Harassment and Discrimination Prevention Policy

Updated February 17, 2012

POLICY

The Clark University community depends, for the achievement of its goals, on an atmosphere of trust, tolerance, and respect. The University reaffirms its commitment to providing a working and learning environment that is free of all forms of abusive, harassing or coercive conduct. The University recognizes and seeks to protect the right of all members of the community to be treated with respect and dignity. It is the policy of Clark University that all our faculty, staff and students should enjoy an environment free of unlawful discrimination, harassment and related retaliation. This policy includes, but is not limited to, harassment and/or discrimination in the following areas: age, race, color, national origin, religion, gender, sexual orientation, marital status, disability and veteran status.

Unlawful harassment or discrimination violates both Federal and state laws including Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Massachusetts General Laws. Title IX applies to all public and private educational institutions that receive Federal funds. Sexual harassment, sexual violence, and sexual assault are forms of sex discrimination prohibited by Title IX; and are included in this policy. It is also unlawful to retaliate against a person for filing a complaint or participating in an investigation of illegal harassment or discrimination. The University will fully comply with all federal and state laws relative to unlawful practices.

The conduct on the part of any member of the University community which inappropriately introduces harassment, discrimination or retaliation into the teaching, learning, or working environment will not be tolerated. This policy applies to all members of the University community, who are encouraged to promptly report complaints of discrimination, harassment, or inappropriate behavior. Confidentiality will be maintained to the extent that is legally and practically possible to do so. Although the University offers the option of an informal resolution of a grievance when the complaint does not involve sexual assault, persons found to be in violation of this harassment and discrimination prevention policy shall be subject to disciplinary action which may include, but not be limited to, written warning, reprimand, demotion, transfer, suspension or dismissal.

Supervisors at all levels are responsible for monitoring behavior in the workplace and for taking appropriate action to identify and eliminate discriminatory, harassing, and inappropriate behavior before it rises to the level of unlawful activity.

Except in cases where confidentiality is legally protected, all employees who receive reports of, or witness, a sexual assault must report the assault to the appropriate University officials. In addition the Commonwealth of Massachusetts mandates that suspected abuse and/or neglect of children under the age of 18 be reported to the Department of Children and Families.

It is the policy of Clark University to promptly and appropriately investigate complaints which may constitute discrimination or harassment about which it has knowledge, and to take prompt and appropriate corrective action when needed.

The University will also investigate complaints made by a member of the University community regarding illegal harassment or discrimination by a non-employee on University premises, or at

other locations where the non-employee and the member of the University community are together because of University-assigned or University-sanctioned activities. Such contractors, vendors and others who do business with the University are expected to ensure compliance with this policy; and the University, once notified, will take appropriate action if they fail to do so.

The University prohibits retaliation against any individual who reports acts of discrimination or harassment or participates in an investigation of such reports. Retaliation against an individual for reporting harassment or discrimination or for participating in an investigation of a claim of harassment or discrimination is a serious violation of this policy and, like harassment or discrimination itself, will be subject to disciplinary action.

Definitions:

Discrimination is an act or communication that unlawfully interferes with an individual's or group's ability to participate fully in the Clark University community on the basis of race, sex, religion, national origin, age, color, disability or other legally protected status.
Unlawful Harassment is unwelcomed or unsolicited speech or conduct based upon race, sex, religion, national origin, age, color, disability or other legally protected status that creates a hostile work or academic environment or circumstances involving quid pro quo. Unlawful harassment may occur in a variety of ways including, but not limited to verbal, physical, written or graphic materials, face to face conduct or online comments.
Hostile Environment is one that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance or a student's academic achievement.
Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing or (2) submission to or rejection of such conduct by an individual is used as the basis for employment or the evaluation of academic achievement decisions affecting such individual.
Retaliation is taking an adverse action against an individual because of an individual's participation in a protected activity, such as reporting concerns formally or informally regarding potential discrimination, harassment, or retaliation; or filing a formal or informal complaint regarding discrimination or harassment; or participating in an investigation of discrimination or harassment.
Sexual Assault takes many forms including, but not limited to, attacks such as rape or attempted rape, as well as any unwanted sexual contact or threats.
Sexual Harassment includes unwelcome sexual advances, requests for sexual favors and/or other verbal, nonverbal, or physical acts of a sexual nature such as sexual assault or acts of sexual violence which, because of their severity and/or persistence, interfere significantly with an individual's or a group's work or education.

