
Title IX Policy: East Central University

INTRODUCTION

East Central University affirms its commitment to an educational and working environment free from discrimination and harassment on the basis of race, color, genetic information, national origin, religion, sex, sexual orientation, gender, age, disability, veteran status, and other protected characteristics. Discrimination of any kind, including harassment and retaliation, will not be tolerated. This policy specifically covers Title IX matters for all faculty, students, staff, student and employee applicants, contractors and visitors when the University becomes aware of discrimination, harassment or retaliation through a complaint or by other means. East Central is committed to promptly ending any instances of discrimination, harassment, or retaliation and taking appropriate measures to effectively prevent the repetition of such conduct. The University will impose appropriate sanctions to reasonably ensure that such actions are not repeated, and steps will promptly be taken to remedy the effects of the misconduct. Where concerning conduct is not covered by Title IX law, regulation, and policy – please be aware that East Central’s Employee Handbook and Student Handbook may have restrictions on conduct that go beyond the requirements of Title IX in regard to nondiscrimination, harassment, and assault that takes place on the basis of sex or otherwise.

The University is committed to preventative programming and outreach to the campus community in order to improve campus attitudes and understanding about discrimination, harassment, sexual misconduct, effective consent, bystander intervention, and other important behavioral wellness topics.¹

POLICY STATEMENT

East Central University, in compliance with applicable federal and state law and regulations, does not discriminate and prohibits discrimination on the basis of race, color, genetic information, religion, national origin, sex, age, disability, sexual orientation, gender identity, or status as a veteran in any of its policies, practices, procedures, or programs. This includes, but is not limited to: admissions, employment, financial aid, and educational services.

PRIMARY AUTHORITY

The application of other University policies not related to discriminatory misconduct may trigger this policy if any report or complaint that arises under those processes contains elements of discriminatory misconduct, and will therefore be addressed in accordance with this policy prior to the resolution of other claims.

Examples: A student grade appeal typically routed through the Academic Appeals Committee, but which contains allegations of racial discrimination must first be evaluated in accordance with the policies and procedures contained herein, before continuing through that committee.

 An employee appeal from suspension, demotion, or discharge which contains allegations of gender based discrimination must first be evaluated in accordance with the policies and procedures contained herein, before continuing through that committee.

¹ This is to comply with VAWA/Clery.

POLICY APPROVAL

Policy Revisions Enacted after new Title IX Regulations:

August 13, 2020

PRIMARY CONTACT

Dana Collins
Director of Employment Services
Title IX Coordinator
Administration Building, Room 160
1100 14th Street
Ada, OK 14820
Phone: 580-559-5217
Email: dcollins@ecok.edu

This policy shall be prominently displayed on the www.ecok.edu website. The contact information for the Title IX Coordinator shall be published in each handbook or catalog that East Central makes available to applicants for admission and employment, students, and employees.²

² 85 Fed. Reg. 30578 – training materials must be posted on the website in full. 85 Fed. Reg. 30589 - the Coordinator’s contact information must be made available in specified locations.

PART ONE OVERVIEW

1.1 KEY DEFINITIONS

1.1.A Title IX Coordinator

The Title IX Coordinator is responsible for the oversight of the investigation and resolution of all reports of gender-based discrimination, sexual harassment, sexual violence, stalking, and domestic and dating violence involving students and employees. **At East Central the Title IX Coordinator is also the Affirmative Action and Equal Employment Opportunity Officer.** The Coordinator is trained in University policies and procedures as well as applicable laws, and is available to advise any individual, including a complainant, respondent, or a third party, about the courses of action available at the University, both informally and formally. The Coordinator is available to provide assistance to any University employee regarding how to respond appropriately to a report of discriminatory or sexual misconduct. The coordinator is additionally responsible for monitoring compliance with all procedural requirements, record-keeping, and timeframes outlined in this policy, as well as overseeing training, prevention, and education efforts. The Coordinator operates independently of other University administrative structures. At East Central, the coordinator is required to have at least 8 hours of continued training on this topic every year of employment. The University will notify applicants for admission and employment, students, and employees of the name, title, office address, electronic email address, and telephone number of the Title IX Coordinator. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, 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. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.³

1.1.B Reasonable Cause

Some credible information to support each element of the offense.

³ 85 Fed. Reg. 30540 FOOTNOTE 134.

