

SEXUAL MISCONDUCT POLICY AND COMPLAINT PROCEDURES

Date Effective: January 1, 2017
Issued By: Title IX Coordinator
Contact: 814-393-2351

I. POLICY

Clarion University is committed to creating an environment free of sexual harassment for all members of its University community. Sexual harassment encompasses all forms of sexual misconduct: sexual harassment, sexual assault, sexual exploitation, stalking, dating violence, domestic violence, and any sexual activity conducted without consent. Accordingly, Clarion University will not tolerate any form of sexual harassment and provides this policy to ensure its employees, students, and other members of the University community are not subjected to sexual harassment in any form.

This policy applies to students who are registered or enrolled for credit- or non-credit-bearing coursework; University employees; and contractors, vendors, visitors, guests or other third parties ("third parties"). This policy pertains to acts of prohibited conduct committed by or against students, employees and third parties when:

- (1) the conduct occurs on University grounds or other property owned or controlled by the University;
- (2) the conduct occurs in the context of a University employment or education program or activity, including, but not limited to, University-sponsored study abroad, research, on-line, or internship programs; or
- (3) the conduct occurs outside the context of a University employment or education program or activity, but has continuing adverse effects on or creates a hostile environment for students, employees or third parties while on University grounds or other property owned or controlled by the University or in any University employment or education program or activity.

The University will actively and expeditiously investigate any allegation of sexual harassment and, if it is determined that sexual harassment has occurred, the University will take appropriate disciplinary action. An employee found to have engaged in misconduct constituting sexual harassment will be disciplined. Disciplinary actions could include: verbal warning, written reprimand, a requirement to attend counseling or training, suspension, or dismissal.

A student found to have engaged in misconduct constituting sexual harassment will be referred for student conduct action. Action may include expulsion, suspension, or probation. Additional sanctioning outcomes could include counseling referrals or referrals for other resources as well as on-line tutorials, sexual harassment trainings, admittance to the Judicial Mentoring Program, or other educational opportunities. Further, if a Clarion University employee or student is sexually harassed by a vendor or a third party not

affiliated with the University, the aggrieved party is encouraged to report this harassment to the Title IX Coordinator, who will assess the complaint and a determination will be made regarding options available to address the complaint ensuring students' and employees' safety and full access to expected educational services.

II. TITLE IX COORDINATOR

The University's Title IX Coordinator oversees compliance with all aspects of the sexual harassment, including sexual misconduct, policy. 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 overseeing appropriate actions to eliminate prohibited conduct, prevent its recurrences, and remedy its effects. The Title IX Coordinator reports directly to the President of the University, and is housed in the office of Student Affairs. The Title IX Coordinator can be contacted by telephone, email, or in person during regular office hours:

Susanne Fenske, Ph.D.
Vice President for Student Affairs and Title IX Coordinator
Office of Student Affairs
103 Carrier Administration Hall
814-393-2351
sfenske@clarion.edu

Mr. Matthew Shaffer
Director of Judicial Affairs and Deputy Title IX Coordinator
207 Becht Hall
814-393-1982
mshaffer@clarion.edu

Dr. Wendy Snodgrass
Interim Director of Athletics and Deputy Title IX Coordinator
112 Tippin Gymnasium
814-393-1997
wsnodgrass@clarion.edu

Concerns about this Policy and Complaint Procedures may be addressed to the University's Title IX Coordinator; the United States Department of Education, Clery Act Compliance Division (at clery@ed.gov); the United States Department of Education, Office for Civil Rights (at OCR@ed.gov or 800-421-3481); and/or the Equal Employment Opportunity Commission (at info@eeoc.gov or 800-669-4000).

III. DEFINITIONS (See Appendix on page 18 for more examples illustrating some of these definitions.)

Sexual Harassment – Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature whether intentional or not, when:

- Submission to the unwelcome conduct of a sexual nature is made, whether explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, status in a course or program or any aspect of the University's programs or activities; OR
- Submission to or rejection of the unwelcome conduct of a sexual nature by an individual is used as the basis for an academic or employment-related decision affecting the individual, e.g.

promotion, grade assignment, sports team selection; OR

- The unwelcome conduct of a sexual nature is so severe, persistent, pervasive and objectively offensive as to substantially limit or interfere with an individual's work or academic performance, participation in extracurricular activities or equal access to the University's resources and opportunities; OR
- Such contact creates an intimidating, hostile, or abusive living, working or educational environment.

