 24 Hours</p> <p><b>Health Services</b> 2145 Adelbert Rd. (216) 368-2450 – 24 Hours</p> <p><b>Student Advocate for Gender Violence Prevention, Education, and Advocacy</b> Sears 201 (216) 368-8639-(M-Fri) 8:30 am - 5:00 pm</p> <p><b>Inter-Religious Center:</b> Church of the Covenant 11205 Euclid Avenue—Annex (216) 421-9614 or Hillel (216) 231-0040 (Ask to speak with a Clergy person)</p>	<p><b>The Cleveland Rape Crisis Center (CRCC)</b> (216) 619-6192 – 24 hours</p> <p><b>The Domestic Violence Center &amp; Child Advocacy Center (DVCAC)</b> (216) 391-HELP (4357) – 24 hours</p>

<b>Chart IIb. Faculty &amp; Staff Confidential Support Resources</b>	
<b>On-Campus Resources</b>	<b>Off-Campus Resources</b>
<p><b>Employee Assistance Program</b> (216) 241-EASE (3273) or (800) 521-3273 – 24 Hours</p>	<p><b>The Cleveland Rape Crisis Center (CRCC)</b> (216) 619-6192 – 24 hours</p> <p><b>The Domestic Violence Center &amp; Child Advocacy Center (DVCAC)</b> (216) 391-HELP (4357) – 24 hours</p>

## **Police Resources**

Anyone who has experienced sexual misconduct may choose to contact at any time either **University Police & Security Services** or a local police jurisdiction where the misconduct occurred. (See Chart III).

<b>Chart III. On-Campus Police Resources</b>
<b>CWRU Police &amp; Security Services</b> <b>1689 E. 115 Street Cleveland, Ohio 44106-7173</b> 216-368-3333 – Anytime 24/7 For police assistance and action related to sexual misconduct

## **Anonymous Reports**

In the event that the university receives an anonymous report of sexual misconduct, the university will conduct an inquiry into the matter. In such instances, the university may be limited in its ability to conduct an effective inquiry and to take action concerning the report.

## **Confidentiality & Retaliation**

### **Confidentiality and Privacy**

Complainants have the right to request confidentiality of a complaint of sexual misconduct. The responsibility of the Designated Reporting Representative(s) is to weigh requests for confidentiality against the need to investigate and protect the university community. In reviewing a complainant's request for confidentiality, the Designated Reporting Representative will weigh the request against other factors such as the seriousness of the alleged misconduct; the risk that the respondent may commit additional acts of sexual misconduct; whether the report indicates a pattern of sexual misconduct including whether other complaints or findings of sexual misconduct or violence have been made against the respondent or at a particular location; whether the complainant is a minor; and whether the University has other means to obtain relevant evidence about the alleged sexual misconduct. The Designated Reporting Representative will advise the complainant that the request for confidentiality will limit the University's ability to investigate and to take appropriate action regarding the complaint, but that the University will attempt to limit the effects of the misconduct and prevent its recurrence (i.e. increased monitoring or appropriate training and education), while adhering to the request for confidentiality. If the Designated Reporting Representative cannot grant a complainant's request to maintain confidentiality of the complaint and/or the complainant's identity, the Designated Reporting Representative will discuss with the complainant this determination and what information will be disclosed and to whom it will be disclosed as necessary to conduct an investigation or take appropriate action.

The Designated Reporting Representative(s) will attempt to keep complaints private to the extent possible and consistent with legal requirements and/or the university's requirement to investigate allegations and take appropriate action. Information about sexual misconduct complaints and investigations will be shared with those responsible for handling the complaint and those with a need-to-know the information to meet the University's obligations under this Policy.

In order to protect the integrity of the inquiry, investigation, and resolution through the use of this policy, all parties and witnesses are expected to maintain the confidentiality of the process. However, confidentiality is not required if disclosure is required by law, or if disclosure is necessary to report a crime or violation of law or to engage in concerted activity regarding terms or conditions of employment, or in relation to the right of a student respondent or complainant to re-disclose the outcome of the process under FERPA and/or Campus Crime Statistics Act (Clery Act) laws.

Although there is an expectation of confidentiality with regard to the process, the university recognizes that the complainant, respondent, and witnesses may need support. Should the need arise for parties and/or witnesses to seek

support and/or share with others information regarding this process, they are encouraged to confer with the Designated Reporting Representatives regarding this action, including how to find an advisor or advocate.

### **Retaliation**

Retaliation is prohibited and will constitute separate grounds for disciplinary action. Retaliation is the act of taking adverse action against a complainant, a respondent, or any other person involved in the process under this policy based on the person's reporting or participation in the process under this policy. Retaliation includes behavior on the part of the respondent or the complainant and other related persons, including, but not limited to, acquaintances, friends, and family members. Although independent action will be taken against anyone engaging in retaliation, the complainant and the respondent are responsible for discouraging such actions and will also be held responsible to the extent of their involvement in the retaliation.

An individual who believes they have experienced retaliation should contact a Designated Reporting Representative (see Chart I) under this policy, and the university will investigate the complaint. If the university determines that evidence exists to support that retaliation occurred, appropriate action will be taken regardless of the outcome of the underlying sexual misconduct complaint. This may involve referral of the retaliation concerns to another university process for resolution.

## **Responsibilities of the University Community**

### **Reporting Responsibility**

Any university faculty, staff, official or student employee (ex. Resident Assistants and Orientation Leaders) who is consulted about and/or witnesses behavior involving potential sexual misconduct has the responsibility to report the potential misconduct to one of the Designated Reporting Representatives. Students are encouraged to report sexual misconduct when they are consulted about and/or witness behavior involving potential sexual misconduct, and may fulfill the reporting expectation by contacting a Designated Reporting Representative. In addition, to the extent possible, the member of the university community should advise the complainant of the university's sexual misconduct policy and encourage prompt reporting to a Designated Reporting Representative (see Chart I). The university community member's duty to report includes instances in which that member learns of the allegation:

- a. From witnessing sexual misconduct
- b. From a person who has experienced the sexual misconduct;
- c. From a person who witnessed the sexual misconduct; or
- d. From a person who heard about the sexual misconduct from another individual.