1.1.C Sexual Conduct

Sexual conduct includes, but is not limited to, any sex act, erotic touching, romantic flirtation, conversation of a carnal nature, advance or proposition for sensual activity, erotically explicit joke, remark of a carnal nature describing a person's body or clothing, display of an erotic object or picture, and physical contact reasonably believed to be of a sensual or flirtatious manner. *Sexual conduct* does not include reasonable use or delivery of bona fide lecture and/or instructional acts, statements, or materials. (See RUSO POLICY MANUAL § 5.8)

1.1.D Consent

Consent means the affirmative, and voluntary agreement to engage in a specific sexual activity during a sexual encounter. Consent can be withdrawn at any time. Consent is freely and actively given in a mutually understandable manner through words or actions that indicate a willingness to participate in a mutually agreed upon sexual activity.

- a. Consent cannot be given by an individual who is asleep, or mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason.
- b. Consent cannot be given by a person under duress, threat, coercion or force.
- c. Initiators of sexual activity are responsible for obtaining consent. Absence of expressions of non-consent is not by itself a form of consent.
- d. Silence or passivity alone and without some type of affirmative verbal or nonverbal assent to the sexual activity is not consent.
- e. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- f. Previous relationships or prior consent cannot imply consent to future or present sexual acts.
- g. Consent may be withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop.
- h. Lack of consent includes instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity (such as being under the influence of alcohol or other drugs) and instances where the victim is threatened with force, threat, or other duress.
 - i. Force negates consent. Sexual activity that is forced is non-consensual.
 - ii. There is no requirement that a party physically resists the sexual advance or request, but resistance is a clear demonstration of non-consent.
- i. Willful use of alcohol or other drugs on the part of the initiator of sexual activity will never function as a defense for any behavior that violates this policy.

- j. For all conduct sections where consent is required consent must be present.
- k. If at any time during sexual activity consent becomes unclear or uncertain, it is the responsibility of the initiator of continued activity to ensure that there is consent.

1.2 PRESERVATION OF ACADEMIC FREEDOM AND INTELLECTUAL INQUIRY

The definition of discriminatory misconduct, including sexual harassment, in this policy is meant neither to proscribe nor to inhibit discussions, in or out of the classroom, of complex, controversial, or sensitive matters, when related to a reasonable pedagogical purpose. East Central promotes intellectual inquiry and debate. The mere expression of views that might be seen as offensive does not by itself create a hostile environment or constitute a per se violation of this policy. The exercise of protected speech does not violate this policy.⁴

PROHIBITED ACTS

1.2.A Discrimination

Disparate treatment on the basis of sex that is not otherwise an exception to Title IX law or regulation. Any act or omission that meets the criteria outlined by statute or caselaw for any civil rights law applicable to the University including the laws cited in this policy.

1.2.B Sexual Harassment under Title IX⁵

Conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient 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 recipient's education program or activity; or

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

⁴ Free speech cannot be retaliation 85 Fed. Reg. 30538, and it cannot be harassment or discrimination 85 Fed. Reg. 30419.

⁵ 85 Fed. Reg. 30574 definition of harassment is mandatory.

1.2.C Sexual Violence/Assault Sexual violence/assault is a particularly pernicious form of sexual harassment. Sexual violence/assault is any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent.⁶ The University may immediately suspend on an interim basis any employee or student reasonably believed to have committed sexual violence against another person in violation of this policy, with notice and hearing to follow promptly. Sexual violence includes, but is not limited to:

- a. *Rape*: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of the victim.
- b. *Fondling*: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim.
- c. *Incest*: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Oklahoma law.

(See RUSO POLICY MANUAL § 5.6.1)

1.2.D Sexual Exploitation Taking nonconsensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit a person other than the one being exploited. This includes but is not limited to:

- a. Nonconsensual video or audio recording of sexual or lewd activity, exceeding the boundaries of explicit consent.
- b. Engaging in voyeurism (as in a peeping tom).
- c. Knowingly transmitting a sexually transmitted disease or infection to another student or employee.

