

## **Sexual Violence Policy**

Members of the Clark University community are expected to behave in ways that demonstrate their care and respect for others. Clark University students are expected to live within a set of community expectations that insure the health, safety and quality of life of all. Sexual violence in all forms, including Sexual Harassment, Sexual Assault, Sexual Misconduct, and Sexual Exploitation, constitutes one of the most serious violations of respect for others and will not be tolerated within our community. Some forms of sexual violence, often referred to as sexual assault or rape, are punishable by both civil and criminal legal action.

When an allegation of sexual violence is brought to the administration, and a respondent is found to have violated this policy, serious sanctions will be used to ensure that such actions are never repeated. All members of the community are expected to conduct themselves in a manner that does not infringe on the rights of others. Clark University's Sexual Violence Policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. Students at Clark University are responsible for being familiar with and abiding by the standards of conduct set forth herein.

### **SEXUAL VIOLENCE OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:**

- 1. Sexual Harassment**
- 2. Sexual Assault**
- 3. Sexual Misconduct**
- 4. Sexual Exploitation**

#### **1. Sexual Harassment**

Sexual Harassment consists of any unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. This includes, but is not limited to: submission to, or rejection of, such conduct that is made either implicitly or explicitly a term or condition of employment or participation in an education program; submission to, or rejection of, such conduct that is used as the basis for employment or academic decisions affecting a student; such conduct that has the purpose or effect of interfering with a student's work or academic performance; or such conduct that creates a hostile or intimidating work or academic environment.

A more severe form of Sexual Harassment is Stalking. Stalking is a course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking behaviors include, but are not limited to: non-consensual communication (including in-person communication, telephone calls, voice/text/email messages, social networking site postings, instant messages, postings of pictures or information on websites, written letters, gifts, or any other communications that are undesired and/or place another person in fear); following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a person; surveillance and other types of observation, whether by physical proximity or electronic means; vandalism; trespassing; nonconsensual touching; direct physical or verbal threats against a person and/or his/her loved ones; gathering of information about a person from family friends, co-workers, and/or classmates; manipulative and controlling

behaviors such as threats to harm oneself or threats to harm someone close to that person; and defamation or slander against a person.

## **2. Sexual Assault**

Sexual Assault is any sexual penetration (anal, oral or vaginal), however slight, with any object or sexual intercourse by a man or woman upon a man or woman without effective consent.\* Sexual penetration includes vaginal or anal penetration by a penis, object, tongue or finger and oral copulation by mouth to genital contact or genital to mouth contact.

## **3. Sexual Misconduct**

Sexual Misconduct is any intentional sexual touching, however slight, with any object by a man or woman upon a man or woman without effective consent.\* Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another or any other bodily contact in a sexual manner. Any disrobing of another or exposure to another by a man or woman without effective consent is considered a violation of this policy.

## **4. Sexual Exploitation**

Sexual Exploitation occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute Sexual Assault, Sexual Misconduct, or Sexual Harassment. Examples of Sexual Exploitation include, but are not limited to: making public sexual activity with another student without that other student's consent; prostituting another student; non-consensual video- or audio-taping of sexual activity; going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex); voyeurism; and/or knowingly transmitting an sexually transmitted infection (STI) or HIV to another student.

### **\*CONSENT DEFINED**

In order for individuals to engage in sexual activity of any type with each other, there must be clear consent. Effective consent is defined as a freely and affirmatively communicated willingness to participate in sexual activity, expressed either by words or clear, unambiguous actions. Clark University strongly encourages students who choose to engage in sexual behavior to verbally communicate their intentions and consent as clearly as possible.

It is the responsibility of the initiator of the sexual activity to ensure that he or she has the other person's consent to engage in sexual activity. Do not make assumptions about consent, about someone's sexual availability, about whether they are attracted to you, about how far you can go, or about whether they are physically and mentally able to consent to you. Clearly communicate your intentions to your sexual partner and give your partner a chance to clearly relate his/her intentions to you.