Reporting is required in these instances if the university community member receives information that permits the member to identify (i) the complainant or the respondent by name or by other identifying information, or (ii) the location at which the sexual misconduct occurred. The required reports should include all relevant facts about the alleged sexual misconduct incident necessary for the University to investigate, including the names of those involved, any witnesses, and other relevant details such as date, time, and specific location of the incident. Because the university is committed to a positive educational and work environment, in instances in which individuals believe that behavior has occurred that could be construed as sexual misconduct, the individual is encouraged to report the incident to a Designated Reporting Representative.

### **Cooperating with Investigations**

All members of the university community are encouraged to cooperate and participate in inquiries and investigations, appear before a hearing panel as requested, and cooperate with resolutions of complaints and implementations of recommended sanctions as applicable.

### **Police Responsibility**

There may be instances in which sexual misconduct constitutes a criminal act. The police have a responsibility to uphold and enforce the law even if the person experiencing the misconduct does not want to participate in the process and/or make a complaint. As a result, once a report is made to a police officer and/or once the officer learns of possible criminal activity, the officer has a duty to investigate and may have a duty to forward information to the appropriate prosecutor's office for possible criminal prosecution. The CWRU Police will also notify the Title IX Coordinator as appropriate.

When the person who has experienced sexual misconduct is under the age of 18, or under 21 and physically or mentally impaired, the Designated Reporting Representative may be required to report the sexual misconduct to the appropriate social service agency or the police.

### **Support of Witnesses and Bystanders**

The welfare and safety of our community is of paramount importance. The university encourages community members to offer help and assistance to others in need. Sometimes individuals are hesitant to offer assistance to others for fear that they will be subject to sanctions for other policy violations (e.g. alcohol violations). While serious policy violations cannot be overlooked, the university will consider providing educational options or training rather than sanctions as an appropriate response to those who have offered assistance.

### **University's Investigative Responsibility**

The informal and formal processes as described in this Policy apply to faculty, staff, and students of the university. (See Flow Chart in this Policy). Once a report of sexual misconduct is made to one of the Designated Reporting Representatives, the university is obligated by law to investigate and to take appropriate action regardless of whether the complainant wishes to participate or considers the behavior sexual misconduct.

The university's authority to investigate, to compel cooperation, or to impose sanctions against those who are not members of the university community is limited. Complaints against guest lecturers, volunteers, contractors and visitors will be referred to the Title IX Coordinator for investigation and appropriate action.

### **University's Responsibility to Support A Fair Process and the Rights of the Complainant and Respondent**

The university is committed to providing support to anyone involved in an incident of sexual misconduct. The University is responsible for assuring that the rights of the complainant and the respondent are maintained by supporting a fair process for the handling of sexual misconduct matters and making determinations regarding the Policy. The complainant and the respondent can expect the university to respect the rights of all involved by following the stated university sexual misconduct process. The University will maintain the rights of the complainant and the respondent in implementing this Policy. These rights of the complainant and respondent related to the process include:

- a. To confidentiality as provided in this policy (see above).
- b. To options outlined below in the informal process or formal process if applicable.
- c. To the presence of an advisor (as described in this policy below) at meetings during the initial inquiry and during the Informal process and/or Administrative/Formal Hearing (see Hearing Procedures).
- d. To not be questioned or have information presented about past sexual conduct or history with anyone other than with the complainant or respondent, unless related to a pattern of prior violations or behavior by the respondent that was substantially similar to the present complaint.
- e. To have the allegations investigated in a thorough and timely manner.
- f. To refrain from making statements. However, the university will make a determination of whether a violation of the sexual misconduct policy occurred based on the information presented.

- g. To be informed of the outcome of the sexual misconduct process in a timely manner.
- h. To access to support resources listed in this Policy.

## **Notifications**

### **Parental/Legal Guardian/Partner Notification**

In some instances when there is a health or safety concern involving a dependent or a non-dependent student, the university may need to notify the parent(s), guardian(s), or partner. In making this determination, the university will consider the wishes of those involved, as well as their personal safety, and the safety of the campus community. The university may contact the parent(s) or guardian(s) of a dependent student when there is a concerning behavioral pattern or a change in student status. In addition, when a person who is under the age of 18, or under 21 and physically or mentally impaired, reports sexual misconduct other than sexual harassment, both Designated Reporting Representatives and confidential sources may be required to report the sexual misconduct to the appropriate social service agency or the police who then may contact the parent or legal guardian.

### **Federal Timely Warning Obligations**

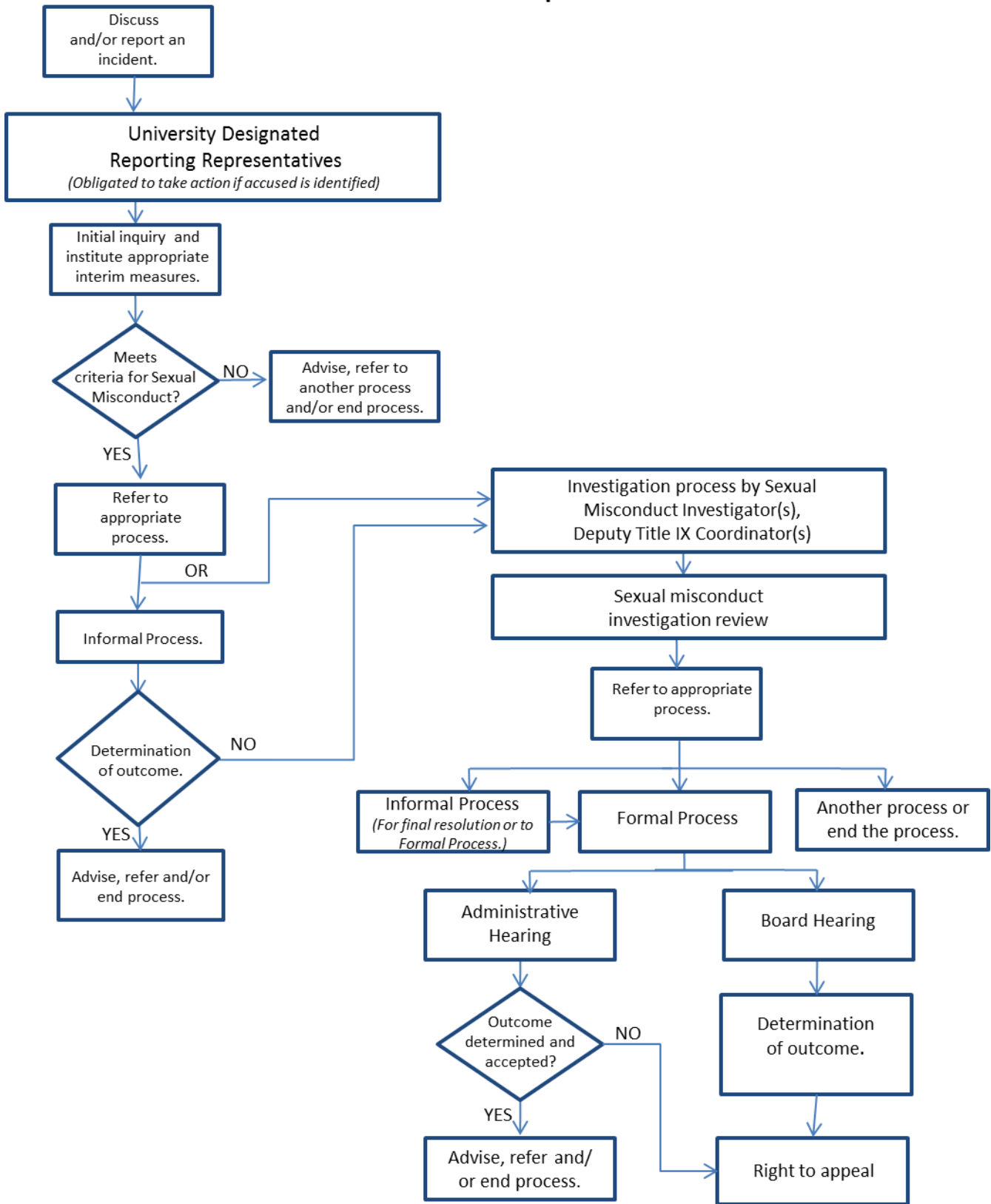
Once a report of sexual misconduct is made, the university is obligated by law to take all necessary steps to protect the campus and the person who has experienced the misconduct. This may include alerting the campus of crimes that it determines pose a substantial threat of bodily harm or danger to members of the campus community. In making such determinations, the university will consider the safety of students, faculty, and staff as well as the privacy interests of all persons involved in such incidents. Regardless of the action taken by the university, the university will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to take safety precautions.