1.2.E Domestic Violence A felony or misdemeanor crime of violence committed

⁶ Sexual violence includes, but is not limited to, rape as defined by 21 Okla. Stat. § 1111; rape by instrumentation as defined by 21 Okla. Stat. § 1111.1; forcible sodomy as defined by 21 Okla. Stat. § 888, assault as defined by 21 Okla. Stat. § 641 when committed in a sexual context, in furtherance of sexual demands, or because of a person's sex or sexual orientation; battery as defined by 21 Okla. Stat. § 642 when committed in a sexual context, in furtherance of sexual demands, or because of a person's sex or sexual orientation; aggravated assault and battery as defined by 21 Okla. Stat. § 646 when committed in a sexual context, in furtherance of sexual demands, or because of a person's sex or sexual orientation; stalking as described by 21 Okla. Stat. § 1173 when committed in a sexual context, in furtherance of sexual demands, or because of a person's sex or sexual orientation; sexual battery as defined by 21 Okla. Stat. § 1123(B); any sexual act involving a child as described in 21 Okla. Stat. 1123(A); maliciously intimidating or harassing or attempting to maliciously intimidate or harass another person because of that person's sex or sexual orientation; or inciting others, or attempting to incite others to maliciously intimidate or harass another person because of that person's sex or sexual orientation.

- a. By a current or former spouse or intimate partner of the victim.
- b. By a person with whom the victim shares a child in common.
- c. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner.
- d. By a person similarly situated to a spouse of the victim who is protected from that person's acts under the domestic or family violence laws of the State of Oklahoma, specifically: Okla.Stat. Ann. Tit. 21, §644.1.
- e. Domestic violence includes physical, sexual, emotional, economic, or psychological actions or threat of actions that influence another person.

1.2.F Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

1.2.G Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to suffer substantial emotional distress.

- a. "Course of conduct" means two or more acts, including but not limited to acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- b. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.
- c. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

1.2.H Attempts and Complicity

Attempts to or encouraging others to commit acts prohibited by this policy will be sanctioned to the same extent as if one had committed the prohibited act. Apathy or acquiescence in the presence of prohibited conduct may constitute a violation of this policy.

1.2.I Retaliation

Under Title IX, retaliation is defined more specifically as a prohibition on the following conduct:⁷

The University nor any other 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 this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an 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 or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX constitutes retaliation. The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or 2032 filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures.

1.2.J Obstruction

Obstruction, misdirection, and interference with investigation procedures or outcomes is prohibited. This includes falsification, distortion or misrepresentation of information, knowingly filing a complaint without good faith, and the harassment or intimidation of an individual involved in the investigation and sanction process including witnesses. This also includes the failure to comply with sanctions properly imposed through the conduct process.

1.2.K Employee Sexual

Conduct with Students

No employee shall engage knowingly or attempt knowingly to engage in consensual or nonconsensual sexual conduct with any student whom

⁷ 85 Fed. Reg. 30578 – these descriptions of retaliation are verbatim from the regs.

the employee supervises, acts as academic advisor for, or over whom the employee has any power to determine the student's grade; honors; discipline; research opportunity; scholarship opportunity; acceptance in a graduate or other program of study; participation in arts, athletic, academic, or extracurricular competition; work-study assignment; or similar education-related matter. University employees' sexual liaisons with students in such situations exploit position, abuse power, and fundamentally harm the academic relationship. Voluntary intoxication with drugs, alcohol, or other substances shall not negate knowledge. (See RUSO POLICY MANUAL § 5.6.2 including the statement on exceptions to this policy).

1.2.L Employee Sexual

Conduct with Supervisee Supervisors' sexual liaisons with their supervisees may exploit position, abuse power, and fundamentally harm the working environment. No supervisor may engage knowingly or attempt knowingly to engage in consensual or nonconsensual sexual conduct with any employee, not his or her spouse, whom he or she supervises, directly or indirectly. Voluntary intoxication with drugs, alcohol, or other substances shall not negate knowledge. (See RUSO POLICY MANUAL § 5.6.2 including the statement on exceptions to this policy).

1.3 TRAINING FOR EMPLOYEES AND STUDENTS

Educational materials related to sexual misconduct will be disseminated to each new employee and student in an online format, and these materials will be designed to be compliant with Clery Act law. This is achieved through the use of the *Get Inclusive* modules for students and employees and ongoing training and awareness programs conducted by University.

