

## University Policy Number 200.29

### SEX DISCRIMINATION, INCLUDING SEXUAL HARASSMENT, UNDER TITLE IX

**Responsible Administrator:** Vice President for Administration

**Responsible Office:** Office of Human Resources

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**Authority:** Office of the President

#### **POLICY STATEMENT**

Clafin University (“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 places within the University’s jurisdiction. The University community will receive equal treatment on the basis of sex, and principles of free speech and academic freedom, due process of law, and fundamental fairness will be respected and preserved.

#### **STATEMENT OF PURPOSE**

The purpose of this Policy on Sex Discrimination, Including Sexual Harassment, under Title IX (“Policy”) is to memorialize the University’s prohibition of all forms of sex discrimination, sexual assault, sexual harassment, dating violence, domestic violence, and gender-based stalking, consistent with the terms of Title IX of the Education Amendments Act of 1972 and the regulations issued thereunder by the U.S. Department of Education (collectively, “Title IX”). This Policy’s prohibition of sex discrimination, including sexual harassment, extends to all admission and employment decisions of the University. The University will respond to reports of sex discrimination, including sexual harassment, in a prompt and effective manner and will take appropriate action to prevent and remediate such behavior if it occurs.

#### **APPLICABILITY**

This Policy applies to all persons participating in or attempting to participate in an educational program or activity, including (but not limited to) all active or enrolled faculty, staff, temporary employees, students; volunteers; customers; and other third parties within the University’s control (e.g., students in a University camp).

Sexual harassment can be committed by both men and women, and can involve people of the same sex, opposite sex or non-binary persons. It can occur between strangers or between those who know each other well, including people involved in an intimate or sexual relationship. Additionally, sexual harassment can occur over the internet or in other cyber-based environments. This Policy prohibits such behavior in the context of the University's educational programs and activities regardless of the means by which such behavior occurs.

**Note:** Sexual relationships among members of the University community in which one party exercises academic or administrative authority over the other are inappropriate because of a perception of power or influence. For further information regarding the University's policies concerning consensual relationships, please refer to University Policy No. 200.31: Relationships Between Employees and students.

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**

- A. Actual Knowledge** - Notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or the University's President. No other University employee shall be considered an official of the University who has authority to institute corrective measures on behalf of the University under this Policy. Furthermore, the mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University, nor does notice of allegations of sexual harassment to a responsible employee other than the Title IX Coordinator or the University's President establish Actual Knowledge of such allegations for the University.
  
- B. Advisor** - A person of choice (who may be, but does not need to be, an attorney) selected by the complainant or respondent to assist that party in connection with any grievance procedures or grievance process under this Policy. (NOTE: For the purposes of conducting cross-examinations at a live hearing, if a party has not engaged an advisor, the University will provide that party (at no fee or charge) with

an advisor of the University's choice. A University-appointed advisor may be, but does not need to be, an attorney.)

- C. **Appeals Representative** - Individual(s) designated by the University President or such person's designee to preside over one or more appeals pursued under this Policy.
- D. **Complainant** - An individual who is alleged as the victim of conduct that could constitute sexual harassment as that term is defined under Title IX.
- E. **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, subsequent 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. Consent may be withdrawn at any time during the sexual activity. Withdrawal of consent must be demonstrated by words and/or conduct that indicate a desire to end sexual activity. Once an individual has communicated withdrawal of consent, all sexual activity must end. 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 the following: incompetence, incapacitation (as defined in this Policy), fear, intimidation, coercion, and confinement. Sexual activity occurring in any of the University's educational programs or activities without the consent of all individuals involved violates this Policy.
- F. **Decision Maker** - Individual(s) designated by the President or the President's designee to render a decision at the conclusion of one or more hearings conducted under this Policy.
- G. **Exculpatory Evidence** - Evidence favorable to the respondent in a case that exonerates or tends to exonerate the respondent of guilt.
- H. **Formal Complaint** - A document filed and signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the University's education program or activity for which the formal complaint is filed.

