

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

This process describes how Clark University will investigate a report that a student has engaged in conduct that could constitute a sexual offense, as defined in the University's Sexual Offense Policy and determine what, if any, safety measures and/or disciplinary sanctions are appropriate. 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>1</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>2</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, transportation and working situations, and other actions to address the situations and concerns raised on an interim basis.
- B. The Title IX Coordinator or their designee 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 for any persons, or any other interim measures or 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. The Title IX Coordinator will notify the Complainant of the available resources for seeking medical treatment, counseling, spiritual guidance, or other interim measures. These resources can be found at <https://bit.ly/2Mv5JL7>.
- E. 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, or there are other extenuating circumstances, the process will move to the Investigation Phase set forth in Section II.
- F. If anyone in the process wishes to request a reasonable accommodation under Title III of the Americans with Disabilities Act and/or Section 504 of the Rehabilitation Act, they should notify the Title IX Coordinator within 48 hours of learning that a conduct inquiry has begun. The Title IX Coordinator will consult with Student Accessibility Services (SAS) as necessary. This could require a student to self-identify with a disability and get registered with SAS. This may delay the Sexual Offense process. If a student does not request an accommodation in a timely manner, Clark cannot guarantee it will be able to honor the request.

<sup>1</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>2</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 provided to the Complainant under the Sexual Offense Policy are also applicable to the Reporting Party.

G. 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 the relevant 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.

**B. Information about Advisors.** Each Party, including any Reporting Party, may have a single advisor of their choice present with them during any University meeting where their client/advisee would be involved, including any related meeting, interview, or hearing, held related to the Sexual Offense Policy. Advisors may not participate actively while present at a Sexual Offense 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/2KRct9u>. 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 also exercise discretion in assigning an external investigator to conduct the investigation with the University's internal investigator. (In addition, the University may assign an external investigator, without assigning an internal investigator.) 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 interview requests 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 about when the Hearing Board will meet to review relevant materials. Parties will be invited to attend the Hearing but are not required to do so.

**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 nor their advisor will be permitted to question or cross-examine the other Party during the investigation or disciplinary proceedings. Moreover, the Investigator(s) generally will not consider information related to either Party's sexual history outside of the conduct in question. Neither party will be permitted to directly question or cross-examine the other party during the investigation. Moreover, the

investigator(s) and or the Sexual Offense Hearing Board (SOHB) generally will not consider information related to either party's character or sexual history outside of the conduct in question. Where there is evidence of a pattern of conduct similar in nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to the investigators report and/or the SOHB's determination of responsibility or sanction. In those instances, the Title IX Coordinator will determine whether the previous incident was substantially similar to the conduct cited in the report and/or indicates a pattern of behavior and substantial conformity with that pattern by the Respondent.

### **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, a separate section where the Investigator(s) point out relevant consistencies or inconsistencies (if any) between different sources of information, and a separate, optional section describing the Investigator(s)' perception of the individuals interviewed. 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 Hearing Board, as described 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 scheduled to review the Investigative Report. 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 either 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. The Investigative Report will then be submitted to the Title IX Coordinator. 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. Informal Resolution Option:** At any point before the convening of the SOHB, the parties can request or the University can propose 'informal resolutions' where responsibility of the charge(s) are accepted by the Respondent. Either party can opt out of the informal resolution process at any time. In informal resolutions, sanctions would be imposed by the Title IX Coordinator and/or their designee. If an informal resolution is reached, a Sexual Offense Hearing Board will not be convened. An informal resolution process is not allowed in cases involving sexual violence. The Title IX Coordinator must approve all requests for informal resolution processes and their decision is final.

**D. Convening the Sexual Offense Hearing Board:** The Title IX Coordinator will ask the Chair of the SOHB to convene a three member Sexual Offense Hearing Board from an established pool of University community members trained to hear and decide sexual offense cases. Parties will be invited to be present, but will be physically separated, before the Hearing Board. Similarly, if the parties submitted written comments to the Investigative Report, Hearing Board members may ask questions of the party who submitted the statement. If the Hearing Board invites one party to provide information in person, it will provide the same or a similar opportunity to the other party.

Each party will be notified in writing about who will attend the Hearing. The Chair will oversee the process but will not be involved in rendering a decision. This pool shall not include students. As soon as possible, but no later than three (3) calendar days after receiving notice of the identity of the assigned Hearing Board members, the Parties should inform the Title IX Coordinator (in writing) of any conflicts or potential conflicts of interest in regard to the selected members assigned to the Hearing Board. The Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned as members to the Hearing Board. The Title IX Coordinator's decision regarding any conflicts is final. The Title IX Coordinator will then submit the Investigative Report to the Hearing Board Chair who will set a subsequent date for the Hearing Board to meet to determine responsibility and appropriate sanctions, if any.

**E. Review and Determination by the Hearing Board.** The Hearing Board will make a determination as to whether or not the Respondent is responsible for violating the Sexual Offense Policy by having engaged in some or all of the reported conduct and will determine appropriate sanction(s), if any. The Hearing Board has the authority to accept the Investigative Report without seeking additional investigation, or to ask the Investigator(s) to conduct additional investigation on specific points. The Hearing Board, in its discretion, may invite the Investigator(s) to attend a Hearing if the Hearing Board believes it would be helpful to have an opportunity to ask the Investigator(s) any questions arising from the Investigative Report. The Hearing Board also has the authority to speak directly with any persons identified in the Investigative Report, but it is expected that the need to exercise this authority will be extremely limited. Hearing Board members may ask questions related to written statements provided by parties in preparation for the Hearing. The Hearing Board, as the ultimate decision-maker in the matter, is provided broad discretion.

