

Title IX Sexual Misconduct Policy



Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §1681 et seq., is a Federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. Under Title IX, discrimination on the basis of sex can include any type of sexual misconduct, including dating violence, domestic assault, domestic violence, rape, sexual assault, sexual harassment and stalking. Clarkson College (College) strives to provide an environment free from all forms of sexual misconduct to all of its community members. The Sexual Misconduct Policy applies to all Clarkson College community members, whether the alleged sexual misconduct is committed by a student, an employee or a third party. To the greatest extent possible, alleged incidents of sexual misconduct against or by students or employees at any Clarkson College-sponsored program or activity will be investigated by the College whether said incident occurred on or off campus. Such misconduct seriously undermines the atmosphere of trust, responsibility and professionalism underlying the Code of Conduct and will not be tolerated by the College. All members of the College community are encouraged to promptly report complaints about sexual harassment, sexual misconduct, and sexual assault to the Title IX Coordinator. It is also the right of an individual to file a criminal complaint, separate from the College report, if he or she chooses to do so. Persons who have been subjected to sexual misconduct can receive Clarkson College-related assistance regardless of whether or not a legal charge or the College report is filed. For any Clarkson College report filed, a fair and timely investigation will be undertaken, with notice of the outcome to all involved parties. Individuals found to be in violation of this policy will be subject to disciplinary action.

DEFINITIONS

College means Clarkson College.

Complainant is an individual who is subject to alleged discrimination, harassment, or retaliation regarding the application of this policy.

Confidentiality means that the College will not disclose the names of individuals involved in a sexual misconduct case to others except on a need to know basis or as required by law. The College will instruct employees and students about the requirement not to disclose confidential information. Confidentiality is not the same as anonymity, where an individual is not named or personally identified.

Consent can be defined as a decision that is informed and freely and actively given. Consent is communicated through mutually understandable words or actions that indicate willingness by all of the involved parties to engage in the same sexual activity, at the same time, and in the same way. The person must act freely and voluntarily and have knowledge of the nature of the act involved. A person who is giving consent cannot be under the influence of drugs or alcohol, unconscious, passed out, coming in and out of consciousness, or have a disability or disorder that would impair his/her understanding of the act. Silence or lack of active resistance does not imply consent. Past consent does not imply future consent. The presence or absence of consent is based on the totality of the circumstances.

Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

Domestic assault, as a third degree offense, occurs if a person: (a) intentionally and knowingly causes bodily injury to his or her intimate partner; or (b) places, by physical menace, his or her intimate partner in fear of imminent bodily injury. A second degree offense of domestic assaults occurs if a person intentionally and knowingly causes

bodily injury to his or her intimate partner with a dangerous instrument. A first degree offense of domestic assault occurs when a person knowingly causes serious bodily injury to his or her intimate partner (Nebraska Statute 28-323).

Domestic violence means asserted violent, misdemeanor or felony offenses, committed by the victim's current or former spouse or intimate partner, current or former cohabitant, or person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence laws of Nebraska.

Faculty Member is defined as any person hired by the College to conduct classroom/clinical activities on or off campus.

Hostile Environment is when sexual harassment is sufficiently severe or pervasive that it unreasonably interferes, limits or deprives someone of the ability to participate in or benefit from Clarkson College educational programs, activities, or employment. In determining whether a reasonable person in the individual's circumstances would find the work or educational environment hostile, the totality of the circumstances must be considered.

Member of the College Community includes any person who is a student, faculty member, Clarkson College official, or any other person employed by the College, or is formally or informally associated or affiliated with the College. Human Resources and/or the Registrar's office shall determine a person's status in a particular situation whichever is appropriate.

Policy is defined as the written regulations of the College as found in, but not limited to, the Student Handbook and the Faculty Handbook.

Preponderance of the Evidence occurs when the complainant or respondent has shown that his/her version of the facts, causes, damages, or fault is *more likely than not* the correct version.

Respondent is an individual whose alleged conduct is the subject of a complaint.

Retaliatory Harassment is intentional action taken by an accused or allied third party that harms a complainant, witness, reporter, investigator, or any other individual for filing or participating in the College investigation.

Sexual Assault is defined as a severe form of sexual harassment including physical sexual acts perpetrated against another person without his/her consent. Examples of sexual violence include rape, sexual assault, sexual battery and sexual coercion. Such acts include, but are not limited to, forced oral, anal, or vaginal penetration, to any degree, insertion of foreign objects into the body and any act of sexual intercourse against someone's will. This includes, but is not limited to, the use of a weapon, physical violence or restraint, verbal threats, intimidation, and threats of retaliation or harm. See also Neb. Rev. Stat. § 28-319 for degrees of sexual assault and corresponding penalties.

