

This replaces 9N text in student regulations

DD Discrimination Greivance Procedures replaced

POLICY AND PROCEDURES  
**EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION  
FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD-PARTIES**

**1. Definitions**

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity. [Formerly Reporter]
- *Complaint (formal)* means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that Clarkson University investigate the allegation.  
[https://cm.maxient.com/reportingform.php?ClarksonUniv&layout\\_id=40](https://cm.maxient.com/reportingform.php?ClarksonUniv&layout_id=40)
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status), such as Student Health and Counseling Center staff.
- *Confidentiality* exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Clarkson University has designated individuals who have the ability to have communications as Confidential Resources. For more information about Confidential Resources, see page 26. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.
- *Day* means a business day when Clarkson University is in normal operation.
- *Education program or activity* means locations, events, or circumstances where Clarkson University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination is alleged to have occurred and also includes any building owned or controlled by a student organization that is officially recognized by Clarkson University.
- *Final Determination*: A conclusion by preponderance of evidence that the alleged conduct occurred and whether it did or did not violate policy.

- *Finding*: A conclusion by preponderance of evidence that the conduct did or did not occur as alleged.
- *Formal Complaint* means a document filed/signed, including via electronic or physical signature, by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that Clarkson University investigate the allegation(s).
- *Formal Grievance Process* means “Process A,” a method of formal resolution designated by Clarkson University to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.
- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker[s]* refers to those who have decision-making and sanctioning authority within Clarkson University’s Formal Grievance process.
- *Investigator* means the person or persons charged by Clarkson University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of Clarkson University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator or an Official with Authority.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of Clarkson University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of Clarkson University.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Privacy* means that information related to a complaint will be shared with a limited number of Clarkson University employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. Even University offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. This is explained further in Section 11 below. All employees who are involved in Clarkson University’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in Clarkson University’s FERPA policy. The privacy of employee records will be protected in accordance with Human Resources policies.
- *Process A* means the Formal Grievance Process detailed below and defined above as the Formal Grievance Process.
- *Process B* means the informal alternative resolution procedures detailed below.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Clarkson University’s educational program.

- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal resolution or Formal Grievance Process under either Process A or B.
- *Sanction* means a consequence imposed by Clarkson University on a Respondent who is found to have violated this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. [See Section 17.b.](#), for greater detail.
- Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Clarkson University's education program or activity, including measures designed to protect the safety of all parties or Clarkson University's educational environment, and/or deter harassment, discrimination, and/or retaliation.
- *Title IX Coordinator* is the official designated by Clarkson University to ensure compliance with Title IX and Clarkson University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

## **2. Rationale for Policy**

Clarkson University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Clarkson University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Clarkson University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

## **3. Applicable Scope**

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using Clarkson University's "Process A" or "Process B," as determined by the Title IX Coordinator or appropriate Official with Authority, and as detailed below.

When the Respondent is a member of the Clarkson University community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Clarkson University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

One or more of Clarkson University's personnel policies or faculty and staff handbook policies may overlap with this policy in a particular situation. The processes described in this policy apply to any situation where a student or a student

organization is the Complainant or Respondent. In all other situations, the University reserves the right to apply this process or another applicable University policy or process. The University will apply this process to any situation where the University determines that applicable law (including but not limited to Title IX) requires the application of this process.

#### **4. Title IX Coordinator**

Jennifer Ball, Chief Inclusion Officer, serves as the Title IX Coordinator ADA/504 Coordinator and Title VI Coordinator for purposes of Clarkson University's policy on equal opportunity, harassment, and nondiscrimination. Amy McGaheran serves as the Title VII and Affirmative Action Officer and oversees implementation of Clarkson University's Affirmative Action and Equal Opportunity plan. The Title IX Coordinator has the primary responsibility for coordinating Clarkson University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy. Both the Chief Inclusion Officer and the Chief Human Resources Officer serve as primary contacts for reporting non discrimination violations under New York State law.

#### **5. Title IX Independence and Conflict-of-Interest**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures related to Title IX, Title VI, and ADA/504. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Clarkson University President [president@clarkson.edu](mailto:president@clarkson.edu) or designee. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Clarkson University President [president@clarkson.edu](mailto:president@clarkson.edu) or designee. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator .

#### **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Jennifer L. Ball, PhD  
Title IX Coordinator  
Chief Inclusion Office  
Location/Address:  
1003b ERC  
(315) 268-4208 315-212-8940 cell  
Email: [TitleIX@clarkson.edu](mailto:TitleIX@clarkson.edu) or [jball@clarkson.edu](mailto:jball@clarkson.edu)  
Web: <https://www.clarkson.edu/nondiscrimination>

Kelsey Pearson  
Deputy Title IX Coordinator, Student Affairs  
Office of the Dean of Students  
Price Hall 1003A  
(315) 268-2012  
[kmpearson@clarkson.edu](mailto:kmpearson@clarkson.edu)

Amy McGaheran  
Deputy Title IX Coordinator, Human Resources  
Clarkson University  
102 Graham Hall  
CU Box 5542  
Potsdam, NY 13699  
(O)315-268-3788

Clarkson University has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept notice or complaints of violations of this policy on behalf of Clarkson University.

Jim Pittman  
Dean of Students  
Price Hall, 1003G  
(315) 268-6620  
Email: [jpittman@clarkson.edu](mailto:jpittman@clarkson.edu)

Clarkson University has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation.

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Office for Civil Rights,  
***New York Office***  
U. S. Department of Education  
32 Old Slip, 26th Floor  
New York, NY 10005-2500  
Telephone: (646) 428-3800  
Facsimile: (646) 428-3843  
Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)  
For complaints involving employees: [Equal Employment Opportunity Commission](#) (EEOC)

## **7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice to, the Title IX Coordinator or deputies or Officials with Authority (see contact information above). Such a report may be made at any time (including during non-business hours)

by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.

2) Submit a complaint online, using the reporting form posted at [[https://cm.maxient.com/reportingform.php?ClarksonUniv&layout\\_id=40](https://cm.maxient.com/reportingform.php?ClarksonUniv&layout_id=40)]. Anonymous reports are accepted, but be advised that such reports can give rise to a need to investigate. Clarkson University tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report where the Complainant cannot be identified.

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. A formal complaint must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the complaint.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly. In order to proceed with a Title IX process, a formal complaint is necessary. However, other reports of non-Title IX based incidents may proceed without a formal complaint under Process B.

### **8. Supportive Measures**

Clarkson University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Clarkson University's education program or activity, including measures designed to protect the safety of all parties or Clarkson University's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator or appropriate Official with Authority promptly makes supportive measures available to the parties upon receiving notice or a complaint. The Title IX Coordinator or appropriate Official with Authority works with the party to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

Clarkson University will maintain the privacy of the supportive measures, provided that privacy does not impair Clarkson University's ability to provide the supportive measures. Clarkson University will act to ensure as minimal an academic impact on the parties as reasonably possible. Clarkson University will implement measures in a way that does not unreasonably burden the other party.

For notice under Title IX jurisdiction, when supportive measures are offered, Clarkson University will inform the Complainant, in writing, that they may file a formal complaint with Clarkson University either at that time or in the future, if they have not done so already.

Supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning

- Providing campus safety escorts
- Providing transportation accommodations
- Implementing mutual contact limitations (no contact orders) and, in certain circumstances, one-directional contact limitations, between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator or appropriate Official with Authority

Violations of no contact orders or Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders will be referred to appropriate student or employee conduct processes for enforcement including referral to appropriate law enforcement.

## **9. Emergency Removal**

Clarkson University can act to remove a student or student organization Respondent<sup>1</sup> entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator or appropriate Official with Authority in conjunction with the Behavioral Intervention Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator or designee prior to or at the time of such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within 10 days after the Respondent is notified of the emergency removal, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this review if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

In Title IX cases, the Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

Clarkson University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator or appropriate Official with Authority, these actions could include, but are not limited to:

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<sup>1</sup> This section applies only to student and student organization Respondents. Employee respondents are not subject to this section and may be placed on administrative leave pursuant to the University's policies and/or collective bargaining agreements during the pendency of a process under this policy.

removing a student from a residence hall,  
temporarily re-assigning an employee,  
restricting a student's or employee's access to or use of facilities or equipment,  
allowing a student to withdraw or take grades of incomplete without financial penalty,  
authorizing an administrative leave,  
or suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator or appropriate Official with Authority, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

#### **10. Promptness**

All allegations are acted upon promptly by Clarkson University once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Clarkson University will use reasonable efforts to avoid undue delays within its control.

Any time the general time frames for resolution outlined in Clarkson University procedures will be delayed, Clarkson University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

Any internal University investigation and/or hearing process will be conducted concurrently with any criminal justice investigation and proceeding that may be pending. Temporary delays in the University's internal process may be requested by local law enforcement authorities for the purpose of gathering evidence. Any such temporary delay shall not last more than ten (10) business days, except when local law enforcement authorities specifically request and justify a longer delay.

#### **11. Privacy**

Every effort is made by Clarkson University to preserve the privacy of reports.<sup>2</sup> Clarkson University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as otherwise permitted or required by law, or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Clarkson University reserves the right to designate which Clarkson University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Title IX Team members or Officials with Authority. Information will be shared as necessary with Investigators, Hearing Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as reasonably possible to preserve the parties' rights and privacy. Clarkson practices need-to-know privacy in all reports and complaints.

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<sup>2</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. Please see above.