### **Federal Statistical Reporting Obligations**

In compliance with the Clery Act (Campus Crime Statistics Act), Designated Reporting Representatives are required to report to CWRU Police sexual misconduct that constitutes a crime (i.e. anything not defined in this policy as sexual harassment). In addition, anonymous reports and de-identified reports of crimes from confidential support resources received by the CWRU Police are also included in the Clery Act Report. Typically, the following information is included: crime, date, location, and status (i.e. student, faculty, staff, stranger, etc.) of the individuals involved in the crime. The university never includes the names of the complainant or the respondent in crime statistics.

When a complaint of sexual misconduct is made that may also constitute a criminal act, the Designated Reporting Representative also will inform the complainant of the right to file a criminal complaint.

## Student, Faculty & Staff Sexual Misconduct Complaint Process





## **University Complaint Processes**

The university strongly encourages persons who experience sexual misconduct to report the misconduct, to seek assistance and to pursue university action for their own protection and that of the entire campus community.

When a complaint of alleged sexual misconduct is received, an initial inquiry is conducted by a Designated Reporting Representative, who is a neutral administrator in the process. The Designated Reporting Representative is responsible for coordinating the sexual misconduct process. The usual practice will be that the inquiry will be conducted in collaboration with the Office of Inclusion, Diversity and Equal Opportunity and the University Office of Student Affairs as appropriate and possible.

### **Time Table**

The university intends to resolve complaints of sexual misconduct in a timely manner. The University generally attempts to resolve complaints from the filing of a complaint to a determination within sixty (60) days. The University generally attempts to make a determination on appeals within ten (10) business days following the submission of an appeal. However extenuating or more complex circumstances may preclude the university from resolving a complaint within such a timeframe. The Title IX Coordinator, or his/her designee, will make a determination as to any reasonable extension of these timeframes. Complainants and respondents will be provided periodic updates as to the status of the process.

### **Initial Inquiry**

An initial inquiry is conducted by the Designated Reporting Representative/ Title IX Coordinator and will generally include interviews with the complainant and the respondent and a review of relevant documents. Following the initial inquiry, the Title IX Coordinator will determine whether the information gathered during the initial inquiry indicates that the complaint falls within this policy. The complainant and respondent will be informed promptly after the completion of initial inquiry.

If it is determined that the complaint falls within this policy, the Designated Reporting Representative will either: 1) proceed with the Informal Process; or 2) refer the matter to the Sexual Misconduct Investigator/Title IX Coordinator (for a determination as to whether the process should proceed to the Informal Process, the Formal Process, or another university process. See Investigator process below.) The Title IX Coordinator will make this determination by reviewing the following factors surrounding the complaint:

- a. The wishes of the complainant and the respondent;
- b. Consideration of a pattern of behavior; and
- c. The nature and severity of the behavior or action; and
- d. The sufficiency of the information.

The complainant and the respondent will be informed promptly upon a determination by the Designated Reporting Representative/Title IX Coordinator.

### **Interim University Actions**

In addition to conducting an initial inquiry, the Designated Reporting Representative/Title IX Coordinator may need to take interim actions to protect the safety and well-being of the individuals involved in a complaint of sexual misconduct. The university will consider interim or remedial measures, as appropriate or legally supported, to protect those involved. These measures will be implemented as promptly as possible. Generally, such actions include, but are not limited to, the following:

- a. Notify the respondent that a complaint has been made against them;
- b. Provide a copy of the university sexual misconduct policy to both parties;
- c. Direct the parties or establish an agreement between the parties that they are not to initiate contact with the other party or parties until further notice by the university. Failure to cooperate or honor the agreement could result in restricting either party's presence on campus;

- d. Institute alternative work arrangements, living arrangements, dining facilities, class schedule, or advisor/supervisor arrangements as feasible and appropriate during the pendency of the process, considering safety issues and concerns of the complainant and the respondent;
- e. Provide access to appropriate academic supports, such as tutoring, or permission to withdraw from or retake a class or classes;
- f. Have each of the parties and any witnesses acknowledge the expectation of confidentiality as outlined in this policy;
- g. Advise all parties and any witnesses that they may not retaliate against any party or any witness involved in a sexual misconduct complaint.
- h. Notify the dean, department chair or supervisor of the complaint to assist with managing the rights of the complainant and the respondent as appropriate.