Sexual Harassment is defined as unwanted conduct of a sexual nature. Sexual harassment can be verbal, visual or physical. It can be overt or it can be implied from the conduct, circumstances and relationships of the persons involved. Sexual harassment can also consist of persistent, unwelcome attempts to change a professional or academic relationship to a personal one. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, questions about a person's sexual practices, lewd, offensive or vulgar comments, sexual insults or innuendoes, sexually explicit jokes, and other verbal, nonverbal or physical conduct of a sexual nature. The display of sexually explicit pictures, sexual graffiti, cartoons or objects can also constitute sexual harassment.

Sexual Misconduct refers to dating violence, domestic assault, domestic violence, rape, sexual assault, sexual harassment and stalking.

Stalking means engaging in a course of conduct directed at a specific person(s) that would cause a reasonable person to: (a) fear for his or her safety or the safety of others, or (b) suffer substantial emotional distress. Such conduct may include, but is not limited to, the following:

- Non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, text messages, written letters, unwanted gifts, etc.;
- Cyber stalking—Use of online, electronic, or digital technologies, including:
 - Posting of pictures or information in chat rooms or on websites;
 - Sending unwanted/unsolicited email or talk requests;
 - Posting private or public messages on Internet sites, social networking sites, and/or school bulletin boards;
 - Installing spyware on a victim’s computer;
 - Using Global Positioning Systems (GPS) to monitor a victim;
- Pursuing, following, waiting, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the victim;
- Surveillance or other types of observation, including staring or “peeping”;
- Trespassing;
- Vandalism;
- Non-consensual touching;
- Direct verbal or physical threats;
- Gathering information about an individual from friends, family, and/or co-workers;
- Threats to harm self or others; and
- Defamation – lying to others about the victim.

See also Neb. Rev. Stat. §§ 28-311.02 – 28-311.05.

Student includes all persons taking courses at the College on campus or through online learning, both full-time and part-time, pursuing undergraduate or graduate studies. Persons who are not officially enrolled for a particular term but who have a continuing relationship with the College are considered.

CONFIDENTIALITY

The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation or disciplinary action by the complainant. However, the College also has the responsibility to provide a safe and nondiscriminatory environment for all in the community and therefore cannot guarantee confidentiality. If a complainant requests that a name and/or other identifiable information not be shared with the respondent or that no formal action be taken, the College will weigh this request with its obligations to the community.

When weighing the complainant’s request for confidentiality and/or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- The seriousness of the alleged complaint,
- Other complaints about the same alleged respondent;
- Whether the alleged respondent threatened further sexual violence or other violence against the complainant or others;
- Whether the complainant is a minor;
- Whether the College possesses other means to obtain relevant evidence related to the complaint (e.g., security cameras or personnel, physical evidence).

If the College determines that it cannot maintain a victim's confidentiality, the College will inform the complainant prior to starting the investigation and will, to the greatest extent possible, only share information with those responsible for handling the response of the College.

UNMC Campus Security will be notified of any reports of sexual misconduct. Pursuant to Federal law, the College has a legal responsibility for documenting and providing statistics of reported incidences of sexual assault. All personally identifying information is removed from these reports.

REPORTING

Individuals are encouraged to report a complaint as soon as possible to maximize the ability of the College to respond as effectively as possible, although there is no time limit to reporting. A student that has a complaint against another student involving allegations of sexual misconduct is encouraged to contact the Title IX Coordinator, the counselor, a faculty member and/or the Office of Civil Rights through the United States Department of Education. Complaints of sexual misconduct by or against employees or third parties should be reported to the Director of Human Resources, the Title IX Coordinator, and/or the Office of Civil Rights through the United States Department of Education. A report can be received in person, by phone, or through email. Any employee who receives a report of sexual misconduct, other than those with significant counseling responsibility, is required to share the report with the Title IX Coordinator per the Federal Crime Awareness Act.