- I. **Incapacitation** - When an individual is at such a level of impairment such that she/he/they lack 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 sleep, unconsciousness, a temporary or permanent physical or mental condition, or other state of mind rendering the person unaware that sexual activity is occurring. In evaluating if consent has occurred in cases of alleged incapacitation, the University will consider at least the following two issues: (1) whether the person initiating sexual activity knew that the other party was incapacitated, and if not, (2) whether a sober, reasonable person in the same situation would have known that the other party was incapacitated. If the answer to either of these inquiries is "YES," affirmative consent was absent. A respondent cannot rebut a charge of sexual assault or sexual harassment by merely asserting that they were drunk or otherwise impaired, and as a result did not know that the complainant was incapacitated. Alcohol, drugs, or other intoxicants do not negate or diminish the responsibility of an individual to obtain affirmative consent.
- J. **Inculpatory Evidence** - Evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt.
- K. **Investigator** - Individual(s) designated by the President or the President's designee to investigate one or more formal complaints filed or signed under this Policy.
- L. **Respondent** - An individual reported as the perpetrator of conduct that could constitute sexual harassment as that term is defined under Title IX. Where the respondent is a non-University affiliated party who is not participating or attempting to participate in a University educational program or activity, the University will offer and implement supportive measures to the complainant as outlined in this Policy.
- M. **Responsible Employee** - Any University faculty member or supervisory employee.
- N. **Retaliation** - 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.
- O. **Sexual Harassment** - For purposes of this Policy, the term "sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. 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;
2. 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; or
3. Any of the following crimes: (i) "Sexual assault";<sup>1</sup> "Dating violence";<sup>2</sup> "Domestic violence";<sup>3</sup> or "Stalking."<sup>4</sup>

**P. Supportive Measures** - Non-disciplinary, non-punitive individual services offered as appropriate, as reasonably available, and without charge to the complainant or the respondent before or after the filing of a complaint or when no formal complaint has been filed. This includes measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment and to restore or preserve equal access to the University's education program or activity, without unreasonably burdening the other party.

**Q. Title IX Coordinator** - The person whom the University has designated and authorized to coordinate the University's efforts to comply with its Title IX

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<sup>1</sup> The term "sexual assault" means "an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation." See 20 U.S.C. § 1092(f)(6)(A)(v).

<sup>2</sup> The term "dating violence" means "violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a 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." See 34 U.S.C. § 12291(a)(10).

<sup>3</sup> The term "domestic violence" means "felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is 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 receiving grant monies, 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" See 34 U.S.C. § 12291(a)(8).

<sup>4</sup> The term "stalking" means "engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress." See 34 U.S.C. § 12291(a)(30).

responsibilities. The Title IX Coordinator shall be responsible for monitoring compliance with all aspects of this Policy. See Sections VII, VIII, and IX of this Policy for details regarding the Title IX Coordinator's duties. Shirley Biggs

Title IX Coordinator

Telephone: (803) 535-5268

E-Mail: [confidential@clafflin.edu](mailto:confidential@clafflin.edu)

Address: 400 Magnolia St., Orangeburg, SC 29115

Tingley Hall, Floor 1, Suite 4

- R. University Community** - Includes all faculty, adjunct faculty, persons engaged in research, teaching assistants, administrators, staff, students, volunteers, and persons who conduct business with the University but are not employees. For the purpose of filing a formal complaint under this Policy, this definition also includes any person attempting to participate in a University activity or program.

## V. JURISDICTION

The University will respond promptly when it receives actual knowledge of sexual harassment occurring within the jurisdiction of this Policy, i.e., sexual harassment in any education program or activity of the University occurring against a person in the United States. For purposes of this Policy, the phrase "education program or activity" includes locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. Jurisdiction under this Policy extends to admissions and employment decisions of the University.

The University has in place other policies that address various types of misconduct that do not constitute sexual harassment (as defined in this Policy) and thus that are not addressed by this Policy and Title IX. If reported misconduct is not covered by this Policy, such conduct will not be investigated or adjudicated by the University's Title IX office. However, such reported conduct may be referred to other University personnel or departments to be investigated pursuant to other applicable University policies, e.g., the Student Code of Conduct, etc.

- **The following are examples of circumstances that may fall outside the jurisdictional scope of this Policy:**

- Sexual harassment alleged against or by former students or former employees who are not participating or attempting to participate in any education program or activity of the University.
- Sexual harassment alleged in a study abroad program outside of the United States. Even if a study abroad program is affiliated with the University, Title IX protections do not extend to incidents of sexual misconduct occurring against persons outside of the United States.
- Allegations of sexually offensive conduct that does not satisfy the definition of sexual harassment in this Policy. Such complaints that do not meet the definition of sexual harassment under this Policy may still trigger a Code of Conduct or other policy violation, e.g., a student-on-student assault at an apartment complex adjacent to campus (but not owned or operated by the University).

