

## University Policy Number 200.29

### POLICY ON SEXUAL MISCONDUCT AND HARASSMENT

**Responsible Administrator:** Vice President of Administration

**Responsible Office:** Office of Human Resources

**Originally Issued:** August 2014

**Revision Date:** July 2018

**Authority:** Office of the President

#### I. POLICY STATEMENT

Claflin University is committed to providing a safe and healthy educational and workplace environment for all members of the University community. One of the University's guiding principles is its "Commitment to Valuing People." All students and employees have a right to be treated with dignity and respect; these rights extend to classrooms, work places, residences, and the University environment. Accordingly, Claflin University prohibits discrimination, harassment, bullying, stalking, sexual harassment, sexual misconduct, or any other victimization of individuals based on actual or perceived traits or characteristics, including sex, age, race, religion, national origin, sexual orientation, gender identity, and disability. This document outlines Claflin University's ("the University") policy regarding sex discrimination as prohibited by Title IX of the Education Amendments of 1972, including sexual harassment and sexual misconduct.

This Policy also prohibits retaliation against any person who has filed a complaint of harassment and/or sexual misconduct or who has assisted or participated in any manner in the investigation and/or resolution of a complaint.

The University is committed to protecting, maintaining, and encouraging both freedom of expression and full academic freedom of inquiry, teaching, service, and research. However, raising issues of academic freedom and freedom of expression will not excuse behavior that constitutes a violation of this Policy or the law.

Violation of this Policy can result in any disciplinary action that the University deems appropriate, see page 17.

#### II. STATEMENT OF PURPOSE

This Policy establishes guidelines for providing students and employees with an educational and/or workplace environment that is free from all forms of harassment and

sexual misconduct. The purposes of this Policy include:

- Defining harassment and sexual misconduct;
- Educating all students and employees on the different types of behavior that can be considered harassment or sexual misconduct;
- Explaining procedures for reporting incidents of harassment or sexual misconduct;
- Explaining the investigation process; and
- Identifying the types of disciplinary actions that may be imposed upon persons who violate this Policy.

### **III. APPLICABILITY**

This Policy is applicable to all sexual misconduct and harassment by and among all members of the University community, including all faculty, staff, temporary employees, students, customers, and other third parties within the University's control.

This Policy applies to harassment and sexual misconduct:

- a) on property within the jurisdiction of the University;
- b) in University-owned or University-operated vehicles;
- c) at University-sponsored activities;
- d) at other off-campus activities;
- e) that has an adverse impact on the education or employment of a member of the University community; or
- f) that otherwise threatens the health or safety of a member of the University community.

Harassment and sexual misconduct can be committed by both men and women, and can occur between people of the same or opposite sex, and can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship.

Note: Consensual relationships among members of the University community in which one party exercises academic or administrative authority over the other may be inappropriate because of a perception of power or influence. Any faculty member, teaching associate, or administrator or other staff member who engages in such relationships must accept responsibility for assuring that it does not result in a conflict of interest or raise other issues of professional ethics.

For matters involving discrimination based on pregnancy, pregnancy related conditions, and/or parenting status, please refer to University Policy No. 400.06: Title IX Policy on Pregnancy.

Unless otherwise stated, this Policy supersedes and applies in lieu of all other procedures and policies set forth in University documents.

#### IV. DEFINITIONS

Deputy Coordinator and Appeals Representative: Individual(s) designated by the President or designee with special responsibility to carry out the provisions of this Policy.

Coercion: Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of Sexual Contact or Sexual Intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

Consent: Defined as an affirmative agreement to engage in mutually acceptable sexual activity. Consent is given by clear words or actions and may not be inferred from silence, passivity, or lack of active resistance alone. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. A current or previous dating or sexual relationship is not sufficient to constitute consent. Conduct will be considered “without consent” if there is no clear consent, verbal or nonverbal. In some situations, an individual’s consent to sexual activity may be invalidated because of circumstance or the behavior of another. Examples of such situations include, but are not limited to: incompetence, incapacitation from alcohol and/or other drugs, fear, unconsciousness, intimidation, coercion, confinement, isolation, and mental or physical impairment.

Gender-based Discrimination: Defined as acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, but not involving sexual activity or sexual language. This can be combined with incidents of sexual harassment to determine if the incidents of sexual harassment are sufficiently serious to create a hostile work environment.