The Director of Student Support Services serves as the Title IX Coordinator and is located in the Success Center. The Title IX Coordinator can be contacted at 402.552.2693, 1.800.647.5500, or at hesskris@clarksoncollege.edu. If the Title IX Coordinator is unavailable or has a conflict of interest, the Director of Human Resources, the Title IX Investigator, is available and can be contacted at 402.552.3395, 1.800.647.5500, or at tomekdeb@clarksoncollege.edu. The Office of Civil Rights can be contacted at the U.S. Department of Education, Office of Civil Rights, Lyndon Baines Johnson Department of Education Bldg, 400 Maryland Avenue, SW, Washington, D.C., 20202-1100; the phone number is 1.800.421.3481, and email is OCR@ed.gov. Upon receipt of a sexual misconduct report or complaint, the Title IX Coordinator will provide the complainant a written notice describing the options that are available:

- Pursuing a legal charge with a law enforcement agency,
- Pursuing a complaint within the College informal and/or formal resolution processes,
- Pursuing both actions as described above (the complainant may go forth with one or more options at the same time).

The complainant must determine, in writing, if he or she wishes to pursue a complaint with local law enforcement and/or within the College internal resolution processes. If he or she does not wish to pursue the complaint and/or requests that his or her identity remain anonymous, the Title IX Coordinator will make note of that wish in the report and educate the complainant about the limits of the College to confidentiality and its obligation to protect the College community.

Reporting Involving Minors: If a sexual misconduct complaint involves a minor (an individual under the age of 19), Nebraska law requires the College report this to the Department of Health and Human Services within 24 hours.

ANONYMOUS REPORTING

Any individual may make an anonymous report concerning an act of sexual misconduct. The College has made available the Sexual Misconduct Reporting Form for this. Although preferred that this report be made directly to the Title IX Coordinator, an individual may ask a third party (e.g., faculty, counselor, College administrator) to do so. Depending on the level of information available about the incident or the individuals involved, anonymous reporting may impact the ability of the College to respond, investigate, or take further action.

BYSTANDER INTERVENTION

A bystander is one who is present at an event or situation and potentially has the opportunity to make a change in said event or situation. The College strongly encourages bystanders to intervene in situations where there is no threat of harm to them and to contact the Title IX Coordinator, a Clarkson College administrator, and/or campus security to report any event of concern.

FALSE REPORTING

The College takes allegations of sexual violence very seriously and recognizes the consequences such allegations may have on a respondent as well as a complainant. Any individual who knowingly provides false information regarding the filing of a complaint or report of sexual misconduct or during the investigation of such a complaint or report may be subject to discipline or under certain circumstances, legal action.

INITIAL CONSULTATION

Upon receipt of a complaint, the Title IX Coordinator will determine whether or not the complaint reflects a potential violation of this policy and then, within five business days of having received the complaint, notify the complainant in writing of this determination. At any point, the Title IX Coordinator has the right to seek consultation with other relevant professionals outside of the College, if necessary. If it is determined a potential violation exists, the Title IX Coordinator will initiate a consultation with the complainant within seven business days of receiving the complaint. The purpose of this meeting is to gain an understanding of the nature of the complaint. During this meeting, the Title IX Coordinator will also address the following:

- a) physical safety and emotional well-being of the complainant,
- b) interim accommodations available, if necessary,
- c) complainant's rights,
- d) complainant's preferred manner for resolution,
- e) confidentiality and the limits of the College to confidentiality,
- f) the College policy prohibiting retaliation, and
- g) complainant's right to pursue legal charges.

INTERIM ACCOMMODATIONS

In all cases of alleged sexual misconduct, regardless of whether the complainant wishes to pursue an investigation or action, the College will undertake an appropriate inquiry and take prompt and effective action to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation, if any.

Complainants have the right to assistance in changing academic and living situations after an alleged incident if such changes are reasonably available. Accommodations may include but are not limited to:

- Changing an on-campus student's housing to a different location within student residence hall
- Arranging to end a student housing contract
- Rescheduling exams, papers and/or assignments
- Taking an incomplete in one or more courses
- Transferring between class sections (on campus or online)
- Taking a voluntary leave of absence
- Offering counseling services

Any course-based interim accommodation(s) will be coordinated with the appropriate faculty to ensure the least disruption in the complainant's course of study.

INFORMAL RESOLUTION

Complainants have the option to seek resolution informally in an attempt to resolve the complaint without a formal hearing. The informal resolution process is optional and voluntary, and both the complainant and the respondent must agree to participate for an informal resolution process to occur. The parties involved in the informal resolution process will not be required to deal directly with one another; the Title IX Coordinator (or other designee) will serve as the facilitator of mediation between the involved parties and coordinate any other informal resolution matters. **Note: Mediation is not an available option for allegations of sexual assault or sexual violence.**

The complainant or the respondent can terminate the informal resolution process at any time. If either party chooses not to remain in the informal resolution process or if the situation is not able to be resolved informally, a formal resolution process can be initiated by either party. A summary of the outcome(s) of the informal resolution process will be provided to the Vice President of Operations, who oversees the Clarkson College Code of Conduct. Outcomes of an informal resolution could include determining a remedy for the complainant and/or securing agreement by the respondent to accept one or more disciplinary sanctions.