Clarkson University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk or when otherwise permitted by law, but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

## **12. Jurisdiction of Clarkson University**

This policy applies to the education program and activities of Clarkson University, to conduct that takes place on the campus or on property owned or controlled by Clarkson University, at Clarkson University-sponsored events, or in buildings owned or controlled by Clarkson University's recognized student organizations. The Respondent must be a member of Clarkson University's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Clarkson University's educational program or activity. Clarkson University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Clarkson University interest.

Regardless of where the conduct occurred, Clarkson University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial Clarkson University interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any action that raises a compliance obligation under civil law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- c. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- d. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- e. Any situation that is detrimental to the educational interests or mission of Clarkson University.

If the Respondent is unknown or is not a member of the Clarkson University community, the Title IX Coordinator or appropriate Official with Authority will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. If University community members believe they have been subjected to misconduct of the sort prohibited by this policy by a guest or other non-community member in connection with a University program or offering, they should make a report to the Title IX Coordinator, who will work with Campus Safety or other Officials with Authority to conduct an appropriate investigation. The officials will report their findings to the Title IX Coordinator for action. The decision of the Title IX Coordinator in such matters will be final.

Further, even when the Respondent is not a member of Clarkson University's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator or appropriate Official with Authority.

In addition, Clarkson University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Clarkson University property and/or events.

All vendors serving Clarkson University through third-party contracts are subject to the policies and procedures of their employers or to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator or appropriate Official with Authority can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator or appropriate Official with Authority may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the Clarkson University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

### **13. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator or appropriate Official with Authority. However, if the Respondent is no longer subject to Clarkson University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator or appropriate Official with Authority, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, Clarkson University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

### **14. Online Harassment and Misconduct**

The policies of Clarkson University are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Clarkson University's education program and activities or use Clarkson University networks, technology, or equipment.

While Clarkson University may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Clarkson University, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Clarkson University community.

### **15. Policy on Nondiscrimination**

Clarkson University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

Clarkson University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

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<sup>3</sup> There is an argument to be made to apply current policy definitions to past misconduct, but such an approach would have to be consented to by the parties and/or carefully vetted with legal counsel.

- Race,
- Religion,
- Personal appearance,
- Color,
- Sex,
- Pregnancy,
- Political affiliation,
- Source of income,
- Place of business,
- Residence,
- Religion,
- Creed,
- Ethnic or national origin (including ancestry),
- Citizenship status,
- Physical or mental disability (including perceived disability),
- Age,
- Marital status,
- Familial status,
- Sexual orientation/identity,
- Gender identity,
- Gender expression,
- Veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),
- Predisposing genetic characteristics,
- Domestic violence victim status, or
- any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the Clarkson University community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of the Clarkson University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the Clarkson University policy on nondiscrimination.

When brought to the attention of Clarkson University, any such discrimination will be promptly and fairly addressed and remedied by Clarkson University according to the appropriate grievance process described below.

#### **16. Policy on Disability Discrimination**

Clarkson University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by Clarkson University, regardless of whether they currently have a disability. A substantial impairment is

one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

Jennifer Ball, Chief Inclusion Officer, has been designated as Clarkson University's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status will be addressed using Process B. For details relating to appealing disability accommodations, see Grievance Process detailed in the Policy of Disability Accommodation.

## **17. Policy on Disability Accommodation**

### **a. Students with Disabilities**

**Preamble** Clarkson University is committed to ensuring equal educational opportunity and access to services, programs, and activities for persons with disabilities.

It is the policy of the University to provide reasonable accommodation to a qualified student or prospective student with a qualified disability. The University's responsibility to make a particular reasonable accommodation is limited by the qualification that to do so would not impose an undue hardship upon the University's operations, programs or activities. If a particular accommodation imposes an undue hardship to University resources or would fundamentally alter a University course or program, the University will consider whether there are alternative accommodations that would not impose such hardship. This policy also applies to concerns regarding physical barriers or policies and procedures preventing access.

**Definitions** *Substantially Limits:* The inability to perform a major life activity that the average person in the general population can perform; or a significant restriction as to the condition, manner or duration under which an individual can perform a major life activity as compared to the condition, manner, or duration under which the average person can perform that same major life activity.

*Major Life Activities:* Includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

*Physical or Mental Impairment:* Defined by the regulations of the ADA/504 to include any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

*Qualified Individual with a Disability:* An individual with a disability who meets the skill, experience, education, and other course or program requirements, and who, with or without reasonable accommodation, can perform the essential functions of the course or program.

*Undue Hardship:* An excessively costly, extensive, substantial, or disruptive modification, or one that would fundamentally alter the nature or operation of the program or activity, or the institution.

*Essential Functions:* The fundamental elements of the course or program.

*Obvious Disability:* A person has an obvious disability when the disability is visible or readily apparent to a reasonable person (e.g., physical disabilities such as mobility impairments or blindness).

**Procedures** A student or prospective student may request reasonable accommodation by contacting the Office of

Accessibility Services (OAS). OAS, with the assistance of the ADA/504 Coordinator as needed, will make a determination of the reasonableness and appropriateness of the requested accommodation.

If the request must be denied because of undue hardship or fundamental alteration of a course or program, the party will be notified by OAS.

It is the obligation of an individual with a disability to make a request for a reasonable accommodation to OAS. This request will state the functional limitations associated with the disability and the specific accommodation(s) requested. OAS will engage the party in an interactive process to determine the appropriate accommodation. Accommodations may include temporary or permanent modifications to the course or program, living, and/or dining environments.

When a request is made for a reasonable accommodation, and the disability is not obvious and has not been previously documented, the student or prospective student may be required to provide written verification from a health care professional that they have a disability as claimed, including the functional limitations associated with the disability. The University reserves the right to request the party to submit to an Independent Medical Exam, at the University's expense, in the event an issue arises concerning a disability or the related functional limitations.

A qualified individual with a disability has the right to refuse an accommodation. However, if the individual cannot perform the essential requirements of the course or program without the accommodation, they will not be considered to be an otherwise qualified individual with a disability after refusing the accommodation.

**Obvious Disability:** In the event of an obvious disability, the student shall contact OAS to ensure appropriate accommodations are considered and implemented.

**Undue Hardship** The University's responsibility to make a particular reasonable accommodation is limited by the qualification that to do so would not impose an undue hardship upon the University's operations or would fundamentally alter the nature of operation of a particular program or activity. If a particular accommodation imposes an undue hardship, the University will consider whether there are alternative accommodations that would not impose such hardship.

The following criteria shall be considered in determining undue hardship:

1. The nature and net cost of the accommodation needed, taking into consideration the availability of funding sources;
2. The overall financial resources of the University, the number of employees, and the effect on expenses and resources;
3. The impact of the accommodation on the operation of the department involved and the University's mission, including the impact on others' housing and dining environments and the ability of other students to complete their course or program, and the University's ability to conduct its business.

**University Commitments** The need for a reasonable accommodation shall not adversely affect the consideration of an individual with a disability for a course or program to avail themselves of equal benefits, privileges, and conditions of University attendance.

The University will share information regarding the presence or nature of a party's disability only on a need to know basis.

**Grievance** Any student or prospective student who feels that they have been unfairly denied reasonable accommodation(s) may [ask for a review of the denial](#) by the Director of Accessibility Services. If this does not resolve the matter, the individual may file a written grievance with the ADA/504 Coordinator who will review the grievance with

two trained members of the ADA/504 Committee. In the event of a conflict of interest or other compelling reason, there will be a reassignment of authority under this grievance procedure from the named University officials to other appropriate individuals.

This grievance procedure shall be the exclusive internal procedure for grieving matters arising under this policy.

### **b. Employees with Disabilities**

**Philosophy** Clarkson University (the "University") is committed to assuring equal employment opportunity and equal access to services, programs and activities for persons with disabilities.

**Policy** It is the policy of the University to provide reasonable accommodation to a qualified employee or applicant with a disability to enable that person to perform the essential functions of the position for which the employee or applicant is applying or is employed. The University's responsibility to make a particular reasonable accommodation is limited by the qualification that to do so would not impose an undue hardship upon the University's operations, programs or activities. If a particular accommodation imposes an undue hardship, the University will consider whether there are alternative accommodations that would not impose such hardship. This policy also applies to concerns regarding physical barriers or policies and procedures preventing access.

**Application** This policy applies to all employment practices and actions. It includes, but is not limited to, recruitment, job application procedure, hiring, training, advancement, classification, transfer and reassignment, and promotions.

**Request for Accommodation** An employee or applicant may request reasonable accommodation by completing a Request for Reasonable Accommodation and submitting it to Human Resources. Human Resources, with the assistance of medical advice and/or legal counsel as needed, will make a determination of the reasonableness and appropriateness of the requested accommodation.

If the request must be denied because of undue hardship, the employee/applicant will be notified of the decision by Human Resources.

### **Definitions**

*Substantially Limits:* The inability to perform a major life activity that the average person in the general population can perform; or a significant restriction as to the condition, manner or duration under which an individual can perform a major life activity as compared to the condition, manner, or duration under which the average person can perform that same major life activity.

*Major Life Activities:* Includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

*Physical or Mental Impairment:* Defined by the regulations of the Equal Employment Opportunity Commission to include any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

*Qualified Individual with a Disability:* An individual with a disability who meets the skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the job.

*Undue Hardship:* An excessively costly, extensive, substantial, or disruptive modification, or one that would fundamentally alter the nature or operation of the program or activity, or the institution.

*Essential Functions:* The fundamental job duties of the position.

*Obvious Disability:* A person has an obvious disability when the disability is visible or readily apparent to a reasonable person (e.g., physical disabilities such as mobility impairments or blindness).

