

# Cleary University

## Title IX Sexual Harassment Policy

Revised 8-12-2020

Cleary University is committed to maintaining an environment conducive to learning for all students and a professional workplace for its employees that are free from offensive and unwelcome conduct, actions and words directed at anyone, but especially because of one's membership in a protected class. Cleary University prohibits discrimination, discriminatory harassment, and sexual harassment, including sexual violence and any type of sexual misconduct. Cleary University prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking (as defined by the Clery Act/Violence Against Women Act). This policy also prohibits retaliation against a person who reports, complains about, or who otherwise participates in good faith in any matter related to this policy.

This policy applies to all Cleary University administrators, faculty, staff, and students and all forms of prohibited conduct under this policy are regarded as serious University offenses, and violations may result in disciplinary sanctions, including the possibility of separation from the University. Persons engaged in prohibited conduct may also be subject to criminal and civil procedures at state and/or federal levels independent of any disciplinary action instituted by Cleary University.

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

This policy prohibits all forms of harassment and discrimination under Title IX of the Education Amendments of 1972, 2020 Title IX Regulations (34 CFR § 106), Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA), Title VII of the Civil Rights Act of 1964, and other applicable statutes, including the Elliott-Larsen Civil Rights Act, Michigan PA 453 of 1976. This policy prohibits a broad continuum of behaviors, some of which are not legally prohibited but which reflect Cleary University's standards and expectations for a positive working and learning environment.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

This Title IX Sexual Harassment policy is based on definitions set forth in regulations promulgated by the U.S. Department of Education under Title IX of the Education Amendments Act of 1972, and this policy limits the scope of

Title IX Sexual Harassment to, among other things, conduct that occurs within the United States and conduct that occurs within the University's education program or activity (a concept further defined and discussed below).

The University will not deprive an individual of rights guaranteed under federal and state law (or federal and state anti-discrimination provisions; or federal and state law prohibiting discrimination on the basis of sex) when responding to any claim of Title IX Sexual Harassment.

In recent years, "Title IX" cases have become a shorthand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. Yet under the Final Rule, Cleary University must narrow both the geographic scope of its authority to act under Title IX and the types of "sexual harassment" that it must subject to its Title IX investigation and adjudication process. **Only** incidents falling within the Final Rule's definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Procedures (below).

Cleary University remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has a separate Student Code of Conduct Policy, located at <http://www.cleary.edu/operational-policies>, and the Anti-Harassment Policy, beginning on page 20 of the Cleary University Employee Handbook, that addresses the types of sex-based offenses constituting a violation of campus policy. To the extent that alleged misconduct falls outside the Title IX Sexual Harassment Policy, or misconduct falling outside the Title IX Sexual Harassment Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Student Code of Conduct Policy through a separate grievance proceeding. Student appeals to disciplinary action outside of the Title IX Sexual Harassment Policy take place through the Student Ombudsmen as detailed beginning on page 35 of Cleary University's 2020-21 Academic Catalog.

The elements established in the Title IX Sexual Harassment Policy under the Final Rule have no effect and are not transferable to any other policy of the University for any violation of the Student Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the University and may not be cited for or against any right or aspect of any other policy or process.

### **Effective Date**

The Title IX Grievance Policy will become effective on August 14, 2020 and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

### **Revocation by Operation of Law**

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner,

any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing Sexual Misconduct Policy.

### **Non-Discrimination in Application**

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

### **Privacy vs. Confidentiality**

References made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or university officials without permission, except for extreme circumstances, such as a health and/or safety, emergency or child abuse.

References made to *privacy* mean Cleary University officers and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Cleary University will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### **Disability Accommodations**

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

## **Title IX Coordinator**

Under Title IX: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. The Title IX Coordinator is charged with monitoring the university's compliance with Title IX; ensuring appropriate education and training; coordinating the university's investigation, response, and resolution of all reports under this policy; and ensuring appropriate actions to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is available to meet with any student, employee, or third party to discuss these procedures.

The Dean of Academic Operations and the Associate Dean of Students serve as Cleary University's Title IX Coordinators. The Title IX Coordinator is responsible for coordinating the University's compliance with Title IX, the 2013 Amendments to the Violence Against Women Act (VAWA) and the University's conduct policies related to sexual misconduct.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinators, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinators:

Sara Barnwell  
Dean of Academic Operations/Title IX Coordinator  
Cleary University  
3750 Cleary Drive  
Howell, MI 48843  
Email: sbarnwell@cleary.edu  
Telephone: 800-686-1883 x1601

Matt Oliver  
Associate Dean of Students/Title IX Coordinator  
Cleary University  
3750 Cleary Drive  
Howell, MI 48843  
Email: moliver@cleary.edu  
Telephone: 800-686-1883 x1456

Such a report may be made at any time (including during non-business hours) by using the telephone numbers or electronic mail addresses, or by mail to the office addresses listed above for the Title IX Coordinators.