**Interim Separation/Suspension Action:** The University has the right to impose an interim separation or suspension, as provided for under other university policies or procedures.

### **Role of the Designated Reporting Representative and/or Title IX Investigator(s)**

The Designated Reporting Representative/Title IX Coordinator and/or Title IX Investigator conducts a prompt and thorough investigation of the complaint, which includes identifying and interviewing witnesses, gathering and securing relevant documentation, and identifying other relevant information. Depending on the number of ongoing investigations and/or the nature and complexity of the complaint, the Title IX Investigator for a complaint may be a qualified investigator retained by the university from outside the university community. The Designated Reporting Representative/ Investigator provides a report of the finding of the investigation for review by the Title IX Coordinator or his/her designee in consultation with the Office of General Counsel. A decision will be made as to the appropriate next steps to bring resolution to the complaint, which will include one of the following:

- a. Formal Process (Administrative Hearing or Board Hearing);
- b. Informal Process;
- c. Another university process;
- d. End the process.

In making this determination, the reviewers will consider the following factors:

- a. The wishes of the complainant and the respondent;
- b. Consideration of a pattern of behavior; and
- c. The nature and severity of the behavior or action.
- d. The sufficiency of the information to move forward.

If the Title IX Coordinator finds that the complaint does not fall within the sexual misconduct policy, the matter and other possible policy violations discovered (including any relevant information) may be referred to other university processes.

### **Informal Process**

The informal process is an opportunity to bring resolution to an informal complaint through awareness, education, and/or a facilitated discussion. During an informal process, a hearing is not conducted to determine whether the sexual misconduct policy has been violated. Normally, the informal process will not be used to resolve allegations of Non-Consensual Sexual Contact/Activity, Forced Sexual Contact/Activity, Non-Consensual Sexual Intercourse, Forced Sexual Intercourse and Sexual Exploitation. The complainant will be advised of the right to end the informal process and begin the formal process, if the complainant wishes to do so.

### **Step 1-Facilitate Resolution**

The Designated Reporting Representative(s)/Title IX Coordinator utilizes the information gathered during the initial inquiry to facilitate an appropriate resolution to the informal complaint. The Designated Reporting Representative(s)/Title IX Coordinator may determine that the informal action may be facilitated by an appropriate designee (e.g. for students, a Residential Coordinator or other designee; for staff, Human Resource representative;

for faculty, the Chair). The following are examples of possible options, one or more of which may be used to bring resolution to an informal complaint.

- a. Distribute a copy of the sexual misconduct policy to the respondent and/or the complainant and/or to the department or area whose behavior is being questioned;
- b. Educate the respondent or all parties regarding the university sexual misconduct policy;
- c. Conduct a sexual misconduct educational workshop for the designated department/school/university organization;
- d. Meet with the respondent to raise awareness about alleged inappropriate behavior and provide notice about possible university consequences;
- e. Facilitated discussion with the agreement of the complainant, respondent, and the Title IX Coordinator/Designated Reporting Representative(s) or designee;
- f. Institute alternative work arrangements, living arrangements, class schedule, dining facilities, or advisor/supervisor arrangements as feasible;
- g. Provide access to appropriate academic supports, such as tutoring, or permission to withdraw from or retake a class or classes; and/or
- h. Limit contact or impose no contact between respondent and complainant.

## **Step 2-Document Informal Resolution**

At the conclusion of the informal process, a letter summarizing the outcome(s) of the process will be sent by the Designated Reporting Representative(s)/Title IX Coordinator to the complainant and respondent and other appropriate university officials to bring closure to the matter (see Retention of Documents section in this policy).

If the matter is not resolved to the satisfaction of the complainant or the respondent utilizing the informal process, and/or the university determines the matter should be resolved through the formal process, the complainant, the respondent and/or the university may pursue the formal process. In such an instance, the complainant, the respondent and/or the university may request to utilize the formal process by submitting a written request to the Designated Reporting Representative/Title IX Coordinator within five (5) business days of the date of the receipt of the informal outcome letter.

## **Formal Process**

### **Determination of Administrative Hearing vs. Board Hearing:**

A formal process may be facilitated in one of two ways, through an administrative hearing or a board hearing.

An administrative hearing may be used when a, b(i) or b(ii), and c all exist:

- a. The complainant wishes to use an administrative hearing to resolve the complaint;
- b. (i) The respondent has admitted to the alleged sexual misconduct and admits that the conduct is or could be construed as sexual misconduct under the university's policy, or  
(ii) For matters in which the complainant and the respondent are both students, the Designated Reporting Representative/Investigator has determined, after consultation with the Title IX Coordinator or his/her designee and the Office of General Counsel, that an administrative hearing is appropriate to determine both whether a violation of the Policy has occurred and an appropriate sanction for a violation of the Policy, if any. In such cases, the Title IX Coordinator will determine that the administrative hearing shall be conducted, as appropriate, by either (a) a representative from the Office of Student Affairs, or (b) three (3) members of the Sexual Misconduct Panel, selected as provided for in the Formal Process: Sexual Misconduct Panel section, below.
- c. The investigation or review determine(s) that an administrative hearing is appropriate to bring resolution to the complaint.

A board hearing is used when the following exists:

- a. The complainant wants to use a board hearing to resolve the complaint, and/or the review of the investigation determines that a board hearing is necessary to resolve the complaint.
- b. The respondent does not admit that the alleged sexual misconduct has occurred and/or does not admit that the alleged conduct is or could be construed as sexual misconduct under this policy, or the Designated Reporting Representative/Investigator determines, after consultation with the Title IX Coordinator or his/her designee and the Office of General Counsel, that use of a board hearing is appropriate.

To move the formal process forward, the Title IX Investigator/ Title IX Coordinator will submit the following documents to the Sexual Misconduct Panel or administrative hearing representative(s) for their consideration at a formal hearing:

1. The written account from the complainant of the sexual misconduct complaint. When possible, the account should include dates, times, locations, a description of the alleged behavior/incident, and the name(s) of the respondent.
2. The written account from the respondent of the sexual misconduct complaint. When possible, the account should include dates, times, locations, a description of the alleged behavior/incident.
3. Additional written accounts from witnesses collected during the investigation.
4. Other relevant documents collected during the investigation, including the report of the Title IX Investigator/Deputy Title IX Coordinator.
5. In addition, the complainant and the respondent may submit their own written statement about the facts of the alleged behavior/incident for consideration by the panel. Written statements must be submitted no later than three (3) business days prior to the scheduled hearing.
6. The complainant and the respondent may also submit their own written statement about the impact of the alleged behavior/incident for consideration by the panel during the sanction phase of the process, if applicable. Written statements must be submitted no later than three (3) business days prior to the scheduled hearing.
7. The complainant and respondent may provide a list of any person(s) who may have relevant information about the behavior/incident.
8. Once 1-7 have been completed, the case will be turned over to the chairperson of the Sexual Misconduct Panel or the administrative hearing representative who will contact the complainant and respondent within five (5) business days to schedule a pre-hearing meeting and/or a hearing.