Sexual harassment is further defined as conduct that focuses on a person's sexuality or gender, rather than on their contributions as a student, employee or member of the University community. Sexual harassment encompasses a full range of coercive, unwelcome behavior from subtle psychological force to physical acts. Sexual harassment can happen to anyone, regardless of age, gender, race, sexual orientation, social class, ability, religion or appearance.

Sexual Assault – sexual assault is any type of sexual conduct or contact that occurs without the explicit consent of the recipient.

- Non-consensual sexual contact (or attempts to commit same) is: an intentional sexual touching, however slight, with any object or body part by a person of any gender or sexual orientation that is without consent.
- Non-consensual sexual intercourse/penetration (or attempts to commit same) is: any sexual penetration (anal, oral, vaginal), however slight, with any object or body part by a person of any gender or sexual orientation that is without consent.

Sexual Exploitation – sexual exploitation occurs when a person takes non-consensual, unjust or abusive sexual advantage of another for his/her own sexual gratification, financial gain, personal advantage or benefit, or to benefit or advantage someone other than the one being exploited and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy
- Prostituting another person
- Non-consensual video, photography or audio-taping of sexual activity
- Non-consensual distribution of a video, photography or sound recording of sexual activity
- Going beyond the boundaries of consent (such as letting someone hide in a closet to watch you having consensual sex)
- Engaging in voyeurism
- Knowingly transmitting an STD or HIV to another person
- Exposing one's genitals in non-consensual circumstances or inducing another to expose his/her genitals
- Inducing incapacitation through alcohol or drugs in order to sexually assault another person (whether or not sexual contact actually takes place)
- Sexually based bullying

Stalking – stalking is engaging in a course of conduct directed at a specific person or persons that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress. Stalking includes cyber-stalking which involves using electronic media such as cell phones, social media sites, the internet, blogs, etc. to make unwelcome contact with another individual.

Dating Violence – dating violence (sometimes referred to as intimate partner violence) is violence committed by a person who is or has been in a sexual, dating, or other relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the length of the relationship, the type

of the relationship, and the frequency of the interaction between the persons involved in the relationship.

Domestic Violence – domestic violence is 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 someone similarly situated to a spouse, or by any other person from whom the victim is protected under the domestic or family violence laws.

Force – force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).

Coercion - unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent – consent is words or actions that demonstrate an affirmative, unambiguous, knowing and voluntary permission to engage in specific sexual activity.

- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.
- Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
 - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
 - The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
 - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
 - This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. [Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>].

NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual

sexual activity is not by definition forced.

IV. CONSENSUAL RELATIONSHIPS

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes Resident Advisors (RAs) and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee¹.

V. REPORTING AN INCIDENT OF SEXUAL MISCONDUCT

IF YOU ARE A VICTIM OF A SEXUAL ASSAULT AND ARE READING THESE PROCEDURES TO DETERMINE WHAT TO DO, PLEASE CONTACT THE CLARION UNIVERSITY TITLE IX COORDINATOR AT 814-393-2351. REPORTS MAY ALSO BE FILED WITH UNIVERSITY POLICE (available 24/7) AT 814-393-2111.

Making a Report

There are multiple channels for reporting sexual misconduct. A complainant may choose to report to the University, to law enforcement, to both, or to neither. The reporting options are not exclusive. A complainant may simultaneously pursue criminal and disciplinary action. Clarion University will support complainants in understanding, assessing and pursuing these options.