## Definitions

**Complainant** means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

**Consent** is an affirmative decision to engage willingly in mutually acceptable sexual activity given by clear words or actions. Consent must be informed, voluntary, and mutual, and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard or being asleep or unconscious.

**Dating violence** (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act) includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.

**Domestic violence** (as defined in the VAWA amendments to the Clery Act) includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under Michigan domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Michigan.

**Education Program or Activity** is any Cleary University educational program or activity on any on-campus premises, any off-campus premises that Cleary University has substantial control over. This includes buildings or property owned or controlled by a recognized student organization and/or an activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Cleary University's programs and activities over which the University has substantial control.

**Fondling** is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

**Formal Complaint**, for the purposes of this Title IX Grievance Policy, means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within Cleary University's education program or activity and requesting initiation of the procedures consistent with the Title IX Sexual Harassment Policy to investigate the allegation of sexual harassment. Cleary University's Formal Title IX Complaint Form is Appendix I of this document.

**Incapacitation** is the inability to make informed, rational judgments and decisions. If alcohol or drugs are involved, incapacitation may be assessed by evaluating how the substance has affected a person's decision-making capacity, awareness, and ability to make informed judgments. The impact of alcohol and drugs varies from person to person; however, warning signs of possible incapacitation include slurred speech, unsteady gait, impaired coordination, inability to perform personal tasks such as undressing, inability to maintain eye contact, vomiting, and emotional volatility. The perspective of a reasonable person will be considered in the University's determination of whether a person knew, or reasonably should have known under the circumstances, whether the other party was incapacitated. Being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for sexual misconduct.

**Incest** is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Preponderance of the evidence standard** means that a decision of responsibility for a policy violation will be made on whether it is more likely than not that the respondent violated the policy on the totality of information gathered during the investigation.

**Quid Pro Quo Sexual Harassment:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

**Rape** is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Statutory Rape** is defined a sexual intercourse with a person who is under the statutory age of consent.

**Stalking** (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

**Relevant evidence and questions** refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true. "Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

**Respondent** means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

**Sexual Assault** is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders.

**Title IX Sexual Harassment** is unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the University's athletic program or activity or education program or activity.

## Making a Report Regarding Covered Sexual Harassment to Cleary University

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

At Cleary University, all faculty, staff and employees are considered 'responsible employees.' A responsible employee is required to report all instances of suspected Title IX Sexual Harassment violations to a Title IX Coordinator. Responsible employees should not investigate the claims, responsibility ends with Title IX Coordinator communication. Only employees considered *confidential* are exempt from this policy and detailed below.

## Prohibited Conduct Under Title IX

1. **Sexual Assault:** having or attempting to have *sexual intercourse* or *sexual contact* with another individual by force or threat of force, without *consent*, or where the person is *incapacitated*, as defined below:
  - a. **Sexual Contact:** any intentional sexual touching, however slight, with any object or body part, performed by a person upon another person, and includes:
    - i. Intentional touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts;
    - ii. Making another touch you or themselves with or on any of these body parts;
    - iii. Causing another to touch one's intimate parts, disrobing or exposure of another without permission.
  - b. **Sexual Intercourse:** vaginal or anal penetration, however slight, with any object or body part, performed by a person upon another person; and/or oral penetration involving mouth to genital contact, and includes:
    - i. Vaginal penetration by a penis, object, tongue, or finger;
    - ii. Anal penetration by a penis, object, tongue, or finger;
    - iii. Any contact, no matter how slight, between the mouth of one person and the genitalia of another person.
2. **Intimate Partner Violence:** any act of *Domestic Violence* or *Dating Violence* as defined below:
  - a. **Domestic Violence:** any act of violence committed by any of the following individuals: (1) a current or former spouse or intimate partner of the victim; (2) person with whom the victim shares a child in common; (3) person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; and/or, (4) a resident or former resident of the victim's household in the event such household residents have a current or prior intimate relationship.
    - i. An incident of domestic violence can consist of a single act of violence or a pattern of violent acts that includes, but is not limited to, sexual or physical abuse, or the threat to engage in such abuse.
  - b. **Dating Violence:** any act of violence committed by a person who is, or has been, in a social relationship of a romantic or intimate nature with the victim that does not fall within the definition of "domestic violence."
    - i. Dating violence includes, but is not limited to, sexual or physical abuse or assault or the threat of such abuse or assault.
    - ii. For the purposes of determining Intimate Partner Violence, whether the relationship is of a romantic or intimate nature is determined by a variety of factors, including: (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.
    - iii. A relationship of a romantic or intimate nature means a relationship that is characterized by the expectation of affection or sexual involvement between the parties.
    - iv. An incident of dating violence can consist of a single act of violence or a pattern of violent acts that includes, but is not limited to, sexual or physical abuse, or the threat to engage in such abuse.
3. **Stalking:** when a person engages in a *course of conduct* directed at a specific person under circumstances that would cause a *reasonable person* to fear bodily injury or to experience *substantial emotional distress*.
  - a. *Course of conduct* means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
  - b. *Reasonable person* means a reasonable person under similar circumstances.

