

# TITLE IX process for resolving complaints of sexual offenses involving Clark University staff

This process describes how the University will investigate a report that a staff member has engaged in conduct that could constitute sexual misconduct, as defined in the University Sexual Offense Policy, and determine what, if any, safety measures and/or disciplinary sanctions are appropriate.<sup>1</sup> The University's Sexual Offense Policy can be found here: <https://bit.ly/2JiM0fk>

## I. Initial Steps; Interim Measures

After receiving a report of conduct that could fall under the Sexual Offense Policy, the Title IX Coordinator or their designee<sup>2</sup> will take a number of initial steps. These initial steps are not an investigation. Rather, these initial steps will enable the University to assess the need to take any immediate action to address the safety and health needs of the Complainant<sup>3</sup> and the University community, and to determine the next steps for investigating the reported conduct and the need for any interim measures. These initial steps may include, but are not limited to, the following:

- A. The Title IX Coordinator will contact the Complainant and encourage them to meet to discuss the nature and circumstances of the reported conduct, review relevant documentation that is available, and address their immediate physical safety and emotional needs, including the need for any interim measures. Examples of interim measures may include no-contact orders, requests for academic adjustments, changes to living and working situations, temporary loss of leadership or supervisory opportunities, and other actions to address the situations and concerns raised on an interim basis.
- B. The Title IX Coordinator will assess the reported conduct to determine whether the circumstances pose a threat to the health or safety of the University community that warrants issuance of a timely warning, a no-contact order, or any other interim protections.
- C. The Title IX Coordinator will notify the Complainant about: (a) the availability of the Sexual Offense Policy; (b) the right to report (or decline to report) the matter to University Police and/or to local law enforcement if the conduct is potentially criminal in nature; and (c) that a report to law enforcement will not change the University's obligation to potentially investigate the matter but it may briefly delay the timing of the investigation if a law enforcement agency requests that the University delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct.
- D. If the Title IX Coordinator determines the reported conduct could, in any way, trigger the Sexual Offense Policy, they will contact the Complainant to discuss that determination. If, at this time, the Complainant requests that the process not move forward, the University will weigh that request against the University's obligation to address any risk of harm to the Complainant or other individuals in the community and the nature of the incident or conduct at issue. Except in limited circumstances in which a Complainant's request not to proceed to investigation is granted, the Title IX Coordinator will proceed to Section II.
- E. If the Title IX Coordinator determines that the reported conduct would not, in any way, trigger the Sexual Offense Policy, they will advise the Complainant of such in writing and refer the reported conduct to the appropriate administrator for handling consistent with any other appropriate University policy. (If new information is subsequently provided, the decision whether or not to investigate under the Sexual Offense Policy may be reevaluated).

## II. The Investigation Phase

- A. **Notice of an Investigation.** If it is determined that the reported conduct could trigger the Sexual Offense Policy and an investigation is required, the Title IX Coordinator will prepare a written notice to the Complainant and Respondent that will include a brief description of the allegations, the portions of the Sexual Offense Policy that are alleged to have been violated, and any interim measures in place about which either Party must be made aware. This written notice does not constitute a finding or a determination of responsibility.

<sup>1</sup> Allegations made by staff of a violation of the Sexual Offense Policy will be governed by whether the Respondent is faculty, staff, or a student.

<sup>2</sup> Where the Title IX Coordinator is listed as the designated point of contact for any role in the Sexual Offense Policy or this Process, they may designate a Deputy Title IX Coordinator or another qualified member of the University community to assume the role at issue, as necessary and appropriate

<sup>3</sup> The individual who experienced conduct that may have violated the Sexual Offense Policy will be referred to as the "Complainant." The individual who is alleged to have violated the Sexual Offense Policy will be referred to as the "Respondent." When the Complainant and the Respondent are discussed collectively, they will be referred to as "the Parties" and may be referred to as a "Party." There may be instances where another person, who has not experienced but is aware of the occurrence of prohibited conduct, may bring a complaint under the Sexual Offense Policy, and that person is referred to as the "Reporting Party." In those limited circumstances, the University will determine which of the protections under the Sexual Offense Policy are also applicable to the Reporting Party.