## **VI. REPORTING PROCEDURES**

The University has instituted procedures for the proper handling and treatment of sexual harassment allegations which involve conduct that occurred under an education program or activity and perpetrated against a person in the United States.

**Prompt reporting is encouraged.** Although the University does not limit the timeframe for reporting, members of the University community are encouraged to promptly report all incidents of conduct prohibited under this policy as soon as possible in order to maximize the University's ability to respond promptly and effectively. Any person may report sexual harassment, including sexual assault, dating violence, domestic violence, or gender-based stalking (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual harassment), in person, by mail, telephone, or electronic mail that contains the complainant's physical or digital signature using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

**Reporting Obligations of "Responsible Employees":** When an individual tells a responsible employee about conduct that may constitute a violation of this Policy, the responsible employee must promptly report to the Title IX Coordinator all relevant details about the alleged policy violation shared by the individual, including the names of the complainant and respondent, any witnesses, and any other relevant facts, including the date, time, and specific location of the alleged incident as well as any other relevant information or physical and/or electronic documents.

**Anonymous Reporting:** Any member of the University community may report a violation of this policy by calling EthicsPoint (the school's reporting hotline) toll free at (877) 319-8243 or reporting online using the University's website, both available seven days a week, 24 hours a day. Although a complainant is able to make an EthicsPoint report anonymously, a complainant cannot initiate the Title IX grievance process anonymously. Using the complainant's physical or digital signature (which has been provided to the Title IX Coordinator), sexual harassment allegation must be provided in a verbal or written report (e.g., in person, by email, telephone, electronic mail).

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)

## **Who to contact:**

Students and employees who believe that they have been victims of sexual harassment 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, employees and other parties** should report any incident of sexual harassment to the Title IX Coordinator identified in this Policy:

- Title IX Coordinator/ Associate Vice President for Human Resources  
Telephone: 803-535-5268  
Email: confidential@claflin.edu  
Location: Human Resources Office  
Tingley Hall, Floor 1, Suite 4

Additionally, the individuals holding the following positions are all responsible employees under this Policy and are thus required to report to the Title IX Coordinator any allegation of sexual harassment that they receive:

- Vice President for Student Development and Services  
Telephone: 803-535-5341



Email: ldurant@claflin.edu  
Location: Calhoun-Downs Laymen Hall, Room #107

- Vice President and Chief of Staff  
Telephone: 803-535-5267  
Email: cpeters@claflin.edu  
Location: Tingley Hall, Suite 2-S1
  
- Director of Internal Audit  
Telephone: 803-535-5372  
Email: panderson@claflin.edu  
Location: Tingley Hall, Suite 2-S2
  
- Interim Executive Director of Public Safety  
Telephone: 803-535-5575 or 803-535-5444  
Email: mewilliams@claflin.edu  
Location: High Rise Hall, OR1-1

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

**"Confidential Resources"** have no obligation to report an allegation of sexual harassment. The individuals holding these positions are listed in this policy.

- Director of Counseling  
Telephone: 803-535-5285  
Location: 897 Goff Avenue
  
- University Chaplain  
Telephone: 803-535-5150  
Location: Chapel, Suite 10, Room 12

## **VII. 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.

This grievance process will enforce equal treatment of the complainants and respondents. No disciplinary sanctions will be imposed prior to a determination of responsibility for sexual harassment. However, the University reserves the right to enact **emergency removal** of any respondent (whether an employee, a student, or other person) from an education program or activity on an emergency basis, provided that the University (1) undertakes an individualized safety and risk analysis; (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and (3) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal (see Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act). For example, if a respondent threatens physical violence against the complainant in response to the complainant's allegations that the respondent verbally sexually harassed the complainant, the immediate threat to the complainant's physical safety posed by the respondent may "arise from" the sexual harassment allegations. As a further example, if a respondent reacts to being accused of sexual harassment by threatening physical self-harm, an immediate threat to the respondent's physical safety may "arise from" the allegations of sexual harassment and could justify an emergency removal.

In matters involving the emergency removal of a non-student employee respondent, the University may place that respondent on administrative leave with or without pay (in such person's capacity as an employee of the University) during the pendency of a grievance process in a manner consistent with applicable law and any other legal obligations of the University.