It is the effect of behavior, as defined by the reasonable person standard, not the intent of the person who did the behavior that determines unlawful harassment or discrimination. Unwelcomeness is not dependent solely on the recipient expressly rejecting such behaviors.

A third party may file a complaint under this policy if the conduct of others in the education or work environment has the effect of substantially interfering with the third party's welfare, academic or work performance.

Examples of Inappropriate Harassment and Discrimination:

Prohibited acts that constitute unlawful harassment or discrimination may take a variety of forms. The following are examples of conduct that may constitute inappropriate or illegal behavior. They include, but are not limited to:

A. Unwelcome sexual propositions, invitations and solicitations, including sexual assault, sexual violence or rape.
B. Threats or insinuations that a person's employment, wages, academic grade, promotional opportunities, classroom or work assignments or other conditions of employment or academic life may be adversely affected by their race, sex, religion, national origin, age, color, disability or other legally protected status.
C. Unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities
D. The unwelcome use of degrading language, jokes or innuendos about a person's age, race, color, national origin, religion, gender, sexual orientation, marital status, handicap and veteran status.
E. Unwelcome suggestive or insulting sounds or whistles; obscene phone calls.
F. If not removed when requested, sexually suggestive objects, pictures, videotapes, audio recordings or literature, placed in the work or study area that embarrass or offend individuals. Such material if used in an educational setting should be related to educational purposes.
G. Unwelcome and inappropriate touching, patting, or pinching; obscene gestures.
H. Consensual relationships where such relationships lead to favoritism of a student or subordinate employee with whom the teacher or superior is romantically involved and where such demonstrated favoritism adversely affects other students and/or employees.
I. Stalking: any pattern of behavior composed of two or more acts over a period of time, however short, directed at a specific person that would cause a reasonable person to feel fear.

These actions in and of themselves are not always considered harassment or discrimination, but when performed repeatedly, or in a manner designed to humiliate or intimidate another, can be found to meet the definition. The examples above could be used to assist in identifying offensive or unlawful behaviors but in no way should be construed as an exhaustive list of unacceptable acts. In determining whether the alleged conduct constitutes harassment or discrimination consideration should be given to the record of the incident or incidents as a whole and to the totality of the circumstances, including the context in which the alleged incidents occurred.

Consenting relationships of a romantic nature that might be appropriate in other circumstances are deemed extremely unwise and are strongly discouraged when they occur between a member of the University and a person for whom he/she has a professional responsibility. Examples of

such relationships include, but are not limited to teacher/student; advisor/student; and supervisor/supervisee. These relationships may also result in an appearance of unfair advantage accruing from the consenting relationship. The power differential inherent in such relationships may render any apparent consent void. It is incumbent upon those with authority not to abuse, or seems to abuse, the power with which they are entrusted. In the event that a sexual harassment complaint is subsequently filed, it may be exceedingly difficult for the respondent to defend him/herself on grounds of mutual consent. The University expects the individual with a supervisory or other decision-making role to bear the responsibility of any negative consequences resulting from his/her consensual relationships and requires the individual in the superior position to disclose the relationship to his/her supervisor, and the Director of Human Resources and Affirmative Action, or the Provost at the onset of such a relationship.

University faculty, administrators and supervisors have the further responsibility of preventing and eliminating harassment and discrimination regardless of whether a complaint has been filed. If administrators, faculty, or supervisors receive a complaint of harassment or discrimination or obtain other information indicating possible unlawful harassment or discrimination, they are responsible for informing the Director or Associate Director of Human Resources/Affirmative Action, or Provost immediately.

Examples of Retaliation:

The following are examples of some actions or behaviors that could constitute retaliation if the actions are found to be motivated wholly or in part because of an individual's participation in a protected activity as described above. This is only a partial list and other actions or behaviors may also constitute retaliation:

A. Poor performance review or grade because of an individual's having participated in a protected activity;
B. Termination or expulsion from class because of an individual's having participated in a protected activity;
C. Demotion or lack of promotion because of an individual's having participated in a protected activity;
D. Withholding of special assignment or critical information because of an individual's having participated in a protected activity.

Procedures:

Various types of harassment and discrimination may occur between peers, including sexual harassment. Unwelcome sexual behavior between peers is unacceptable at the University. Staff, faculty, students and other members of the Clark University community who are subject to such offensive behavior by fellow peers may either confront the alleged offender directly or use the complaint resolution mechanism described in the Grievance Procedures documents.