- c. *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
  - d. Stalking includes "cyber-stalking," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact. This policy prohibits all stalking, not just stalking that occurs within the context of a relationship.
4. **Sexual Exploitation:** taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited.  
Examples include, but are not limited to:
- a. Causing the *incapacitation* of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give *consent* (as defined in this policy) to sexual activity;
  - b. Allowing third parties to observe private sexual activity from a (a) hidden location (e.g., closet), or (b) through electronic means (e.g., Skype or live streaming of images);
  - c. Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
  - d. Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
  - e. Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
  - f. Knowingly exposing another person to a sexually transmitted infection or virus without the other's knowledge;
  - g. Arranging for others to have non-consensual sexual contact, as defined by this policy, with a non-consenting person.
5. **Sexual Harassment:** unwelcome or unwanted conduct of a sexual nature whether verbal or nonverbal, graphic, physical or otherwise, where *Quid Pro Quo* is present and/or rises to the level of creating a *Hostile Environment*.
6. **Gender-Based Harassment:** unwelcome or unwanted conduct based on gender, sexual orientation, transgender, gender non-conforming, transitioning, gender identity, or gender expression that may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, where *Quid Pro Quo* is present and/or rises to the level of creating a *Hostile Environment*.
- a. *Transgender* is an umbrella term that can be used to describe people whose gender identity and/or expression is different from their sex assigned at birth.
  - b. *Gender non-conforming* describes people who have, or are perceived to have, gender characteristics and/or behaviors that do not conform to traditional or societal expectations.
  - c. *Transition/Transitioning* is the process of changing one's gender from the sex assigned at birth to one's gender identity.
  - d. *Gender Identity* is a personal, internal sense of oneself as, for example, male, female, both, or neither.
  - e. *Gender Expression* is the external appearance of one's gender identity, or how one represents one's gender through hair style, clothing, mannerisms, etc.
7. **Discriminatory Harassment:** conduct on the basis of that person's actual or perceived membership in one or more of the protected classes listed below, that could reasonably be understood as having the purpose or effect of creating an intimidating, hostile, or offensive environment; having the purpose or effect of unreasonably interfering with an individual's work performance or access to educational activities and programs; adversely affecting an individual's employment opportunities or access to educational activities and programs.



- a. *Protected Classes* are age, color, disability, familial status, gender, gender expression, gender identity, gender non-conforming, height, marital status, national origin, political affiliation, race, religion, sex, sexual orientation, transgender, transitioning, veteran or active duty military status, or weight.
8. **Retaliation:** taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual: reported an incident of prohibited conduct under this policy, participated in a grievance process related to this policy, supported an impacted party, assisted in providing information relevant to an investigation, and/or acted in good faith to oppose conduct that constitutes a violation of this policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Cleary University will take all appropriate and available steps to protect individuals who are concerned that they may be subjected to retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

- a. Retaliation under Title IX also includes:  
Charges against an individual for conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Charging an individual with a conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## 9. Title IX and Sexual Misconduct

- a. Title IX defines sexual harassment as conduct on the basis of sex that satisfies one or more of the following:
- i. An employee of Cleary University conditioning the provision of aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
  - ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Cleary University's education programs or activities; or
  - iii. "Sexual assault" as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#) ([forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation](#)), "dating violence" as defined in [34 U.S.C. 12291\(a\)\(10\)](#), "domestic violence" as defined in [34 U.S.C. 12291\(a\)\(8\)](#), or "stalking" as defined in [34 U.S.C. 12291\(a\)\(30\)](#).

## Sexual Assault Amnesty

The health and safety of every student and employee at Cleary University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs, may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Cleary

University strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to University officials.

A bystander acting in good faith or a reporting individual (complainant) acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to University officials and/or law enforcement will not be subject to the University's code of conduct action for violations or alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

### **Anonymous Reporting**

Anonymous reports may be submitted however, the nature of anonymity makes responsive actions more difficult and, at times, impossible.

### **Confidential Reporting**

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinators or designees

The following personnel may provide confidentiality:

- Michael Barnes, Cleary University Legal Counsel
- Andrew Chamberlin, Cleary University Licensed Counselor, 800-686-1883 x1455

Consistent with the definition of confidential employees and licensed community professionals, there are a number of resources within the university and local communities where students and employees can obtain confidential, trauma-informed counseling and support. Community resources include:

- YWCA Flint, 801 S. Saginaw Street, Flint MI, 24- hour confidential crisis line (810) 238-7233
- LACASA, 2895 W. Grand River Avenue, Howell MI, 24-hour confidential crisis line (866) 522-2725
- National hotlines
  1. Rape, Abuse and Incest National Network (RAINN) (800) 656- HOPE
  2. National Center for Victims of Crime Victim Service (800) FYI-CALL or (800) 211-7996 (TTY/TDD).