The proper evidentiary standard for determining whether the conduct occurred is the preponderance-of-the-evidence standard (i.e., it is more likely than not that sexual harassment occurred). Regardless of whether any other University policy, handbook or other materials suggest or mandate, in general, the application of any other evidentiary standard to charges or complaints against faculty or other University personnel, where any such person, the standard of evidence shall be the preponderance of the evidence standard for any formal complaint alleging sexual harassment regardless of the position, title or status held by the Respondent.

All parties and witnesses shall maintain professional decorum throughout any process or procedure conducted under this Policy. The expectation of professionalism includes, without limitation, that no person may badger or harass any party, witness, decision maker or other University personnel involved in the hearing proceeding. Furthermore, a party shall be free to confer with the party's advisor during a hearing, such conferral shall not take place in a loud or disruptive manner. If a party or advisor violates any rules imposed on parties equally by this Policy or by a decision-maker during a process or

procedure conducted under this Policy, the University retains authority to respond in accordance with its policies governing student and employee misconduct.

Note: Individuals have a right to file both a criminal complaint and a Title IX complaint simultaneously. The University's policy, definitions, and burden of proof may differ from South Carolina criminal law. Neither law enforcement's determination whether or not to prosecute a respondent, nor the outcome of any criminal prosecution, are determinative factors regarding whether a violation of University policy has occurred. Grievance proceedings under this Policy may be carried out prior to, simultaneously with, or following external civil or criminal proceedings. At the request of law enforcement, the University may agree to defer its Title IX investigatory process until after the initial stages of a criminal investigation. The University will promptly resume its Title IX fact-gathering as soon as it is informed that law enforcement has completed the initial investigation.

#### **A. Initial Response to an allegation of Sexual Harassment**

The Title IX Coordinator will promptly contact complainant in a manner that is not deliberately indifferent (i.e., not clearly unreasonable in light of the known circumstances) to:

- Discuss their right to request supportive measures;
- Consider the complainant's wishes with respect to supportive measures;
- Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and

1. **Supportive Measures Available** - 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, or mutual restrictions on contact between the parties;
- 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;
- Providing counseling and/or medical services;
- Providing academic support service, such as tutoring; and

- Arranging for complainant/respondent to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the academic record.
  
- Explain to the complainant the process for filing a formal complaint that will not restrict rights protected under the U.S. constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, as a way of responding in a non-deliberately indifferent manner. The complainant will never be pressured into filing a formal complaint, or participating in a grievance process.

## **B. Formal Complaint Procedure**

The Formal Complaint Procedure will be followed in accordance with Title IX. A formal complaint is initiated when the complainant (or, based upon the age of the Complainant, a guardian or parents) files a formal complaint. A formal complaint is a document filed and signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment. The complainant must be participating in or attempting to participate in the education program or activity of the University with which the formal complaint is filed.

If there are multiple complainants and one respondent, the University may consolidate the formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances. The requirement for the “same facts and circumstances” means that the multiple complainants’ allegations are so intertwined that their allegations directly relate to all the parties. To reiterate, the formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint, by using the contact information listed for the Title IX Coordinator ([www.claflin.edu](http://www.claflin.edu) Website).

The University desires to respect a complainant’s autonomy as much as possible and thus, if a grievance process is initiated against the wishes of the complainant, that decision will be reached thoughtfully and intentionally by the Title IX Coordinator.

The Title IX Coordinator’s decision to sign a formal complaint will occur only after the Title IX Coordinator has promptly contacted the complainant to discuss availability of supportive measures, considered the complainant’s wishes with respect to supportive measures, and explained to the complainant the process for filing a formal complaint. In deciding whether to sign a formal complaint, the Title IX Coordinator may consider a variety of factors, including (but not limited to):

- any pattern of alleged misconduct by the respondent (i.e., serial predation);

- the risk of serious harm to any student, employee or other individual associated with the University;
- whether the complainant's allegations involved violence, threats, use of weapons, or other similar factors;
- whether the complainant's allegations involve law enforcement; and/or
- any other factor, whose consideration is permitted by applicable law, that directly or indirectly implicates the University's interests in providing a safe and productive learning environment.

