Harassment and Discrimination Grievance Procedures for Complaints Against Persons Who Are Not University Students or Employees

February 7, 2014
GRIEVANCE PROCEDURES

These procedures describe an internal method for seeking redress for alleged violations of the Clark University Harassment and Discrimination Prevention Policy. Complaints of discrimination, harassment, or related retaliation filed under these procedures will be investigated and resolved as promptly and with as much confidentiality as possible. This process should insure quicker review of complaints than can normally be obtained through state or federal 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 this review procedure.

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 the Harassment and Discrimination Prevention Policy and will be subject to disciplinary action.

Individuals who are aware of, or have experienced, an incident of harassment, discrimination, and/or related retaliation involving persons who are not members of the University community should promptly report the matter to one of the following University officials:

Director or Associate Director of Human Resources/Affirmative Action
153 Woodland Street, Worcester, MA 01610
508-793-7294

The University has created the following procedures for the resolution of grievances alleging violation of its Harassment and Discrimination Prevention Policy involving persons who are not members of the University community. While these procedures provide sanctions for speech and behavior that violate state and federal law, importantly, they also describe ways of resolving informally conflicts and disagreements involving allegations of harassment or discrimination. These 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.

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These procedures are not intended to inhibit or restrict the free expression or exchange of ideas. The procedures address unlawful discriminatory or harassing behavior. The University provides two options for addressing such issues: (1) Reporting an Incident and Informal Resolution of Conflicts; and (2) Filing a Complaint. Each of these procedures is outlined below. Contact the Director or Associate Director of Human Resources/Affirmative Action, 153 Woodland Street, 508-793-7294, for additional guidance on how to handle issues of harassment or discrimination.
Definitions:

- The term “Complainant” is used throughout this document to refer to persons who either report incidents or file signed complaints regarding harassment or discrimination. The complainant does not need to be the subject of the harassment or discrimination.
- The term “Respondent” is used to refer to the person against whom a complaint has been made.

1. Reporting an Incident and Informal Resolution of Conflicts:

In a diverse community, disagreements and conflicts of various degrees of seriousness are inevitable. Often, the most effective avenue for informal resolution of complaints is direct conversation with the person or persons alleged to have caused the offense. Reasoned discussion of the issue will often bring about a resolution and new understanding. While informal resolution is an option for most cases of harassment or discrimination, Title IX requirements specifically state that informal resolution cannot be used for cases of sexual assault or sexual violence.

Suggestions for Individual Action

A. In circumstances not jeopardizing one’s personal safety, job, or academic status, communicate clearly to the offender that the behavior is not welcome, and should cease immediately. This can be done verbally or in writing.

B. Keep a written record documenting as precisely as possible what happened, when the incident took place, how you responded, how you felt after the incident, and any other information which may be helpful later. Should there be any witnesses, include their names in documentation of the incident.

C. Report the situation to the Director or Associate Director of Human Resources/Affirmative Action or the supervisor most directly involved with either the complainant or the respondent.

D. Contact Clark’s Employee’s Assistance Program Provider (LifeScope) for free confidential advice on a 24/7 basis. Toll Free at 800-227-2195, or at www.LifeScopeEAP.com

When a direct conversation with the respondent is not a desired or permitted option, the complainant is encouraged to contact either the Director or Associate Director of Human Resources/Affirmative Action who are prepared to assist the complainant in assessing the incident and to explain the options and resources available. The University encourages potential complainants to raise any questions they may have; merely discussing an incident in this way does not commit an individual to filing a complaint, however, this will not prevent the University from taking further action on its own initiative if it deems it appropriate to do so or if it is required to do so by law.

The complainant may request one of the University officials to discuss the allegations informally with the respondent in an attempt to end the alleged discrimination or harassment and resolve the issue. Based on the judgment of the Director or Associate Director of HR/AA, s/he may meet with the alleged harasser to inform him/her of the reported behavior, providing the individual with a copy of Clark University's harassment and discrimination prevention policy and encouraging greater awareness of behaviors which may lead to perceptions of harassment or discrimination.
Informal procedures generally will involve efforts to arrive at a resolution that both the complainant and the respondent can agree upon. The respondent, thus, will be informed of the nature of the complaint and will have an opportunity to respond. In most cases, if there is a resolution acceptable to all parties, the matter will not proceed further. However, the University may take further action if: (1) repeated complaints about the respondent have been received; or (2) the University believes it is in its best interest to do so.