Employees can also obtain counseling through the Lincoln Employee Assistance Program (888) 628-4824.

### **False Reports**

Cleary University takes the accuracy of information very seriously, as a report of prohibited conduct may have severe consequences. A good-faith complaint that results in a finding of 'not responsible' is not considered a false or fabricated report of prohibited conduct. However, when a Complainant or third-party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant may be subject to disciplinary action.

### **Supportive Measures**

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from Cleary University regardless of whether they desire to file a complaint. These measures may include:

- Assisting with accessing other available victim advocacy, academic support, alternative instruction, counseling, disability, health or mental health services;
- Providing security and support, transportation assistance, campus escort services, increased security and monitoring of certain areas of the campus;
- Issuing, helping arrange a change of living or working arrangements or course schedules or adjustments for assignments or tests; and leaves of absence;
- Informing of the right to report a crime to local law enforcement and assisting with the reporting;
- And other assistance if requested and reasonably available.

Supportive measures are non-disciplinary and non-punitive.

## **Emergency Removal**

Cleary University retains the authority to remove a respondent from the University's program or activity on an emergency basis, where the University (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If Cleary University determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. This challenge will be directed toward the Student Ombudsman and will be handled in the same manner as a non-academic Student Disciplinary Appeal as detailed in Cleary University's 2020-21 Academic Catalog. The office of the Student Ombudsman handling anonymous complaints and appeals can be reached as follows:

Student Ombudsman

Phone: (800) 686-1883 ext. 1252

Email: [studentconcerns@cleary.edu](mailto:studentconcerns@cleary.edu)

Website: <https://www.cleary.edu/ombudsman/>

## **Administrative Leave**

Cleary University retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process.

## **General Expectations for Complainants and Respondents**

Pursuant to these procedures, complainants and respondents can expect:

1. Prompt and equitable resolution of allegations of prohibited conduct;
2. Privacy in accordance with the policy and any legal requirements;
3. Reasonably available interim remedial measures, as described in these procedures;
4. Freedom from retaliation for making a good faith report of prohibited conduct or participating in any proceeding under the policy; [see Sexual Harassment policy for definition of retaliation]
5. The responsibility to refrain from retaliation directed against any person for making a good faith report of prohibited conduct or participating in any proceeding under the policy;
6. The responsibility to provide truthful information in connection with any report, investigation, or

- 7. resolution of prohibited conduct under the policy or these procedures;
- 7. The opportunity to articulate concerns or issues about proceedings under the policy and these procedures;
- 8. Timely notice of any meeting at which the party's presence is contemplated by these procedures;
- 9. The opportunity to choose an advisor, including the right to have that advisor attend any meeting at which the party's presence is contemplated by these procedures, including cross examination hearings;
- 10. Written notice of an investigation, including notice of potential policy violation(s);
- 11. The opportunity to offer information, present evidence, and identify witnesses during an investigation;
- 12. The opportunity to be notified, orally and/or in writing, as to the determination of a policy violation and the imposition of any sanction(s);
- 13. Timely and equal access to any information that will be used during resolution and related meetings;
- 14. Reasonable time to prepare any response contemplated by these procedures;
- 15. Written notice of any extension of timeframes for extenuating circumstances; and
- 16. Written notice of the outcome of any determination of a policy violation, imposition of any sanction(s), and the rationale for each.

## **Grievance Procedures for Title IX Sexual Harassment Complaints**

### **Initial Complaint and Assessment**

Upon receipt of a report of prohibited conduct, received orally or written, the Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. This initial assessment will complete the following:

- 1. Assess the complainant's safety and well-being and offer the university's immediate support and assistance;
- 2. Inform the complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
- 3. Inform the complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- 4. Inform the complainant about university and community resources, the right to seek appropriate and available remedial and protective measures, and how to request those resources and measures;
- 5. Inform the complainant of the right to seek university investigation and resolution under these procedures; ascertain the complainant's expressed preference (if the complainant has, at the time of the initial assessment, expressed a preference) for pursuing university investigation and resolution; and discuss with the complainant any concerns or barriers to participating in any University investigation and resolution under these procedures;
- 6. Explain the university's prohibition against retaliation and that the university will take prompt action in response to any act of retaliation;
- 7. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the complainant, the respondent, any witness, and/or any other third party with knowledge of the reported incident;
- 8. Ascertain the ages of the complainant and the respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and
- 9. Communicate with appropriate university officials to determine whether the report triggers any Clery Act obligations; including entry of the report in the daily crime log and/or issuance of a timely warning and take steps to meet those obligations.