### **University Role to Address Violations of Policy Via Formal Process**

The university may address violations of the policy in instances in which the complainant is not willing to bring a complaint and the university determines it is necessary to proceed with a formal process under the policy. In such a case, the university will select a representative to act during the formal process.

Generally, if the respondent is a faculty member, the university representative shall be the Provost or his/her designee; if the respondent is a student, the university representative shall be the Vice President for Student Affairs or his/her designee; and if the respondent is a staff member, the university representative shall be the Vice President for Human Resources or his/her designee. If the university representative is the respondent or a potential witness, the Title IX Coordinator shall appoint the university representative. The university representative shall have the same rights and responsibilities as the complainant as outlined in this policy. The university representative shall not be an attorney from the Office of General Counsel.

## **Formal Process: Administrative Hearing**

The function of this hearing is to review the relevant documents, hear from the respondent and the complainant where complainant wishes to participate, and to determine whether the Sexual Misconduct Policy has been violated in cases in which the complainant and respondent are both students, and/or an appropriate sanction.

All administrative hearings will be conducted by (1) a representative of the Office of Inclusion, Diversity or Equal Opportunity, or the Office of Student Affairs, or his or her designee (“the administrative hearing representative”), as appropriate, or (2) three members of the Sexual Misconduct Panel, as provided for in provision b.ii above.

### ***Administrative Hearing Procedure***

1. The complainant and respondent will be notified of the date, time and location of the hearing.
2. The hearing is closed and generally includes the respondent, the Title IX Investigator/ Title IX Coordinator who conducted the investigation, and the administrative hearing representative(s). The complainant will be notified of the option to attend the hearing if the complainant wishes to do so.
3. The complainant may submit an additional written statement concerning the effect of the sexual misconduct and the desired sanction for the respondent. The written statement must be submitted no later than three (3) business days prior to the scheduled hearing.
4. The respondent may make a statement about the sexual misconduct and the possible sanction(s) for the misconduct. The written statement must be submitted no later than three (3) business days prior to the scheduled hearing.
5. The administrative hearing representative(s) may ask questions of the respondent and will consider the statements and any relevant information received during the investigation.
6. Prior to determining whether the Sexual Misconduct Policy was violated and/or a sanction, as applicable to the matter, the administrative hearing representative(s) will normally consult with the following individuals depending on the constituency of the respondent:
  - When a student is the respondent: Vice President for Student Affairs or his/her designee;
  - When a faculty member is the respondent: Provost or his/her designee;
  - When a staff member is the respondent: Vice President for Human Resources or his/her designee.

After the hearing is concluded, the administrative hearing representative(s) will make a decision promptly whether the Sexual Misconduct Policy was violated, as applicable to the matter, and/or on the appropriate sanction and communicate that decision in writing to the respondent, complainant, and to any university administrators, faculty or staff who require the information to carry out the sanction. Generally, notification will be provided to the parties within two (2) business days after the administrative hearing is held, except when extenuating circumstances preclude notification to the parties within such a timeframe.

### ***Administrative Hearing Appeal Process***

If the complainant or the respondent is not satisfied with the outcome of the administrative hearing, either party may notify the appropriate Designated Reporting Representative/Title IX Coordinator of the desire to file an appeal with the Appeals Board. Appeals must be submitted within three (3) business days of receipt of the written decision. An appeal as outlined below will then be held.

### **Formal Process: Sexual Misconduct Panel**

The Office of Equity selects and trains a Sexual Misconduct Panel that includes representation from all constituent groups within the university community (students, faculty, staff) and that is charged to hear and make a determination about whether the sexual misconduct policy has been violated and if so, the appropriate sanction for the violation.

All formal complaints referred to the Sexual Misconduct Panel in which the complainant and the respondent are both students will be chaired by the Associate Dean of Students, or designee appointed by the Associate Vice President for Student Affairs/Title IX Coordinator. For all other complaints involving different constituencies within the university (students, faculty or staff), a representative of the Office of Inclusion, Diversity and Equal Opportunity or the Office of Equity will chair the hearing.

When a complaint is referred to the formal board process, the designated chairperson will select three representative members from the Sexual Misconduct Panel at-large (faculty, staff and/or students) to serve as the hearing panel for an individual case. The hearing panel will be comprised of three voting members and a non-voting chairperson.

In addition, an alternate member(s) may also be selected to attend the hearing in the event one of the other three voting members is unable to continue, or as training.

### **Pre-Hearing Procedure:**

Prior to the board hearing, the chairperson will:

1. Determine available and appropriate hearing panel members from the Sexual Misconduct Panel. Generally, the hearing panel will include panel members representing the constituencies of the complainant and the respondent, except that the chairperson may determine that based on the nature and/or complexity of a case, student representation on the hearing panel is not appropriate. During certain times of the academic year (e.g. during break periods, final exam times etc.), the panel may not include student representation;
2. Consult with the complainant, the respondent and potential panel members to determine any personal and/or professional conflicts of interest that may make the panel member unable to render an unbiased decision. All panel participants are required to disclose any personal and/or professional conflicts of interest to the chairperson prior to agreeing to participate in a board hearing. The chairperson will determine whether a member should not serve on the panel because of a conflict of interest;
3. Advise the complainant and respondent of their right to have an advisor of their choice at the hearing, whose function is to provide support and advice for the complainant or the respondent. During the hearing, the advisor may talk quietly with the complainant or the respondent or pass notes in a non-disruptive manner. The advisor may not, in any way, intervene in the hearing or address the panel.