(Unless otherwise agreed upon by the Title IX Coordinator, this notice — and all notices — under this Policy will be directed to the named Party and it shall be their responsibility to share that information with their advisor.)

**B. Information about Advisors.** Each Party, including any Reporting Party, may have a single advisor of their choice present during any University disciplinary proceeding, including any related meeting, interview, or hearing, held according to the Sexual Offense Policy. The advisor may be an attorney. Advisors may not participate actively while present at any disciplinary proceeding and may not speak on the part of the individual they are advising, although they may ask to suspend any meetings, interviews, or hearings briefly to provide private consultation related to the disciplinary proceeding in progress. An advisor is subject to the same confidentiality expectations applicable to others in attendance. Accommodations, including scheduling of interviews or hearings, will not be made for any advisors if they unduly delay the process.

**C. Support Services and Resources.** The Parties should review the University's available support services and resources, which can be found at <https://bit.ly/2Mv5JL7>. At the request of either Party, the Title IX Coordinator can discuss further the support services and resources available.

**D. Designation of Investigator.** The Title IX Coordinator will designate at least one investigator to conduct a prompt, fair, and impartial investigation of the reported conduct and prepare a report of investigative findings (the "Investigative Report"). At the University's discretion, more than one investigator may be assigned. The University may exercise discretion in assigning an internal investigator, an external investigator, and/or some other combination of individuals to conduct the investigation. All investigators — internal or external — will be selected from a group of qualified and trained individuals employed by the University or engaged by the University for the purpose of conducting investigations under the Sexual Offense Policy. The Title IX Coordinator will provide the Parties with the name of the person(s) assigned to investigate the reported conduct (the "Investigator(s)"). As soon as possible, but no later than three (3) calendar days after receiving notice of the identity of the Investigator(s), the Parties should inform the Title IX Coordinator (in writing) of any conflicts or potential conflicts of interest with regard to the selected Investigator(s). The Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned as Investigator(s). The Title IX Coordinator's decision regarding any conflicts is final.

**E. Nature of the Investigation.** The investigation will include separate interviews with the Complainant, the Respondent, and any witnesses whom the Investigator(s) believe will provide necessary and relevant information. The investigation may include the review of documentation or other items relevant to the reported conduct. The Investigator(s) will provide the Parties with written notice of meetings at which their presence is required.

**F. The Parties' Identification of Potential Witness and Documentation.** The Parties have the opportunity (and are expected) to provide the Investigator(s) with the identification of potential witnesses who have specific information about the reported conduct and with whom they would like the Investigator(s) to speak. The Parties also have the opportunity (and are expected) to provide the Investigator(s) any documentation or other items they would like to be considered. All information described in this section must be presented to the Investigator(s) in writing and include a brief description as to how the persons, documents, and/or items are relevant to the reported conduct. This information must be provided to the Investigator(s) during the Investigation Phase and without delay upon becoming aware of it. The Investigator(s) will exercise discretion in their determination of what information to consider and which potential witnesses identified by the Parties can provide relevant information to the investigation.

**G. Investigation Prohibitions.** Neither Party will be permitted to question or cross-examine the other Party during the investigation or disciplinary proceedings. The Investigator(s) also generally will not consider information related to the sexual history of either Party, unless the allegation indicates that a specific aspect of their sexual history is part of the offense in question. An example might include but is not limited to, other bad acts that contributed to a sexually hostile environment.

**H. Respondent Voluntary Agreement to Policy Violation.** At any point prior to the convening of a Determination Panel, discussed below in Section III, a Respondent may agree in writing to the alleged violation(s) of the Sexual Offense Policy. In such cases, the University retains the right to conduct further investigation or accept the agreement, in whole or in part, and provide an appropriate sanction as set forth in Section IV of this Process.

### III. Investigative Report and Determinations by Hearing Board

**A. Content of the Investigative Report.** At the conclusion of the Investigation Phase, the Investigator(s) will prepare an Investigative Report, which should include a summary of the factual information presented during the Investigation Phase and a separate section where the Investigator(s) point out relevant consistencies or inconsistencies (if any) between different sources of information. The Investigative Report will not include a determination by the Investigator(s) as to whether a Party has violated the Sexual Offense Policy or what sanctions may be appropriate. These determinations will be made by the Determination Panel and the individuals described in Section IV, below.