Mixed messages from your partner are a clear indication that you should step back, defuse the sexual tension, and communicate better. Realize that your potential partner could be intimidated by you or fearful. You may have a power advantage because of your size, strength, and/or standing or reputation at the university. Do not abuse that power. Consent may never be obtained through the use of force, intimidation, or coercion. When someone makes clear to you that s/he does not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent cannot be assumed because of the existence of a dating relationship between the persons involved or due to the existence of a previous sexual relationship between the persons. Silence, in and of itself, cannot be interpreted as consent. Consent must be present throughout the sexual activity by all parties involved. Consent to one form of sexual activity cannot imply consent to other forms of sexual activity. The perpetrator or victim's use of alcohol or other drugs does not diminish the perpetrator's responsibility.

Consent may never be given by minors (in Massachusetts, those not yet sixteen (16) years of age), those who are mentally disabled, or by one who is incapacitated as a result of alcohol or other drug consumption (voluntary and involuntary) or those who are unconscious, unaware, or otherwise physically helpless. **A person who knows or should reasonably have known that another person is incapacitated may not engage in sexual activity with that person.** Incapacitation means being in a state where a person lacks the capacity to appreciate the fact that the situation is sexual, or cannot appreciate (rationally and reasonably) the nature and/or extent of the situation.

A person's state of incapacity is a subjective determination that will be made after the incident in light of all of the facts available because people reach incapacitation at different points and as a result of different stimuli. They also exhibit incapacity in different ways. The following factors bear on incapacity: body weight, height, and size; tolerance for alcohol and other drugs; amount and type of alcohol or other drugs consumed, and the mixture taken; amount of food intake prior to consumption; voluntariness of consumption; vomiting; propensity for blacking out (mentally or physically); and genetics.

Alcohol-related incapacity results from a level of alcohol ingestion that is more severe than impairment, being under the influence, drunkenness, or intoxication. It is less severe than alcohol poisoning or overdose, which may lead to coma or death. Evidence of incapacity may be detected from context clues, such as: slurred speech, bloodshot eyes, the smell of alcohol on breath, shaky equilibrium, vomiting, outrageous or unusual behavior; and/or unconsciousness.

This policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of a so-called "date-rape" drug. Possession, use, and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc., is prohibited, and administering one of these drugs to another person for the purpose of inducing incapacity is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org>.

### **Additional Clarifying Rules:**

- A person who is the object of Sexual Harassment/Misconduct/Assault/Exploitation is not required to physically or otherwise resist a sexual aggressor.
- Intentional use of alcohol or other drugs does not excuse a violation of the Sexual Violence Policy.
- Attempts to commit Sexual Harassment/Misconduct/Assault/Exploitation are also prohibited under this policy, as is aiding the commission of Sexual Harassment/Misconduct/Assault/Exploitation as an accomplice.
- Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly (because you cannot be expected to read the mind of your sexual partner(s)), and all sexual activity must cease;
- An “intent to rape” is not required under the Sexual Assault definition. Unlike murder, for which there must be an intent to kill, Sexual Assault is not an intent-based concept. The requisite intent for Sexual Assault is demonstrated by engaging in the act of intercourse intentionally.

## **SANCTION STATEMENT**

Sexual violence in all forms, including Sexual Harassment, Sexual Assault, Sexual Misconduct, and Sexual Exploitation, constitutes one of the most serious violations of respect for others and will not be tolerated within our community.

Any student found responsible for violating the policy on Sexual Misconduct (where no intercourse has occurred) will likely receive a sanction ranging from warning to expulsion, depending upon the severity of the incident, and taking into account any previous campus conduct code violations.\*

Any student found responsible for violating the policy on Sexual Assault will likely face a recommended sanction of suspension or expulsion.\*

Any student found responsible for violating the policy on Sexual Exploitation or Sexual Harassment will likely receive a recommended sanction ranging from warning to expulsion, depending upon the severity of the incident, and taking into account any previous campus conduct code violations.\*

\*The judicial board reserves the right to broaden or lessen any range of recommended sanctions in the complaint of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

## **CONFIDENTIALITY AND REPORTING POLICY**

Different people on campus have different reporting responsibilities, and different abilities to maintain your confidentiality, depending on their roles at the university. When consulting campus resources, victims should be aware of confidentiality and mandatory reporting, in order to make informed choices. On campus, some resources may maintain your complete confidentiality, offering you options and advice without any obligation to tell anyone, unless you

want them to. Other resources are expressly there for you to report crimes and policy violations, and they will take action when you report your victimization to them. Most resources on campus fall in the middle of these two extremes. Neither the university nor the law requires them to divulge private information that you share with them, except in extremely rare circumstances, described below. You may seek assistance from them without starting a chain of events that takes things out of your control, or violates your privacy.