Any individual designated by the University as a Title IX Coordinator, investigator, decision-maker, or any person designated by the University to facilitate an informal resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The University must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30 of the 2020 Title IX Regulations, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. A recipient also must ensure that investigators

receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.⁸

1.4 DESIGNATION OF AND REQUIREMENTS FOR MANDATORY REPORTERS

All instances of discrimination, harassment, and retaliation should be properly reported to the Title IX Coordinator or any person in their direct chain of command at East Central, any supervisor, or to the RUSO Board. Such instances may also be reported to external agencies (see Section 2.1 E of this policy). Any supervisor who witnesses or becomes aware of conduct that she or he reasonably believes may be discriminatory or retaliatory must promptly report the conduct to the EEO/Title IX Coordinator, even if the supervisor has not received a complaint. Such reports shall take place promptly.

East Central has designated all employees except health care providers and clinical counselors mandatory reporters of discrimination which means that if any instance of gender-based discrimination, sexual harassment, or sexual assault is reported to a University employee, then that employee should immediately report the incident or situation to the Title IX Coordinator. An employee's report should include all relevant details, including time, place, and the individuals involved so that the University can conduct a prompt and proper investigation of the matter in order to preserve a safe campus. An employee should not share this information with law enforcement unless there is an emergency or a complainant requests such a report.

Note: Before a complainant reveals any information to a mandatory reporter of discrimination the employee should ensure that the complainant understands the resources available to the complainant and the employee's obligation as a mandatory reporter of the information. If the complainant wants to maintain confidentiality, then the complainant should be directed to a confidential resource such as a counselor. If a person who experienced sexual misconduct wants to tell the employee what happened, but maintain confidentiality, the employee should respond that the University will consider the request for confidentiality, but cannot guarantee that it will be honored. The confidentiality determination will be made by the Title IX Coordinator based on a balancing of the complainant's privacy interest and the safety of the University community. Employees shall never pressure a complainant to make a full report if the individual is not comfortable doing so.

1.5 THE TITLE IX COMMITTEE

The Title IX Committee, or an appointed panel therefrom, will hear all claims arising under this policy, including discrimination, harassment and retaliation related to Title IX. This includes all claims that cut across the various constituencies of faculty, staff, students, contractors, and visitors. Additionally it includes all claims that the institution's policies, procedures, services, determinations or other actions are discriminatory and cases where there is no specifically named respondent.

⁸ 85 Fed. Reg. 30577 – this language is largely directly from the regs.

Note: A subset of Civil Rights and Title IX Committee members will be trained at least annually on issues specifically relating to Title IX and the four VAWA-specific categories of Dating Violence, Domestic Violence, Sexual Assault, and Stalking. This training is required by 79 CFR 62773 § 668.46(k)(2)(ii). This training will include definitional understanding including the definition of consent, and how to conduct a hearing process that protects the safety of victims and promotes accountability. This training may be done by the Title IX Coordinator or through other trainings, webinars, seminars, etc.

PART TWO PROCEDURE

2.1 INITIAL REPORTING

Employees, staff, students, campus visitors or any other participant in, or applicant to, a University program or activity who has been a victim of discrimination, harassment, or retaliation (including sexual harassment or sexual assault) should report the incident immediately.

2.1.A Emergency

Reporting to Police

Incidents of discrimination do not always amount to criminal conduct, but instead are enforced through administrative processes to preserve equity, equal opportunity, and the protection of civil rights. However, some conduct covered by this policy is indeed criminal and should be reported as such – especially acts of domestic violence, dating violence, sexual assault, and stalking. Filing a police report allows for immediate evidence gathering procedures to be implemented which preserves future options regarding criminal prosecution, university conduct sanctions, and civil or criminal actions against the perpetrator of the crime. Reports made to Campus Police will serve to simultaneously notify University officials including the Title IX Coordinator.

Incidents can be reported to Campus Police at 580-559-5555. If the incident occurred off-campus, it is appropriate to call the local Police Department by dialing 911.

2.1.B Non-Emergency

Reporting to the University

All university employees have a duty to forward information reported to them to the EEO/Title IX Coordinator, any person in their direct chain of command at East Central, or the RUSO Board, unless they are a confidential resource such as a health care provider or clinical counselor. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details will be shared with the EEO/Title IX Coordinator. If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the EEO/Title IX Coordinator who will evaluate that request with legal counsel in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the University will likely be unable to honor a request for confidentiality. In cases where the

victim/complainant requests confidentiality or no formal resolution and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the victim and the community but the University will investigate and resolve the complaint to the extent possible without breaching confidentiality or revealing the complainant's identity.