The Title IX Coordinator will ensure that the complainant receives a written explanation of all available resources and options and is offered the opportunity to meet to discuss those resources and options. When a decision is reached to initiate an investigation or to take any other action under these procedures that impacts a respondent (including the imposition of interim protective measures), the Title IX Coordinator will ensure that the respondent is notified, receives a written explanation of all available resources and options, and is offered the opportunity to meet to discuss those resources and options.

### **Filing a Formal Complaint**

After the initial complaint, the timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) calendar days after the filing of the Formal Complaint, provided that the Process may be extended due to extenuating circumstances, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged utilizing the Cleary University Title IX Complaint Form. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of Cleary University, including as an employee. For complainants who do not meet these criteria, the University will utilize existing policy in the Anti-Harassment Policy located in the Cleary University Employee Handbook.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine if a Formal Complaint is necessary. Cleary University will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all required notices issued under this Policy and Procedure.

Nothing in the Title IX Sexual Harassment Policy or the Anti-Harassment Policy or the Student Code of Conduct prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

### **Notice of Allegations**

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, but no more than five (5) days after the institution receives a Formal Complaint of the allegations if there are no extenuating circumstances. The Title IX Coordinator will promptly inform the complainant of any action(s) undertaken by the university to respond to reported prohibited conduct, including the decision to proceed with an investigation. The Title IX Coordinator also will promptly inform the respondent of any action(s) (including any interim protective measures) that will directly impact the respondent and provide an opportunity for the respondent to respond to such action(s). The Title IX Coordinator retains the discretion to impose and/or modify any interim protective measures based on all available information. Interim protective measures will remain in effect until the resolution, unless new circumstances arise which warrant reconsideration of the protective measures.

The parties will be notified by their Cleary University email accounts if they are a student or employee, and by other reasonable means if they are neither.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator or designee may determine that the Formal Complaint must be dismissed on the mandatory grounds identified below and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

### **Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the institution's Title IX Grievance Process including any informal resolution process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);
- A statement that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

### **Health and Safety Concerns**

The Title IX Coordinator will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health and/or safety of the complainant and/or to any other member of the university community. This determination is based upon a review of the totality of the known circumstances, and will be guided by a consideration of the following factors:

- Whether the respondent has prior arrests, is the subject of prior reports and/or complaints related to any form of prohibited conduct, or has any history of violent behavior;
- Whether the respondent has a history of failing to comply with any university no-contact directive, other university protective measures, and/or any judicial protective order;
- Whether the respondent has threatened to commit violence or any form of prohibited conduct;
- Whether the prohibited conduct involved multiple respondents;
- Whether the prohibited conduct involved physical violence. Physical violence: means exerting control over another person through the use of physical force. Examples include hitting, slapping, kicking, restraining, strangling, brandishing or using any weapon;

- Whether the report reveals a pattern of prohibited conduct (i.e. by the respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- Whether the prohibited conduct was facilitated through the use of rape facilitated drugs or similar drugs or intoxicants;
- Whether the prohibited conduct occurred while the complainant was unconscious, physically helpless or unaware that the prohibited conduct was occurring;
- Whether the complainant is (or was at the time of the prohibited conduct) a minor (under 18); and/or
- Whether any other aggravating circumstances or signs of predatory behavior are present.

## Determining Jurisdiction

The Title IX Coordinator or designee will determine if the Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in Cleary University's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, Cleary University will investigate the allegations according to the Grievance Process.

## Informal Resolution

Parties who do not wish to proceed with an investigation and live hearing, and instead seek the University's assistance to resolve allegations of Title IX-covered misconduct, may elect to enter the informal resolution process. Generally speaking, these resolution options are less time intensive than an investigation and live hearing, while still affording students an opportunity to actively participate in a process led by the University for the resolution of their complaints.

The Parties may elect to enter the University's informal resolution process at any time after the filing of the Formal Complaint through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in informal resolution, and the University may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the formal resolution process recommences. In participating in the informal resolution process, the Parties understand that the timeframes governing the formal process temporarily cease, and only recommence upon reentry into the formal process.

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or other designated official **may** approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator or other designated official may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing

threat of harm or safety to the campus, whether the Respondent is a repeat offender, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal resolution is only permitted to address allegations of student-on-student sexual harassment and is never allowed as an option to resolve allegations that an employee sexually harassed a student. See, 85 Fed. Reg. 30026, 30054 (May 19, 2020).

At any time after the commencement of the informal resolution process, the Title IX Coordinator or other designated official may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the formal process. This determination is not subject to appeal.

### **Role of the Facilitator**

Informal resolution processes are managed by facilitators, who may not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the specific Parties in the matter. The Title IX Coordinator may serve as the facilitator, subject to these restrictions.

All facilitators must have training in the definition of sexual harassment under 34 C.F.R. § 106.30(a), the scope of the institution's education program or activity, how to conduct informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

### **Confidentiality**

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Formal Complaint is confidential while the parties are participating in the informal resolution process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process may be incorporated into the formal investigation and live hearing, provided that this information is disclosed and reviewed by the Parties under the investigatory and hearing procedures described in the Title IX Grievance Process.