Complaints under informal procedures will be kept confidential, to the extent practicable, except as compelled by law. In some cases, confidentiality cannot be maintained based on several factors, including the severity of the alleged incident, the nature of the parties involved (e.g. professor or student), and if this complaint falls within a pattern of behavior warranting intervention or action on behalf of the University. Disclosure of the complaint’s existence or substance will be limited to those who, in the interests of fairness and problem resolution, have an immediate need to know.

All members of the Clark community are expected to cooperate in addressing harassment or discrimination complaints.

2. Filing a Complaint

A complaint may be filed when it appears that good faith efforts to informally resolve a disagreement are unsatisfactory, unsuccessful, or inappropriate.

Complaints should be filed with the Director or Associate Director of Human Resources/ Affirmative Action immediately after an alleged act of harassment or discrimination has taken place or after any efforts that may have been undertaken to reach an informal settlement has proven unsuccessful. Complaints must be filed within 300 days of the alleged discrimination or harassment unless there is good reason (as determined by the Director or Associate Director of HR/AA) for having this period extended. In special circumstances, the processing of a complaint may be deferred at the discretion of the Director or Associate Director of HR/AA until a specified date (e.g., after completion of a course or other academic exercise). Usually such deferral will be for no more than one semester. Prompt reporting is strongly urged; the longer the delay between the incident(s) and the report, the more difficult it is to investigate and evaluate a complaint.

A complaint may be made orally; however complainants are encouraged to file the complaint in writing so that there is no misunderstanding of the issues, which can sometimes occur when complaints are made verbally. Complaints should include the following information:

1) Identification of the person(s) injured by the alleged harassment or discrimination.
2) Identification of the person(s) alleged to have committed the harassment or discrimination.
3) The dates over which alleged conduct occurred; and where the incident(s) occurred.
4) A clear and chronological description of the incident(s) with sufficient information to understand the factual basis for the complainant's belief that harassment or discrimination occurred.
5) Identification of any witnesses or person’s having direct knowledge of the alleged harassment or discrimination.
6) The complainant’s preferred remedy of the complaint.
The Director or Associate Director of HR/AA will meet privately with the complainant to discuss the complaint and to apprise the complainant of the manner in which they will proceed. If the complainant declines to submit the complaint in writing the Director or Associate Director will prepare a memorandum outlining the issues and ask the complainant to sign it, verifying it as factual.

A. Initial Review of Complaint

The Director or Associate Director of HR/AA is an impartial fact-finder who will make an objective preliminary determination as to whether the alleged conduct may violate University policy. The initial decision as to whether a complaint merits review under these procedures will be made by the Director or Associate Director of Human Resources/Affirmative Action within 10 business days after receiving the complaint. A complaint will be dismissed at this stage if it does not warrant review because the behavior complained of does not constitute an allegation of harassment or discrimination; because the alleged behavior does not constitute a violation of the policy; or because the speech or expression complained of does not violate the law. No complaint will be accepted that does not pass this initial review. The complainant will be informed in writing of the decision. Appeals of this decision may be addressed to the Vice President for Budgets & Planning or the Executive Vice President within 10 business days after the written decision has been issued.

B. Investigation of Complaint

If the Director or Associate Director of HR/AA concludes that the complaint should go forward, he/she will launch an investigation of the complaint. Due to the nature of third party complaints, the investigation may need to be coordinated with grievance policies and procedures of contractors or other employers.

C. Determination of Complaint

The investigator will send a confidential report to the Executive Vice President once the investigation process is completed. The report will include:

   a) a summary of the complainant's allegations
   b) a summary of the respondent's response to the allegations
   c) a citation to any relevant laws or policies
   d) a summary of the information developed in the course of the investigation, which may include any relevant or similar patterns of prior behavior
   e) an analysis of whether it is likely that the alleged conduct occurred and may be a violation of any relevant policy and/or law
   f) any recommendations for corrective action or disposition

The investigator’s report will be made available to both parties upon request.