Incapacitation: Incapacitation results when an individual is at such a level of impairment such that she/he lacks the ability to consent to participation in sexual activity. An individual may be incapacitated as a result of the consumption of alcohol or drugs, or due to a temporary or permanent physical or mental condition. In evaluating consent in cases of alleged incapacitation, the University will ask two questions: (1) Did the person initiating sexual activity know that the other party was incapacitated? and if not, (2) Would a sober, reasonable person in the same situation have known that the other party was incapacitated? If the answer to either of these questions is “YES,” affirmative Consent was absent and the conduct is likely a violation of this Policy.

President or his or her designee: Administrator(s) with special responsibility to carry out the appeal provision of this Policy.

Responsible Employee: A Responsible Employee is a University employee who has the authority to redress sexual violence, who has the duty to report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty. See Section VII for more information on Responsible Employees.

Sexual Orientation: The actual or perceived sexual orientation or gender identity of the parties, including lesbian, gay, bisexual, transgender, and queer (LGBTQ), does not change the University's obligations under this Policy.

Title IX Coordinator: The Title IX Coordinator shall be responsible for monitoring compliance with all aspects of this Policy. Accordingly, the Title IX Coordinator must be informed of all reports and complaints raising Title IX issues (subject to the exception for mental-health counselors described in Section IX-A), even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. Shirley Biggs is the Title IX Coordinator/Senior Director of Human Resources for the University. See Sections VII, VIII, and IX of this Policy for details regarding the Title IX Coordinator's duties.

Shirley Biggs  
Title IX Coordinator/Senior Director of Human Resources  
Telephone: (803) 535-5268  
E-Mail: [confidential@claflin.edu](mailto:confidential@claflin.edu)  
Address: 400 Magnolia St., Orangeburg, SC 29115  
Tingley Hall, Floor 1, Suite 4

University Community: Includes all faculty, adjunct faculty, persons engaged in research, teaching assistants, administrators, staff, students, and persons who conduct business with the University but are not employees.

Unwelcome Conduct: Conduct is unwelcome if the individual does not request or invite it and regards the conduct as undesirable or offensive.

## V. RELEVANT FEDERAL LAWS

The University complies with all applicable laws, federal regulations, and other requirements, including those set forth below:

### A. Title IX of the Education Amendments of 1972

Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities.

The law provides that "[n]o person in the United States shall, on the basis of sex, be

excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." *Title IX of the Education Amendments of 1972*, 20 U.S.C. § 1681, et seq.

The U.S. Department of Education's Office for Civil Rights mandates that schools take "prompt and effective action to end harassment and prevent its recurrence."

Title IX protects all students at recipient institutions in the United States regardless of national origin, immigration status, or citizenship status.

### **C. Title VII of the Civil Rights Act of 1964**

Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination based on sex, race, color, religion, or national origin. Accordingly, harassment of an employee on the basis of sex violates this federal law. In the event of a complaint of sexual harassment or sexual misconduct, whether in the academic or employment setting, the University will investigate the complaint pursuant to the Title IX reporting procedures set forth below.

### **D. The Violence against Women Reauthorization Act (VAWA) of 2013**

VAWA prohibits sexual assault, domestic violence, dating violence, and stalking. This federal legislation is sometimes referred to as the Campus Sexual Violence Elimination (SaVE) Act.

### **E. The Clery Act**

The Clery Act, 20 U.S. Code § 1092(f), requires all colleges and universities that participate in federal financial aid programs to collect and disclose certain information about crime on or near their campuses, including sex offenses.

### **F. Family Educational Rights and Privacy Act (FERPA)**

FERPA protects the privacy of student educational records. FERPA is designed to ensure that students (and parents of students under the age of 18) may obtain access to the student's educational records and challenge the content or release of such records to third parties.

## **VI. PROHIBITED CONDUCT**

### **A. Sexual Harassment**

The University prohibits sexual harassment, defined as any unwelcome conduct of a sexual nature. This includes unwelcome sexual advances, requests for sexual favors,

unwelcome verbal or other expressive behaviors, or physical conduct commonly understood to be of a sexual nature.

This Policy covers sexual harassment by and among all members of the University community, including faculty, staff, and students. The prohibited harassment may arise between employment supervisors and subordinates, between instructors and students, between peers, or between any of the foregoing persons and persons who do business with the University.