FORMAL RESOLUTION

If the informal resolution process is unsuccessful or not an available option, an individual may pursue a formal resolution. To initiate this process, the complainant must submit a signed, written statement to the Title IX Coordinator that addresses the following:

- the complainant's want to pursue a formal resolution,
- the name of the individual responsible for the alleged violation,
- a detailed description of the event and actions creating the alleged violation,
- the date and location of the event,
- the names and contact information of any witnesses to the event,
- the remedy requested, and
- other information relevant to the complaint.

Once this statement is received by the Title IX Coordinator, the respondent will be notified of such (see below). If either party is an employee, the Title IX Coordinator will inform the Director of Human Resources. Once this statement is received by the Title IX Coordinator, the respondent will be notified of such (see below). If either party is an employee, the Title IX Coordinator will inform the Director of Human Resources. If it is determined that an investigation is warranted, the Title IX Coordinator will provide the respondent a summary of the complaint and allegations within ten working days of the Title IX Coordinator receipt of the written statement. The respondent will have ten working days to respond in writing to the complaint and the allegations. The respondent must address each allegation in full, including a statement of agreement or disagreement to each. If the respondent fails to respond within ten working days, the Title IX Coordinator has the right to continue the investigation. If the Title IX Coordinator receives the respondent's response to the complaint and allegations, the Title IX Coordinator will forward this written response and the complainant's written statement to the investigator.

It is the intent of the investigator to complete the investigation within sixty calendar days after receipt of the written statement and written response from the Title IX Coordinator. Such investigation will be conducted fully and impartially. An extension of this timeline may be required based on extraordinary circumstances, and both parties (complainant and respondent) will be informed in writing if this extension is necessary.

During the investigation, the investigator will interview separately the complainant, the respondent, and any witnesses either party has identified. In addition, the investigator will review all written documentation related to the complaint, all evidence presented by each party, and all relevant Clarkson College policies. The investigator may consult with other professionals outside of the College as needed.

During the formal resolution process, both the complainant and the respondent have the right to have an attorney or other advisor present during any component each is respectively involved in. At no time shall the investigator allow the complainant and the respondent to cross examine each other. Throughout the process, the investigator will advise all participants in the formal resolution process that confidentiality is essential for the integrity of the investigation.

At the end of the investigation, the investigator will submit a written report to the Title IX Coordinator stating his/her analysis of the facts, related evidence, and his/her conclusion as to whether or not sexual misconduct occurred. This conclusion will be based upon the “preponderance of evidence” standard (e.g., more likely than not). This written report will also provide recommendations for any remedial action as well as disciplinary action if sexual misconduct was believed to have occurred.

Upon receipt of the investigator’s written report, the Title IX Coordinator will review the report and subsequently call a Title IX Review Board meeting within five business days. The Title IX Review Board will consist of the Vice President of Academic Affairs, the Vice President of Operations, the faculty representative from the Behavioral Intervention Team, the counselor (unless the counselor has a conflict of interest with either the complainant or the respondent), a designee of the Vice President of Academic Affairs, and a designee of the Vice President of Operations if the counselor is unable to serve. The Title IX Coordinator will serve as meeting facilitator.

The Title IX Review Board will review the investigator’s report and may request additional information and/or investigation as warranted. Once the Title IX Review Board determines the investigation is complete, they will give due consideration to the investigator’s conclusion as to whether or not sexual misconduct occurred and subsequently issue a final determination of whether or not sexual misconduct occurred using the preponderance of evidence standard.

Within ten working days of receipt of the Title IX Review Board’s finding(s), the Title IX Coordinator will provide a written summary of the findings and recommendations to the complainant and to the respondent. This summary will also include information on the appeals process. If disciplinary actions are recommended for the respondent, the College has an obligation to disclose said disciplinary actions to the complainant. If either the complainant or the respondent is a Clarkson College employee, employment-related decisions will be deferred to the Director of Human Resources. It is the responsibility of the Title IX Review Board to ensure recommendations are implemented.