There are distinct grievance procedures for each of the following groups. Each of these procedures is available by clicking on the hyperlinks below:

1) Procedures for complaints against **administrators, staff, or campus police**
2) Procedures for complaints against **faculty or instructors**
3) Procedures for complaints against **students**
4) Procedures for complaints against **persons who are not students or employees of the University.**

While these procedures provide sanctions for speech and behavior that violate state or Federal laws, they also describe ways of informally resolving conflicts and disagreements that do not rise to the level of sexual assault/sexual violence. The procedures are intended to provide a fair, prompt, and reliable mechanism for determining whether the policies of Clark University have been violated and, if so, to provide appropriate resolution.

The procedures describe an internal method for seeking redress for alleged violations of the policy. Complaints of discrimination or harassment filed under these procedures will be investigated and resolved as promptly and with as much confidentiality as possible. The University will endeavor to expedite a resolution as quickly as possible, usually less than 60 calendar days following receipt of a complaint; however, the length of the process will be dictated by the volume and nature of the information provided in the complaint, as well as the availability of witnesses, etc. Clark's process should insure a quicker review of complaints than can normally be obtained through state or federal procedures. Students, faculty, and staff members having such complaints are therefore encouraged to pursue them through these internal grievance procedures. Complaints where both parties are not current Clark employees or students of the University, even if one or both are former faculty, staff, or students, will not be eligible for these procedures.

These procedures are not intended to inhibit or restrict the free expression or exchange of ideas. Clark University is committed to the principles of academic freedom that guarantee faculty and students the right to pursue teaching and learning with full freedom of inquiry, however academic freedom does not extend to unlawful harassment, discrimination or retaliation.

University Official designated to receive complaints:

In a diverse community, disagreements and conflicts of various degrees of seriousness are inevitable. Many issues are best resolved informally by direct communication between the individuals involved or with the help of a third party. Any member of the Clark University community who feels he/she has experienced inappropriate behavior, sexual misconduct, harassment or discrimination can meet with anyone of the following members of the University community to discuss or report an incident:

For students: the Dean of Students, the Associate Dean of Students, or the Director of Residential Housing (undergraduate students), the Dean of Graduate Studies (graduate students), or the Provost (undergraduate/graduate students).

For faculty: the Director of Human Resources/Affirmative Action, the Academic Department chair, or the Provost.

For staff: the Director or Associate of Human Resources/Affirmative Action, the Executive Vice President, or the Vice President for Planning and Budgets.

Contact the Director or Associate Director of Human Resources/Affirmative Action, 20 Downing Street, 508-793-7294, for additional guidance on how to handle issues of harassment, discrimination, or related retaliation.

Title IX Coordinator

In compliance with Title IX of the U.S. Department of Education's Office of Civil Rights, the University has appointed Jacqueline Capomacchio, Director of Human Resources/Affirmative Action, as the University's Title IX Coordinator.

Jacqueline can be reached at be reached at:
950 Main Street
Worcester, MA 01610
508-793-7294
jcapomacchio@clarku.edu

Other members of the Title IX team include:

- Athletics: Trish Cronin, Senior Women's Administrator and Assistant Trainer
- Academic Affairs: The Provost or his/her designee
- Police: Officer Lauren Misales, Sexual Assault Investigator
- Student Affairs: Jason Zelesky, Associate Dean of Students
- Business Office: Paul Wykes, Business Manager

State and Federal Agencies:

The Massachusetts Commission Against Discrimination (MCAD) is charged by the state as the agency to handle formal complains of unlawful harassment or discrimination. The nearest local office is located at 436 Dwight Street, Second Floor, Room 220, Springfield MA 01103 (413-739-2145).

The federal agency charged with handling unlawful harassment or discrimination complaints by employees is The Equal Employment Opportunity Commission (EEOC) located at John F. Kennedy Federal Building, 475 Government Center, Boston MA 02203 (617-565-3200 or 1-800-669-4000).

Complaints may also be filed directly with the Office of Civil Rights at either of the following locations:

Headquarters:

Leon Rodriguez, Director
Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201

Region I - Boston (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
Peter Chan, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
Government Center
J.F. Kennedy Federal Building - Room 1875
Boston, MA 02203
Voice phone(617)565-1340
FAX (617)565-3809