**B. Review by the Parties:** The Parties will have an opportunity to review the Investigative Report and may submit written comments about the content of the Investigative Report to the Investigator(s) within five (5) calendar days of the date they are notified that the Investigative Report is available for review. This review will take place at a secure location and in a secure manner determined by the University. The time to submit written comments can be extended for a brief period if the Title IX Coordinator concludes, in their sole discretion, that the additional time is warranted, and upon written request of the Party seeking the extension that explains the reason the additional time is necessary. Likewise, the secure location and manner of reviewing the Investigative Report can be modified if the Title IX Coordinator deems it necessary and appropriate. The Parties may have the advisors review the Investigative Report with them. Photographs or any other copies of the Investigative Report are not allowed by either Party or the advisors. The comments submitted by the Parties may not exceed five (5) double spaced pages. After reviewing the submissions, if any, from the Parties, the Investigator(s) may determine that additional investigation is required or no further investigation is needed. If further investigation is conducted, the Investigator(s) will include any additional relevant information in the Investigative Report and provide a summary of any updated findings to the Parties. The Investigative Report will then be submitted to the Title IX Coordinator, who will prepare it for dissemination to the Determination Panel. Any submissions made by either Party pursuant to this section, as well as any other documentation deemed relevant by the Investigator(s), will be attached to the Investigative Report.

**C. Convening the Determination Panel:** In conjunction with the finalization of the Investigative Report, the Title IX Coordinator will consult with the Director of Human Resources and convene a three-member Determination Panel from an established pool of University community members trained to decide cases according to this Policy. In no instance shall the Panel include students. The member(s) on the Determination Panel shall not be from the same department as any Party.<sup>4</sup> The Title IX Coordinator will provide the Parties with the names of the persons assigned as the Determination Panel members for their case. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the assigned Determination Panel members, the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest in regard to the selected members assigned to the Determination Panel. If a conflict of interest is raised regarding any of the individuals assigned to the Determination Panel, the Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned to the Determination Panel. The Title IX Coordinator may consult with other relevant and appropriate University personnel to assess any conflicts of interest. The Title IX Coordinator's decision regarding any conflicts is final. The Title IX Coordinator will then submit the Investigative Report to the Determination Panel members and set a subsequent date for the Determination Panel to meet to determine responsibility.

**D.** In the event that both parties, Complainant and Respondent, are staff, all three Determination Panel members will be staff. If the Complainant is a student, the Dean of Students or their designee must be one member of the Determination Panel. If the Complainant is a faculty member, the Chair of the Faculty Assembly or their designee must be one member of the Determination Panel.

**E.** The Chair of the Determination Panel will be determined by the Title IX Coordinator or their Designee in consultation with the Director of Human Resources. The role of the Chair of the Determination Panel is to oversee the proceedings. The Chair of the Determination Panel does not have a vote in either the Determination Panel or the Sanctions Determination.

<sup>4</sup> Determination Panel members' partners or spouses, current or former, may not be in the same department as either the Complainant or the Respondent. The Title IX Coordinator will make every effort to assure that there are no conflicts of this kind in the composition of the Determination Panel.

F. Once the identities of Complainant, Respondent, Determination Panel Members and the Chair are announced, any *ex parte*<sup>5</sup> communication about any case related details between any and all parties are prohibited.

**G. Determination Panel Proceedings.** The Panel will review the Investigative Report at a location determined by the Title IX Coordinator or their designee. The report remains in the location where it is reviewed. The Panel will identify who it would like to speak with in order to reach its conclusions. The Panel is not obligated to speak with any Party or witness and may issue its findings and sanction recommendation based on the Investigative Report and accompanying documents. The Parties do have a right to address the Panel, if they so choose. If either Party chooses to address the Panel, they must inform the Title IX Coordinator and they will be given a pre-designated amount of time — not to exceed fifteen minutes unless prior authorization is granted by the Title IX Coordinator, in which case both Parties will receive equal time — to address the Panel, but the Parties can only discuss details that are included in or attached to the Investigative Report so that both Parties are on notice of the content in question. If the Panel chooses to question either Party, those questions will not count against the Parties' pre-designated time. Both Parties will also be provided the same number of times to address the Panel, which will typically be communicated to the Parties and the Panel by the Title IX Coordinator before the hearing. If the Panel determines, during the hearing, to provide another opportunity for one Party to address it and/or answer questions, the same or a similar opportunity will be offered to the other Party. The Panel will not make a determination until each individual's options, as set forth in this paragraph, to address the Panel are exhausted.