Should the Title IX Coordinator sign the formal complaint in lieu of the complainant, the Title IX Coordinator is not a complainant or otherwise a party during a grievance process, and must comply with requirements for all Title IX personnel to be free from conflicts and bias.

There is no time limit or statute of limitations on a complainant's decision to file a formal complaint; however, prompt reporting of a complaint is encouraged as the University's ability to respond may diminish over time due to the fact that evidence may erode, memories may fade, or the respondent may no longer be affiliated with the University.

#### Reasons to dismiss a Formal Complaint

- **Mandatory dismissal** – If the alleged conduct does not meet the following jurisdictional requirements under Title IX, the Title IX Coordinator or the decision-maker(s) must dismiss the complaint:
  - If the alleged conduct – even if proven to be true – would not constitute sexual harassment as defined in this Policy.
  - If the alleged conduct did not occur in the University's education program or activity.
  - If the alleged conduct did not occur against a person in the United States. A mandatory dismissal does not prevent the University from taking appropriate action under another University rule or policy, such as the Student Code of Conduct, Staff Guidelines/Human Resources Policies and Procedures or Faculty Handbook.
- **Permissive dismissal** – The Title IX Coordinator or the decision-maker(s) may dismiss the formal complaint, or any allegations therein, if at any time during the investigation or hearing:
  - The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
  - The respondent is no longer enrolled at or employed by the University; or

- Specific circumstances prevent the Investigator or decision-maker(s) from gathering evidence sufficient to reach a determination as to the formal complaint or the allegations therein.
- Notice of dismissal – Upon dismissal, the Title IX Coordinator or the decision maker(s) will provide prompt written notice of the dismissal and the reason(s) therefor simultaneously to the parties. Any party to a formal complaint can appeal a dismissal decision pursuant to the appeal procedures set forth in this Policy.

Upon receipt of a formal complaint, the Title IX Coordinator will send a written notice to both parties containing the formal complaint's allegation(s), formal grievance procedures, University guidance on the prohibition of submitting false information during the grievance process; and the investigator(s) that have been assigned. Supportive measures will also be made available to both the complainant and the respondent.

### **C. Investigatory Process**

The Title IX Coordinator as well as all Investigators, decision makers, and appeal representatives will be trained and free from any conflict of interest.

Once a formal complaint of sexual harassment has been received and has met the criteria for undergoing the formal grievance process, the Investigator(s) will conduct a thorough, prompt, fair, equitable, and impartial investigation of the allegations. The complainant and respondent may have an advisor provided by the University or an advisor of their choice present at any meeting or proceeding related to the investigation or formal grievance process. An advisor of the party's choice may include an attorney retained by a party at the party's own expense. An advisor provided by the University will be properly trained to function in an advisory capacity, but that individual may or may not be an attorney. While advisors may attend University processes in an advisory capacity, advisors may not participate directly in the investigation, hearing, or appeal, with the exception of conducting cross-examination during a live hearing. Failure to follow this guidance will prohibit the advisor from participating in the meeting or interview. If an advisor does not adhere to these or other applicable ground rules, the advisor will be dismissed from the applicable interview or meeting, and the University will provide a new advisor of the University's choice to the party whose advisor has been dismissed. Additionally, the University will determine its own schedule, and it is incumbent upon the complainant and the respondent to ensure their advisors are available. The schedule for interviews, appeals, or any meeting necessary will not be driven by an advisor's availability.

Each party and their advisor will receive written notice of any investigative interview, meeting, or proceeding in which they are expected to attend. This notification will include the date, time, location, names of those who will be present, and the purpose of the meeting. Parties will be given sufficient time to prepare for such interview, meeting, or proceeding.

The investigation will include interviews with the parties, interviews with witnesses, and a review of the documents or anything relevant to the investigation. The complainant and the respondent will have equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The parties will be allowed to discuss the case and gather evidence. The presumption is that the Respondent is not responsible for any Policy violation prior to a finding of such at the conclusion of the grievance process.

Neither the Investigators nor any authorized University official can access, consider, disclose, or otherwise use in the grievance process a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in the capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so. Likewise, the University will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

If needed, the Title IX Coordinator may assist with investigations of formal complaints.

The investigation will be completed as promptly as possible, and in most cases within 4560 work days from the date the formal complaint was filed by the complainant or signed by the Title IX Coordinator. If the investigation cannot be completed within the designated time because of extenuating circumstances, the parties will be notified and given a projected time of completion. Extenuating circumstances may exist for a variety of reasons, including (but not limited to) the complexity of the circumstances surrounding the allegation(s); the request to comply with external local law enforcement processes; to account for University breaks or vacations; or to address other legitimate reasons.