Consensual relationships among members of the University community in which one party exercises academic or administrative authority over the other may be inappropriate because of a perception of power or influence. Any faculty member, teaching associate, or administrative or athletic staff member who engages in such relationships must accept responsibility for assuring that it does not result in a conflict of interest or raise other issues of professional ethics.

**Sexual harassment** includes, but is not limited to, the following:

- Intentional and unwelcome physical contact;
- Repeated unwelcome sexually oriented conversations or comments, including jokes or anecdotes of a sexual nature, and sexually degrading language, including unwelcome or insulting sounds or whistles, and obscene telephone calls, emails, social media posts, or texts;
- Sexually explicit language or writings, including the content of text messages and emails;
- Display of sexually demeaning and suggestive objects, pictures, videotapes, audio recordings, computer communications, or literature placed in the work or study area. (Note: Materials with sexual content that are used or displayed in an educational setting must be related to educational purposes);
- Displaying or electronically transmitting lewd pictures;
- Threats that an individual's conditions of employment or academic life may be adversely affected by refusing to submit to sexual advances;
- Promises, implied or expressed, of employment or academic benefits to a person who engages in sexual activities;
- Indecent exposure;
- Invasion of sexual privacy;
- Bullying; and
- Any other conduct which, when viewed from the perspective of a reasonable person, is sufficiently pervasive, severe, or persistent to alter the conditions of the individual's employment or status as a student and create a hostile working or learning environment.

## 1. Types of Harassment

*Quid pro quo* sexual harassment occurs when someone in a position of power over another in the work or educational environment conditions an educational or employment decision or benefit on an individual's submission to unwelcome sexual conduct.

**Hostile Environment** harassment occurs when unwelcome conduct of a sexual nature is so severe, persistent, or pervasive that it affects an individual's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, or abusive educational or work environment. The following are examples of factors that may be considered when determining whether conduct creates a hostile work environment:

- Whether the conduct unreasonably interfered with the alleged victim's educational or work performance;
- The type, frequency, and duration of the conduct;
- The identity of and relationship between the harasser and the subject or subjects of harassment;
- The number of individuals involved;
- The severity of the conduct; or
- Whether the conduct arose in the context of other discriminatory conduct, such as gender-based discrimination.

Note: A single incident that is sufficiently severe can create a hostile environment (for example, the rape of a student by a professor).

**Retaliatory** harassment refers to any adverse employment or educational action taken against an individual because of the individual's participation in a complaint or investigation of discrimination or sexual misconduct. Members of the University community shall not retaliate, threaten to retaliate, or attempt to cause retaliation against any person who:

- reasonably protests against sexual harassment practices within the University, or
- becomes involved in any capacity in the procedures established in this Policy.

### **B. Sexual Misconduct**

The University prohibits sexual misconduct, defined in this Policy as any act of a sexual nature perpetrated against an individual **without consent** or when an individual is unable to give consent, including rape, sexual assault, and sexual harassment. These acts may or may not be accompanied by the use of coercion, intimidation, or advantage gained by the use of alcohol and/or other drugs.

Sexual misconduct includes, but is not limited to:

- Offensive physical contact such as unwelcome touching, fondling, patting, pinching, brushing the body, or obscene gestures;
- Continued or repeated verbal abuse of a sexual nature, such as suggestive comments and sexually explicit jokes;
- Sexually degrading language or remarks of a sexual nature used to describe a person's body or clothing;
- Coerced sexual intercourse;
- Verbal or physical conduct of a sexual nature made to any employee or student that may threaten or insinuate, either explicitly or implicitly, that an individual's submission to, or rejection of, sexual advances will in any way influence any personnel or academic decisions regarding that person; or
- Sexual harassment (See Section VI-A).

### 1. Categories of Sexual Misconduct:

**Non-Consensual Sexual Contact:** This Policy forbids all non-consensual sexual contact and any attempt to commit non-consensual sexual contact. Sexual Contact refers to any intentional sexual touching, however slight, with any object, without consent and/or by force, including:

- Intentional contact with the breast, buttock, groin, or genitals;
- Touching another with any of these body parts; and
- Making another touch you or themselves with or on any of these body parts.