To make a report to the Police:

Jason Hendershot
Chief of Clarion University Police
Located on Wood Street, next to Eagle Commons
814-393-2111
jhendershot@clarion.edu

Clarion University Police employees must notify complainants of their right to file an administrative Title IX sex discrimination complaint with the University in addition to, and independent of, the criminal complaint. The University's Title IX investigation is different from any law enforcement investigation, and a law enforcement

investigation does not relieve the University of its independent Title IX obligation to investigate a complaint. Complainants should take every precaution to preserve evidence as proof of sexual violence, domestic violence, dating violence, and stalking offenses.

To make a report to the University:

Susanne Fenske, Ph.D.
Vice President for Student Affairs and Title IX Coordinator
Office of Student Affairs
103 Carrier Administration Building
814-393-2351
sfenske@clarion.edu

- **Student against Student** - Report to Title IX Coordinator/Vice President for Student Affairs Office. Cases submitted through this avenue will be investigated and handled in accordance with the procedures outlined in the Clarion University Student Code of Conduct.
- **Student against Faculty or Staff member (Employee)** – Report to Title IX Coordinator/Vice President for Student Affairs Office. Cases submitted through this avenue will be investigated and handled jointly between the Office of Judicial Affairs and the Office of Social Equity in accordance with procedures described below. In cases where deemed appropriate, the President may designate another individual to receive the complaint and conduct processes aimed at resolution of the complaint.
- **Faculty or Staff member (Employee) against Student** - Report to Vice President for Student Affairs Office. Cases submitted through this avenue will be investigated and handled jointly between the Office of Judicial Affairs and the Office of Social Equity in accordance with the procedures outlined in the Clarion University Student Code of Conduct.
- **Employee against Employee** - Report to Office of Social Equity. Cases submitted through this avenue will be investigated and handled in accordance with procedures described below. In cases where deemed appropriate, the President may designate another individual to receive the complaint and conduct processes aimed at resolution of the complaint.
- **Anyone against a Vendor on Campus** – Report to Vice President for Student Affairs Office. Cases submitted through this avenue will be handled in accordance with the University's agreements with the contracted companies.
- **Allegations against the Title IX Coordinator or Associate Vice President of Finance & Administration** – Report to the Office of President. Cases submitted through this avenue will be handled by another individual designated by the President to receive the complaint and conduct processes aimed at resolution of the complaint.
- **Allegations against the Director of Social Equity or the University President** – Report of any complaint should be directed to the Office of the Chancellor for the Pennsylvania State System of Higher Education through the System Title IX Coordinator 717-720-4061 or vsanders@passhe.edu Dixon University Center, 2986 North Second Street, Harrisburg, PA 17110. Cases submitted through this avenue will be investigated and handled in accordance with Board of Governors policy.
- **Anonymous Complaints** – Report to the Vice President for Student Affairs Office. The University will accept and attempt to investigate when anonymous complaints of sexual harassment, sexual violence and other forms of sexual misconduct are alleged; however, the University has limited ability to bring such cases to resolution because of the inability to fully investigate.

Title IX Reporting Responsibilities of Employees

All Clarion University employees are considered “responsible employees” and are required to report sexual

misconduct to the Title IX Coordinator to ensure a safe environment for living, learning and working. Exceptions to the reporting requirement are licensed campus professional counselors acting in their capacity as employees in the Center for Wellness. Failure of a responsible employee to report an incident or incidents of sexual misconduct of which they become aware is a violation of University policy and the employee can be subject to disciplinary action for failure to comply with University policy.

All other University community members are encouraged to report information about incidences of sexual misconduct to the Title IX Coordinator.

Confidentiality, Mandatory Reporting and Privacy

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected harassment to appropriate University officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at University:

Confidential Reporting Options

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus licensed professional counselors and staff located in the Center for Wellness
- On-campus health service providers and staff located in the Center for Wellness
- Off-campus:
 - Licensed professional counselors
 - Local rape crisis counselors
 - Domestic violence resources,
 - Local or state assistance agencies,
 - Clergy/Chaplains

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors and/or the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit yearly anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, patient or parishioner.