The investigator(s) will submit a written report that fairly summarizes relevant evidence (the "Report"). Before completion of this Report, both parties shall have an equal opportunity to inspect and review the Report as well as any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, regardless of whether or not it was included in the preliminary Report. Upon inspection

of review of the Report and evidence, parties will be given 10 workdays days to submit a written response. The written responses will be considered before completing the final Report. The investigator(s) will have 5 business days to complete the final Report and submit to both parties. The live hearing will be scheduled within 10 workdays of the final Report being made available to the parties.

#### **D. Informal Resolution Procedure**

**After a formal complaint has been filed, and only if each party is interested and willing, the University may offer an informal resolution process.**

- Informal resolution may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice.
- Parties must voluntarily consent to this option in writing.
- If a complaint involves allegations that an employee sexually harassed a student, **the informal resolution process will not be used.**
- A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution and resume the grievance process with respect to the formal complaint.
- Parties who choose this option will receive notice of the allegations, their rights and information about how to withdraw from the process and resume the grievance process. To withdraw, either party will have to submit a written request to withdraw from the informal process and then the party will be eligible to resume the grievance process.
- The informal resolution procedure may be conducted by an assigned mediator, the Title IX Coordinator, or any person trained to facilitate the informal resolution process. The person assigned may not have a conflict of interest or bias either for or against complainants, respondents, or individual parties.

The informal resolution process is available at any point prior to a final determination being issued.

#### **E. Live Hearing**

The live hearing will be adjudicated by **one or more decision-makers** (who will be persons other than the individuals who served as the Title IX Coordinator and



Investigator(s) for the formal complaint). The decision-maker(s) will outline the order and expectations of the proceedings at the start as well as provide written notification and the rationale for their determination at the conclusion of the proceedings. Information regarding the range of possible sanctions should the grievance process result in a finding a responsibility will also be provided (See Section VIII.).

All parties will receive a 10-day advanced notification of the time, date and location of the live hearing.

- **Virtual hearings** – At the request of either party, University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- **Live hearings** – May be conducted with all parties physically present in the same geographic location or, at the University’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- **Documentation of Hearings** – The University has the sole discretion to record by audio, video, or other means. To reduce technical difficulties or delays, a member of the Department of Information Technology or a designee will operate hearing equipment. In addition, hearings will preferably be transcribed by a court reporter or equivalent. Transcripts or recordings, as applicable, will be available for the parties to inspect and review. Finally, as required, transcripts or recordings will be preserved for a seven (7) year period.

**Decision-Maker(s)** – At the live hearing, the decision-maker(s) must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. **The cross-examination** at the live hearing must be conducted directly, orally, and in real time by the party’s **advisor** and never by a party personally. If a party does not have an advisor present at the live hearing, the University will provide without fee or charge to that party, an advisor of the University’s choice, to conduct cross-examination on behalf of that party.

At the live hearing, only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent or witness answers a cross examination or other question, the decision-maker(s) will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the complainant's or respondent's prior sexual behavior are not relevant (**Rape shield protections**), unless such questions and evidence about sexual predisposition or 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.

If a party or witness **does not submit to cross-examination** at the live hearing, the decision-maker(s) must not rely on any statement of the party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

At the conclusion of the live hearing, the decision-maker(s), using the preponderance of the evidence standard (applicable to all parties) will determine whether or not the Respondent is responsible of violating this Policy. If a finding of responsibility is made, the decision-maker(s) will determine the appropriate sanctions. The complainant and respondent will simultaneously receive written notice of the decision-maker's determination, along with information regarding their rights to appeal the determination.

- **Grounds for Appeal** – Either party has the option to appeal a determination or the dismissal of a complaint on the grounds of:
  - Procedural irregularity that affected that outcome;
  - New evidence that was not reasonably available at the time of determination or dismissal that could affect the outcome; or
  - The Title IX Coordinator, Investigator or decision-maker had a conflict of interest or bias that affected the outcome of the matter.

#### F. Appeals of the Formal Complaint Procedure

The complainant or the respondent has a right to appeal a decision of the formal complaint procedure based upon any of the **Grounds for Appeal** identified in Section VII(E) of this Policy. 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 Determination Letter from the decision-maker(s). decisions not appealed within such time are deemed final.