An advisor may be a current member of the university community (i.e. student, full-time faculty or full-time staff member) or may be an individual from outside the university community or from an off-campus resource (e.g. Rape Crisis Center). An advisor may not be an attorney from the Office of General Counsel, a witness in the matter, or an individual that otherwise has a conflict of interest in serving as an advisor as determined by the chairperson. An advisor from within or from outside the university community may be an attorney by training, but is only permitted to act as an advisor (as described above) during the hearing. The chair will assist in advising the complainant and respondent on how to obtain an advisor;

4. Notify all panel members, the complainant, the respondent, the witnesses and all those involved in the hearing process that the hearing is closed and confidential and should not be discussed outside the hearing proceedings, except as provided in the Confidentiality section of this policy;

5. Provide the panel members access to the information to be considered by the panel. The information shall include the file compiled by the Title IX Investigator/ Title IX Coordinator, which shall include the items compiled by the Title IX Investigator/ Title IX Coordinator (see listing above), as well as:
  - a. Any other information submitted by the complainant or respondent as deemed relevant to the complaint. The chairperson, in consultation with the Title IX Investigator/ Title IX Coordinator, will make determinations as to the relevance of information submitted ;
  - b. Any other information that may be relevant to the complaint;
  - c. Witness list and witness accounts/statements. The Title IX Investigator/ Title IX Coordinator will confer with both the complainant and the respondent regarding which of their identified witnesses will be included in the hearing. The chairperson, in consultation with the Title IX Investigator/ Title IX Coordinator, will make the final determination as to which witnesses have relevant information.
6. Provide complainant, respondent, and advisors an opportunity to review all information prior to the hearing;
7. Arrange a hearing date, time, and location and notify all hearing participants;
8. Advise panel members about the complaint and the hearing procedures.

### **Hearing Procedure**

1. The chairperson will convene the hearing by introducing the participants and explaining the sexual misconduct hearing purpose, procedures and Standard of Proof. Standard of Proof is the preponderance of evidence, which means that the panel must be convinced, in light of all the information presented, that it is more likely than not that the sexual misconduct policy was violated.
2. An audio recording of the hearing will be made by the university only.
3. The chairperson may determine that a complainant and/or the respondent may participate by telephone or video conference.
4. The complainant will be invited to make a statement to the panel.
5. The respondent will be invited to make a statement to the panel.
6. Panel members will be permitted to ask questions at the conclusion of each statement. The complainant and the respondent may then ask questions of each other by submitting written questions to the chair.
7. Witnesses are invited to make a statement before the panel. The panel members, the complainant and the respondent are invited to ask questions of each witness.
8. The complainant, the respondent and their advisors will be permitted to sit in the hearing during all statements and questioning. Witnesses will be permitted to attend only during their own statements and questioning. The Investigator/ Title IX Coordinator who investigated the matter shall be present at the hearing to answer questions from the panel.
9. The panel may ask further questions of the complainant and the respondent after it has heard from all witnesses.
10. After all statements and questioning are completed, the panel will dismiss the complainant, the respondent and their advisors from the hearing and meet to discuss the finding.
11. The panel will consider all information received as part of the hearing process. The panel will issue one of the following findings, based on a preponderance of the evidence:
  - a. The University Sexual Misconduct Policy was not violated or;
  - b. The University Sexual Misconduct Policy was violated.

In addition, the panel may determine that the respondent's actions may violate some other university policy. The chairperson will refer the matter and all relevant information to the appropriate university process.

12. If the panel determines that the sexual misconduct policy was violated, the panel members will determine sanctions. Sanctions will be based on the nature and severity of the offense and/or on prior violations of university policy. The panel may consider the statements of the complainant and respondent regarding the impact of the behavior/incident during the sanction process. In general, sanctions may include, but are not limited to, one or more of the following:
  - a. Apology;
  - b. Participation in educational, skills or management training;
  - c. Written warning, or letter of reprimand;
  - d. Institute alternative work and/or living arrangements, class schedules, advisor/supervisor arrangements;
  - e. Limit contact between respondent and complainant;
  - f. Limit contact between the respondent and other members of the university community
  - g. Faculty and staff may face suspension without pay, consideration of or denial of advancement or pay raise, demotion, removal or suspension from administrative or honorary duties or appointments, or termination for cause;
  - h. Students may be suspended from the university, university housing, selected activities or organizations; placed on probation; or expelled from the university.
13. Prior to determining a sanction, the panel will normally consult with the following individuals depending on the constituency of the respondent:
  - When a student is the respondent: Vice President for Student Affairs or his/her designee
  - When a faculty member is the respondent: Provost or his/her designee
  - When a staff member is the respondent: Vice President for Human Resources or his/her designee

### **Report of Findings**

1. The chairperson, in consultation with the panel, will draft a written letter that includes the panel's finding that:
  - a. The Sexual Misconduct Policy has been violated and the type of sexual misconduct violated as defined in this policy, or
  - b. The University Sexual Misconduct Policy has not been violated.
2. The letter will also include the reason for the finding, and sanctions (if applicable).
3. The chairperson, or his/her designee, will distribute, at the same time or as near the same time as feasible, a copy of the letter to the complainant and the respondent. The chairperson, or his/her designee, will also distribute a copy of the letter to the respondent's department chair, dean/supervisor, and appropriate vice president(s) or his/her designee. A copy of the report will be kept on file in the Office of Equity. A student complainant or respondent has the right to re-disclose the outcome of the formal process under FERPA and/or Campus Crime Statistics Act (Clery Act) laws, as provided in the Confidentiality provision in this policy.
4. The chairperson, or his/her designee, will identify and notify the appropriate individuals to carry out the respondent's sanctions, if applicable.
5. The chairperson, or his/her designee, will notify the complainant and respondent of the right to appeal the determination and/or sanction, as provided in the Appeal Process below.
6. Sanctions are imposed immediately unless the chairperson stays their implementation in extraordinary circumstances, pending the outcome of the appeal.



## **Appeal Process**

Either the respondent or the complainant may appeal the panel's decision and/or the sanction to an Appeals Board. The Appeals Board shall consist of three (3) members of the Sexual Misconduct Panel, selected by the Associate Vice President for Student Affairs/ Title IX Coordinator, or his/her designee who has not been involved in the particular matter, being appealed. The members of the Appeals Board shall not have served as a member of the hearing panel. The Appeals Board shall not rehear or make a redetermination of the facts of the matter, but will review only whether the decision erred in one of three limited grounds on which an appeal may be filed, which are as follows:

1. New information not available to the panel which, if available at the time of the hearing, would have significantly affected the decision;
2. Evidence that established procedures were not followed in a manner that would have significantly affected the decision, and/or;
3. The sanction(s) are substantially disproportionate to the severity of the violation.

