

Clark State College - Sex Discrimination Procedures

Policy Number: 3358:5-3-04.1

Category: Conditions of Employment

Owner: Vice President for Business Affairs

Effective: August 24, 2022

The following administrative procedures pertain to the Clark State College policy on sex discrimination approved by the board of trustees. These procedures apply to sex discrimination complaints filed by Clark State College students or employees against other College employees, students, or third parties, regardless of the age of the complainant or respondent. They are meant to assist employees and students in understanding their rights and responsibilities under the current policy.

1. Initiating a Formal Complaint

All incidents of sex discrimination should be reported to enable the College to take immediate action to eliminate the discrimination, prevent its recurrence, and address its effects. In order to enable the College to respond effectively and to stop instances of sex discrimination, all College employees must, within twenty-four (24) hours of receiving the information, report information they have about reported or possible sex discrimination to the Title IX Coordinator or a Deputy Title IX Coordinator (hereafter collectively referred to as "Title IX Coordinator").

Individuals who are complainants of sex discrimination are encouraged to promptly report the incident to the local law enforcement. If the person is incapacitated for any reason, a report should be made on behalf of the complainant.

Complaints of sex discrimination should be made to the Title IX Coordinator. Upon receipt of a formal complaint, the College will follow procedures in response to the reported conduct. A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of sexual harassment. There are avenues available for submitting a formal complaint: the complainant can (1) make the complaint to the Title IX Coordinator; or (2) submit the online Sex Discrimination form located on the College website.

The Clark State Title IX Coordinators are listed on the College website.

1. To ensure a prompt and thorough investigation, the complainant should provide as much of the following information as possible:
 1. The name, department, and position of the person or persons reportedly causing the sex discrimination, or retaliation.
 2. A description of the incident(s), including the date(s), location(s), and the presence of any witnesses, or potential witnesses.

3. Any other information the complainant believes to be relevant to the sex discrimination or retaliation.

2. Notification

Upon receipt of a formal complaint, written notice will be sent to the parties within five (5) calendar days of the reported conduct and the College's sex discrimination policy and procedures will be provided. Written notice will include the following:

1. Identities of the parties involved.
2. The conduct reportedly constituting sexual harassment.
3. The date and location of the reported incident.
4. Notice that the parties may have an advisor of their choice.
5. Notice that parties may inspect and review evidence.
6. The respondent is presumed not responsible for the alleged conduct and a determination regarding responsibility is made at the end of the grievance process.

Notice will be provided with adequate time to prepare a response and secure an advisor before any initial interview. The respondent will have five (5) calendar days from the date of receipt of the written notice to secure an advisor.

3. Supportive Measures

In all instances of reported sexual harassment or misconduct, regardless of a formal complaint being filed, individual services are offered to the complainant or respondent. The services are offered as appropriate, as reasonably available, and without fee or charge. Supportive Measures may include counseling, campus escort services, mutual restrictions on contact between the parties or modifications of work/class schedules.

4. Informal Resolution

The Informal Resolution process is designed to assist students in resolving a formal complaint and may be appropriate in some circumstances when all parties agree. This process can be used for a variety of reasons including privacy, speed of resolution, and may be in the interest of both the complainant and the respondent to resolve the complaint through Informal Resolution rather than the Formal Resolution process. At any time prior to written consent agreeing to resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process via the formal resolution process. The complainant may withdraw the formal complaint by notifying the Title IX Coordinator in writing that they would like to no longer pursue the matter.

The Title IX Coordinator(s) will serve as a facilitator(s) to help the complainant and respondent reach a mutually satisfactory resolution. The resolution will be conducted in a manner so that it is adequate, reliable, impartial, and confidential to the extent possible.

The process may include interview of the parties involved, including witnesses, potential witnesses, the gathering of relevant information and mediation. Both parties to the complaint will be afforded an equal opportunity to present relevant witnesses and other evidence. If a mediated resolution is reached, it will be agreed to in writing by the respondent, the complainant, and the Title IX Coordinator and may not be appealed.

Informal Resolution cannot be used for complaints involving allegations that an employee of the College sexually harassed a student.

5. Formal Resolution

The Formal Resolution process is designed to provide a prompt, fair, and impartial resolution. This process includes an Investigation, Hearing Process, Determination Regarding Responsibility, and Right to an Appeal. The Formal Resolution process will be implemented when a formal complaint has been filed with the College and the complainant and/or respondent does not pursue or withdraws from the Informal Resolution process.

The respondent is presumed not responsible for the reported conduct until a determination regarding responsibility has been made by the decision-maker. The standard of review used to determine responsibility is the “preponderance of the evidence” standard (i.e., it is more likely than not that sexual harassment or violence occurred). This means that a person is presumed not to have engaged in the reported conduct unless a “preponderance of the evidence” supports a finding that the conduct has occurred. This “preponderance of the evidence” standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it.

1. Investigation

The Title IX Coordinator(s) will serve as investigative officer(s) who will be responsible for obtaining all facts of the case. The investigation will include interviews of any parties involved, including witnesses, potential witnesses, and gathering relevant evidence. The investigative officer(s) will have forty-five (45) calendar days upon receipt of formal complaint to generate the investigative report. The investigator(s) may provide written notice to the parties with explanation for an extension in generating the investigative report.

Prior to completion of the investigative report, the investigator(s) will send to each party and the party’s advisor the evidence subject to inspection and review. The parties will have up to ten (10) calendar days from receipt to submit a written response. Late submissions will not be accepted. The

investigator(s) will consider the parties' written response prior to completion of the investigative report.