### **To Report Confidentially**

If you desire that details of the incident be kept confidential, you should speak with on-campus counselors, campus health service providers, or off-campus rape crisis resources, who will maintain confidentiality. Counselors at the Clark Anti-Violence Education Program and University Counseling Center are available to help you free of charge, and can be seen during their normal operating hours.

### **Quasi-Confidential Reporting**

You can seek advice from certain resources that are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. These resources include those without supervisory responsibility or remedial authority to address Sexual Harassment/Misconduct/Assault/Exploitation, such as faculty members, advisors to student organizations, career services staff, admissions officers, student activities personnel, and many others. You can also talk with your RA, but note that your RA will call the Dean of Students office and reveal your name to the Dean of Students. The Dean of Students is also a quasi-confidential reporting resource. They will not file an official report if you do not want them to, but can offer you various options to keep you safe. If you are unsure of someone's duties and ability to maintain your privacy, ask them before you talk to them. They will be able to tell you, and help you make decisions about who can help you best. If your personally identifiable information is shared, it will be shared with as few people as possible, and all efforts will be made to protect your confidentiality to the greatest extent.

### **Non-Confidential Reporting Options**

You are encouraged to speak to officials of the institution to make formal reports of incidents (deans, vice presidents, or other administrators with supervisory responsibilities, university police, and human resources). You have the right and can expect to have incidents of Sexual Harassment/Misconduct/Assault/Exploitation to be taken seriously by the university when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Formal reporting does not mean that your report will not be confidential, but it does mean that people who need to know will be told, and information will be shared as necessary with investigators, witnesses, and the accused. The circle of people will be kept as tight as possible, to preserve your rights and privacy.

### **Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report Sexual Assault for federal statistical reporting purposes. All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on- or off-campus, in the surrounding area, but no addresses are given), for publication in the annual Campus Security Report. This Report helps to provide the community with a clear

picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities.

### **Federal Timely Warning Reporting Obligations**

Victims of Sexual Assault should also be aware that university administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The university will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

### **QUESTIONS AND ANSWERS**

Here are some of the most commonly asked questions regarding Clark University's Sexual Violence policy and procedures.

- Does the complaint remain confidential?

The privacy of all parties to a complaint of Sexual Harassment/Misconduct/Assault/Exploitation must be strictly observed, except insofar as it interferes with the university's obligation to fully investigate allegations of Sexual Harassment/Misconduct/Assault/Exploitation. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the complainant or the accused student may lead to conduct action by the university. In all complaints of Sexual Harassment/Misconduct/Assault/Exploitation, the complainant will be informed of the outcome. In some instances, the administration also may choose to make a brief announcement of the nature of the violation and the action taken, using no names. Certain university administrators are informed on a confidential basis (e.g., the President of the university, Dean of Students, Chief of University Police). If you report an act of alleged Sexual Harassment/Misconduct/Assault/Exploitation to a conduct officer of the university and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the university is legally required to notify law enforcement authorities. The university also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

- Will my parents be told?

No, not unless you tell them. Whether you are the complainant or the accused, University's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student, or in a life-threatening situation. The university reserves the right to notify a parent or

legal guardian in the event that your status at the university has either changed or is in serious jeopardy of changing.

- Will I have to confront the perpetrator?

Yes, if you file a formal complaint. Sexual Harassment/Misconduct/Assault/Exploitation is a serious offense and the accused has the right to confront the accuser. However, the university does provide options for allowing confrontation without direct contact, including closed-circuit cameras, using a room divider or using separate hearing rooms.

- Do I have to name the perpetrator?

Yes, if you want formal disciplinary action to be taken against the alleged perpetrator. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy below to better understand the university's legal obligations depending on what information you share with different university officials).

- What do I do if I am accused of Sexual Harassment/Misconduct/Assault/Exploitation?

DO NOT contact the alleged victim. You may immediately want to contact someone in the campus community who can act as your advisor. You may also contact the Dean of Students, who can explain the university's procedures for dealing with sexual misconduct complaints. You may also want to talk to a confidential counselor at the university counseling center.