### **Employee/ Applicant Responsibility**

- a) It is the obligation of an individual with a disability to make a request for a reasonable accommodation to Human Resources, unless the need for an accommodation is obvious. This request will state the functional limitations associated with the disability and the specific accommodation(s) desired. Human Resources will advise the supervisor of the request.
- b) When an applicant or employee makes a request for a reasonable accommodation, and the disability is not obvious and has not been previously documented, the employee or applicant may be required to provide written verification from a health care professional that they have a disability as claimed, and the functional limitations associated with the disability. The University reserves the right to request an employee or applicant to submit to an Independent Medical Exam, at the University's expense, in the event an issue arises concerning a disability or the related functional limitations.
- c) A qualified individual with a disability has the right to refuse an accommodation. However, if the individual cannot perform the essential functions of the job without the accommodation, they will not be considered to be an otherwise qualified individual with a disability after refusing the accommodation.

### **University Commitments**

- a) The need for a reasonable accommodation shall not adversely affect the consideration of an individual with a disability for employment, training, promotion or opportunity to avail themselves of equal benefits, privileges and conditions of employment.
- b) The University will share information regarding the presence or nature of an employee's or applicant's disability only on a need to know basis.

### **Procedure For Obvious Disability**

In the event of an obvious disability, the supervisor shall contact Human Resources to ensure appropriate accommodations are considered and implemented.

**Procedures For Recruitment/ Selection** The University will provide reasonable accommodation in all stages of the recruitment, application and selection process according to the following procedure:

- a) Applicants will be notified of the right to make an accommodation request and be given information on how to initiate such a request.
- b) The University will respond to requests to provide accommodation in a timely manner.

### **Reasonable Accommodation Request Process**

- a) An employee may request reasonable accommodation by completing a Request for Reasonable Accommodation and submitting it to the Human Resources. An applicant may request an accommodation by contacting Human Resources.
- b) Where possible, Human Resources will propose a reasonable accommodation to the employee. The accommodation may include, but is not limited to:

1. Modification of the work environment;
2. Modification of the employee's regular job duties and/or work schedule within the current position; or
3. Temporary appointment in accordance with applicable policies, collective bargaining agreements, laws and regulations.

c) If the request must be denied because of undue hardship, the employee/applicant will be notified of the decision by Human Resources.

### **The Undue Hardship Limitation**

a) The University's responsibility to make a particular reasonable accommodation is limited by the qualification that to do so would not impose an undue hardship upon the University's operations or would fundamentally alter the nature of operation of a particular program or activity. If a particular accommodation imposes an undue hardship, the University will consider whether there are alternative accommodations that would not impose such hardship.

b) The following criteria shall be considered in determining undue hardship:

1. The nature and net cost of the accommodation needed, taking into consideration the availability of funding sources;
2. The overall financial resources of the University, the number of employees, and the effect on expenses and resources;
3. The impact of the accommodation on the operation of the department involved and the University's mission, including the impact on the ability of other employees to perform their duties, and the University's ability to conduct its business.

### **Grievance Procedure**

1. Any employee or applicant who feels that they have been unfairly denied reasonable accommodation(s) [may file a written grievance](#) with the University's Chief Human Resources Officer. An employee or applicant may appeal the decision of the Chief Human Resources Officer to the University's ADA and Section 504 Coordinator, who will review with two members of the ADA/504 Committee to determine whether the University's policies and procedures have been followed. In the event of a conflict of interest or other compelling reason, there will be a reassignment of authority under this grievance procedure from the named University officials to other appropriate individuals.

This grievance procedure shall be the exclusive internal procedure for grieving matters arising under this policy. The general grievance procedures set forth in Section 3.1.13 of the University's Operations Manual shall not be applicable to matters arising under this policy. The grievance procedure available to employees and applicants under this policy is intended to address issues involving the accommodation of a disability and is not available to dispute determinations involving job performance, compensation or other terms and conditions of employment. It shall be within the discretion of the ADA and Section 504 Coordinator to determine whether a grievance properly falls within this grievance procedure.

### **18. Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Clarkson University's harassment policy is not meant to inhibit or prohibit educational or research content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.



The sections below describe the specific forms of legally prohibited harassment that are also prohibited under Clarkson University policy. When speech or conduct is protected by academic freedom, it will not be considered a violation of Clarkson University policy, though supportive measures will be offered to those impacted.

### **a. Discriminatory Harassment Other than Sexual Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by Clarkson University policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law. Discriminatory harassment as defined in this section does not include sexual harassment or harassment based on sex, sexual orientation, gender identity or gender expression. Sexual harassment is defined in Section (b) below.

Clarkson University does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Clarkson University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.”

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities.<sup>4</sup> This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive **and** objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, Clarkson University may also impose sanctions on the Respondent through application of the appropriate grievance process below.

Clarkson University reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct may fall under Clarkson University policy, but may also be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms.

For assistance with Alternate Resolution and other informal resolution techniques and approaches, contact the Chief Inclusion Officer, the Dean of Students (students) or Human Resources (employees).

### **b. Sexual Harassment**

This policy sets forth conduct expectations for our community and provides a process for the reporting, investigation and adjudication of alleged Violations. This policy applies to alleged conduct violative of Title IX of the Education Amendments of 1972 (i.e., “Title IX Category” Violations) and also applies to a broader range of contexts and behaviors inconsistent with the University’s commitment to equal opportunity (i.e., “University Standards” Violations).

The designation of conduct or allegations as either “Title IX Category” or “University Standards” Violations is not a function of the seriousness of the alleged conduct but rather a function of the scope and coverage of Title IX versus the University’s broader jurisdiction to prohibit and discipline a larger scope of inappropriate behavior.

Clarkson University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, gender identity and/or gender expression of those involved.

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<sup>4</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Institutions Investigative Guidance](#).

## 1. Title IX Violations

Title IX of the Education Amendments of 1972 provides: “No person in the United States shall, on the basis of sex, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

In accordance with Title IX as interpreted by the Department of Education, the University recognizes the following as conduct violations within the meaning of Title IX, provided that the context and circumstances of the conduct fall within the scope of Title IX, including but not limited to that the Complainant was in the United States at the time of the alleged conduct, that the Complainant be participating in or seeking to participate in the University’s education program or activity at the time of the complaint, and that the conduct have occurred in the context of the University’s education program or activity:

**a. Sexual harassment.** “Sexual harassment” means conduct on the basis of sex (including gender, sexual orientation, or gender identity or expression) that satisfies one or more of the following:

2. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct (commonly referred to as a “quid pro quo”);
3. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity (commonly referred to as a sexually or gender-based “hostile environment”).

Unwelcome conduct on the basis of sex that does not rise to the level described above may be addressed as a University Standards Violation as described below, provided that it meets the definition of sexual harassment as a University Standards Violation.

**b. Sexual assault.** Consistent with federal law, the University defines sexual assault as a sexual act directed against another person without consent of the other person, including instances where the other person is incapable of giving consent. Sexual assault consists of the following specific acts:

1. **Non-Consensual Sexual Intercourse.** Sexual assault of this type includes the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the other person.
2. **Non-Consensual Sexual Contact.** This form of sexual assault includes any intentional touching, however slight, for purposes of sexual gratification, of the private body parts (including genitalia, anus, groin, breast, inner thigh, or buttocks) of another person without the consent of the other person, including instances where the other person is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity. This may include non-penetrative acts, touching directly or with an object, and/or touching the private body parts of another over clothing.
3. **Incest.** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
4. **Statutory Rape.** Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.

5. **Dating Violence.** Dating violence refers to violence (including but not limited to sexual or physical abuse or the threat of such abuse) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on the Complainant's statement with consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence can include behavior such as coercion, isolation or other forms of emotional, verbal or economic abuse if it reflects a threat of sexual or physical abuse as described above. Dating violence does not include acts covered under the definition of domestic violence.
6. **Domestic Violence.** Domestic violence refers to 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 intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the University is located, 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. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship as described above.
7. **Stalking.** Stalking is engaging in a course of conduct directed at a specific person on the basis of sex (including gender, sexual orientation, or gender identity or expression) that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition, (i) a "course of conduct" means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; (ii) "reasonable person" means a reasonable person under similar circumstances and with similar identities to the Complainant; and (iii) "substantial emotional distress" means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling. Examples of behavior that may constitute stalking include repeated, intentional following, observing or lying in wait for another; using "spyware" or other electronic means to gain impermissible access to a person's private information; repeated, unwanted, intrusive, and frightening communications by phone, mail, email, text, etc.; making direct or indirect threats to harm an individual or the individual's relatives, friends, or pets; or damaging or threatening to damage the property of the targeted individual. Stalking that does not occur on the basis of sex may be addressed as a University Standards Violation as described below.

## 2. University Standards Violations

The University prohibits the following behavior. For purpose of University Standards Violations, the below conduct is prohibited even if the conduct occurs off-campus, outside the United States, the Complainant is not participating or seeking to participate in the University's education program or activity, or otherwise in circumstances over which the University does not have influence or control, including but not limited to during University academic breaks. The University retains discretion to not respond to, investigate or adjudicate circumstances in which no University interest is implicated.

- a. **Sexual harassment.** "Sexual harassment" means unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex (including gender, sexual orientation, or gender identity or expression), when such conduct has the purpose or effect of unreasonably interfering with an individual's work, academic, or extracurricular performance, or creating an intimidating, hostile, or offensive

work or learning environment, even if the reporting individual is not the intended target of the sexual harassment.

Harassing conduct can occur in various forms, including:

**Verbal** – Conduct such as unwelcome sexually suggestive, demeaning, or graphic comments; unwelcome verbal sexual advances; using slurs to refer to a person; bullying, yelling or name-calling; refusing to use a person’s preferred pronouns or name; or jokes or comments that demean a person on the basis of gender, sexual orientation, gender identity or gender expression.