D. Final Disposition of Complaint

The Director or Associate Director of HR/AA will make recommendations to the Executive Vice President in light of any records of the respondent’s past conduct including any discrimination or harassment complaints. The Executive Vice President may accept, reject, or modify the recommendations or may remand the complaint for further consideration or clarification. The Executive Vice President will send a written decision, an explanation of the decision, and determination of any sanctions and relief, including dates by which each is to be implemented, to the complainant, the respondent, and the Director or Associate Director of HR/AA.
The decision by the Executive Vice President may include, but is not limited to, one or more of the following actions:

a) campus bans  
b) filing of criminal charges  
c) reassignment of contracted services personnel  
d) termination of business agreements

Request for an appeal by either the complainant or the respondent may be made to the President of the University within 30 days after the initial decision is communicated by the Executive Vice President.

**Principles Guiding these Procedures:**

A. **Withdrawal of Complaints**

A complainant may withdraw a complaint after it has been filed. The Director or Associate Director of Human Resources/Affirmative Action will inform all parties previously notified of the complaint of its withdrawal. Such withdrawal will not prevent the University from taking further action on its own initiative if it deems it appropriate to do so or if it is required to do so by law.

B. **Failure to Cooperate**

A respondent will not prevent a complaint from going forward by his/her silence or failure to cooperate. Failure to cooperate may result in the investigation proceeding solely on the basis of the available evidence.

C. **Confidentiality**

The University seeks to prevent and eliminate harassment and discrimination on campus by encouraging students, faculty, and employees to promptly report complaints about such issues. Situations involving alleged discrimination or harassment demand special attention to issues of confidentiality. Confidentiality will be maintained in proceedings to the extent that it is practicable. In some cases, confidentiality cannot be maintained based on several factors, including the severity of the alleged incident, the nature of the parties involved (e.g. professor or student), and if this complaint falls within a pattern of behavior warranting intervention or action on behalf of the University. All documents should be marked confidential, and all recipients will be responsible for keeping them confidential. All statements and discussions should be also considered confidential.

D. **Protection Against Retaliation**

It is unlawful to retaliate against a person for filing a complaint of harassment or discrimination; or for cooperating in an investigation of such a complaint. Complaints of such retaliation should be addressed to the Director or Associate Director of Human Resources/Affirmative Action, who will review and investigate the alleged retaliation.

E. **Deliberate Fabrication of Evidence**

If at the conclusion of proceedings, it is determined that a complainant, respondent, or witness has knowingly given false or misleading information, the
University may implement the range of penalties up to and including dismissal from the University.

F. **Protection of Respondents**

Because personal and professional reputations are involved, in the event allegations that a member of the community violated the University's policy are not substantiated, reasonable steps as determined by the Director or Associate Director of Human Resources/Affirmative Action, and the Executive Vice President, may be taken to assist in restoring the reputation of the respondent if it is damaged by any proceedings.

G. **Record Keeping**

The Director or Associate Director of Human Resources/Affirmative Action will maintain confidential records of all complaints received. Such records will contain the complainant's and respondent's names, dates, outcome of the proceedings, and any sanctions imposed.

H. **Other Remedies**

These procedures are not intended to impair or limit the right of any individual to seek a remedy available under state or federal law. If, however, a complainant initiates or pursues redress outside the University, the University will not be obliged to continue processing the complaint through these procedures and thus may terminate such proceedings.

I. **Preservation of Authority**

Nothing in these procedures is intended in any way to detract from or impede the authority and responsibility of any administrative officer, supervisor, or authorized agent of the University in the day-to-day exercise of his/her authority as it normally exists apart from these procedures.

Contact the Director or Associate Director of Human Resources/Affirmative Action, 153 Woodland Street, 508-793-7294, for additional guidance on how to handle issues of harassment or discrimination.

**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:
950 Main Street
Worcester, MA 01610
508-793-7294
jcapomacchio@clarku.edu
Other members of the Title IX team include:
- Athletics: Trish Cronin, Interim Athletic Director
- Academic Affairs: The Provost or his/her designee
- Police Sergeant Lauren Misale, Sexual Assault Investigator
- Student Affairs: Denise Darrigrand, V.P. of Student Affairs & 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