**F. Findings Letter.** The Hearing Board Chair will send a letter to all involved parties indicating the findings reached by the Hearing Board. The letter to the Respondent may also include information regarding sanctions. The letter to the Complainant may include information related to sanctions that directly affect their educational experience.

**G. 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.

**H. 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. Sanctioning Decision.** The Hearing Board will determine the appropriate sanction. The Hearing Board's determination will be in writing and shared with the Parties, as set forth in Section V. Sanctions may be determined during the same Hearing in which responsibility is determined, as set forth in Sections III(C) and (D).

**B. Scope of Sanctions.** Sanctions may include, but are not limited to, one or more of the following: suspension, dismissal, expulsion, probation, reprimand, warning, restitution, education, counseling, no-contact order, restriction from extracurricular programs or activities,

loss of leadership opportunity or positions in activities, housing restriction/relocation, and/or restriction from University employment.

**C. Considerations.** In determining an appropriate sanction, the Hearing Board may take into account the following:

1. The nature and circumstances of the misconduct.
2. The impact of the misconduct on the Complainant.
3. The impact of the misconduct on the University community.
4. The disciplinary history of the Party deemed responsible.
5. Any other mitigating or aggravating circumstances in order to reach a fair and appropriate resolution in each case.
6. Input from a Student Affairs representative if the Hearing Board deems such input to be relevant to the situation.

**D. Additional Remedies.** The Hearing Board 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.

#### **V. Notification of Investigation Outcome**

The SOHB Chair will first inform the Title IX Coordinator of the outcome. Next, the Respondent and Complainant will be notified simultaneously 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 SOHB Chair will also inform the Title IX Coordinator of the findings. If sanctions are imposed, the Respondent will be notified. The Complainant will be advised of sanctions that directly affect them. 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 confidential except in situations in which disclosure is necessary to protect the safety of the community or is otherwise required or allowed by law.

#### **VI. Appeal of Decision**

Within five (5) calendar days of receiving notice of the Hearing Board's determination on 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 Hearing Board that materially prejudiced the Party requesting review; and/or

- Newly discovered material information that was not previously 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 written notice of the appeal submitted by one Party to the other Party. The Title IX Coordinator will provide the appeal to the Provost. This will include a short summary of the appeal and any relevant documentation as needed. At the conclusion of the Appeal, parties will have the right to review new materials introduced.

The Provost (or their designee)<sup>3</sup> will be the Appellate Officer for matters in which the Respondent is a student. The Appellate Officer will decide the merits of any appeal and, in so doing, may consult with the Investigator(s), the Hearing Board, the Title IX Coordinator, 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 Title IX Coordinator.

The Appellate Officer may affirm all or part of the Hearing Board's determinations (which includes the sanction, as well as the determination of responsibility), may refer the matter to the Hearing Board for further consideration, or may refer the matter back to a new Investigator(s) for further consideration. If the matter is referred back to the Hearing Board 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 Appellate Officer will inform the Parties simultaneously and in writing of the outcome of the appeal. The Appellate Officer will also notify the Title IX Coordinator in writing of the decision.

## **VII. Timeframe for Completion of Investigation and Disciplinary Process.**

The University cannot promise the definitive timeframe of this process, but ordinarily will complete its investigation and disciplinary process, if any, within sixty (60) days of the delivery of the written notice of the investigation to the Parties. This time period does not include the time for any appeal. The U.S. Department of Education has made clear

that the length of investigations may vary with the complexity and unique factors in each case. Examples of such factors include, without limitation, circumstances in which critical witnesses are unavailable or if law enforcement requests the University temporarily halt its investigation for a brief period of time. Accordingly, all timeframes set forth in this Policy may be altered by the Title IX Coordinator for good cause. The University's overarching goal is that all sexual misconduct complaints be investigated in a prompt, fair, and impartial manner.

## **VIII. 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 urged 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. The U.S. Department of Education has provided guidance indicating that there are situations in which it may be necessary for an institution 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 video, audio, or other electronic, photographic, or digital recordings of any hearings or proceedings held under the Sexual Offense Policy. The Hearing Board proceedings will be recorded by the University. Parties may request to review the recordings once the Hearing has concluded. This will occur under the supervision of the Title IX Coordinator or their deputy. 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. Deliberations are not recorded.

<sup>3</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. Follow-up with Reporting Party and Complainant.**

Where the Title IX Coordinator deems appropriate, they may contact the Complaining Party and the Responding to provide an update on the process, the timing and extent of updates will be determined by the Title IX Coordinator and depend upon the nature of the allegations and the situation.

**F. 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. Retaliation includes any acts or words that constitute intimidation, threats or coercion because of that person's (1) report of Sexual Offense(s); (2) assistance in reporting of Sexual Offense(s); (3) participation in any proceeding under the Policy or (4) protesting of Sexual Offense(s) conduct, and that would also deter a reasonable person from reporting or assisting in reporting a violation of the policy, participating in any proceeding under the Policy, or protesting Sexual offenses. An adverse action does not include minor annoyances or another's lack of good manners as those actions will not deter a reasonable person from engaging in the process. 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 <https://bit.ly/2JiM0fk>.

**G. 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 Code of Conduct 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 misconduct 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.

**H. 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.