**Physical** – Conduct such as unwanted sexual contact or physical sexual advances (e.g., unwanted touching, pinching, patting, kissing, hugging, grabbing, brushing against another person’s body or poking another person’s body); sexual intimidation through physical threats; or physical threats toward or intimidation of another on the basis of gender, sexual orientation, gender identity or gender expression.

**Visual** – Conduct such as exposing another person to unwanted pornographic images; creating or displaying pictures, symbols, flags, cartoons, or graffiti that is/are sexually offensive or disparage(s) another person or group based on gender, sexual orientation, gender identity or gender expression.

**Communication-based** – Conduct such as phone calls, e-mails, text messages, chats, blogs or online communications that offend, demean, or intimidate another on the basis of gender, sexual orientation, gender identity or gender expression. Members of the community are expected to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of, or group within, the University community.

**Sex stereotyping** – Conduct in which another person’s or group’s conduct or personality traits are considered inappropriate simply because they may not conform to other people’s ideas or perceptions about how individuals of a particular sex should act or look.

A determination as to whether sexual harassment occurred depends on the totality of the circumstances, including the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness or severity of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual or group and the learning community.

1. A **“hostile environment”** is created when the offensive behavior interferes with an individual’s ability to participate in the University’s programs (i.e., to work and to learn) when judged against a reasonable person standard. However, the University encourages individuals experiencing or witnessing offensive behavior to make a report as early as possible so as to have the situation corrected before it reaches the level of a hostile environment. Individuals with a concern need not worry about whether the behavior is sufficiently serious to constitute a hostile environment. The University reserves the right to remedy sexual harassment pursuant to this policy even if the behavior in question does not rise to the level of legally recognized or actionable harassment.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation of this policy. The determination as to whether this policy has been violated takes into account the totality of

the circumstances as described above. In all instances, a key factor is whether the complained-of behavior occurred because based on sex (including gender, sexual orientation, gender identity or gender expression) or was sexual in nature. If it did not or was not, the behavior is not regulated by this policy. However, even if the conduct is not sexual in nature or based upon on sex, and/or does not otherwise constitute prohibited conduct under this policy, the University may respond by providing individual and community support and resources to those who have been impacted.

2. The University also prohibits “**quid pro quo**” **sexual harassment**, which means “this for that” harassment. It is a violation of this policy for any person to condition any benefit on submission to sexual activity. No person should believe that any other person -- no matter their position of authority -- has a right to require sexual activity in exchange for any benefit or advantage; they do not.
  
3. **Sexual Assault.** “Sexual assault” includes any sexual act directed against another person without the consent of the other person, including instances where the victim is incapable of giving affirmative consent, but that does not constitute sexual assault as a Title IX Violation as defined above because of the nature of the behavior or the context in which it occurs (for example because the Complainant was not in the United States at the time of the alleged conduct, because the Complainant was not participating in or seeking to participate in the University’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the University’s education program or activity). Sexual assault consists of the following specific acts:
  - a. **Non-Consensual Sexual Intercourse.** Sexual assault of this type includes the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the affirmative consent of the other person or where the other person is incapable of consent due to mental or physical incapacity. This type of sexual assault also includes non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.
  - b. **Non-Consensual Sexual Contact.** This form of sexual assault includes any intentional touching, however slight, for purposes of sexual gratification or with sexual intent, of the private body parts (including genitalia, anus, groin, breast, inner thigh, or buttocks) of another person without the affirmative consent of the other person, including instances where the other person is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity. This may include non-penetrative acts, touching directly or with an object, and/or touching the private body parts of another over clothing. This may also include forcing or causing another without affirmative consent to touch one’s own private body parts.

4. **Sexual Exploitation.** Taking non-consensual or abusive sexual advantage of another for one’s own benefit or for the benefit of anyone other than the person being exploited, if the conduct does not otherwise constitute another offense under this policy. Examples of Sexual Exploitation include (a) sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed); (b) taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent or beyond the parameters of consent), including the making or posting of revenge pornography; (c) exposing one’s genitals in non-consensual circumstances or non-consensual disrobing of another person so as to expose the other person’s private body parts; (d) prostituting another person; (e) engaging in sexual activity with another person while knowingly infected with a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the STD or STI; (f) causing or

attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity; (g) misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections; (h) forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity; (i) knowingly soliciting a minor for sexual activity.

**5. Dating Violence.** Dating violence refers to violence (including but not limited to sexual or physical abuse or the threat of such abuse) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, but that does not constitute dating violence as a Title IX Violation as defined above because of the nature of the behavior or the context in which it occurs (for example because the Complainant was not in the United States at the time of the alleged conduct, because the Complainant was not participating in or seeking to participate in the University's education program or activity at the time of the complaint, or because the conduct did not occur in the context of the University's education program or activity). The existence of such a relationship shall be determined based on the statement of the Complainant with consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence can include behavior such as coercion, isolation or other forms of emotional, verbal or economic abuse if it reflects a threat of sexual or physical abuse as described above. Dating violence does not include acts covered under the definition of domestic violence.

**6. Domestic Violence.** Domestic violence refers to 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 intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the University is located, 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 act of violence occurs, that does not constitute domestic violence as a Title IX Violation as defined above because of the nature of the behavior or the context in which it occurs (for example because the Complainant was not in the United States at the time of the alleged conduct, because the Complainant was not participating in or seeking to participate in the University's education program or activity at the time of the complaint, or because the conduct did not occur in the context of the University's education program or activity). To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship as described above.

**7. Stalking.** Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress, but that does not constitute stalking as a Title IX Violation as defined above because of the nature of the behavior or the context in which it occurs (for example because the Complainant was not in the United States at the time of the alleged conduct, because the Complainant was not participating in or seeking to participate in the University's education program or activity at the time of the complaint, or because the conduct did not occur in the context of the University's education program or activity). For the purposes of this definition, (i) a "course of conduct" means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; (ii) "reasonable person" means a reasonable person under similar circumstances and with similar identities to the Complainant; and (iii) "substantial emotional distress" means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling. Stalking behavior may include but is not limited to repeated, intentional following, observing or lying in wait for another; using "spyware" or other electronic

means to gain impermissible access to a person's private information; repeated, unwanted, intrusive, and frightening communications by phone, mail, email, text, etc.; making direct or indirect threats to harm an individual or the individual's relatives, friends, or pets; or damaging or threatening to damage the property of the targeted individual.

#### **d. Force, Coercion, Consent, and Incapacitation**

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. A person's words or conduct are sufficient to constitute coercion if they deprive another individual of the ability to freely choose whether or not to engage in sexual activity.

**Affirmative Consent. A.k.a. Consent.** Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Whenever the word "consent" is used in this policy, it should be understood to mean affirmative consent as defined here. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.

Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. In New York, a person less than 17 years of age is incapable of consenting to any sexual activity. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When consent is withdrawn or can no longer be given, sexual activity must stop.

**Consent that meets this definition must be obtained** to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Clarkson University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>5</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Clarkson University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

Violation of any other Clarkson University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

## **19. Expectations Regarding Unethical Relationships**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. Clarkson University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of Clarkson University. However, for the personal protection of members of this community, relationships in which power

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<sup>5</sup> Bondage, discipline/dominance, submission/sadism, and masochism.



differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of the Human Resources Office and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains. This type of relationship includes Resident Advisors (RAs) and students over whom the RA has direct responsibility.

While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

Clarkson University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

## **20. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator or appropriate Official with Authority and will be promptly investigated. Clarkson University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for Clarkson University or any member of Clarkson University's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner (including as or in support of a Complainant or Respondent) in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for code of conduct violations that do not involve discrimination or harassment but arise out of the same facts or circumstances as a report or complaint of discrimination or harassment, for the purpose of interfering with any right or privilege secured by law or this policy, constitutes retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **21. Mandated Reporting**

All Clarkson University employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

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 and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator or appropriate Official with Authority (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Clarkson University for a Complainant or third-party (including parents/guardians when appropriate):

#### **a. Confidential Resources**

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

- Student Counseling Center at (315) 268-2327
- Student Health Services at (315) 268-6633
  - These counseling and health services are provided to University students free of charge.
- Harassment, Assault, and Abuse Response Team (HAART) at (315) 268-4466
  - HAART Advocates are employees of the university who can offer confidential advice on your options to report misconduct and access support resources. They are not mental health counselors or legal advisors, but can help you coordinate contact with our Counseling center, Renewal House or the local police.

Off-campus confidential resources (non-employees) are:

- Renewal House at (315) 379-9845
- Canton-Potsdam Hospital at (315) 265-3000
- Reach Out at (315) 265-2422
- Legal Aid Society at (315) 386-4586
- Athletic trainers (if licensed and privileged under state statute, and/or working under the supervision of a health professional)

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Clarkson University employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

#### **b. Mandated Reporters and Formal Notice/Complaints**

All employees of Clarkson University, excluding most student employees, with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator or appropriate Official with Authority all known details of a report made to them in the course of their employment.

Mandated Reporters must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from Clarkson University.

Supportive measures may be offered as the result of such disclosures without formal Clarkson University action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of Clarkson University policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though Clarkson University is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **22. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator or appropriate Official with Authority, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether Clarkson University proceeds when the Complainant does not wish to do so, and in cases involving Title IX jurisdiction the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate risk assessment. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy. When Clarkson University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish.