**Non-Consensual Sexual Intercourse:** This Policy forbids all non-consensual sexual intercourse or attempts to commit non-consensual sexual intercourse. Non-Consensual Sexual Intercourse is defined as any sexual intercourse, however slight, with any object, without consent and/or by force, including:

- Vaginal penetration by a penis, object, tongue, or finger;
- Anal penetration by a penis, object, tongue, or finger; or
- Oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

**Sexual Exploitation:** Sexual Exploitation refers to any actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes that does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual video or audio-taping of sexual activity;
- Engaging in voyeurism;
- Knowingly transmitting a Sexually Transmitted Infection (STI) or Human Immunodeficiency Virus (HIV) to another person;
- Exposing one's genitals in non-consensual circumstances; or
- Sexually-based stalking and/or bullying.



## 2. Consent and the use of alcohol and/or other drugs

Being intoxicated does not diminish an individual's responsibility to obtain the consent of the other party before engaging in sexual activity. Being intoxicated or high is never an excuse for sexual misconduct.

### C. Other Misconduct

#### a. Harassment and Bullying

The University will not tolerate bullying on the basis of sex. Harassment and Bullying are defined as repeated unwelcome verbal or physical conduct, based on any actual or perceived trait or characteristic of the individual, such as sex, race, color, religion, sexual orientation, gender, gender identity, national origin, age, disability, status as a military veteran, or other protected class or activity, that has the purpose or effect of causing injury, discomfort, fear, or suffering to the victim, and unreasonably interferes with the person's work or educational performance or creates an intimidating or hostile work or educational environment. This includes, but is not limited to, comments, jokes, or slurs about race, color, national origin, sex, gender, gender identity, sexual orientation, or disability. For more information, see University Policy No. 400.03: Bullying Policy.

**This Policy prohibits sex-based harassment and bullying, including harassment based on gender, sexual orientation, and gender identity.**

**Cyber Bullying.** The University prohibits bullying in any form, including the use of electronic communication to bully an individual. "Electronic" means any communication involving the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. It includes, but is not limited to, communication via electronic mail, internet-based communications, pager service, cell phones, social media, messaging apps, and other electronic text messaging, as well as any invasion of privacy, such as the unauthorized electronic surveillance or videotaping of an individual without consent.

**Hazing.** Bullying may take the form of hazing, defined in this Policy and the University's Student Handbook as "participation in any act which is degrading or injurious, or in which another is held against his or her will, or which endangers the mental or physical health or safety of another." Such activities or situations include paddling in any form; branding; creation of excessive fatigue or physical or psychological shocks; quests, treasure hunts; scavenger hunts; road trips or any such activities; wearing publically apparel which is conspicuous and not normally in good taste; engaging in public stunts and buffoonery; morally degrading or humiliating games or activities; and alcohol or drug abuse.

## **b. Intimate Partner Violence**

Intimate Partner Violence includes any act of violence or threatened act of violence, including emotionally abusive behaviors, that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate Partner Violence may include any form of harassment or misconduct prohibited in this Policy, including sexual assault, stalking, and physical assault. Intimate Partner Violence includes “dating violence” and “domestic violence,” as defined by VAWA:

- **Dating Violence:** Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- **Domestic Violence:** Domestic Violence is defined as a felony or misdemeanor crime of violence committed (1) by a current or former spouse or intimate partner of the victim; (2) by a person with whom the victim shares a child in common; (3) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (4) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; (5) by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

## **c. Sexually-Based Intimidation**

Intimidation refers to the act of placing another person in reasonable fear of bodily harm and/or emotional distress through the use of threatening words, repeated and/or severe aggressive behavior, or other conduct, but without displaying a weapon or subjecting the person to a physical attack.

## **d. Stalking**

Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress.

Course of conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property. Substantial emotional distress means significant mental suffering or anguish.

Stalking includes “cyber-stalking,” a form of stalking in which a person uses electronic

media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of communication.

Examples of stalking include, but are not limited to:

- Following an individual;
- Approaching or confronting that individual in a public place or on private property;
- Appearing at the workplace or residence of the individual without invitation (unwelcome);
- Making threatening or obscene gestures;
- Repeated or continuing non-consensual communication, including personal telephone calls, voice messages, text messages, social media, electronic mail, written correspondence, unwanted gifts, etc.;
- Non-consensual touching;
- Trespassing;
- Vandalism; or
- Surveillance or other types of observation.