### **Informal Resolution - Mediation**

The purpose of mediation is for the parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate remedies to address them. Either party can request mediation to seek resolution; mediation will be used only with the consent of both Parties, who will be asked not to contact one another during the process. The Title IX Coordinator will also review any request for mediation and may decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within ten (10) days after the Office of Title IX receives consent to mediate from both Parties and will continue until concluded or terminated by either party or the Office of Title IX. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a



resolution cannot be reached, the matter will be referred to the Title IX Coordinator or designee to re-evaluate other options for resolution, including investigation.

During mediation, a facilitator will guide a discussion between the parties. In circumstances where the Parties do not wish to meet face to face, either Party can request "caucus" mediation, and the facilitator will conduct separate meetings. Whether or not the Parties agree to meet face to face, each Party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the Parties. The Office of Title IX will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

### **Multi-Party Situations**

The institution may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

### **Allegations Potentially Falling Under Two Policies**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied in the investigation and adjudication of all of the allegations.

### **Mandatory Dismissal**

If any one of these jurisdictional elements are not met, the Title IX Coordinator or designee will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Sexual Harassment Policy, but may fall under another student-facing or employee-facing policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

### **Discretionary Dismissal**

The Title IX Coordinator or designee may dismiss a Formal Complaint brought under the Title IX Sexual Harassment Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint, or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by Cleary University; or,
- If specific circumstances prevent Cleary University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in "Appeals," below.

### **Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their Cleary University email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

### **Notice of Removal**

Upon dismissal for the purposes of Title IX, Cleary University retains discretion to utilize Student Code of Conduct or Anti-Harassment Policy to determine if a violation has occurred. If so, Cleary University will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the conduct process.

### **Ongoing Notice**

If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Sexual Harassment Policy, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

### **Student Groups and Organizations**

If the Title IX Coordinator determines that a report of prohibited conduct reveals involvement of, or a pattern of behavior by, a particular student group or organization (e.g., special status organization, fraternity, club sport and/or athletic team), the Title IX Coordinator or designee may impose any appropriate remedial or protective measures contemplated by these procedures (e.g., training and/or prevention programs targeted to student members of the group or organization). The Title IX Coordinator or designee will also consult with relevant university officials regarding any appropriate University action directed at the student group or organization, including, but not limited to, modification, suspension or termination of the student group's or organization's agreement or status with the university.

### **Advisor of Choice and Participation of Advisor of Choice**

Cleary University will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

The University has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of Cleary University.

Cleary University will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Cleary's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other university policies apply to matters governed under this Policy, and the University cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The University will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the University.

### **Notice of Meetings and Interviews**

Cleary University will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

### **Delays**

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator or designee shall have sole judgment to grant further pauses in the Process.

## **Investigation**

### **General Rules of Investigations**

The University's designated Title IX Investigator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations. All investigators will receive, at minimum, annual training on issues related to sex and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of complainants and the university community while promoting accountability.

Cleary University, and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility.

Cleary University cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

The Title IX Coordinator (or designee) will notify the complainant and the respondent in writing of the commencement of an investigation. Such notice will (1) identify the complainant and the respondent; (2) specify the

date, time (if known), location, and nature of the alleged prohibited conduct; (3) identify potential policy violation(s); (4) include information about the parties' respective expectations under the policy and these procedures; (5) explain the prohibition against retaliation; (6) instruct the parties to preserve any potentially relevant evidence in any format; and (7) provide a copy of the policy and these procedures. Upon notice of a potential Title IX violation, the respondent is presumed non-responsible.

The investigator may visit relevant sites or locations and record observations through written, photographic, or other means.

The investigator may consult medical, forensic, technological or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. All experts must be impartial and free from bias or conflict of interest.

The investigator and/or Title IX Coordinator may contact any law enforcement agency that is conducting its own investigation to inform that agency that a university investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the university in its investigation. At the request of law enforcement, the university may delay its investigation temporarily while an external law enforcement agency is gathering evidence. The university will promptly resume the investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

Prior or subsequent conduct of the respondent may be considered in determining pattern, knowledge, intent, motive or absence of mistake. For example, evidence of a pattern of prohibited conduct by the respondent, either before or after the incident in question, regardless of whether there has been a prior finding or a policy violation, may be deemed relevant to substantiate the behavior that was the subject of the complaint. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar prohibited conduct. Such prior or subsequent conduct may also constitute a violation of university policy, in which case it may subject the respondent to additional sanctions.