A reporting party has the right, and can expect, to have reports taken seriously by University when formally reported, and to have those incidents investigated and properly resolved through this policy if they are properly categorized as Title IX prohibited conduct. Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Title IX Coordinator; Division of Student Development; Campus Police, and the Behavioral Intervention Team. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Records will not be disclosed outside the University unless required by law.

To report any act of discrimination, harassment, or retaliation covered by this policy, the primary point of contact is the Title IX Coordinator. Students may wish to contact the Vice President of Development as an alternate option.

Dana Collins, EEO/Title IX Coordinator
Administration Bldg., Room 160
580-559-5217
dcollins@ecok.edu

Brandon Hill, Vice President of Student Development
Administration Bldg., Room
580-559-5208
bhill@ecok.edu

2.1.C Anonymous Reporting

Anonymous reports may prompt a need for the institution to investigate and should not be utilized for reporting emergencies. Emergencies should be reported by contacting the police (see above). Anonymous reporting may inherently limit the scope of the investigation due to limited information and evidence. The following anonymous reporting option has been made available:

1. Filing an anonymous tip with the Regional University System of Oklahoma through the RUSO Tip Line in EthicsPoint:
<https://secure.ethicspoint.com/domain/media/en/gui/30756/index.html>

2.1.D Confidential Reporting

For students:

If a student would like the details of an incident to be kept confidential and would like to decline to report an incident to the University or law enforcement, the reporting party may still speak with counselors in the East Central University Student Counseling Center. The Counseling Center will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors are available to help free of charge to students and can be seen on an emergency basis during normal business hours. These employees will submit yearly anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client.

For employees:

Employees can contact the Crisis Control Center at (580) 924-3000. Additionally, employees can contact the National Sexual Abuse Hotline at 800-656-4673. Resources may also be available through the Employee Assistance Program. Contact Employment Services at 580-559-5260 or email es@ecok.edu to get access to the EAP program.

2.1.E External Reporting

Employees may make Title VII discrimination and/or retaliation complaints to an appropriate agency external to RUSO or East Central, such as the following:

U.S. Equal Employment Opportunity Commission (“EEOC”)

Phone: 1-800-669-4000

Email: info@eeoc.gov

U.S. Department of Justice Civil Rights Division

Phone: (202) 514-4609

TTY Phone: (202) 514-0716

Oklahoma Office of Civil Rights Enforcement (OCRE)

Phone: (405) 521-3921

NOTE: Victims reporting violations of this policy should be aware that university administrators must issue immediate timely warnings for incidents reported to them that are confirmed to 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.

2.2 INVESTIGATION OF A GRIEVANCE

2.2.A Process

An individual may initiate the investigation process by filing a grievance with the EEO/Title IX Coordinator. Employees may additionally may report such grievances to any person in their direct chain of command at East Central, and to the RUSO board directly using the EthicsPoint reporting system. Grievances must be reduced to writing if they not already in writing. Grievances may be submitted in writing using the mail, electronic email, or submission of a hand delivered letter to the EEO/Title IX Coordinator. Where the complaint is made orally initially, the University and/or the EEO/Title IX Coordinator will direct the complainant to submit a written complaint and to specify whether they wish the University to perform an investigation. Individuals can be assisted by the EEO/Title IX Coordinator in reducing their complaint to written format if requested. The complainant shall make any necessary corrections to the written version of their complaint and shall sign and date the final draft of the written version. An investigation into discrimination, harassment, or retaliation may be initiated regardless of whether a formal grievance has been filed or not if a written complaint is drafted and signed by the EEO/Title IX Coordinator. The EEO/Title IX Coordinator will be available to explain the process to involved parties or third parties as requested. The investigation process will be prompt, fair, and impartial. This means the process will be completed within a reasonable timeframe and without undue delay. The individuals conducting the investigation shall not have a conflict of interest or bias for the complainant or respondent. In cases of contractors and visitors, the University may have limited jurisdiction over the grievance and limited ability to secure any sanction beyond banning or removing specific individuals from campus or terminating various vending agreements. Investigations shall not last longer than 60 days unless there is a circumstance that reasonably hinders the investigation. Good cause for delay or extension include considerations such as the absence of a party, a party's advisor, a witness, concurrent law enforcement activity, or accommodation requirements.⁹