**H. Standard of Proof.** All findings and determinations of responsibility under the Sexual Offense Policy will be made using a preponderance of the evidence standard. This standard requires the determination of whether it is more likely than not that a fact exists or a violation of the Sexual Offense Policy occurred. The Determination Panel renders its finding (and ultimate sanction) by a majority vote; it does not need to be unanimous.

Please note that the preponderance of the evidence standard is not the standard used for criminal culpability in most jurisdictions and a determination of responsibility under the Sexual Offense Policy does not equate with a finding of a violation of criminal laws.

#### **IV. Sanctions**

- A. Scope of Sanctions.** Sanctions may include, but are not limited to, one or more of the following: suspension, probation, reprimand, warning, restitution, education/counseling, no-contact order, loss of leadership opportunity or position, restriction from current or future University employment or extracurricular events or responsibilities, or any other appropriate sanctions as determined by the University in the context of the individual issues at hand.
- B. Considerations.** In determining an appropriate sanction, the Panel may take into account the following:
1. The nature and circumstances of the misconduct.
  2. The impact of the behavior on the Complainant and the University community.
  3. The disciplinary history of the Party deemed responsible.
  4. Any other mitigating or aggravating circumstances relevant to reach a fair and appropriate resolution.
- C. Sanctioning Decision.** The Panel will determine if an individual is responsible for the behavior in question and, if so, will assign an appropriate sanction. If the chosen sanction is dismissal or loss of tenure, then the sanction will be considered a recommendation and the additional process set forth in Section IV(D), below, will be utilized as appropriate.
- D. Sanctions of Dismissal:** If the Panel recommends a sanction of dismissal, the Title IX Coordinator shall be notified of the decision in writing and will provide a copy to the President. The President can affirm or reject the Panel's decision. If the President rejects the decision, it will be sent back to the Panel with specific instructions for further action. This may include convening a new panel or asking the same panel to re-convene. The President may also ask for a new investigator to be assigned.

(The complete Appeal Process is set forth below, in Section VI.) If the President affirms the Panel's sanction, the Title IX Coordinator will inform the parties of the result as set forth in Section V.

- E. Additional Remedies.** The Determination Panel may also identify additional remedies to address the effects of the conduct on the impacted Party. Remedies may include extending or making permanent any interim or safety measures.

<sup>5</sup>Ex parte communications, in this context, generally means that the Parties should not consult Determination Panel members or vice versa unless within the context of a hearing or meeting with the full Determination Panel. This is to avoid a situation in which any individual attempts to use their role, personal relationship, or professional relationship to influence the outcome of this process. Because the University is concerned both with impropriety as well as the appearance of impropriety, individuals are expected to navigate this area extremely carefully and consult with the Title IX Coordinator if they have any questions.



## V. Notification of Investigation Outcome

The Title IX Coordinator will inform the Parties simultaneously and in writing of (1) the outcome of the disciplinary proceeding; and (2) the procedures for either Party to appeal the result of the disciplinary proceeding. The Title IX Coordinator will also inform other University officials with a legitimate educational interest about the outcome of the finding. Notice to these other individuals will be accompanied with a request that the information should remain private except in situations in which disclosure is necessary to protect the safety of the community.

## VI. Appeal of Decision

Within seven (7) calendar days of receiving the final notice of the determination of responsibility and sanctions, either Party may appeal the decision by submitting to the Title IX Coordinator a letter stating why the Party requesting the appeal believes the determination of responsibility and/or the sanctions were inappropriate. A Party may only appeal on the following grounds:

- Procedural error by the Investigator(s) or Panel that materially prejudiced the Party requesting review; and/or
- Newly discovered material information that was not known to the Party requesting review and not available to the Investigator(s).

The Party submitting the appeal must set forth in detail the grounds for review and must attach all materials that they wish to have considered in the appeal process. The Title IX Coordinator will provide a copy of the appeal submitted by one Party to the other Party. If relevant and appropriate, the Title IX Coordinator may allow the non-appealing Party an opportunity to respond.