If a formal university judicial complaint is filed against you, a member of the Dean of Students office will contact you directly, ask you to complete a voluntary statement (if you have not already done so), and review the judicial process with you. If a criminal complaint is filed against you (separate or in addition to a university judicial complaint), you will be contacted by University Police, and depending on information presented, you may be subject to arrest. An accused student may also be placed on immediate "Interim Suspension" if the information presented suggests that an alleged perpetrator represents a possible risk to any member of the Clark community or if the alleged incident is serious enough that an immediate separation from the University is necessary. Being placed on "Interim Suspension" is not an assumption of responsibility. Accused students will be informed of their rights as a student and will be subject to "fair practice" under the Code of Student Conduct.

- Will I (as a victim) have to pay for counseling/or medical care?

Counselors at the Clark Anti-Violence Education Program and University Counseling Center are available to help you free of charge, and can be seen during their normal operating hours. Students can also seek medical care from University Health Services free of charge. If you choose to go to the hospital, Clark University would cover transport to and from the hospital upon request (a report does not need to be filed); however, the University does not cover specialized medical expenses above and beyond what could be done at University Health Services. You may be eligible for state assistance for uninsured medical and counseling services through the Massachusetts Victims of Violent Crimes Compensation program. For eligibility criteria and additional information about this program, you can call (617) 727-2200.

- What do I do about legal advice?

Victims of criminal Sexual Assault need not retain a private attorney because legal issues will be handled through a representative from the District Attorney's office. You may want to

retain an attorney if you are the accused or are considering filing a civil action against the alleged perpetrator.

- What about changing residence hall rooms?

If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is the University's policy that in emergency room changes, the student is moved to the first available suitable room. If you want the accused to move, and believe that you have been the victim of Sexual Harassment/Misconduct/Assault/Exploitation, you must be willing to pursue formal University conduct action. If the information is clear and convincing, the University will place the alleged perpetrator on "interim suspension", which would require him/her to leave campus. If the information is unclear, the University will move forward with judicial action, but may not force the perpetrator to move simply based upon the accusing student's request.

Other accommodations available to you might include:

- Assistance from university support staff in completing the relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Exam (paper, assignment) rescheduling;
- Taking an incomplete in a class;
- Transferring class sections;
- Temporary withdrawal;
- Medical leave;
- Alternative course completion options.

- What do I do about preserving evidence of a sexual assault?

Physical evidence of a criminal sexual assault must be collected within 72 hours. If you believe you have been a victim of a criminal sexual assault, you should go to UMass Memorial Hospital Emergency Department (119 Belmont Street, Worcester, MA 01605), before washing yourself or your clothing. The Sexual Assault Nurse Examiner (a specially trained nurse) at UMass Memorial Hospital is on call 24 hours a day, 7 days a week (call the Emergency Department at 508-334-6481, if you first want to speak to the nurse; ED will refer you). A representative from the university can also accompany you to the hospital and University Police can provide transportation. If you go to the hospital, local police will be called, but you are not obligated to talk to the police or to prosecute. The exam will help to keep that option open for you, should you decide later to exercise it. The hospital staff will collect evidence, check for injuries, and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

- Will a student be sanctioned when reporting a Sexual Harassment/Misconduct/Assault/Exploitation policy violation if he/she has illegally used drugs or alcohol?

No. The severity of the infraction will determine the nature of the university's response, but whenever possible, the University will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of Sexual Harassment/Misconduct/Assault/Exploitation is a major concern and the University does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of Sexual Harassment/Misconduct/Assault/Exploitation.

- Will the use of drugs or alcohol affect the outcome of a Sexual Harassment/Misconduct/Assault/Exploitation conduct complaint?

The use of alcohol and/or drugs by either party will not diminish the accused student's responsibility. On the other hand, alcohol and/or drug use is likely to affect the complainant's memory and therefore, may affect the outcome of the complaint. A person bringing complaints of Sexual Harassment/Misconduct/Assault/Exploitation must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove his/her complaint. If the complainant does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the accused without further corroborating information. Please be aware, however, that the University Judicial Board makes decisions using a different threshold than a criminal court. The University Judicial Board invokes an evidentiary standard of "clear and convincing" when determining whether a violation has occurred. Criminal courts use the standard of "beyond a reasonable doubt" given their access to expert testimony and access to criminal evidence.