In both Title IX and non-Title IX jurisdiction cases, the University’s decision as to responsive action will depend on the nature of the offense, whether the Respondent has a history of violent behavior or is a repeat offender, whether the incident represents escalation in unlawful conduct from previously noted behavior, the risk that the Respondent will commit additional acts of violence, whether there was a single perpetrator or multiple, whether the Respondent used a weapon or force, whether the Reporting Individual is a minor, whether available information reveals a pattern of perpetration at a given location or by a particular group or organization, whether the circumstances otherwise suggest an ongoing or future risk to the campus community or the Complainant, and similar considerations. Clarkson University may be compelled to act on alleged employee misconduct irrespective of a Complainant’s wishes.

The Title IX Coordinator or appropriate Official with Authority must also consider the effect that non-participation by the Complainant may have on the availability of evidence and Clarkson University’s ability to pursue a Formal Grievance Process fairly and effectively.

Note that Clarkson University’s ability to remedy and respond to notice may be limited if the Complainant does not want Clarkson University to proceed with an investigation and/or grievance process and/or does not participate. The goal is to

provide the Complainant with as much control over the process as possible, while balancing Clarkson University's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Clarkson University to honor that request, Clarkson University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Clarkson University, and to have the incidents investigated and properly resolved through these procedures.

### **23. Federal Timely Warning Obligations**

Parties reporting incidents should be aware that under the Clery Act, Clarkson University must issue timely warnings for certain incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Clarkson University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **24. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Clarkson University policy.

### **25. Amnesty for Complainants and Witnesses**

The Clarkson University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Clarkson University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Clarkson University community that Complainants choose to report misconduct to Clarkson University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

The health and safety of every student at Clarkson University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault, or other conduct in violation of this policy, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Clarkson University strongly encourages students to report domestic violence, dating violence, stalking, sexual assault or other violations of this policy to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, sexual assault or other violation of this policy to University officials or law enforcement will not be subject to University disciplinary action (including but not limited to action under this policy) for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual misconduct to Campus Safety or a Resident Assistant).

Clarkson University maintains a policy of amnesty from minor policy violations as described above for students who offer help to others in need. While such policy violations cannot be overlooked, Clarkson University may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

## **26. Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA<sup>6</sup>-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to Campus Safety regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, Campus Safety & Security, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## **27. Disabilities Accommodation in the Resolution Process**

Clarkson University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution processes at Clarkson University. Anyone needing such accommodations or support should contact the Director of Disability Services, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

## **28. Recordkeeping**

Clarkson University will maintain for a period of at least seven years, or as required by state or federal law or institutional policy, records of (as applicable):

1. Investigations including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to Clarkson University’s education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;

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<sup>6</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040

6. All materials with respect to Title IX jurisdiction investigation and adjudication processes used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. Clarkson University will make these training materials publicly available on Clarkson University's website; and
7. Any actions taken in response to a report.
  - a. Any actions, including any supportive measures, taken in response to a report or formal complaint under this policy, including (as applicable):
    - i. The basis for all conclusions that the response was not deliberately indifferent;
    - ii. Any measures designed to restore or preserve equal access to Clarkson University's education program or activity; and
    - iii. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Clarkson University will also maintain any and all records in accordance with state and federal laws.

### **29. Revision; Interpretation**

These policies and procedures will be reviewed and updated annually by an appropriate group of Officials with Authority and the Title IX Coordinator. Clarkson University reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

The Title IX Coordinator has discretionary authority to construe and interpret this policy and associated procedures, and to determine the meaning of any disputed or uncertain provisions. The Title IX Coordinator or appropriate Official with Authority may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator or appropriate Official with Authority may also vary procedures materially with notice (on the Clarkson University website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.

If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

# RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION

## PROCESS “A” Title IX Jurisdiction

### 1. Overview

Clarkson University will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) involving Title IX qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) by or against students, staff, administrators, or faculty members that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as “Process A.”

Except as described below with respect to collateral misconduct, the procedures below apply **only** to Title IX qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

If other aspects of the Policy are invoked, such as policies on protected class harassment or discrimination above, please see procedures applicable to the resolution of such offenses, known as “Process B.”

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

Unionized/other categorized employees are subject to the terms of their agreements/employees’ rights to the extent those agreements do not conflict with federal or state compliance obligations.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student, faculty, and staff Codes of Conduct and Operations Manual.

### 2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, Clarkson University initiates a prompt initial assessment to determine the next steps the University needs to take.

Clarkson University will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to proceed formally; and/or
- 2) An informal resolution; and/or
- 3) A Formal Grievance Process including an investigation and a hearing.

The investigation and grievance process will determine whether or not the Policy has been violated. If so, Clarkson University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

### 3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>7</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

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<sup>7</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue, based on the nature of the complaint.
    - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly (which may include referring the matter for resolution under Process B). Please note that dismissing a complaint under Title IX is just procedural, and does not limit Clarkson University’s authority to address a complaint with an appropriate process and remedies.

#### **a. Violence Risk Assessment**

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavioral Intervention Team (BIT) as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose a transcript notation or communicate with a transfer institution about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning and/or persona-non-grata order is needed.



Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Behavioral Intervention Team (BIT) team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the BIT or threat assessment team. Where a VRA is required by the Title IX Coordinator and the involvement of the Respondent is requested, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. an appraisal of **risk factors** that escalate the potential for violence;
2. a determination of **stabilizing influences** that reduce the risk of violence;
3. a contextual **analysis of violence risk** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of **intervention and management** approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the BIT. The BIT will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

#### **b. Dismissal (Mandatory and Discretionary)<sup>8</sup>**

Clarkson University must dismiss a formal complaint or any allegations therein from Process A if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute Title IX jurisdiction sexual harassment as defined in the Policy hereinabove, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by Clarkson University (including buildings or property controlled by recognized student organizations), and/or Clarkson University does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of Clarkson University.

Clarkson University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or

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<sup>8</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

- 2) The Respondent is no longer enrolled in or employed by Clarkson University; or
- 3) Specific circumstances prevent Clarkson University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, Clarkson University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

#### **4. Counterclaims**

Clarkson University is obligated to ensure that the grievance process is not abused for retaliatory purposes. Clarkson University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the applicable grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **5. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>9</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

Clarkson University may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

##### **a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the Clarkson University community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from Clarkson University, the Advisor will be trained by Clarkson University

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<sup>9</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

and be familiar with Clarkson University's resolution process.

If the parties choose an Advisor from outside the pool of those identified by Clarkson University, the Advisor may not have been trained by Clarkson University and may not be familiar with Clarkson University policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

#### **b. Advisors in Hearings/Clarkson University-Appointed Advisor**

Under U.S. Department of Education regulations applicable to Title IX, an opportunity for cross-examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, Clarkson University will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, Clarkson University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision-maker(s) during the hearing.

#### **c. Advisor's Role**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Clarkson University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Clarkson University is not obligated to provide an attorney.

#### **d. Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Clarkson University's policies and procedures, not to discuss case details.

#### **e. Advisor Violations of Clarkson University Policy**

All Advisors are subject to the same Clarkson University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Clarkson University officials in a meeting or interview unless invited to do so. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate

measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **f. Sharing Information with the Advisor**

Clarkson University expects that the parties may wish to have Clarkson University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

If a party requests that communication be made through their attorney Advisor, Clarkson University may comply with that request at the discretion of the Title IX Coordinator.

#### **g. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Clarkson University. Clarkson University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Clarkson University's privacy expectations.

#### **h. Expectations of an Advisor**

Clarkson University generally expects an Advisor to adjust their schedule to allow them to attend Clarkson University meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Clarkson University may also make reasonable provision to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **i. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

### **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Clarkson University policy. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. Clarkson University encourages parties to discuss this with their Advisors before doing so.

#### **a. Informal Resolution**

Informal Resolution can include three different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism [including mediation, restorative practices, etc.];
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, Clarkson University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Clarkson University.

Clarkson University will obtain voluntary, written confirmation that parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

### **b. Alternate Resolution**

Alternate Resolution is an informal process by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Alternate Resolution.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

### **c. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used

according to the criteria in that section above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and Clarkson University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Clarkson University policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

#### **d. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and Clarkson University. Negotiated Resolutions are not appealable.

### **7. Grievance Process Pool**

The Formal Grievance Process relies on a pool of trained employees (“the Pool”) to carry out the process.

The list of Pool members and a description of the Pool can be found at [www.clarkson.edu/nondiscrimination](http://www.clarkson.edu/nondiscrimination).

#### **a. Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in informal resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

#### **b. Pool Member Appointment**

The Title IX Coordinator, in consultation with the President, appoints the Pool, which acts with independence and impartiality. While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, Clarkson University can also designate more limited roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

#### **c. Pool Member Training**

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of Clarkson University’s Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and fundamental fairness
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- The effects of trauma
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by Clarkson University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- The rights of the Respondent, including the right to a presumption that the Respondent is "not responsible" until a finding of responsibility is made pursuant to this Policy
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

Specific training is also provided for Investigators, Appeal Decision-makers, intake personnel, Advisors (who are Clarkson University employees), and Panel Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: [[www.clarkson.edu/nondiscrimination](http://www.clarkson.edu/nondiscrimination)].

#### **d. Pool Membership**

The Pool includes:

- 2 chairs
- 3 or more members of the administration/staff
- 2 representatives from Human Resources
- 2 faculty members

### **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator or designee will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Clarkson University presumes the Respondent is not responsible for the reported misconduct unless and until a determination is made under the Formal Grievance Process,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- Information about the privacy of the process,
- Detail on how the party may request disability accommodations during the interview process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Clarkson University records, or emailed to the parties' Clarkson University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9. Resolution Timeline**

Clarkson University will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

## **10. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

## **11. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the President's Office.



The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Clarkson University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

## **12. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Clarkson University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

## **13. Delays in the Investigation Process and Interactions with Law Enforcement**

Clarkson University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation (which shall not exceed ten days unless the law enforcement authority specifically requests a justifies a longer delay), the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

Clarkson University will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. Clarkson University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Clarkson University will implement supportive measures as deemed appropriate.