#### **e. Sexual Assault**

This Policy defines sexual assault as an intentional (attempted or intended) physical sexual act perpetrated against a person's will, including situations where a person is incapable of giving consent. Sexual assault may involve a person of either sex against a person of the opposite or same sex.

#### **f. Rape**

Rape is defined as any act of sexual intercourse that takes place against a person's will and that is accompanied by physical coercion or the threat of bodily injury. This includes the sexual penetration of any bodily orifice with a body part or other object. Rape also includes intercourse with a person who is unable to consent as a result of conditions including, but not limited to, those caused by the intake of alcohol or drugs, or because intellectual or other disability prevents the person from having the capacity to give consent.

#### **g. False Complaints**

Individuals who knowingly or recklessly file a false harassment complaint and/or give false statements in an investigation against another are in violation of this Policy. If, upon the conclusion of an investigation of any complaint regarding a violation of this Policy, the University learns that an individual has provided false information regarding the complaint or investigation, disciplinary action may be taken against that individual, up

to and including, termination of employment, expulsion or suspension, removal from campus, cancellation of contract, and any other appropriate institutional sanctions.

#### **h. Retaliation**

Retaliation is defined as conduct causing any interference, coercion, restraint, or reprisal against a person complaining of harassment or against a person assisting in any way in the investigation and resolution of a complaint.

### **VII. REPORTING PROCEDURES**

The University has instituted procedures for the proper handling and treatment of harassment and sexual misconduct allegations.

**Prompt reporting is encouraged.** It is the responsibility of students and employees to immediately report incidents of sexual misconduct and harassment. In order to best preserve evidence in cases of assault, campus police/law enforcement officials should be contacted as soon as possible after an assault has occurred. Preserving evidence may be necessary in proving criminal domestic violence, dating violence, sexual assault, stalking, or in obtaining a protection order.

#### **Who to contact:**

Students and employees who believe that they have been victims of sexual misconduct are encouraged to report the incident **immediately** to **Campus Public Safety** at (803) 535-5444 (24 hours a day, seven days a week) or to law enforcement by dialing 911.

**Students** should report any incident of harassment and/or sexual misconduct to any of the following Responsible Employees:

- Title IX Coordinator/Senior Director of Human Resources  
Telephone: 803-535-5268  
Email: confidential@claflin.edu  
Location: Human Resources Office  
Tingley Memorial Hall  
Floor 1, Suite 4
- Vice President for Student Development and Services  
Telephone: 803-535-5341  
Email: ldurant@claflin.edu Location: Calhoun-Downs Laymen Hall  
Room #107
- Administrators and other staff
- Resident Advisors
- Faculty

**Employees and other parties** should report all incidents of harassment and/or sexual

misconduct to Claflin University's Title IX Coordinator/Senior Director of Human Resources, Shirley Biggs.

Telephone: 803-535-5268  
Email: confidential@claflin.edu  
Location: Human Resources Office  
Tingley Memorial Hall  
Floor 1, Suite 4

Forms and procedures for reporting complaints of sexual misconduct, bullying, and/or harassment are available in the Office of the Vice President for Student Development and Services, the Office of Human Resources, and on the University's website at [www.Claflin.edu/Policies](http://www.Claflin.edu/Policies).

**Confidential Employees:** Professional licensed counselors and pastoral counselors who provide mental health counseling to members of the University community are not required to report any information without the victim's permission.

**Reporting Obligations of "Responsible Employees":** All faculty, staff, and administrators, and resident advisors are considered "Responsible Employees" pursuant to this Policy. When an individual tells a Responsible Employee about conduct that may constitute a violation of this Policy, the individual has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A responsible employee must report to the Title IX Coordinator all relevant details about the alleged policy violation shared by the individual, including the names of the victim and alleged perpetrator, any witnesses, and any other relevant facts, including the date, time, and specific location of the alleged incident.

**Anonymous Reporting:** Any member of the University community may report a violation of this policy by calling the school's reporting hotline, Ethics Point, toll free (seven days a week, 24 hours a day) at (877) 319-8243. Callers will speak with a live operator who will ask you questions and complete a report. Callers will also be able to provide further details as needed anonymously.

**Amnesty:** The University considers the reporting and investigation of sexual misconduct cases to be of paramount importance. While the University does not condone underage drinking or the use of illegal drugs, the University will extend amnesty to students from sanctioning in the case of alcohol and/or illegal drug use to victims and to those reporting incidents or assisting in investigations of sexual misconduct.