- Will either party's prior use of drugs and/or alcohol be a factor when reporting Sexual Harassment/Misconduct/Assault/Exploitation?

No.

- What should I do if I am uncertain about what happened?

If you believe that you have experienced a non-consensual sexual contact, but are unsure of whether it was a violation of the University's Sexual Violence Policy, you can contact any of the following offices:

Dean of Students: <http://www.clarku.edu/offices/dos/>; 508-793-7423

University Police: <http://www.clarku.edu/offices/police/>; 508-793-7575

Counseling Services: <http://www.clarku.edu/offices/counseling/>; 508-793-7678

Clark Anti-Violence Education Program: <http://www.clarku.edu/cave>; 508-793-7790

Health Services: <http://www.clarku.edu/offices/health/about.cfm>; 508-793-7467

## **II. Special Provisions**

### **a. Attempted violations**

In most circumstances, Clark University will treat attempts to commit any of the violations listed in the *Student Code of Conduct* as if those attempts had been completed.

### **b. University as Complainant**

As necessary, Clark University reserves the right to initiate a complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the victim of Sexual Harassment/Misconduct/Assault/Exploitation.

#### c. False Reports

Clark University will not tolerate intentional false reporting of incidents. It is a violation of the *Student Code of Conduct* to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

#### d. Immunity for Victims

The University community encourages the reporting of Conduct Code violations, especially Sexual Harassment/Misconduct/Assault/Exploitation. Sometimes, victims are hesitant to report to university officials because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of this community that as many victims as possible choose to report to university officials. To encourage reporting, Clark University pursues a policy of offering victims of Sexual Harassment/Misconduct/Assault/Exploitation limited immunity from being charged for policy violations related to the Sexual Harassment/Misconduct/Assault/Exploitation incident. While violations cannot be completely overlooked, the university will provide educational options rather than punishment, in such cases.

#### e. Prosocial Bystander

The welfare of students in our community is of paramount importance. At times, students on and off-campus may need assistance. Clark University encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual violence victim to the Campus Police). Clark University pursues a policy of limited immunity for students who offer help to others in need. While policy violations cannot be overlooked, the University will provide educational options, rather than punishment, to those who offer their assistance to others in need.

#### f. Family Notification

Clark University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not-dependent, Clark University will contact parents/guardians to inform them of situations in which there is a health and/or safety risk. Clark University also reserves the right to designate which university officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act (FERPA).

#### h. Notification of Outcomes

The outcome of a campus hearing is part of the educational record of the accused student, and is protected from release under a federal law, FERPA. However, Clark University observes the legal exceptions as follows:

- 1) Complainants in non-consensual sexual assault, sexual misconduct, sexual exploitation, sexual harassment, stalking, and relationship violence incidents have an absolute right to be informed of the outcome and sanctions of the hearing, in writing, without condition or limitation.

2) The university may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a university policy that is a “crime of violence,” including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. The university will release this information to the complainant in any of these offenses regardless of the outcome.

i. Alternative Hearing Options

For Sexual Harassment/Misconduct/Assault/Exploitation complaints, and other complaints of a sensitive nature, whether the alleged victim is serving as the complainant or as a witness, alternative hearing options will be given, such as placing a privacy screen in the hearing room, or allowing the alleged victim to participate in the hearing from another room via closed circuit. While these options are intended to help make the alleged victim more comfortable, they are not intended to work to the disadvantage of the accused student.

j. Past Sexual History/Character

The past sexual history or sexual character of a party will not be admissible by the other party in hearings unless such information is determined to be highly relevant by the Chair. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request, and must be reviewed in advance of the hearing by the Chair of the University Judicial Board. In addition, while previous conduct violations by the accused student are not admissible during the initial hearing, the University Judicial Board will be informed of all past incidents and sanctions of the accused student if s/he is found responsible. This information becomes relevant to sanctioning and is only admissible at this point in the hearing.