Clarkson University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **14. Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties

- Meet with the Complainant to finalize their interview/statement, if necessary
- May prepare the initial Notice of Investigation and Allegation (NOIA) for the Title IX Coordinator. The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) access to a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which Clarkson University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors for review and (if desired) response, through secure electronic transmission or file sharing platform or hard copy at least ten (10) business days prior to a hearing.

### **15. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of Clarkson University are expected to cooperate with and participate in Clarkson University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. Clarkson University will take reasonable appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if

deemed appropriate by the Investigator(s), though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

## **16. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

## **17. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) irrelevant incidents not directly related to the possible violation; or 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

## **18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker[s] from the Pool depending on whether the Respondent is an employee or a student. Allegations involving student-employees will be directed to the appropriate Decision-maker depending on the context of the alleged misconduct.

## **19. Hearing Decision-maker Composition**

Clarkson University will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

## **20. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) irrelevant incidents not directly related to the possible violation; or 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the

Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

## **21. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the **Chair** may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask the other party and/or any witnesses. The party must notify the Title IX Coordinator if they do not have an Advisor, and Clarkson University will appoint one. Each party must have an Advisor present. There are no exceptions.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- 

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by Clarkson University and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

## **22. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

## **23. Pre-Hearing Preparation**

The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of witnesses or evidence newly offered at the hearing, the Chair will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than one day prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

## **24. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties and their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

## **25. Hearing Procedures**

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or two (2) organizational representatives when an organization is the Respondent<sup>10</sup>), Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and the witness will then be excused.

## **26. Joint Hearings**

The Title IX Coordinator may determine that investigations and/or hearings where the allegations arise out of the same set of facts should be consolidated. Instances where consolidation may occur include but are not limited to cross-complaints filed by the parties against each other, multiple complaints by a single Complainant against a Respondent, or multiple complaints by a single Complainant against multiple Respondents. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

## **27. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of

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<sup>10</sup> Subject to Clarkson University's organizational conduct policies..

parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

## **28. Investigator Presents the Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

## **29. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors ("cross-examination").

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

## **30. Refusal to Submit to Cross-Examination and Inferences**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from

admission. Similarly, statements can be relied upon when questions are posed by the Decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, as to those allegations the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with Clarkson University's established rules of decorum for the hearing, Clarkson University may require the party to use a different Advisor. If a Clarkson University-provided Advisor refuses to comply with the rules of decorum, Clarkson University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **31. Recording Hearings**

Hearings (but not deliberations) are recorded by Clarkson University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of Clarkson University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **32. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by the appropriate administrator and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.

This report must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **33. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The



Notice of Outcome may be reviewed by legal counsel. The Title IX Coordinator will then share the Notice of Outcome with the parties and their Advisors.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Clarkson University records, or emailed to the parties' Clarkson University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Clarkson University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent Clarkson University is permitted to share such information under state or federal law; any sanctions issued which Clarkson University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Clarkson University's educational or employment program or activity, to the extent Clarkson University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by Clarkson University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **34. Statement of the Rights of the Parties**

All students in cases involving allegations of sexual assault, domestic or dating violence or stalking have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the University;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the University courteous, fair and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few University representatives as practicable and not be required to unnecessarily repeat a description of the incident;

8. Be protected from retaliation by the Institution, any student, the accused and/or the responding party, and/or their friends, family and acquaintances within the jurisdiction of the Institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or responding party throughout the judicial or conduct process including during all meetings and hearings related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the Institution.

Anyone reporting an incident of sexual assault, domestic or dating violence or stalking has the right to:

1. Notify Campus Safety, Local Law Enforcement or the New York State Police.
2. Emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual and who can provide information, including:
  - a. Options to proceed, including the right to make a report to Campus Safety (reports to Campus Safety are reported to the Title IX Coordinator), Local Law Enforcement, and/or the New York State Police or choose not to report; to report the incident to the University; to be protected by the University from retaliation for reporting an incident; and to receive assistance and resources from the University, as set out in Clarkson University Policy
  - b. Where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible;
  - c. That the criminal justice process utilizes different standards of proof and evidence than the University's policy and procedures and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney;
  - d. Whether the person they are reporting to is authorized to offer confidentiality or privacy,
  - e. and any other reporting options.
3. If they are a student, to contact the University's Health and Counseling Center, where they may be offered confidential resources pursuant to applicable laws and can be assisted in obtaining services for reporting individuals; or to contact non-University confidential resources, including the New York State Office of Victim Services at 1-800-247-8035 or <https://ovs.ny.gov>.
4. Disclose confidentially the incident and obtain services from the state or local government;
5. Disclose the incident to the University's Officials with Authority who can offer privacy or, in appropriate cases determined by the Title IX Coordinator, confidentiality, and can assist in obtaining resources for reporting individuals;
6. File a report of sexual assault, domestic violence, dating violence, and/or stalking and consult the Title IX Coordinator and other appropriate University personnel for information and assistance. Reports shall be investigated in accordance with University policy. A reporting individual's identity shall remain private if that is what the reporting individual wishes, however privacy is not the same as confidentiality and private information can be shared as necessary to implement and fulfill the University's obligations under the law and its policies and procedures;
7. Disclose, if the accused is a University employee, the incident to Human Resources or to request that a confidential employee assist in reporting to Human Resources;
8. Receive assistance from appropriate University representatives if interested in initiating legal proceedings in family court or civil court, such assistance to consist of facilitation in contacting appropriate local agencies who can provide direct assistance with court proceedings.

9. Withdraw a complaint or involvement from the University processes at any time, with the understanding that in appropriate cases, the University may nonetheless be required to proceed even if the reporting individual does not wish to do so.

### **35. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

#### **a. Student Sanctions**

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Clarkson University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either Clarkson University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Clarkson University.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Clarkson University-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma*: Clarkson University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: Clarkson University reserves the right to revoke a degree previously awarded from Clarkson University for fraud, misrepresentation, and/or other violation of Clarkson University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including Clarkson

University registration) for a specified period of time.

- *Other Actions:* In addition to or in place of the above sanctions, Clarkson University may assign any other sanctions as deemed appropriate.

For those crimes of violence that the University is required by federal law to include in its Annual Security Report, the transcripts of suspended or expelled students found responsible after a hearing and appeal, if any, shall include the notation “Suspended after a finding of responsibility for a code of conduct violation” or “Expelled after a finding of responsibility for a code of conduct violation”. Transcript notations for suspensions imposed under this policy may be removed at the discretion of the registrar in consultation with the Title IX Coordinator, but no earlier than one year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed.

## **b. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, Clarkson University may assign any other sanctions as deemed appropriate.

## **36. Withdrawal or Resignation While Charges Pending**

Students: If a student has an allegation pending for violation of the Policy on Equal Opportunity, Harassment, and Nondiscrimination, Clarkson University may place a hold on a student’s ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Clarkson University, the resolution process ends, as Clarkson University no longer has disciplinary jurisdiction over the withdrawn student. If a student withdraws while subject to a complaint, investigation or charges based upon alleged conduct constituting a crime of violence that the University is required by federal law to include in its Annual Security Report, the transcript of the student shall include the notation “Withdrew with conduct charges pending.”

However, Clarkson University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to Clarkson University. Such exclusion applies to all campuses of Clarkson University. A hold will be placed on their ability to be readmitted. They may also be barred from Clarkson University property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Clarkson University unless and until all sanctions have been satisfied.

During the resolution process, Clarkson University may put a hold on a responding student’s transcript or place a

notation on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Clarkson University no longer has disciplinary jurisdiction over the resigned employee.

However, Clarkson University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Clarkson University or any campus of Clarkson University, and the records retained by the Title IX Coordinator will reflect that status.

### **37. Appeals**

Any party may file a request for appeal of a decision to dismiss a complaint or specific allegations in a complaint, or the result of the hearing process ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within 3 days of the delivery of notification of the dismissal or the Notice of Outcome.

No Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

#### **a. Grounds for Appeal**

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter; and/or
- (D) Any sanction imposed is disproportionate to the nature or severity of the violation or violations or otherwise inappropriate.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Chair will render a decision.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which Clarkson University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Clarkson University is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' Clarkson University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

### **b. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are normally stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

Clarkson University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included suspension or expulsion.

### **c. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- In rare cases where a procedural error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- In cases in which the appeal results in reinstatement to Clarkson University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.
- Once an appeal is concluded no further appeals are allowed, except to the extent that one or more parties seek review of proceedings ordered by the appellate panel on remand.

### **38. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation or accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies to the Respondent to prevent effective denial of educational access.

Clarkson University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Clarkson University's ability to provide these services.

### **39. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Clarkson University and may be noted on a student's official transcript.

## **Process B [Non-Title IX] RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION**

Clarkson University will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination that is received by the Title IX Coordinator<sup>11</sup> or appropriate Official with Authority or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

The procedures described below apply to allegations of harassment or discrimination on the basis of protected class status involving students, staff, faculty members, or third parties, other than Title IX qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above), which will be addressed using "Process A."

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty, and staff Codes and Manuals.

