

# Clark State College - Sex Discrimination Policy

**Policy Number:** 3358:5-3-04

**Category:** Conditions of Employment

**Owner:** Vice President for Business Affairs

**Effective:** August 14, 2020

1. Clark State College is committed to providing a safe, collegiate, working and learning environment that promotes personal integrity, civility, and mutual respect and that is free of discrimination, harassment, or adverse treatment. Sex discrimination violates a person's fundamental rights and personal dignity. Clark State College considers sex discrimination in all its forms to be a serious offense.
  1. Title IX of the Education Amendments of 1972 to the Higher Education Act of 1965 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. Education program or activity includes locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the sexual harassment occurs. To ensure compliance with Title IX and other federal and state civil rights laws, the College has developed policies and procedures that prohibit sex discrimination in all of its forms.
  2. Clark State College does not discriminate on the basis of race, color, religion, gender/sex, gender identity or expression, national origin (ancestry), military status, disability, age (40 years of age or older), genetic information, sexual orientation, status as a parent during pregnancy and immediately after the birth of a child, status as a parent of a young child, or status as a foster parent and any other protected group status as defined by law or College policy in its educational programs, activities, admissions, or employment practices as required by Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and other applicable statutes.
2. Clark State College encourages anyone who has experienced sex discrimination in any form, whether or not that person is a minor, to promptly report the incident, to seek all available assistance, and to pursue corrective action through the College against the offender, regardless of whether or not that person is a minor. The College encourages anyone who has experienced sex discrimination, whether or not he or she is a minor, to report the incident to the appropriate Title IX Coordinator listed in the associated procedures. The Title IX Coordinator can assist with all aspects of the reporting procedure and will conduct an investigation into a complaint as appropriate. Clark State is required to report to law enforcement, child protective services, or similar agency any case of sexual abuse of a minor by faculty, staff, or volunteers affiliated with the College.

### 3. Definitions

1. **Actual Knowledge:** Notice of sexual harassment or allegations of sexual harassment to the College's Title IX Coordinator or an official of the College who has authority to institute corrective measures on behalf of the College.
2. **Coercion:** The use of pressure to compel another person to initiate or continue sexual activity against a person's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another person's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.
3. **Complainant:** A person who is alleged to be the victim of conduct that could constitute sexual harassment.
4. **Consent:** Permission that is clear, knowing, voluntary, and expressed prior to engaging in and during an act. 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 clear permission regarding willingness to engage in (and the conditions of) sexual activity.

Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must cease. Prior consent does not imply current or future consent even in the context of an ongoing relationship. Consent must be sought and freely given for each instance of sexual contact.

5. **Formal Complaint:** 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.
6. **Gender Expression:** How a person presents themselves (female, male, androgynous, or as another gender) as evidenced by their manner of dress, speech or other physical expression.
7. **Gender Identity:** Person's internal knowledge of their own gender. A person may identify as a gender that does or does not appear to correspond to the sex (male or female) assigned to that person at birth, or the person may identify as neither female nor male.
8. **Gender-Based Harassment:** Harassment based on sex or gender, sexual orientation, gender identity, or gender expression, which may include acts of

intimidation or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature.

9. Incapacitation: Physical and/or mental inability to make informed, rational judgments and decisions. States of incapacitation include sleep and blackouts. Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments.
10. Non-Consensual Sexual Contact: Any intentional sexual touching, however slight, with any body part or object, by any person upon another that is without consent and/or by force or coercion. Sexual contact includes: intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts or objects, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.
11. Non-Consensual Sexual Intercourse: Any sexual penetration, however slight, with any body part or object, by any person upon another that is without consent and/or by force or coercion. Sexual penetration includes vaginal penetration by a penis, object, tongue, or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact); no matter how slight the penetration or contact.
12. Respondent: A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
13. Retaliation: An adverse action taken against a person for the purpose of interfering with any right or privilege secured by Title IX or because the person has made a report or complaint testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing involving allegations of sex discrimination in violation of this policy.
14. Sex Discrimination: Occurs when a person has been treated inequitably based on sex, sexual orientation, gender, gender identity, or gender expression. Sex discrimination can be committed by anyone regardless of sex, gender, gender identity, gender expression and/or sexual orientation.
15. Sexual Exploitation: Occurs when a person takes non-consensual or abusive sexual advantage or benefit, or to benefit or advantage anyone other than the person being exploited, and that behavior does not otherwise constitute one of the other sexual violence offenses.

Examples of sexual exploitation include, but are not limited to:

1. Voyeurism;
  2. Exposing one's genitals to another person without consent;
  3. Prostituting another person;
  4. Non-consensual video- or audio-recording or photographing of sexual activity;
  5. Going beyond the boundaries of consent (such as permitting others to observe you having consensual sex with a person who is not aware of the observation);
  6. Knowingly exposing another person to a sexually transmitted infection or virus without the other person's knowledge and consent.
16. Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:

1. Quid pro quo: An employee conditioning the provision of an aid, benefit, or service of the College on a person's participation in unwelcome sexual conduct.
2. Hostile environment: Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity.
3. Sexual assault: An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. The FBI uniform crime reporting system provides:

1. Sex Offenses – Forcible. Any sexual act directed against another person, without that person's consent including instances where the person is incapable of giving consent.

Forcible Rape - The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against that person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Forcible Sodomy - Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against that person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical

incapacity.

Sexual Assault With An Object - The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Forcible Fondling - The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against that person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary mental incapacity.

2. Sex Offenses – Non-forcible unlawful, non-forcible sexual intercourse.

Incest - Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape - Non-forcible sexual intercourse with a person who is under the statutory age of consent.

4. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be determined based on the complainant's statement and with consideration of the length and type of relationship, and the frequency of interaction between the persons involved in the relationship.
5. Domestic Violence: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

6. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to
  1. fear for their safety; or
  2. suffer substantial emotional distress.
17. Sexual Violence: Physical sexual acts perpetrated against a person's will or when a person is incapable of giving consent.
18. Supportive Measures: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent.
4. This policy applies to all the following, including those who may be minors:
  1. Non-Exempt and Exempt Staff employees
  2. Faculty and Adjunct Faculty
  3. Temporary Employees
  4. Students
  5. Vendors, Visitors, and other Third Parties
5. The College will not tolerate sex discrimination, whether engaged in by fellow employees, supervisors, students, or by other non-employees who conduct business with the College. The College shall investigate any incident of alleged sex discrimination and shall take any action it deems appropriate after evaluating all of the circumstances.
6. This policy shall be administered as set forth in the associated procedures.
7. The office of human resources shall be assigned the responsibility of developing, implementing, and maintaining the sex discrimination policy and procedures.

**Prior Effective Dates:** 12/1/88, 7/1/98, 3/19/99, 4/1/14, 10/15/15, 1/1/18, 9/1/18, 11/1/19