Formal Reporting Options

All University employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, classroom discussions, class research assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees. Remedial actions may result without formal University action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and

comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the University will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to the Office of Student Affairs, University Police, Office of Social Equity and the Behavioral Assessment Referral Team. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

VI. AFTER A REPORT OF SEXUAL MISCONDUCT

When a report of sexual misconduct is received, the University will provide a coordinated response by the Title IX Team comprising the Title IX Coordinator, Deputy Coordinators and other designated employees across campus. This response will consider the nature of the report, the safety of the Complainant and of the campus community, and the preferences of the Complainant regarding privacy, pursuit of the investigation, etc. According to the Complainant's wishes, the University will provide resources for support.

Absent unusual circumstances, within sixty (60) days of a complaint of sexual misconduct being filed, the Office of Judicial Affairs, in the case of allegations against a student, or the Office of Social Equity, in the case of allegations against a non-student employee or off-campus vendor, will seek to conclude the investigation and will notify the parties, in writing, there has been a resolution of the complaint. Where a complainant reports an alleged incident of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking, the outcome of the complaint will be determined based on a preponderance of the evidence (i.e., it is more likely than not a violation has occurred). Depending on the nature of the allegation, the University may be required to notify law enforcement in order to protect the University community. Pending the resolution of the complaint, based on the circumstances, the University may be required to take or enforce remedial measures to prevent further contact between the parties. In addition, training and education are available to prevent the recurrence of sexual harassment, sexual violence, domestic violence, dating violence, and stalking.

VII. PROCEDURES (for cases in which the alleged individual is not a student)

STEP 1: All charges of sexual harassment, sexual violence, domestic violence, dating violence, and stalking must be referred to the Title IX Coordinator.

In order to ensure the effective handling of all incidents of sexual harassment, sexual violence, domestic violence, dating violence, and stalking, this policy requires that all such reports be directed to the same office on campus, namely the Title IX Coordinator. At this first stage of the procedure, the individual or individuals who alert(s) the Title IX Coordinator of a possible incident might not be the actual aggrieved party. Both the complainant and the respondent may be accompanied by an advisor when meeting with Title IX Coordinator or designee.

A potentially aggrieved party may bring a complaint of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking to a supervisor, department chair or dean, who, in turn, shall refer the complainant to the Title IX Coordinator.

In the event there are two or more complainants and/or two or more persons (respondents) charged with sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking in the same set of circumstances, the Title IX Coordinator or his/her designee, will decide whether the complaint will be handled jointly or separately. For purposes of this document, the phrases “the complainant” and/or “the respondent” may be plural.

The role of the Title IX Coordinator, or his/her designee, in this procedure is to serve as a fact finder. The Title IX Coordinator, or his/her designee, must act in such a manner as to ensure that all parties to a complaint are protected by appropriate due process and confidentiality.

STEP 2: The complainant meets with a representative from the appropriate Office (Judicial Affairs and/or Social Equity).

The purpose of this meeting is to discuss the complaint, to gather information, and to provide the complainant a copy of this policy, which sets forth the rights and procedures governing complaints. At this initial meeting, the Title IX Coordinator, or his/her designee, clarifies for the complainant whether or not the allegations may constitute sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking. The Title IX Coordinator, or his/her designee, then reviews the appropriate complaint procedure for the benefit of the complainant. Complainants are not required to file a written complaint.

STEP 3: The complainant will receive additional clarification regarding University procedures regarding the alleged violation and general information regarding counseling.

If requested by the complainant, the Title IX Coordinator, or his/her designee, will provide general guidance for the complainant in order to:

- (a) clarify the nature of the alleged violation.
- (b) review the University’s complaint procedure.
- (c) review the complainant’s responsibilities of filing a written or oral complaint.
- (d) give guidelines for what a written complaint should contain, in the event the complainant chooses to file his/her complaint in writing.
- (e) apprise the complainant, in writing, of counseling, health, mental health, advocacy, and other relevant services.
- (f) apprise the complainant, in writing, of possible remedial actions with respect to changing transportation, academic, residence, or working situations, if reasonably available.

STEP 4: The complainant files a complaint.

A complainant may file a complaint either orally or in writing. The complainant will be given the opportunity to provide the names of any witnesses and/or documentation in support of his/her complaint.