### **1. Initial Assessment**

Following intake, receipt of notice, or a complaint of an alleged violation of Clarkson University's policy on Equal Opportunity, Harassment and Nondiscrimination, the Title IX Coordinator or appropriate Official with Authority<sup>12</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- The Title IX Coordinator or appropriate Official with Authority will review the notice and determine if it falls within the policy. If it does not fall within the jurisdiction of this policy, they will refer the concerns to the appropriate process.
- The Title IX Coordinator or appropriate Official with Authority reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator or appropriate Official with Authority works with the Complainant to ensure they have an Advisor.
- The Title IX Coordinator or appropriate Official with Authority works with the Complainant to determine whether the Complainant prefers a supportive response or an Administrative Resolution.
  - o If a supportive and remedial response is preferred, the Title IX Coordinator or appropriate Official with Authority works with the Complainant to identify their wishes and then seeks to facilitate implementation. The Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
  - o If an Informal Resolution option is preferred, the Title IX Coordinator or appropriate Official with Authority assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - o If Administrative Resolution is preferred, the Title IX Coordinator or appropriate Official with Authority initiates the investigation process and determines whether the scope of the investigation will address:
    - Incident, and/or
    - A potential pattern of misconduct, and/or

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<sup>11</sup> All references herein to a Title IX Coordinator also include a designee of the Title IX Coordinator.

<sup>12</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.



- A culture/climate issue.

- **Violence Risk Assessment**

In some cases, the Official with Authority may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavioral Intervention Team (BIT) as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer institution about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning and/or Persona-non-grata order is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Behavioral Intervention Team (BIT)/CARE team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the BIT or threat assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate (where requested) may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

- an appraisal of **risk factors** that escalate the potential for violence;
- a determination of **stabilizing influences** that reduce the risk of violence;
- a contextual **analysis of violence risk** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
- the application of **intervention and management** approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the BIT. The BIT will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

Based on the initial assessment, Clarkson University will initiate one of two responses:

- Informal Resolution – typically used for less serious offenses and only when all parties agree to Alternate Resolution, or when the Respondent is willing to accept responsibility for violating policy. This can also include a remedies-only response.

- Administrative Resolution – investigation of policy violation(s) and recommended finding, subject to a determination by the Decision-maker and the opportunity to appeal to an Appeal Decision-maker.

The investigation and the subsequent Administrative Resolution determine whether the policy has been violated. If so, Clarkson University will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator or appropriate Official with Authority. At any point during the initial assessment or formal investigation, if the Title IX Coordinator or appropriate Official with Authority determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

The Complainant may request that the Title IX Coordinator or appropriate Official with Authority review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator or appropriate Official with Authority, but the request is usually only granted in extraordinary circumstances.

## **2. Resolution Process Pool**

The resolution processes rely on a pool of officials (“Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this Policy to all students and, employees.

The list of members and a description of the Pool can be found at [www.Clarkson University.edu/nondiscrimination](http://www.Clarkson University.edu/nondiscrimination). Members of the Pool are trained annually in all aspects of the resolution process and can serve in any of the following roles, at the direction of the Title IX Coordinator or appropriate Official with Authority:

- To provide sensitive intake for and initial advice pertaining to the allegations
- To act as optional process Advisors to the parties
- To facilitate Informal Resolution
- To investigate allegations
- To serve as a Decision-maker
- To serve on an Appeal

The Title IX Coordinator, in consultation with the President, carefully vets Pool members for potential conflicts of interest or disqualifying biases and appoints the Pool, which acts with independence and impartiality.

Pool members receive annual training organized by the Title IX Coordinator or appropriate Official with Authority, including a review of Clarkson University policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.

The Pool members receive annual training specific to their role. This training includes, but is not limited to:

- The scope of Clarkson University’s Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process

- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- The effects of trauma
- Types of evidence
- Deliberation
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by Clarkson University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- The rights of the Respondent, including the right to a presumption that the Respondent is "not responsible" until a finding of responsibility is made pursuant to this Policy
- Any technology to be used
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations

Specific training is also provided for Appeal Decision-makers, intake personnel, and Advisors. All Pool members are required to attend this annual training.

The Resolution Process Pool includes:

- 2 or more Co-chairs: one representative from HR and one from Student Life, etc., who are *ex officio* members and who respectively chair Appeal Panel hearings for allegations involving student and employee Respondents
- At least 1 member of the Academic Affairs administration
- At least 2 members of the administration/staff
- At least 2 representatives from Human Resources

Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

### **3. Counterclaims**

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. Clarkson University is obligated to ensure that any process is not abused for retaliatory purposes.

Clarkson University permits the filing of counterclaims, but uses the initial assessment, described above, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation.

A delay in the processing of counterclaims is permitted. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator or appropriate Official with Authority. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

### **4. Advisors**

#### **a. Expectations of an Advisor**

Clarkson University generally expects an Advisor to adjust their schedule to allow them to attend Clarkson University meetings when planned, but Clarkson University may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Clarkson University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

Parties whose Advisors are disruptive or who do not abide by Clarkson University policies and procedures may face the loss of that Advisor and/or possible Policy violations.

Advisors are expected to consult with their advisees without disrupting Clarkson University meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

#### **b. Expectations of the Parties with Respect to Advisors**

Each party may choose an Advisor who is eligible and available<sup>13</sup> to accompany them throughout the process. The Advisor can be anyone but should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The use of an attorney as an advisor is limited to cases involving sexual assault, domestic violence, dating violence and stalking.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Investigator(s) and/or the Title IX Coordinator or appropriate Official with Authority if they change Advisors at any time.

Upon a written request of a party, Clarkson University will copy the Advisor on communications between Clarkson University and the party. The Advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

At the discretion of the Title IX Coordinator, more than one Advisor may be permitted to the parties, upon request. For equity purposes, if one party is allowed another Advisor, the other party must be allowed one to as well.

#### **c. Assistance in Securing an Advisor**

Clarkson University does train a pool of Advisors for parties. The Title IX Coordinator will furnish names to the parties if needed.

### **5. Resolution Options**

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with Clarkson University Policy.

While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose, but are encouraged to discuss with their Advisors first before doing so.

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<sup>13</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

### **a. Informal Resolution**

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternate Resolution, or when the Respondent accepts responsibility for violating policy, or when the Title IX Coordinator or appropriate Official with Authority can resolve the matter informally by providing remedies to resolve the situation.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the fact, Administrative Resolution may be pursued.

#### **i. Alternate Resolution**

Alternate Resolution is an informal process, such as mediation or restorative practices, by which a mutually agreed upon resolution of an allegation is reached. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts. The parties must consent to the use of Alternate Resolution.

The Title IX Coordinator or appropriate Official with Authority determines if Alternate Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternate Resolution.

In an Alternate Resolution meeting, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. Institutionally-imposed sanctions are not possible as the result of an Alternate Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies.

The Title IX Coordinator or appropriate Official with Authority maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

The results of Alternate Resolution are not appealable.

#### **ii. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator or appropriate Official with Authority makes a determination that the individual is in violation of Clarkson University Policy.

The Title IX Coordinator or appropriate Official with Authority then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator or appropriate Official with Authority or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator or appropriate Official with Authority has determined appropriate sanction(s) or responsive actions, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties are still able to seek Alternate Resolution on the remaining allegations, subject to the stipulations above.

#### **iii. Negotiated Resolution**

The Title IX Coordinator or appropriate Official with Authority, with the consent of the parties, may negotiate and implement any agreement to resolve the allegations that satisfies all parties and Clarkson University.

**b. Administrative Resolution**

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by the Equal Opportunity, Harassment, and Nondiscrimination Policy at any time during the process. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If Administrative Resolution is initiated, the Title IX Coordinator or appropriate Official with Authority will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given at least 48 hours in advance of an interview. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, including the specific rule(s) alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the Respondent based upon the outcome of the process. This notification will be made in writing, and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Clarkson University records, or emailed to the parties' Clarkson University-issued or designated email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Clarkson University aims to complete all investigations within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator or appropriate Official with Authority, with notice to the parties as appropriate.

Once the decision is made to commence an investigation, the Title IX Coordinator or appropriate Official with Authority appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) days of determining that an investigation should proceed.

The Title IX Coordinator or appropriate Official with Authority will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator or appropriate Official with Authority will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator or appropriate Official with Authority, concerns should be raised with the President's Office.

Investigations are completed expeditiously, normally within 30-45 business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Clarkson University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

Clarkson University may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke Clarkson University's resolution process are being investigated by law enforcement. Such delays will not exceed ten days, unless the law enforcement authority specifically requests and justifies a longer delay. Clarkson University will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete.

Clarkson University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, though the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

## **6. Investigation**

The Investigators typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Assist the Title IX Coordinator or appropriate Official with Authority with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
- If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Meet with the Complainant to finalize their statement, if necessary
- May prepare the initial Notice of Investigation and Allegation (NOIA) for the Title IX Coordinator on the basis of the initial assessment. Potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties.
- Notice should inform the parties of their right to have the assistance of a Pool member as a process Advisor appointed by Clarkson University or other Advisor of their choosing present for all meetings attended by the advisee
- When formal notice is being given, it should provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- Give an instruction to the parties to preserve any evidence that is directly related to the allegations
- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Write a comprehensive investigation report fully summarizing the investigation and all evidence
- Provide each party with a full and fair opportunity to respond to the report in writing within 7 days and incorporate that response into the report
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop
- Share the report with the Title IX Coordinator and/or legal counsel for review and feedback.
- Provide the final report to the Title IX Coordinator or appropriate Official with Authority.
- Gather, assess, and synthesize evidence without making a finding, conclusion, determination or recommendation.