The investigative report will be sent to each party and the party's advisor at least ten (10) calendar days before the hearing for their review and written response.

2. Hearing Process

The complainant and respondent may have an advisor and one support person in attendance at the hearing. The advisor will be permitted to ask the other party and witnesses relevant questions and follow-up questions. The cross-examination will be conducted directly, orally and in real time. The decision-maker(s) must determine whether the question is relevant and explain any decision to exclude a question as not relevant. Advisors will submit questions to the decision-maker(s) two (2) calendar days prior to the hearing. The support person will not be permitted to speak or participate in the proceedings.

The hearing procedure will allow for the following:

- Complainant(s) and the Respondent(s) to give an opening statement.
- Advisor for each party will conduct cross-examination.
- Witnesses will only be present when they are giving testimony.
- Respondent(s) and the complainant(s) give closing statement.
- At the request of either party, the hearing procedures will occur with parties in separate rooms, with the use of technology.
- A recording or transcript will be created and made available for the parties to review.

In the event, that any party or witness declines to participate in the hearing or answer cross-examination questions, the decision-maker must not rely of any statement of that party or witness in reaching a determination regarding responsibility. The decision-maker will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Investigator: The investigator is a neutral and impartial fact finder that is responsible documenting the facts. They will provide the written investigative report.

Advisor: The advisor may be any person of the party's choosing. Any party involved in a grievance process may select an advisor who may be but is not required to be an attorney. Any expenses associated with retaining legal

counsel will be the responsibility of the person engaging such counsel. If the party does not have an advisor present at the hearing, an advisor of the College's choice will be provided to serve in this role, without fee or charge, for the purpose of conducting cross-examination.

Decision Maker: The decision-maker oversees the live hearing. They will provide written determination regarding responsibility.

Support Person: The support person may be any person of the party's choosing. The support person will not be permitted to speak or participate in the proceedings.

3. Determination Regarding Responsibility

The decision-maker(s) will issue a written determination regarding responsibility to the parties, within seven (7) calendar days of the conclusion of the hearing. Written determination provided by the decision-maker(s) will include the following.

1. Identification of the allegations potentially constituting sexual harassment
2. Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, evidence gathered and hearings.
3. Finding of fact that support the determination.
4. Conclusions regarding the application of the College's policy and procedures.
5. A statement of and rationale for the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the College to the complainant.
6. Procedures for Appeal Process.

6. Dismissal of Case

The College will investigate the allegations in a formal complaint. If the conduct reported does not meet the definition of sexual harassment or did not occur within the College's program or activity, or did not occur against a person in the United States, the College will dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; however, such a dismissal does not preclude action under another condition of the College's policy and procedures.

The College may dismiss a formal complaint or any allegations therein if: (1) the complainant notifies the Title IX coordinator in writing that they would like to withdraw the formal complaint or any allegations therein; (2) the respondent is no longer enrolled or employed by the College; or (3) specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or any allegations therein.

7. Appeal

Both parties to the complaint may appeal the determination regarding responsibility or dismissal of a formal complaint or any allegations therein on the following bases.

-Procedural irregularity affected the outcome.

-New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome.

-The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome.

Disagreement with the outcome is not sufficient grounds for an appeal.

Appeals must be made in writing and submitted to the Title IX Coordinator within seven (7) calendar days of receipt of the determination regarding responsibility or dismissal of formal complaint.

Upon receipt of an appeal, written notice will be sent to the other party. Both parties will have equal opportunity to submit a written statement in support of the hearing determination or challenging the outcome of the hearing determination. Each party will have ten (10) calendar days to submit their written statement.

Appeals involving students will be conducted by the vice president of student affairs. Appeals involving employees and/or third parties will be conducted by the vice president of business affairs. If the request for an appeal is granted, the vice president will review the investigative report, evidence and recording or transcript of the hearing.

The vice president of student affairs and/or vice president of business affairs shall provide written notification of the outcome of the appeal with rationale within fourteen (14) calendar days of the established deadline for the written statements. The written decision will be provided simultaneously to both parties.

The decision of the vice president of student affairs and/or vice president of business affairs is final.

8. Requests for Confidentiality

As a public institution, Clark State College cannot promise complete confidentiality. Each situation is resolved as discreetly as possible, maintaining confidentiality to the extent allowed under state and federal laws. There may be situations that mandate reporting.

9. Retaliation

The College shall take reasonable steps to prevent the recurrence of sex discrimination or retaliation in any form. If the reoccurrence takes place, those responsible for such behavior may be subject to disciplinary action under the student code of conduct, if the person is a student, or the sex discrimination policy if the person is an employee or third party.

The College will take all necessary steps to remedy the discriminatory effects on the complainants and others.

Clark State College shall not retaliate against a person who makes a report of sex discrimination, nor permit any employee or student to do so. Retaliation is a very serious violation of the College's sex discrimination policy and should be reported immediately. Any person found to have retaliated against a person for reporting sex discrimination or against anyone participating in the investigation of a complaint shall be subject to appropriate disciplinary procedures.

Clark State College has developed its sex discrimination policy and procedures to ensure that all of its employees and students can work and learn in an environment free from sex discrimination. The sex discrimination policy and procedures are available to all employees and students.

Prior Effective Dates: 7/1/98, 3/19/99, 1/6/03, 4/1/14, 10/15/15, 3/1/17, 2/1/18, 9/1/18, 8/4/20, 10/18/21