**Timing.** There is no time limit for reporting Prohibited Conduct to the University under this policy; however, the University's ability to respond may diminish over time, as evidence may erode, memories may fade, and Respondents may no longer be affiliated

with the University. If the Respondent is no longer a Student or an Employee, the University will provide reasonably appropriate remedial measures, assist the Complainant in identifying external reporting options, and take reasonable steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects

**Deputy Coordinators** are responsible for providing assistance with the investigation process. The Deputy Coordinators are:

- Vice President for Student Development and Services
- Director of Public Safety
- Assistant Athletic Director for Compliance
- Associate Professor of Mass Communications
- Library Director
- The Senior Employee Relations Generalist

In addition, individuals may also contact the **Office for Civil Rights (OCR)**:

U.S. Department of Education  
Office for Civil Rights  
Lyndon Baines Johnson Department of Education Bldg.  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

**Telephone:** 800-421-3481

**Fax:** 202-453-6012

**TDD:** 800-877-8339

**Email:** [OCR@ed.gov](mailto:OCR@ed.gov)

## **VIII. GRIEVANCE PROCEDURES**

Although Student and Faculty Handbooks outline the University's general grievance procedures for students and faculty, the University will implement the grievance procedures set forth in this Policy upon receiving a report of an alleged Title IX violation.

Note: Individuals have a right to file both a criminal complaint and a Title IX complaint simultaneously.

### **A. Informal Complaint Procedure**

An individual may elect to resolve the grievance informally. The goal of the Informal Complaint Procedure is to resolve concerns at the earliest stage possible with the cooperation of all the parties involved. This procedure includes, but is not limited to, discussions with the individual parties, referring the parties to counseling programs, conducting educational and training programs, and making other recommendations for

resolution.

Once an individual reports his or her allegations to the appropriate University personnel (as listed previously), the Title IX Coordinator shall assign a single or dual investigator to the case. The Investigator(s) will discuss the procedure with the complainant and have him or her describe the problem. The Investigator(s) will conduct a separate discussion with the accused to review the allegations. The information may be used to conduct a fact-finding investigation pursuant to Section IX of this Policy.

Resolution of complaints handled under the Informal Complaint Procedure shall be completed as soon as possible, and in most cases within thirty (30) calendar days of receipt of the complaint, unless valid extenuating circumstances occur. If a resolution cannot be completed within thirty (30) calendar days because of valid extenuating circumstances, the complainant will be notified and given a projected time for completion. If the complaint is resolved through the Informal Complaint Procedure, a written record of the allegations and the resolution will be retained in the Office of Human Resources, and the file will be closed.

If the Investigator(s) determines that a formal investigation is necessary, the complaint will be handled under the Formal Complaint Procedure described below.

## **B. Formal Complaint Procedure**

The Formal Complaint Procedure will be followed if the individual elects to skip the Informal Complaint Procedure and proceed directly under the Formal Complaint Procedure, or if the Informal Complaint Procedure is not successful or appropriate for addressing the allegations. For example, the University may determine that it is obligated to proceed under the Formal Complaint Procedure due to the seriousness or nature of the allegations, even if the individual making the complaint would prefer to proceed under the Informal Complaint Procedure.

The individual(s) accused of violating this Policy will be notified in writing as to which provision(s) of this Policy are alleged to have been violated.

An investigation will be conducted pursuant to Section IX of this Policy, and will include interviews with the parties, interviews with witnesses, and a review of the relevant documents. The investigation will be completed as promptly as possible, and in most cases within sixty (60) calendar days of the date the formal investigation procedure was initiated. If the investigation cannot be completed within sixty (60) calendar days because of extenuating circumstances, the parties will be notified and given a projected time of completion.

The Investigator(s) designated by the Title IX Coordinator shall weigh the evidence pursuant to the preponderance of the evidence evidentiary standard (i.e. more likely than

not that sexual violence occurred).

Upon conclusion of the investigation, the Investigator should submit a written report to the Title IX Coordinator or designee for approval. The report should include a statement of the allegations, the positions of the parties, a summary of the findings of fact, and a determination by the investigator as to whether this Policy has been violated. If all witnesses identified were not interviewed during the investigation, the report shall include a statement explaining why. Both parties shall have the opportunity to review the report in the Title IX Office (the Office of Human Resources). Either party may respond in writing, if they so choose, within five (5) days after the date the party reviews the report.