Once an appeal is initiated, the non-appealing party will be notified of the appeal and provided an opportunity to submit a written response within five (5) business days of the receipt of the notification.

The President or appeal representative will review the appeal within thirty (30) calendar days after receipt of the written appeal (except in extenuating circumstances). **Normally, the documented evidence will be used to make a decision regarding the appeal;** however, new evidence that was not reasonably available at the time of determination will be reviewed, as well as the mandatory grounds for appeal. This is the final step in the University's formal grievance process. Based upon the new evidence, it may be necessary for a new hearing process to be initiated with a new decision-maker(s). At the conclusion of the appeal process, the appellate decision maker must prepare a written decision, which is provided to both parties simultaneously. After this process, the decision is final.

### **VIII. DISCIPLINARY SANCTIONS**

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. Furthermore, for student respondents who are found to have violated this Policy, sanctions may also include a requirement to take anger management courses or other coursework designed (in the University's opinion) to achieve rehabilitation for the respondent, housing restrictions, community service, and/or educational sanctions. For employee respondents who are found to have violated this Policy, sanctions may also include mandatory counseling, mandatory training, change in job responsibilities, demotion or other adverse employment action, and/or leave without pay.

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.

## **IX. RETALIATION PROHIBITED**

No University or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report of formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. The University will keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.

**Exceptions** - The exercise of rights protected under the First Amendment does not constitute 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 part does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any part made a bad faith materially false statement.

**False complaints** - Individuals who knowingly or recklessly file a false harassment complaint and/or give false statements in an investigation or hearing against another are in violation of this Policy. If, upon the conclusion of a grievance procedure or grievance process under this Policy, the University learns that an individual has provided false information regarding the complaint or investigation, disciplinary action may be pursued under other University policies, including for example the Student Code of Conduct, 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, including without limitation any of those disciplinary sanctions identified in Section VIII of this Policy.

## **X. 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 the designated 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 Title IX Coordinator, investigators, decision-makers, appeal representatives, and any person who facilitates an informal resolution process will receive training on the University's Title IX policy and processes as applicable. Such training includes: the definition of sexual harassment; how to conduct investigations, hearings, appeals, and informal resolution processes; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; how to operate the technology to be used at a live hearing; and how to make determinations on issues of relevance of questions and evidence. The training materials will be available upon request and will be posted on the Title IX website page.

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

An electronic copy of this Policy will be available in the University Policies and Procedures Manual at (<http://www.claflin.edu/about-cu/policies-and-procedures> - Human Resources).

### **3. C. Public Notification**

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

4. **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 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

5. **E. Contact**

If you are concerned that the University has not met its obligation under this Policy, please contact the President at (803) 535-5491 or [dwarmack@claflin.edu](mailto:dwarmack@claflin.edu).

**REVIEW DATE - December 2021**



**CLAFLIN UNIVERSITY STUDENT/EMPLOYEE SEXUAL 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: \_\_\_\_\_

Email Address: \_\_\_\_\_

Local Address: \_\_\_\_\_

Work Phone:  
\_\_\_\_\_

Local Phone:  
\_\_\_\_\_

Cell Phone:  
\_\_\_\_\_

Date of Incident:  
\_\_\_\_\_

Time of Incident:  
\_\_\_\_\_ AM

\_\_\_\_\_ PM

Location of Incident:  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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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Please provide the names and contact information of any witness(es).

Name/Status	Address	Telephone #




(If additional space is required, please use an additional form and just provide your name in the top section of the form).

<p><b><u>Acknowledgement</u></b></p> <p>By signing this form, I understand that this complaint will be investigated, and the alleged harasser(s), any witnesses, and persons of interest will be interviewed.</p> <p>The information provided in this Sexual Harassment Reporting Form is true and accurate to the best of my knowledge. I will cooperate fully in the investigation and provide the University with requested evidence as deemed relevant to the complaint.</p> <p>_____ Date: _____</p> <p>Complainant Signature</p>
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Note: The Office of Human Resources should provide a copy of this form to the Complainant.

**Special Note:** Students and employees who believe that they have been **victims of sexual misconduct** should report their complaint/incident immediately to Campus Police at 803-534-5444 (24 hours a day, seven days a week).