## **7. Determination**

After receiving the Investigator’s recommendation, the Title IX Coordinator or appropriate Official with Authority or a trained, designated Decision-maker from the Pool<sup>14</sup> reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the Title IX Coordinator or appropriate Official with Authority/Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The Title IX Coordinator or appropriate Official with Authority or Decision-maker may invite and consider impact statements from the parties if and when determining appropriate sanction(s),if any.

The Title IX Coordinator or appropriate Official with Authority then timely provides the parties with a written Notice of Outcome to include findings, any sanction(s), and a detailed rationale, delivered simultaneously (without undue delay) to the parties

## **8. Additional Details of the Investigation Process**

### **a. Witness responsibilities**

Witnesses (as distinguished from the parties) who are faculty or staff of Clarkson University are expected to cooperate with and participate in Clarkson University’s investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.

### **b. Remote processes**

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) or Decision-maker determine that timeliness or efficiency dictates a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. Where remote technologies are used, Clarkson University makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

### **c. Recording**

No unauthorized audio or video recording of any kind is permitted during the resolution process. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

### **d. Evidence**

Any evidence that is relevant and credible may be considered, including an individual’s prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

### **e. History/Patterns**

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<sup>14</sup> When the Title IX Coordinator is the Investigator or has been heavily involved in the process prior to determination, a Decision-maker should be designated from the Pool to ensure there is no conflict of interest.



Unless the Title IX Coordinator or appropriate Official with Authority determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the sexual history of a party unless offered by that party (though there may be a limited exception made with regard to the sexual history between the parties); (3) the character of the parties; or (4) the mental health diagnosis or treatment of a party unless offered by that party.

#### **f. Previous allegations/violations**

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator or appropriate Official with Authority with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

#### **g. Character witnesses**

Neither the Title IX Coordinator or appropriate Official with Authority nor the Investigator(s) meet with character witnesses, but the Investigator(s) may accept up to two (2) letters supporting the character of each of the parties. Such letters must be provided to the Investigator(s) prior to the report being finalized; otherwise, the parties have waived their right to provide such letters.

#### **h. Notification of outcome**

If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator or appropriate Official with Authority in consultation with other administrators as appropriate determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively to stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Title IX Coordinator or appropriate Official with Authority informs the parties of the determination, ideally simultaneously, but without significant time delay between notifications. Notifications are made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official Clarkson University records; or emailed to the parties' Clarkson University-issued or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which are appropriate to share (including those that must be shared pursuant to state or federal law), and the rationale supporting the essential findings which are appropriate to share (including those that must be shared under state or federal law).

The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found in section 11 below.

### **9. Sanctions**

Factors considered when determining any sanction(s)/responsive action(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Title IX Coordinator

The sanction(s) will be implemented as soon as is feasible. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

#### **a. Student Sanctions**

The following are the sanctions that may be imposed upon students or student organizations singly or in combination:

- o *Warning*: A formal statement that the behavior was unacceptable and a warning that further infractions of any Clarkson University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- o *Probation*: A written reprimand for violation of Clarkson University Policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any Clarkson University policy, procedure or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, training, restorative requirements, and/or other measures deemed appropriate.
- o *Suspension*: Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Clarkson University. At the discretion of the Title IX Coordinator or appropriate Official with Authority, this sanction may be noted as a Disciplinary Suspension on the student's official transcript.
- o *Expulsion*: Permanent termination of student status, revocation of rights to be on campus for any reason or attend Clarkson University-sponsored events. This sanction will be noted as a Conduct Expulsion on the student's official transcript.
- o *Withholding Diploma and/or Official Transcripts*: Clarkson University may withhold a student's diploma and/or official transcripts for a specified period of time, and/or deny a student participation in commencement activities, if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.
- o *Revocation of Degree*: Clarkson University reserves the right to revoke a degree previously awarded from Clarkson University for fraud, misrepresentation, or other violation of Clarkson University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- o *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including Clarkson University registration), for a specified period of time.
- o *Other Actions*: In addition to or in place of the above sanctions, Clarkson University may assign any other sanctions as deemed appropriate.

For those crimes of violence that the University is required by federal law to include in its Annual Security Report, the transcripts of suspended or expelled students found responsible after a hearing and appeal, if any, shall include the notation "Suspended after a finding of responsibility for a code of conduct violation" or "Expelled after a finding of responsibility for a code of conduct violation". Transcript notations for suspensions imposed under this policy may be

removed at the discretion of the registrar in consultation with the Title IX Coordinator, but no earlier than one year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed.

## **b. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, **Clarkson University** may assign any other sanctions as deemed appropriate.

## **10. Withdrawal or Resignation While Charges are Pending**

Students: Clarkson University may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed. If they withdraw, a transcript notation may be necessary to indicate they withdrew during an investigation.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator or appropriate Official with Authority will reflect that status.

## **11. Appeals**

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator or appropriate Official with Authority within 3 business days of the delivery of the written finding of the Title IX Coordinator or Decision-maker. Any party may appeal the findings only under the grounds described below.

A [three-member appeals panel chosen from the Pool will be designated by the Title IX Coordinator appropriate Official with Authority from those who have not been involved in the process previously. One member of the Appeal Panel will be designated as the Chair. Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the matter (e.g., substantiated bias, material deviation from established procedures).
- To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- Any sanction imposed is disproportionate to the nature or severity of the violation or violations or otherwise inappropriate

When any party requests an appeal, the Title IX Coordinator or appropriate Official with Authority will share the appeal request with the other party(ies) or other appropriate persons such as the Investigator(s), who may file a response within three (3) business days. The other party may also bring their own appeal on separate grounds.

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within 5 business days. These responses or appeal requests will be shared with each party. The Appeal Chair/Panel will review the appeal request(s) within 5 business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the appeal Chair dismisses the appeal.

When the appeal Chair/panel finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Appeal Chair/Panel are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Appeal Chair/Panel to substitute their judgment for that of the original Investigator(s) or Decision-maker merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) or Decision-maker for reconsideration. Other appeals should be remanded at the discretion of the Appeal Chair/Panel.
- Sanctions imposed as the result of Administrative Resolution are implemented immediately unless the Title IX Coordinator appropriate Official with Authority stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - o For students: Graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.
- In rare cases when a procedural error cannot be cured by the original Investigator(s) and/or Title IX Coordinator/Decision-maker (as in cases of bias), the Appeal Chair/Panel may recommend a new investigation and/or Administrative Resolution process, including a new resolution administrator.
- In cases in which the appeal results in Respondent's reinstatement to Clarkson University or resumption of privileges, reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.
- Once an appeal is concluded no further appeals are allowed, except to the extent that one or more parties seek review of proceedings ordered by the appellate panel on remand.

## **12. Long-Term Remedies/Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator or appropriate Official with Authority may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program

- Education to the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator or appropriate Official with Authority in , long-term remedies may also be provided to the Complainant even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator or appropriate Official with Authority will address any remedial requirements owed by Clarkson University to the Respondent.

### **13. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator or appropriate Official with Authority .

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from Clarkson University and may be noted on a student’s official transcript.

### **15. Statement of the Rights of the Parties**

All students in cases involving allegations of sexual assault, domestic or dating violence or stalking have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the University;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the University courteous, fair and respectful health care and counseling services, where available;
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few University representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the Institution, any student, the accused and/or the responding party, and/or their friends, family and acquaintances within the jurisdiction of

the Institution;

- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or responding party throughout the judicial or conduct process including during all meetings and hearings related to such process;
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the Institution.

Anyone reporting an incident of sexual assault, domestic or dating violence or stalking has the right to:

- Notify Campus Safety, Local Law Enforcement or the New York State Police.
- Emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual and who can provide information, including:
  - Options to proceed, including the right to make a report to Campus Safety (reports to Campus Safety are reported to the Title IX Coordinator), Local Law Enforcement, and/or the New York State Police or choose not to report; to report the incident to the University; to be protected by the University from retaliation for reporting an incident; and to receive assistance and resources from the University, as set out in Clarkson University Policy
  - Where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible;
  - That the criminal justice process utilizes different standards of proof and evidence than the University's policy and procedures and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney;
  - Whether the person they are reporting to is authorized to offer confidentiality or privacy,
  - and any other reporting options.
- If they are a student, to contact the University's Health and Counseling Center, where they may be offered confidential resources pursuant to applicable laws and can be assisted in obtaining services for reporting individuals; or to contact non-University confidential resources, including the New York State Office of Victim Services at 1-800-247-8035 or <https://ovs.ny.gov>.
- Disclose confidentially the incident and obtain services from the state or local government;
- Disclose the incident to the University's Officials with Authority who can offer privacy or, in appropriate cases determined by the Title IX Coordinator, confidentiality, and can assist in obtaining resources for reporting individuals;
- File a report of sexual assault, domestic violence, dating violence, and/or stalking and consult the Title IX Coordinator and other appropriate University personnel for information and assistance. Reports shall be investigated in accordance with University policy. A reporting individual's identity shall remain private if that is what the reporting individual wishes, however privacy is not the same as confidentiality and private information can be shared as necessary to implement and fulfill the University's obligations under the law and its policies and procedures;
- Disclose, if the accused is a University employee, the incident to Human Resources or to request that a confidential employee assist in reporting to Human Resources;
- Receive assistance from appropriate University representatives if interested in initiating legal proceedings in family court or civil court, such assistance to consist of facilitation in contacting appropriate local agencies who can provide direct assistance with court proceedings.
- Withdraw a complaint or involvement from the University processes at any time, with the understanding that in appropriate cases, the University may nonetheless be required to proceed even if the reporting individual does not wish to do so.

**The policy and procedures are effective August 14, 2020.**