When the EEO/Title IX Coordinator receives information that reasonably supports allegations that discrimination and/or retaliation may have occurred but the putative victim(s) have not filed a grievance, the EEO/Title IX Coordinator will communicate with the potential aggrieved individual in order to determine whether the individual wishes an investigation to be conducted. During this contact the EEO/Title IX Coordinator will discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability

⁹ 85 Fed. Reg. 30271 – permits this.

of supportive measures with or without the filing of a formal grievance, and explain to the complainant the process for filing a formal grievance.¹⁰

The EEO/Title IX Coordinator will then decide whether to initiate an investigation, and reserves the ability to initiate an investigation even if the victim does not want an investigation to be conducted. If, after communication with the potential victims of discrimination, the EEO/Title IX Coordinator determines to initiate an investigation the notification requirements in Section 2.2D will be followed and written notice of an investigation will be provided.

The respondent is always presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. Even a prophylactic measure such as a properly implemented emergency removal does not mitigate this presumption.¹¹

The University may consolidate formal grievances against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.¹²

2.2.B Distinct and Separate Process

The University may undertake a short delay to allow evidence collection when criminal charges on the basis of the same behaviors that invoke this process are being investigated by police or other law enforcement. University action will not be precluded on the grounds that civil or criminal charges involving the same incident have or have not been filed or that charges have been dismissed or reduced. The Civil Rights & Title IX Process is distinct from any criminal investigation and flows from the University's obligation under Title IX and other equity laws to ensure it is providing a safe and nondiscriminatory environment. If a complainant wishes to pursue criminal processes only and wants to waive any University response to the situation, they should make that request to the Title IX Coordinator – and such requests will usually be respected unless the University must act independently to preserve the safety of the campus community from a threat or future violation of policy.

2.2.C Gatekeeping

No formal investigations shall commence unless the Title IX Coordinator or designee determines through a preliminary investigation that enough information exists and that a case merits investigation. This gatekeeping function is based on whether reasonable cause exists to believe that policy may have been violated. If the preliminary stages of investigation, including the information from the grievance itself, do not produce sufficient evidence to believe a policy may have been violated, then the investigation will cease and no formal notice of allegations will be issued and no hearings will be held. Additionally, this gatekeeping function shall consider any requests for inaction from the University or confidentiality from the complainant and evaluate whether there is enough of a pattern of misconduct or threat of further harm to the campus community to honor those requests or not.

Mandatory and Permissible Gatekeeping Under Title IX¹³

¹⁰ 85 Fed. Reg. 30575 – this information from the Coordinator to the potential complainant is mandatory. See also 85 Fed. Reg. 30044 and 85 Fed. Reg. 30568

¹¹ 85 Fed. Reg. 30576 – mandatory presumption of non-responsibility applies all the way up to when a decision is made.

¹² 85 Fed. Reg. 30576 permits consolidation of grievances.

¹³ See 85 Fed. Reg. 30576 for the “must dismiss” and “may dismiss” language.

At the time of filing a formal complaint categorized as Title IX discrimination, harassment, or retaliation then *for the purposes of Title IX*, a complainant must be participating in or attempting to participate in the education program or activity of the University, and must take place in the United States. If this is not the case, the complaint is required by law to be dismissed.

The University has the discretion to dismiss a Title IX case in instances where the complainant wishes to withdraw a grievance and verifies such intent in writing; where the respondent is no longer enrolled with or employed by the University; or other specific circumstances exist that prevent the University from gathering evidence sufficient to reach a determination as to the formal grievance or its asserted allegations. Any dismissal shall trigger prompt notice simultaneously to the parties in writing including the reasons for the dismissal.

2.2.D Investigation Procedures

If the complainant is not anonymous and is available, the EEO/Title IX Coordinator or appropriate designee will meet with the complainant to discuss the complaint submitted, review the investigation and hearing process, and discuss the outcome desired from the complaint. The complainant will be notified of receipt of the grievance if one is filed and the immediate interim actions or remedies the university will take, if any. The gatekeeping determination mentioned above can be determined at this point, or in any other of the preliminary phases of investigation.

If the respondent in the grievance is a student, then the Student Conduct Coordinator and/or other appropriate Student Affairs professionals may be appointed by the Title IX Coordinator to conduct an investigation. If the respondent in the grievance is an employee, contractor, or visitor, then the EEO/Title IX Coordinator or trained designee will investigate.