Appeals must be submitted to the Title IX Coordinator within three (3) business days of receipt of the written decision and must specify the grounds for the appeal. The Title IX Coordinator or his/her designee shall determine whether the appeal submitted falls within one of the three grounds for appeal of a decision. The appeal statement shall be provided to the other party. The other party shall be entitled to file an opposing statement responding to the appeal within three (3) business days of receipt of the appeal statement. In addition, the chairperson of the panel shall be entitled to submit a responsive statement as well.

In reviewing the appeal, the Appeals Board shall review the panel's report and sanctions to be imposed, and may review any documents or statements presented to the panel. The Appeals Board shall also review the appeals statement and any opposing and/or responsive statements. The Associate Vice President for Student Affairs/Title IX Coordinator, or his/her designee who has not been involved in the particular matter being appealed, will serve as a non-voting facilitator for the Appeals Board to advise on procedural issues involving the appeal. Prior to issuing a decision, the Appeals Board also shall confer with the appropriate Vice President(s) or his/her designee for the constituencies of the complainant or the respondent.

Generally, if an Appeals Board finds that an appeal is valid in that either appeal basis #1 (substantial new evidence was not available to the panel that would have affected the decision) or #2 (evidence that established procedures were not followed in a manner that would have affected the decision), the Appeals Board will refer the appeal back to the Sexual Misconduct Panel to rehear the matter and remedy the issue. As for appeal basis #3 (the sanction was substantially disproportionate to the severity of the violation), the Appeals Board will make the final decision regarding the finding and the sanction based on a review of the existing written record. The sanction imposed by the Appeals Board may be different than the sanction imposed by the Sexual Misconduct Panel, including a sanction that is greater than or lesser than the sanction imposed by the panel. The Title IX Coordinator or his/her designee will communicate the decision, in writing, to the respondent, the complainant, the panel members and to the appropriate administrators (i.e. respondent's department chair, dean/supervisor, and appropriate vice president). The University generally attempts to make a determination on appeals within ten (10) business days following the submission of an appeal.

The Appeals Board's decision shall be final with the exception of certain faculty sanctions described in "Additional Faculty Sanction Process."

## **Additional Faculty Sanction Process**

If the sanction issued to a faculty member, following any appeals, is (1) termination of a tenured faculty member's appointment or (2) demotion in academic rank of a faculty appointment (professor, associate professor, assistant professor, or instructor), then the procedures in Section IV of the Faculty Handbook are initiated. The factual findings

and conclusions of the Sexual Misconduct Panel and/or the Appeals Board shall be determinative as to whether the university's sexual misconduct policy has been violated. The Section IV of the Faculty Handbook proceedings shall be limited to a determination of whether the finding constitutes just cause for termination of the tenured faculty appointment or for demotion in academic rank.

## **False Allegations**

No complaint will be considered “false” solely because it cannot be corroborated. The university will take appropriate action to address and/or impose appropriate discipline on members of the university community who file documented false complaints of sexual misconduct. In such cases of proven false allegations, discipline may include, but is not limited to, suspension or termination.

## **Support Resources**

The following resources and options are available for individuals reporting sexual misconduct. Similarly, the university recognizes that a person being accused of a sexual misconduct may also utilize the following resources and options as appropriate and applicable.

### **Alternative Housing & Academic Accommodations**

The university will accommodate requests for alternative living, working, dining, and academic arrangements as available and appropriate. This is available with all reporting options in both informal and formal choices of action. The university reserves the right, based on the circumstances, to determine the most appropriate course of action in making alternative housing arrangements.

### **Emergency Room Examination/ Preservation of Evidence**

Any person who is a victim of physical sexual violence is urged go directly to the Emergency Room at any local hospital for medical attention. For a list of hospitals close to campus, including those with a SANE (Sexual Assault Nurse Examiner) Unit or staff specially trained for sexual misconduct examination and evidence collection, refer to the appropriate Confidential Support Resource charts in this policy or go to the university's Sexual Misconduct and Title IX website at <http://www.case.edu/title-ix/> for more information.

It is important to note that the preservation of physical evidence is critical in the event of criminal prosecution and may also be useful if university action is pursued. To obtain the best evidence, a person who has experienced sexual violence should not wash her/his hands; shower or douche; brush her/his hair or teeth; or change her/his clothes immediately following the incident. If a victim goes to the hospital, local police will be called, and if the name of the accused is provided, the police will investigate, but the victim is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate him or her to pursue any course of action.

### **University Health and Counseling Services**

Students can seek treatment or advice at the University Health Service for any medical concerns, including a physical exam, sexually transmitted infections, pregnancy testing, and to obtain emergency contraception. All medical information and services are privileged and confidential. There is a nurse and physician on-call 24 hours a day, 7 days a week at **216-368-2450**.

If a student decides to file criminal charges, the student must sign a *University Health Service Medical Information Release Form* if the student wishes to allow the police, the university or their representative to gain access to medical information applicable to the sexual violence.

Counseling may be pursued following an incident of sexual misconduct, no matter how much time has elapsed since the incident. The university offers a 24-hour telephone hotline for privileged and confidential conversations about sexual assault and relationship violence (**216-368-7777**). By calling this number, students may choose to be connected with on and off-campus resources.

On-campus counseling services are available for students at University Counseling Service in Sears, University Health Service, and the Women's Health Advocate at the Flora Stone Mather Center for Women. There is no charge to students and the services are privileged communications. Counseling services are also available for faculty and staff through the Employee Assistance Program (EASE). See Support Resource Charts IIa. or IIb.

## **Retention of Documents**

All records will be retained for at least as long as the respondent and/or the complainant(s) are members of the university community.

For undergraduate, graduate and professional students found responsible for violating the Sexual Misconduct Policy, violations will lead to disciplinary record being created and retained as follows:

- Any disciplinary violation that leads to sanctions less severe than disciplinary probation (including undergraduate, graduate and professional programs) will be retained only to be factored into any subsequent disciplinary violations. Such violations will be considered non-reportable to other higher education institutions or agencies seeking information about student disciplinary records.
- Any disciplinary violation that leads to disciplinary probation or university separation will be retained for eight years from the date of the incident or from the date of completion of all studies at the university (including undergraduate, graduate and professional programs); whichever is later, and is reportable to higher education institutions or agencies seeking information about student disciplinary records.
- Any disciplinary policy violation that leads to a sanction of university expulsion will be retained with the university permanently and is reportable to other higher education institutions or agencies seeking information about student disciplinary records.
- In cases where a student is alleged to have violated a policy but is found not responsible, a record will be retained but will be considered non-reportable to other higher education institutions or agencies seeking information about student disciplinary records.