In the event that a complainant does not wish to file a signed complaint him or herself, the Title IX Coordinator, or his/her designee, will prepare a written statement with the following information: the names of the complainant and the respondent, a short description of the alleged violation as stated by the complainant, and the date(s) of the alleged violation. Whether the complainant submits a written complaint or a University official prepares a written statement, the allegations will be investigated.

STEP 5: The Title IX Coordinator must decide on an appropriate course of action regarding the complaint.

There are two possible courses of action following the filing of a complaint:

- A) Based on the complainant’s written or spoken account of alleged harassment, sexual violence,

domestic violence, dating violence, and/or stalking, the Title IX Coordinator, or his/her designee, determines there is insufficient reason to proceed with a complaint and counsels the complainant regarding this decision. In this case, the investigation would stop at this point and the complainant would be notified of the decision of the Title IX Coordinator or his/her designee.

- B) Based on the complainant's account of alleged harassment, sexual violence, domestic violence, dating violence, and/or stalking and a finding of sufficient reason to proceed, the Title IX Coordinator, or his/her designee, will promptly initiate an impartial fact-finding investigation.

STEP 6: The respondent is notified of the complaint.

Absent unusual circumstances, within 14 calendar days of a complaint being filed, the investigator will notify the respondent that a complaint of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking has been filed against him/her. Depending on the circumstances, the respondent will be notified either orally or in writing. If the notification is in writing, for reasons of confidentiality, the notification will be mailed to the respondent's home address, unless the respondent is a student who resides on campus. Furthermore, if the notification is in writing, it will be sent by certified mail so that only the respondent can sign for it personally.

STEP 7: The Title IX Coordinator, or his/her designee, meets with the respondent.

Absent unusual circumstances, within 14 calendar days of having received notification of the complaint, the respondent must meet with the Title IX Coordinator, or his/her designee, to discuss the complaint. The respondent will be given the opportunity to respond to the allegations and provide any and all defenses, as well as the names of any witnesses and/or documentation in his/her defense.

The University will take every precaution to protect the complainant and any witnesses from retaliatory action by the respondent. Retaliation is defined as any adverse action, which causes a tangible academic or employment detriment to an individual for engaging in a protected activity. In fact, the respondent will be informed he/she is not to retaliate against the complainant in any way nor against any other person connected to the complaint as that action may result in a separate disciplinary action. Further, the respondent will be informed he/she is not to communicate directly with the complainant regarding the claim of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking as this may be perceived as an attempt to discourage the complainant from pursuing the complaint. The University official handling the case will attempt to resolve the complaint informally, if appropriate. If the complaint is not resolved informally, a formal investigative process will follow.

STEP 8: The Title IX Coordinator, or designee, seeks to resolve the complaint and/or to mediate a solution. (Not in cases of Sexual Assault)

The Title IX Coordinator, or his/her designee, may choose to meet with the complainant, absent unusual circumstances, within 7 days of having met with the respondent. Upon meeting with the respondent and the complainant, the Title IX Coordinator, or his/her designee, will seek to resolve the complaint. One of two outcomes is possible:

- (a) The Title IX Coordinator, or his/her designee, is satisfied the respondent will make appropriate changes in his/her behavior. The Title IX Coordinator, or his/her designee, meets with the respondent to counsel the respondent about resolution of the complaint (e.g. removing inappropriate pictures from a conspicuous location). A record of the resolution would be signed by the respondent and would be kept by the Title IX Coordinator for three years. The Title IX Coordinator, or his/her designee, will inform the complainant the matter has been resolved, without providing detailed information about the resolution.

- (b) A mediated solution could be achieved which is satisfactory to the complainant and the respondent. A record of the resolution would be kept by the Title IX Coordinator for three years.
- (c) If the complaint involves an allegation of sexual violence, domestic violence, dating violence, or stalking, there shall be no attempt at mediation, as mediation will not be an option to resolve such complaints. Instead, the matter shall be referred to University Police, if not already reported, and/or resolved as set forth below.
- (d) In cases involving students, the matters will follow protocol outlined in the Student Code of Conduct. These issues would be referred to a University Conduct Board and University Police.