The sexual history of a complainant or respondent will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history of either of the parties is generally not relevant to substantiate the behavior that was the subject of the complaint and will be considered only in limited circumstances. For example, if the existence of affirmative 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 affirmative consent was sought and given during the incident in question. However, even in the context of a relationship, affirmative consent to one sexual act does not, by itself, constitute affirmative consent to another sexual act, and affirmative consent on one occasion does not by itself, constitute affirmative 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 investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

### **Inspection and Review of Evidence**

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

The University will send the evidence made available for each party and each party's Advisor, if any, to inspect and review through an electronic format or a hard copy. The University is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. Parties may request a reasonable extension as their designated extension request.

The institution will provide copies of the parties' written responses to the investigator to all parties and their Advisors, if any. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

The parties and their advisors agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

### **Inclusion of Evidence Not Directly Related to the Allegations**

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30438 (May 19, 2020).

### **Investigative Report**

The Title IX Investigator will create an Investigative Report that fairly summarizes relevant evidence and provide that Report to the parties at least ten (10) calendar days prior the hearing in an electronic format or a hard copy for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence without a determination provided by the investigator.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

The investigator will not make a finding or recommended finding of responsibility. The investigator's report may include credibility assessments based on the investigator's experience with the Complainant, Respondent, and witnesses, as well as the evidence. However, credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.

Copies of the final report will be sent to the parties and their advisors, who will have ten (10) days to respond to the investigative report prior to a hearing, see § 106.45(b)(5)(vii). Responses to the investigative report must be provided to the Title IX Coordinator with a copy to the opposing party. If neither party responds, the investigative report is considered to be final. If one or both parties respond to the investigative report, the Title IX Coordinator will determine whether any modifications are required. After making any such modifications, the investigative report is final, and the Title IX Coordinator will provide a copy of the final report to both parties and their advisors. No response to the final report will be permitted. The Complainant and Respondent may only share the investigative report for the purpose of receiving counsel or advice related to the Title IX process.

## **Hearings**

### **General Rules of Hearings**

Cleary University will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing unless otherwise resolved through an informal resolution process.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at Cleary's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through Zoom Videoconferencing. This technology will enable participants simultaneously to see and hear each other. At its discretion, the University may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded to an audio/visual format and a written transcript of the proceedings will be created. That recording or transcript will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

### **Continuances or Granting Extensions**

Cleary University may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the University will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

## Newly Discovered Evidence

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Hearing Panel will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Hearing Panel answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

## Participants in the live hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

### *Complainant and Respondent (The Parties)*

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party. 85 Fed. Reg. 30026, 30361 (May 19, 2020).
  - For example, a verbal or written statement constituting part or all of the sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>
- Clery University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party’s participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).

### *The Decision-maker*

- The hearing body will consist of a Hearing Panel consisting of THREE (3) officers of the University with one member of the panel functioning as the Administrative Hearing Officer.

- No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.
- No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### *Advisor of choice*

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination and direct examination.
- In addition to selecting an advisor to conduct cross-examination, the parties may select an advisor who may accompany the parties to any meeting or hearing they are permitted to attend but may not speak for the party.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, the University will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).

#### *Witnesses*

- Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).

### **Hearing Procedures**

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- The Administrative Hearing Officer will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Hearing Panel will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after The Hearing Panel conducts its initial round of questioning; During the Parties' cross-examination, The Hearing Panel will have the authority to



pause cross-examination at any time for the purposes of asking The Hearing Panel's own follow up questions; and any time necessary in order to enforce the established rules of decorum.

- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to The Hearing Panel. A Party's waiver of cross-examination does not eliminate the ability of The Hearing Panel to use statements made by the Party.

### **Live Cross-Examination Procedure**

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those questions challenging credibility, directly, orally, and in real time.

Before any cross-examination question is answered, The Hearing Panel will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including those by The Hearing Panel, may be deemed irrelevant if they have been asked and answered.

### **Review of Transcript or Recording**

The recording and transcript of the hearing will be available for review by the parties within (10) business/school days, unless there are any extenuating circumstances. The recording and transcript of the hearing will not be provided to witnesses or advisors of choice.

## **Determination Regarding Responsibility**

### **Standard of Proof**

Clery University uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determine whether it is *more likely than not* that a violation of the Policy occurred.

### **General Considerations for Evaluating Testimony and Evidence**

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that Cleary University allow parties to call "expert witnesses" for direct and cross examination. Note, the University does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that Cleary University allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that Cleary University admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Panel may draw an adverse inference as to that party or witness' credibility.

### **Components of the Determination Regarding Responsibility**

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of the Title IX Sexual Harassment Policy, if any, the respondent has or has not violated.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;
  - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent;and

- c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

### **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Cleary University within ten (10) calendar days of the completion of the hearing.

### **Finality**

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

The respondent may, at any time, elect to resolve the resolution process by accepting responsibility for the prohibited conduct, in which case the Title IX Coordinator will refer the matter to the Provost to discuss and determine the appropriate sanction(s).