For faculty and staff, records will be kept for at least six (6) years after the matter is closed and after the individuals are no longer members of the University community. Records will be kept in a confidential and secure location and only made available to the Title IX Coordinator, Designated Reporting Representative(s), other appropriate university officials, or other authorized individuals as determined by law. In determining when it is appropriate to make available records regarding informal and formal complaints, the following provisions will apply:

### **Informal Complaints**

Information about all informal complaints will be kept on file in the Office of Equity, and in a confidential file in the appropriate dean's and/or department chair's and/or supervisor's office when such dean/chair/supervisor is notified of the informal complaint to ensure that the university is maintaining records of those individuals about whom multiple informal complaints have been made and/or to enforce the informal resolution. Information concerning informal sexual misconduct complaints will not be considered in processes concerning future university misconduct unless the matter involves an allegation of sexual misconduct.

## **Formal Complaints**

If the respondent is found to have violated the sexual misconduct policy, a copy of the decision letter will be retained in the individual's official university file. If a future complaint of sexual misconduct is referred to a formal process, information regarding the previous sexual misconduct complaint(s) may be considered by the panel.

In the event that the respondent is involved in and found responsible for other university violations unrelated to sexual misconduct, information about formal sexual misconduct violations and sanctions will be shared with the board during the sanctioning phase.

If the person found in violation is a:

Faculty: The information will be kept on file in the Office of the Provost, the office of the appropriate dean and department, and the Office of Equity.

Staff: The information will be kept on file in Human Resources, the appropriate dean and/or department, and the Office of Equity.

Student: The information will be kept on file in the University Office of Student Affairs/ Student Conduct, the Dean's Office of the appropriate school, if applicable, and the Office of Equity.

If the respondent is found not to have violated the sexual misconduct policy, a copy of the decision will be retained in the Office of Equity.

## **Annual Report**

An annual report of sexual misconduct complaints and their resolutions shall be produced by the Title IX Coordinator or his/her designee and accessible on the Office of Equity website. The report shall identify complainants and respondent by constituency only, e.g., student, staff, faculty.

## **Prevention, Education & Training**

The University is committed to engaging in efforts to prevent sexual misconduct at CWRU by education and training of its university community members on sexual misconduct reporting and prevention. Various University offices, including but not limited to the Office of Equity, Office for Inclusion, Diversity and Equal Opportunity, the Sexual Misconduct Prevention and Education Committee, and the Office of Student Affairs, conduct and/or oversee sexual misconduct training and education for university community members. In addition, the Title IX Coordinator, Designated Reporting Representatives, Title IX Investigators, and Sexual Misconduct Panel members receive training on sexual misconduct and on the University Sexual Misconduct Policy. These administrators also are involved in professional development activities and national organizations regarding sexual misconduct awareness and prevention.

## Appendix A

### Designated Reporting Representative/Investigators:

Darnell T. Parker  
Senior Associate Vice President for Equity  
University Title IX Coordinator  
Adelbert Hall 110  
10900 Euclid Avenue  
Cleveland, Ohio 44106  
216-368-2020

George O'Connell  
Director of Student Conduct/Community Standards  
Thwing 305  
10900 Euclid Avenue.  
Cleveland, Ohio 44106  
216-368-3170

G. Dean Patterson  
Associate Vice President for Student Affairs  
Adelbert Hall 110  
10900 Euclid Avenue.  
Cleveland, Ohio 44106  
216-368-1527

Megan Carney  
Assistant Director, Conduct/Community Standards  
Thwing 305  
10900 Euclid Avenue  
Cleveland, Ohio 44106  
216-368-3170

Anthony Polito  
Assistant Director, Conduct/Community Standards  
Thwing 305  
10900 Euclid Avenue  
Cleveland, OH 44106  
2016-368-3170

Christopher Jones  
Assistant Vice President for OIDEO  
Deputy Title IX Coordinator for Faculty and Staff  
Adelbert 109  
10900 Euclid Avenue  
Cleveland, Ohio 44106  
216-368-8877

Karen Farrell  
Senior Women's Administrator  
Deputy Title IX Coordinator  
10900 Euclid Avenue.  
Cleveland, Ohio 44106  
216-368-0364

TBA  
Equity Specialist and Investigator  
Thwing 318  
10900 Euclid Avenue  
Cleveland, Ohio 44106

Daniel Nemeth Neumann  
Equity Specialist and Investigator  
Thwing 318  
10900 Euclid Avenue.  
Cleveland, Ohio 44106  
216-368-8740

**Position Descriptions:****Title IX Coordinator**

The Title IX Coordinator is responsible for monitoring and oversight and overall implementation of Title IX Compliance at the University, including coordination of training, education communications and administration of grievance procedures for faculty, staff, students and other members of the university community.

**Deputy Title IX Coordinator**

The Deputy Title IX Coordinator is responsible for overseeing the resolution of issues regarding gender-based discrimination and sexual misconduct for faculty and staff in collaboration with the Title IX Coordinator. The Deputy Coordinator will also assist the Title IX Coordinator in development of training and education for faculty and staff in the university community.

**Designated Reporting Representative**

The Designated Reporting Representative is responsible for coordinating the initial inquiry, which may include interviews with the complainant and the respondent and a review of relevant documents under the supervision of the Title IX Coordinator. Following the initial inquiry, the Title IX Coordinator will determine whether the information gathered during the initial inquiry indicates that the complaint falls within this policy and will utilize criteria outlined in this policy to determine what process will be used to bring resolution to the sexual misconduct case.

**Equity Specialist and Investigator**

The Equity Specialist and Investigator serves as the investigator for sexual misconduct matters and conducts a prompt and thorough investigation of alleged sexual misconduct complaints, which includes identifying and interviewing witnesses, gathering and securing relevant documentation, and identifying other relevant information. Depending on the number of ongoing investigations and/or the nature and complexity of the complaint, the Title IX Investigator for a complaint may be a qualified investigator retained by the university from outside the university community.

**Other Sources for Information:**

Office for Civil Rights

The U.S. Department of Education

600 Superior Ave. East Suite 750

Cleveland, Ohio 44114-2611

216-522-4970

Fax: 216-522-2573

OCR.Cleveland@ed.gov