As soon as possible after receiving the written responses (if such responses are submitted) and in most cases within thirty calendar days of the conclusion of the investigation (unless valid extenuating circumstances occur), the Title IX Coordinator will inform the parties in writing (“Decision Letter”) as to whether any violations of this Policy were found. The complainant will be informed of any individual remedies and/or actions taken to resolve the complaint only if the actions are directly related to the complaint, such as a directive that the accused not contact the complainant. The accused should not be notified of the individual remedies offered or provided to the complainant.

### **C. Appeals of the Formal Complaint Procedure**

The complainant or the accused has a right to appeal a decision of the Formal Complaint Procedure. Appeals must be submitted in writing to the Office of the President of the University within seven (7) working days (excluding weekends and University holidays) after receipt of the final Decision Letter from the Title IX Coordinator. Decisions not appealed within such time are deemed final.

The President or designee will review the appeal and issue a written decision to all parties involved within thirty (30) calendar days after receipt of the written appeal. If additional information is needed, the President or designee reserves the right to remand the case for further investigation to supplement the report. This is the final step in the University’s Formal Complaint Procedure.

## **IX. INVESTIGATORY PROCESS**

Upon receiving a complaint, the University must complete a prompt, fair, and impartial investigation of the allegations.

Members of the University community shall cooperate to the fullest extent possible in any internal investigation conducted by the University. Members of the University community have the right to assert any testimonial and evidentiary privileges available by law.



In resolving complaints of sexual misconduct and harassment, the University will undergo a fact-finding investigation and decision making process to determine (1) whether the conduct occurred; and (2) if the conduct occurred, what disciplinary actions and/or remedial measures the University will take. The proper evidentiary standard for determining whether the conduct occurred is the preponderance-of-the-evidence standard (i.e. more likely than not that sexual misconduct occurred).

Both parties should have an equal opportunity to present witnesses and other evidence.

### **A. Confidentiality**

To the extent possible, the University will make every effort to maintain the privacy of all parties involved in alleged sexual misconduct and harassment complaints. However, confidentiality cannot be guaranteed because the University must also consider fairness to the individual accused as well as the safety and welfare of all members of the University community; these considerations may require the University to disclose the harassment allegation and the identity of the complainant to the accused or other University or law enforcement officials.

The Title IX Coordinator will evaluate the request for confidentiality in the context of the University's responsibility to provide a safe and nondiscriminatory environment for all members of the University Community.

**Counselors and Chaplains:** Some people, such as counselors or victim advocates, can talk with the complainant in confidence without triggering an investigation by the University. Professional, licensed counselors and pastoral counselors who provide mental-health counseling to members of the school community are not required to report any information about the incident to the Title IX Coordinator without a victim's permission. While these professional counselors and advocates may maintain the victim's confidentiality with University, they may have reporting or other obligations under state law.

### **B. Advisors.**

In cases involving allegations of domestic violence, dating violence, stalking, and/or sexual Assault, each party has the right to choose and consult with an advisor throughout the process. The advisor may be any person who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their respective advisors at any meeting related to the investigation. While the advisors may provide support and advice to the parties at the meeting, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings. If an advisor does not adhere to these or other applicable ground rules, the advisor will be dismissed from the applicable interview, proceeding, or meeting, which will continue without

opportunity for the advisee to secure a new advisor. Additionally, the University will determine its own schedule, and it is incumbent upon the reporting party and responding party to ensure their advisors are available. The schedule for interviews, appeals, or any meeting necessary will not be driven by advisor availability.

### C. Interim Measures Available

If appropriate, the University may take interim measures during the investigation designed to promote the safety and well-being of the parties, including, but not limited to:

- Restricting contact between the parties by issuing a “No Contact” Order;
- Providing an extension of time or other course-related adjustments;
- Modifying work or class schedules;
- Providing campus escort services;
- Changing work or housing locations;
- Offering leaves of absence;
- Increasing security and monitoring of certain areas of the campus.

Note: Appropriate applicable guidelines will be applied to students on a visa.

## X. DISCIPLINARY ACTIONS

Employees and students who violate this Policy are subject to appropriate discipline by the University. If an investigation results in a finding that this Policy has been violated, the mandatory minimum discipline is a written reprimand.