APPEAL

Both the complainant and the respondent have the right to appeal the Title IX Review Board decision for any reason. An appeal must be submitted to the Title IX Coordinator within ten calendar days of the complainant and respondent being notified of the Title IX Review Board decision. The appeal must set forth the basis for the decision dispute. Appeals will be decided upon by the President of the College; this decision is final.

Neither the complainant nor the respondent is entitled to a hearing in connection to the appeal; however, written submissions from either party may be requested and/or considerations of any other relevant information may be made by the President. Notification of the appeal will be communicated to the non-appealing party, and both the complainant and the respondent will be informed in writing of the appeal decision within fifteen calendar days from when the Title IX Coordinator receives all requested information, unless it is determined that additional time is warranted.

SANCTIONS

The College may pursue disciplinary action against a student at the same time the student is facing criminal charges for the same offense, even if the criminal prosecution is pending, has been dismissed or the charges have been reduced.

DISCIPLINARY SANCTIONS

The following sanctions may be imposed upon any student found to have violated this policy:

- Warning – a notice in writing to the student that the student is violating or has violated institutional requirements.
- Probation – a written reprimand for violation of specified regulations. Probation lasts for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found in violation of any institutional regulations during the probationary period.
- Loss of Privileges – denial of specified privileges for a designated period of time.
- Fines – Previously established and published fines may be imposed.
- Restitution – compensation for loss, damage or injury. This may take the form of appropriate service and/or monetary or material replacement.
- Discretionary Sanctions – work assignments, service to the College, community service, parental notification (if a minor), workshop attendance, required counseling, written explanation, financial restitution or other discretionary assignments.
- Residence Hall Suspension – separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- Residence Hall Dismissal – permanent separation of the student from the residence halls.
- College Suspension – separation of the student from the College for a specified period of time. Conditions for readmission may be specified.
- College Dismissal – permanent separation of the student from the College.

More than one of the sanctions listed above may be imposed for any single violation.

Other than College Dismissal, disciplinary sanctions shall not be made part of the student's permanent academic record but shall become part of the student's confidential record. Upon graduation, the student's confidential record may be expunged of disciplinary actions other than residence hall dismissal, College suspension or dismissal. Cases involving the imposition of sanctions other than residence hall dismissal or College suspension/dismissal may be expunged from the student's confidential record five years after the final disposition of the case.

In certain circumstances, the Vice President of Operations or the President may impose a College or residence hall interim suspension prior to the determination of the Title IX Review Board. Interim suspension may be imposed only: (a) to ensure the safety and well-being of members of the College community or preservation of College property; (b) to ensure the student's own physical or emotional safety and well-being; or (c) if the student poses a definite threat of disruption with the normal operations of the College. During the interim suspension, students shall be denied access to the residence halls and/or the campus (including classes) and/or all other College activities or privileges for which the student might otherwise be eligible, as the Vice President of Operations may determine to be appropriate.

With respect to sanctions imposed upon an employee, per Policy HR -14, appropriate action will be determined based upon the nature of the situation.

ANTI-RETALIATION

To prohibit retaliation against complainant or witnesses, a no contact directive will be issued in writing to persons involved in the investigation. Both the complainant and the respondent are required to abide by the no contact agreement. Failure to comply could result in disciplinary action.

EDUCATION

The College understands that ongoing education about the issues contained within this policy is critical to fostering a healthy campus environment. The College is committed to providing annual educational and bystander training to all students and employees to promote their awareness and understanding of their rights and conduct

prohibited under this policy. This education will also include sexual violence prevention measures and procedures for responding to and reporting incidents. In addition, safe and positive options for bystander intervention will be addressed. Sexual harassment/sexual assault prevention workshops are available; please contact the Title IX Coordinator to schedule.

RECORDS

The Title IX Coordinator will retain records of all complaints, documentation and reports, regardless of whether the matter is dismissed or is resolved by the informal or formal resolution processes of the College. All records will be maintained by the Title IX Coordinator for seven years. Findings of responsibility resolved through either the informal or formal resolution process will become part of a student's confidential record except in situations where dismissal is a sanction; in these situations, the policy above will be followed.

OTHER CLARKSON COLLEGE DISCIPLINARY PROCESSES

The outcomes and actions taken by the Title IX process do not necessarily preclude other disciplinary actions from being taken using other Clarkson College disciplinary procedures. The Title IX investigations and outcomes may be used as support for other disciplinary processes.

AMENDMENTS OR TERMINATION OF THIS POLICY

Clarkson College reserves the right to modify, amend, or terminate this policy at any time.