When the parties are known to the University and an investigation is commenced, the Title IX Coordinator or designee will provide written notice to the parties, including reference to the grievance process and policy and details about informal resolution processes.¹⁴ The notice will include a summary of the allegations of discrimination, harassment or retaliation – including the specific policy provision alleged to have been violated, identities of the parties involved and the date and location of the alleged incident or incidents.¹⁵ The written notification will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notification will state that the parties may have an advisor of their choice who may be but is not required to be an attorney, and that the parties may inspect and review any evidence. Finally, the written notice will inform the parties of the policy prohibition on making false statements or knowingly submitting false information during the grievance process. Supplementary notice will be provided promptly if the investigation expands to include further allegations not provided in the initial notice.

Sufficient time must be provided for a party to prepare a response before any initial interview.

¹⁴ 85 Fed. Reg. 30576 – this is mandatory.

¹⁵ 85 Fed. Reg. 30573 – the contents of the notice are mandatory.

The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties - provided that the University cannot access, consider, disclose, or otherwise use 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 that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so.¹⁶

This investigation will include meeting with the complainant(s) and with the respondent(s), meeting with relevant witnesses, and reviewing any relevant evidence including evidence submitted by the parties, including any prior complaints of misconduct, and making any site-visits as needed. Parties may have an advisor present during any investigation meeting. The role of the advisor will be limited to being present only; the advisor will not be permitted to speak to anyone other than their advisee during any meeting, interview or hearing relevant to the investigation, with the exception of cross examination within the hearing setting. If the advisor is an attorney, the party shall notify the Title IX Coordinator that an attorney will be present at least two days prior to the meeting, interview or hearing.

The parties involved will have equal opportunities to present information to the investigators including the opportunity to present witnesses including fact and expert witnesses and other inculpatory and exculpatory evidence.¹⁷ The parties will be provided equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the University will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

The investigator will then create an investigative report that fairly summarizes relevant evidence, including inculpatory and exculpatory evidence and, at least 10 days prior to a hearing, send to each party and the party's advisor, if any, the investigative report in an electronic format, for their review and written response.¹⁸ The written response of any party will be included as an attachment to the investigative report at the hearing. Credibility determinations made within the investigative report cannot be based on the person's status as complainant, respondent, or witness.

Other than cross examination in the hearing setting: under no circumstances, except with voluntary consent, will an individual (including an employee or applicant) be required to discuss the alleged

¹⁶ 85 Fed. Reg. 30382 also see FOOTNOTE 1487.

¹⁷ 85 Fed. Reg. 30576 – this is mandatory.

¹⁸ 85 Fed. Reg. 30577

discriminatory and/or retaliatory conduct with the person alleged to have committed the discrimination and/or retaliation. This applies before, during, and after investigation of any grievance.

Information related to prior sexual history [of either of the parties will be prohibited, except in very limited circumstances regarding prior sexual history between the parties where such information may be relevant to the issue of consent. However, consent will not be assumed based solely on evidence of any prior sexual history.

2.3 AGREEMENT-BASED RESOLUTION OPTIONS¹⁹

In appropriate cases the University may choose to pursue agreement-based resolution with the consent of all parties at any point in the investigation process. When an informal agreement-based process is commenced the parties will receive a written notice disclosing the allegations, the requirements of the informal resolution process, information relating to waiver of full investigation and hearing as a result of the agreement-based process, and the right to withdraw from the informal process and resume the formal process. The agreement-based resolution option cannot be commenced without each party's voluntary, written consent and cannot be utilized in situations where an employee is alleged to have sexually harassed a student.

Alternative resolution options can include mediation, admission of misconduct, specific action plans, voluntary agreements, or sanctions. Any alternative resolution must be reduced to writing by the EEO/Title IX Coordinator and be signed or electronically assented to by each party and by the Coordinator. All parties will be notified of the right to end the alternative resolution process at any time and resume the formal process. The investigator will document the outcome of any alternative resolution and share with the parties and the Title IX Coordinator.

Any facilitator of an agreement-based informal resolution process must receive training as required by applicable law including Title IX regulations if the case is categorized as a Title IX investigation.