Upon the finding of a serious violation of this Policy, the University reserves the right to take disciplinary measures, up to and including, termination of employment, expulsion or suspension, removal from campus, cancellation of contract, and any other appropriate actions necessary to address the violation.

Appropriate disciplinary actions shall be taken against any person found to have participated in any acts of retaliation. Any attempt to penalize or retaliate against a person for filing a complaint or participating in the investigation of a complaint regarding a violation of this Policy will be treated as a separate and distinct violation of the Policy. Specifically:

- A student found to have retaliated in violation of this Policy shall be subject to measures up to, and including, suspension and/or expulsion.
- A University employee found to have retaliated in violation of this Policy shall be subject to measures up to, and including, termination of employment.
- A University non-employee found to have retaliated in violation of this Policy shall be subject to measures up to, and including, exclusion from school grounds.

Persons who violate this Policy may also be subject to civil damages or criminal penalties.

## **XI. REMEDIAL MEASURES**

The University recognizes that sanctions against perpetrators, without additional remedies for victims, is likely not sufficient to prevent recurrence of sexual misconduct or harassment. Thus, the University may take remedial measures, including, but not limited to:

- Providing an escort to ensure that the complainant can move safely between classes and activities;
- Ensuring that the complainant and alleged perpetrator do not attend the same classes;
- Moving the complainant or alleged perpetrator to a different residence hall;
- Providing counseling and/or medical services;
- Providing academic support services, such as tutoring; and
- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and/or misconduct that may have resulted in the complainant being disciplined.

The University may also provide remedies for the broad University community population, including additional training and education.

## **XII. EDUCATION AND PREVENTION**

Education is an essential component in the prevention and elimination of sexual harassment. To accomplish an adequate educational program, the University shall:

- Educate members of the University community on what constitutes prohibited conduct.
- Inform members of the University community of this Policy and training programs to assure their implementation.
- Ensure that the University has sufficiently trained staff to carry out educational programs and training regarding the procedures established by this Policy.

The Office of Human Resources shall monitor compliance with all aspects of this Policy and serve as custodian of confidential documents.

### **A. Training**

The Office of Human Resources shall provide training to employees regarding Title IX and the prevention of sexual discrimination.

### **B. Dissemination of the Policy**

A copy of this Policy shall be distributed throughout the campus and shall be included in the University Policies and Procedures Manual (<http://www.claflin.edu/about->

[cu/policies-and-procedures](#) - Human Resources).

The University shall publish a “Sexual Misconduct & Harassment” brochure providing information on the categories of misconduct, the reporting procedures, and resources available on campus. Copies of this brochure shall be available in University offices throughout campus.

### **C. Public Notification**

As required by law, the University shall collect and annually report statistical information concerning sexual misconduct occurring within its jurisdiction. To promote public safety, the University will alert the campus community of incidents and developments of immediate concern.

### **D. Resources**

**Information on Counseling and Victim Services:** For further information on the counseling services available to victims of harassment and sexual assault, contact the Title IX Coordinator (see contact information in Section VII) or The Counseling Department directly at (803) 535-5285.

**Health Services:** (803) 535-5328

**University Chaplain:** (803) 535-5150

**CASA Family Systems:** (803) 534-2272

### **E. Contact**

If you are concerned that the University has not met its obligation under this Policy, please contact the Vice President for Administration, Mr. Drexel Ball, at (803) 535-5263 or [dball@claflin.edu](mailto:dball@claflin.edu).

**CLAFLIN UNIVERSITY  
STUDENT/EMPLOYEE  
SEXUAL MISCONDUCT AND HARASSMENT REPORTING FORM**

The information contained in this document is confidential and must be submitted to the Title IX Coordinator (Office of Human Resources, Tingley Hall, Floor 1, Suite 4).

Name:

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Local Address:

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Work Phone: \_\_\_\_\_ Local Phone: \_\_\_\_\_ Cell Phone:

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Date of Incident: \_\_\_\_\_ Time of Incident: \_\_\_\_\_ AM  
\_\_\_\_\_ PM

Location of Incident:

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Identify the name(s) of the individual(s) against whom you are submitting this complaint:

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Please describe the nature of the incident, providing as much detail as possible to assist with the investigation of this complaint.

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