**STATEMENT OF THE RIGHTS OF THE ALLEGED VICTIM**

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to university administrators;
- The right to be treated with respect by university officials;
- The right of both accuser and accused to have the same opportunity to have others present (in support or advisory roles) during a campus disciplinary hearing;
- The right not to be discouraged by university officials from reporting an assault to both on-campus and off-campus authorities;
- The right to be informed of the outcome and sanction of any disciplinary hearing involving sexual assault, usually immediately after the judicial board hearing;
- The right to be informed by university officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim’s desire;
- The right to be notified of available counseling, mental health or student services for victims of sexual assault, both on campus and in the community;
- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available (no formal complaint, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
  - Change of an on-campus student’s housing to a different on-campus location;

- Assistance from university support staff in completing the relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Exam (paper, assignment) rescheduling;
- Taking an incomplete in a class;
- Transferring class sections;
- Temporary withdrawal;
- Alternative course completion options.
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right not to have any complaint of sexual assault mediated (as opposed to adjudicated);
- The right to make opening and closing statements at the campus conduct hearing and to have those statements considered by the board in determining its sanction;
- The right to a campus no contact order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining student or others;
- The right to have complaints of Sexual Harassment/Misconduct/Assault/Exploitation responded to quickly and with sensitivity by campus law enforcement.
- The right to appeal the finding and sanction of the University judicial board, in accordance with the standards for appeal established by the institution;
- The right to review all information and reports available regarding the complaint, subject to the confidentiality limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to participate in the hearing, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed);
- The right to preservation of confidentiality, to the extent possible and allowed by law;
- The right to a hearing closed to the public;
- The right to petition that any member of the hearing board be removed on the basis of demonstrated bias;
- The right to bring a victim advocate or advisor to all phases of the investigation and campus conduct proceeding, as outlined in *Synergy*;
- The right to give information in a campus hearing by means other than being in the same room with the accused student (closed circuit live audio/video is the recommended method);
- The right to present relevant witnesses to the University Judicial Board;
- The right to be fully informed of campus conduct rules and procedures as well as the nature and extent of all alleged violations contained within the complaint;
- The right to have the university compel the presence of student, faculty and staff witnesses, and the right to ask questions, directly or indirectly, of witnesses (including the accused), and the right to challenge presented information.
- The right to be present for the entirety of the hearing, with the exception of the board's confidential deliberations;
- The right to have complaints heard by hearing officers who have received annual sexual misconduct adjudication training;
- The right to a conduct panel comprised of representatives of both genders;
- The right to have university policies and procedures followed without material deviation;
- The right to be informed in advance of any public release of information regarding the complaint;

- The right not to have released to the public any personal information about the complainant, without his or her consent.

### **STATEMENT OF THE ACCUSED'S RIGHTS**

The rights of accused students should also be prominently indicated. These should include, among others particular to your university:

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to university administrators against the accused student;
- The right to be treated with respect by university officials;
- The right to be informed of and have access to campus resources for medical, counseling, and advisory services;
- The right to be fully informed of the nature, rules and procedures of the campus judicial process and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions;
- The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation;
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right to make voluntary opening and closing statements at the campus conduct proceeding and to have those statements considered by the board in determining its sanction;
- The right to appeal the finding and sanction of the hearing board, in accordance with the standards for appeal established by the institution;
- The right to review all information and reports available regarding the complaint, subject to the confidentiality limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed);
- The right to a hearing closed to the public;
- The right to petition that any member of the hearing board be removed on the basis of bias;
- The right to have the university compel the presence of student, faculty and staff witnesses, and the right to ask questions, directly or indirectly, of witnesses, and the right to challenge information.
- The right to have complaints heard by hearing officers who have received annual sexual misconduct adjudication training;
- The right to have university policies and procedures followed without material deviation;
- The right to have an advisor or advocate to accompany and assist in the campus hearing process. This advisor must be a member of the Clark community, as explained in *Synergy*, but the advisor may not take part directly in the hearing itself, though they may communicate with the accused student as necessary;
- The right to a fundamentally fair hearing and fair practice, as explained in *Synergy*;
- The right to a decision based solely on information presented during the judicial process. Such information shall be credible, relevant, based in fact, and without prejudice;
- The right to written notice of the outcome and sanction of the hearing;
- The right to a conduct hearing board comprised of representatives of both genders;
- The right to be informed in advance, when possible, of any public release of information regarding the complaint.