### **Sanctions**

Once a determination of responsibility has been reached, the Hearing Panel would also determine sanctions appropriate to the severity of the policy violation. Sanctions may include any of the sanctions that are available for violations of the University's Standards of Conduct, including but not limited to:

- Expulsion: Termination of student status for any indefinite period.
- Suspension: Exclusion from classes and other privileges or activities or from the university for a definite period of time.
- Suspension held in abeyance: Exclusion from classes and other privileges or activities or from the university for a definite period of time to be enforced should another violation occur.
- Disciplinary Probation: Exclusion from participation in privileged or extracurricular activities for a definite period of time. Including restriction from entering specific university areas and/or from all forms of contact with certain person(s).
- Restriction from employment at the University: Prohibition of, or limitation of University employment.
- University Housing Transfer or Removal: Placement in another room or housing unit, or removal from university housing. Housing transfers or removals may be temporary or permanent depending on the circumstances.
- Professional Assessment: Completion of a professional assessment that could help the student or the university ascertain the student's ongoing supervision or support needed to successfully participate in the university community. The cost of professional assessment will be paid by the sanctioned student.
- Removal or non-renewal: of scholarship, extracurricular or travel restrictions for employees.
- Restitution: Reimbursement for damages or misappropriation of property.
- Reprimand: A written censure for violation of the policy placed in the student's or employee's record, including the possibility of more severe disciplinary sanctions should another violation occur within a stated period of time.
- Warning Notice: A notice, in writing, that continuation or repetition of conduct found wrongful, within a period of time stated in the warning, may be cause for more severe disciplinary action.

## Appeals

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) calendar days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the institution will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals will be decided by an Appeal Panel consisting of (3) University Officers, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or original Hearing Panel in the same matter.

Outcome of appeal will be provided in writing simultaneously to both parties and include rationale for the decision.

## Record Retention

The University will maintain for a period of seven (7) years records of the following:

- Each Title IX Sexual Harassment grievance process conducted under this policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript from a hearing, any disciplinary sanction imposed on the respondent, and remedies provided to the complainant designed to restore or preserve access to the University's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train University Sexual Misconduct/Title IX Coordinators, investigators, Hearing Panel members, Appeal Panel members, and any individual who facilitates the informal resolution process with regard to Title IX Sexual Harassment;
- Records of any actions, including any supportive measures, taken in response to a report or formal complaint of Title IX Sexual Harassment. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's educational and working program or activity.

## **Retaliation**

Cleary University will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Sexual Harassment Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

If retaliation is suspected, a written complaint can be filed with the Title IX Coordinator.

## **Modification and Review of Policy**

Cleary University reserves the right to modify this policy to take into account applicable legal requirements or extraordinary circumstances. At regular intervals, the University will review this policy to determine whether modifications should be made.



**Title IX Formal Complaint Report Form**

Cleary University is committed to the prompt resolution of complaints in a manner consistent with the University's Title IX Policy. The Cleary University Title IX Coordinator's role is to assist those who believe they have been subjected to conduct in violation of Title IX in any educational program or activity. All members of the Cleary University community are entitled to report allegations to the police and do not need to wait until Cleary University's process and investigation is complete before reaching out to local law enforcement (i.e., processes may work simultaneously).

*The following information must be completed by the Complainant, the Title IX Coordinator, or the Deputy Title IX Coordinator.*

**Complainant: Student, Faculty or Employee (circle one)**

<b>Complainant Name</b>	<b>Complainant Address</b>	<b>Complainant Phone Number(s)</b>	<b>Complainant E-mail Address</b>
<b>Date of Incident</b>	<b>Location of Incident</b>	<b>Other Party Involved</b>	<b>Other party is:</b>
			Student _____ Non-Student _____

Has Complainant contacted anyone else for help regarding this complaint? If so, please name them below:

Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Has Complainant notified law enforcement officials about this claim? YES NO

If so, which agency(s) and contact person? \_\_\_\_\_

What is the action status with the agency(s) involved? \_\_\_\_\_

Under Cleary University's Title IX Policy, parties are entitled to have an advisor to support them through the Title IX process. Parties may select their own advisor or may elect to have Cleary appoint an advisor.

I will select my own advisor.

I elect to have Cleary University appoint an advisor for me.

I decline to have an advisor.

**Statement of Events Provided by Complainant**

Please provide a detailed statement of the events, including dates, places, and names of witnesses. Please attach additional pages if necessary. Provide any additional documentation in support of the claim.

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**Complainant's Consent to Initiate a Formal Investigation**

I have reviewed this complaint form and the information contained herein is truthful and accurate to the best of my knowledge. I understand that upon filing this Title IX Formal Complaint, the University will initiate an investigation pursuant to the Clear University Title IX Grievance Reporting Policy and Procedures. I agree that I am voluntarily choosing to file this formal complaint and that I have the right to decline to do so. I understand that at any point

prior to a determination of responsibility, I may withdraw this  
complaint or request that the complaint be resolved through the  
University's informal resolution process.

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Signature

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Date