The Provost (or their designee)<sup>6</sup> will be the Appellate Officer for matters in which the Respondent is a staff member. The Appellate Officer will decide the merits of any appeal and, in so doing, may consult with the Investigator(s), the Panel, and any other individual that the Appellate Officer deems appropriate.

Sanctions of all types (including, but not limited to, any form of suspension or separation from the University) can be imposed, in full or in part, while an appeal is pending at the sole discretion of the University.

The Appellate Officer may affirm all or part of the Panel's determinations (which includes the sanction, as well as the determination of responsibility), may refer the matter to the Panel for further consideration, or may refer the matter

back to the Investigator(s) for further consideration. If the matter is referred back to the Panel or the Investigator(s), the Appellate Officer will provide specific instructions with the referral. In the event of a referral for further consideration, the Title IX Coordinator will be consulted and further proceedings may be commenced, as appropriate under the circumstances and consistent with this Policy.

The Appellate Officer's decision will be in writing and is final. The Title IX Coordinator will inform the Parties simultaneously and in writing of the outcome of the appeal.

## VII. Additional Matters

- A. Duty of Honesty.** All Parties and witnesses are obligated to be completely honest during the course of the entire process set forth in the Sexual Offense Policy. Any person who knowingly makes a false statement — either explicitly or by omission — in connection with any part of the process may be subject to separate University disciplinary action.
- B. Duty of Cooperation.** All Parties and witnesses are obligated to cooperate with the Title IX Coordinator and any persons charged with implementing the Sexual Offense Policy. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Sexual Offense Policy may be subject to separate University disciplinary action.
- C. Respect for Privacy.** The University values the privacy of individuals involved in the reporting, investigation, and/or resolution of matters subject to the Sexual Offense Policy. There are situations in which it may be necessary for the University to override a request for privacy or confidentiality in order to meet its Title IX obligation. In the event circumstances result in the University overriding a request for privacy or confidentiality to meet its Title IX obligation, the University will do so with the utmost sensitivity and respect for the circumstances and the individuals involved.
- D. Recording the Proceedings.** The Parties are not permitted to make their own personal video, audio, or other electronic, photographic, or digital recordings of any meetings or proceedings held under the Sexual Offense Policy. The Title IX Coordinator may make exceptions to this prohibition in limited circumstances if they conclude, in their sole discretion, that a recording is warranted, and upon written request of the Party seeking the recording that explains the need for the recording.

<sup>6</sup>Where the Appellate Officer is listed as the designated point of contact for any role in the Sexual Offense Policy, they may designate another qualified member of the University community to assume the role at issue, as necessary and appropriate.

**E. Prohibition Against Retaliation.** The University will not tolerate retaliation in any form against any persons for their participation or involvement in the reporting, investigation, and/or resolution of matters subject to the Sexual Offense Policy. The University will take appropriate steps to prevent and/or address retaliatory conduct immediately. The University includes retaliation in its definition of prohibited conduct under this Policy, as well as the University's general prohibition on retaliation, which can be found at [www.clarku.edu/title-ix/sexual-offenses-policies](http://www.clarku.edu/title-ix/sexual-offenses-policies).

**F. Amnesty for Students Reporting Misconduct.** The University encourages reporting under the Sexual Offense Policy and seeks to remove barriers to reporting. The University generally will not hold a student who reports conduct or is a witness during an investigation under the Sexual Offense Policy accountable for disciplinary violations of the University's Community Standards prohibiting use of drugs or alcohol. Under limited circumstances, a person who reports conduct under the Sexual Offense Policy may be held accountable for their own Offense if, in the University's discretion, it is determined that the behavior placed the health and safety of any person at risk, or if it created a danger to the University community. The University retains the right to require students to attend counseling or drug/alcohol related courses even in circumstances in which disciplinary conduct will not be pursued under this part.

**G. Special Situations.** The University retains the right to determine, in its sole discretion, if it will address a report of conduct that falls under the Sexual Offense Policy administratively and outside of the process described herein when the safety of the University community is at risk, if the material facts are undisputed, if there are extenuating circumstances involving either of the Parties, or if the Title IX Coordinator, in consultation with appropriate administrators, determines it is in the best interest of the University and/or the community to do so.