STEP 9: Action by the University President and Final Disposition of the Complaint.

If the alleged party is an employee and the complaint cannot be resolved as set forth in Step 8, the Title IX Coordinator, or his/her designee, will continue the investigation to its conclusion. A report containing any and all factual findings will be submitted to the University President or his/her designee. Upon receiving the report, the President or his/her designee, will decide what action will be taken, including, but not limited to, the dismissal of the complaint or the imposition of discipline. The decision of the President or his/her designee shall be final.

VIII. STANDARD OF PROOF

The University uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt,” “innocence” and “burdens of proof” are not applicable, but the University never assumes a responding party is in violation of University policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

IX. APPEAL STATEMENT

Both the Complainant and the Respondent are entitled to appeal student conduct code hearing decisions. Student appeals should be submitted to the Clarion University Title IX Coordinator.

In the case of investigations conducted through the Office of Social Equity, the decision of the President is final and there is no appeal process.

X. FALSE COMPLAINTS

Any person who knowingly files a false complaint may be subject to disciplinary action, including dismissal from the University.

XI. RETALIATION

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of University policy.

XII. RESPONSIBILITIES AND POLICY DISSEMINATION

Each dean, department chairperson, and/or administrative supervisor is responsible within his/her respective area for the implementation, dissemination, and explanation of this policy. Assistance in accomplishing these tasks may be obtained by contacting the Title IX Coordinator. A current hard copy of this policy is available in the following locations: the student Rights & Regulations; the President's Office; the Office of Social Equity; the Department of Public Safety; the office of the Vice President for Student Affairs/Title IX Coordinator; the Judicial Affairs Office; and the University Library's collection.

An electronic copy of this policy is available on the Clarion University Website at: <http://www.clarion.edu/about-clarion/offices-and-administration/university-support-and-business/office-of-social-equity/policies-and-compliance/>.

It is the obligation of each student, faculty member, and staff member to adhere to this policy.

This policy applies to all individuals on campus regardless of gender.

XIII. RECORDS

All records of the formal process, including the decision of the President or his/her designee, will be kept by the Title IX Coordinator for five years. In the event of an adverse ruling against the respondent, a copy of the decision of the President or his/her designee, shall be placed in the respondent's personnel file. The complainant will receive a letter from the Title IX Coordinator, or designee, stating there has been a resolution of the complaint, without providing specific details regarding the resolution.

XVI. TRAINING

Employee and student training as to the contents of this policy is available on an annual basis throughout the year, both in person and electronically. Additionally, Clarion University employees are required to participate in this training on an annual basis.

Appendix

SEXUAL VIOLENCE — RISK REDUCTION TIPS

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Do not abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

Examples Illustrating Definitions of Sexual Misconduct

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems

to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Amanda would never had done it but for Bill’s incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn’t want it, she could have left. **Bill is responsible for violating the University Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**

2. Jiang is a junior at the University. Beth is a sophomore. Jiang comes to Beth’s residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one’s partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it’s a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John’s bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can’t help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the University expects.**

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT

- The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing (or affirmative, conscious, if you wish to track the CA affirmative consent statute) and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity — without actions demonstrating permission — cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.
- Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.
- Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

It is the policy of Clarion University of Pennsylvania that there shall be equal opportunity in all of its educational programs, services, and benefits, and there shall be no discrimination with regard to a student's or prospective student's gender, gender identity, race or color, ethnicity, national origin or ancestry, age, mental or physical disability, religion or creed, genetic information, affectional or sexual orientation, veteran status, or other classifications that are protected under Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and other pertinent state and federal laws and regulations. Direct inquiries to the Title IX Coordinator, Clarion University of Pennsylvania, 103 Carrier Administration Building, sfenske@clarion.edu or phone 814-393-2351, or the Director of Social Equity, 210 Carrier Administration Building 16214-1232; Email asalsgiver@clarion.edu or phone 814-393-2109. Inquiries may also be directed to the Director of the Office for Civil Rights, Department of Education, 330 Independence Avenue, SW, Washington, DC 20201.

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