2.4 HEARING PROCEDURES

If an agreement-based resolution option is inappropriate or if they are declined by the parties or by the University, a hearing will take place if there is still, after investigation, enough reasonable cause on which to hold a hearing. Whether or not a hearing occurs will not-necessarily impede the supportive measures for complainant or respondent mentioned in Section 4.2 of this policy.

When a hearing is scheduled to take place, the University will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. Parties will continue to have access to all evidence, even such evidence not included in the investigative

¹⁹ 85 Fed. Reg. 30578

report, at the hearing, to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.²⁰

After the passage of ten days for the parties to review the investigative report and submit written responses, a panel of three Civil Rights and Title IX Committee members will be assembled to hold a live hearing. Any investigators of the case are not eligible to serve on the hearing panel, but shall be available to explain their investigative report to the panel. Neither a respondent nor a complainant in a discrimination or retaliation investigation may be one of the decision makers charged with determining whether the respondent discriminated or retaliated against the complainant.

Hearing notification will occur at least five days in advance and include the hearing date, time and location. Hearings will be scheduled around work or class schedules, and will not be postponed unless extraordinary circumstances exist. No fewer than ten days prior to the hearing, the parties shall be provided the investigative report that will be submitted to the hearing panel for review.

Allegations of discrimination, harassment, or retaliation will be heard by the panel. The hearing includes opening statements, discussion of relevant parts of the investigation report, information about the incident or incidents, presentation of information by witnesses brought by the parties, cross-examination of the parties and witnesses, and closing statements. Each party is permitted to have a person of their choosing to accompany them throughout the hearing as an advisor. Their advisor may confer quietly with their party, exchange notes, clarify procedural questions, conduct cross-examination, and generally assist the party in all manner other than speaking for them on their behalf or to the panel on a substantive matter.

Cross-examination is sensitive and must take place in a phased process. Each party's advisor is permitted to ask the other party and any witnesses all *relevant* questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.²¹ 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) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Therefore, upon the oral recitation of each question there will be a brief pause for the panel to consider the relevancy. If any member of the panel believes the question may be non-relevant the panel shall take a vote, and if a majority of the panel agrees the question is non-relevant, then a brief adjournment shall commence so that the panel can draft a written explanation/rationale as to why the question will be excluded. Only after this rationale is read aloud to the room will the next question commence.

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, for the limited purpose of asking questions during cross examination. The questions, insofar as a University provided advisor is concerned, shall be limited to questions drafted by the party.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant,

²⁰ 85 Fed. Reg. 30576

²¹ 85 Fed. Reg. 30577.

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 that 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 either party's request, the hearing be arranged 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. The use of technology must enable parties to see and hear each other, and for parties to see other participants including witnesses.

In the hearing, the parties will have equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

Unduly repetitive character witnesses or any other types of witnesses including expert witnesses can be limited at the discretion of the panel.

The standard of proof used in all university hearings is preponderance of the evidence.

The University will record an audio or audiovisual recording of any live hearing and make it available to the parties for inspection and review.

2.5 OUTCOME

The outcome will be determined by a majority vote of the panel, and the sanction can be based not just on the facts in the present case but also any conduct history of the respondent in totality. Possible outcomes include the entire range of sanctions listed in this policy. Specifically, the panel shall determine if the respondent is responsible or not responsible for violations of this policy and recommend a sanction if they are responsible. Both parties will be notified within fourteen business days after the hearing.

The written outcome determination will include:²²

- A reference to the policy provision alleged to have been violated,
- A summary of the allegations,
- A log of each procedural step taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held,
- Findings of fact supporting the determination,
- Conclusions regarding the application of the Civil Rights & Title IX Policy to the facts,
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the imposed on the

²² 85 Fed. Reg. 30577 – each element MUST be in the outcome letter.

respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the University to the complainant, and

- The recipient's procedures and permissible bases for the complainant and respondent to appeal.

The University will provide the written determination to the parties simultaneously.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

2.6 APPEAL

Appeals shall be on paper, to a three-person panel of the Title IX Committee who are not the same persons who sat on the initial hearing panel. Any individual who was previously involved in complainant's investigation or hearing in an investigative or decisional capacity may not serve on the appeals panel. The written appeal must include the basis for seeking the appeal and include information to support such basis. Either party may appeal from a finding of responsibility, or a dismissal of a formal grievance or any allegations within the formal grievance. It shall be received by the Title IX Coordinator no later than three (3) business days after the date of the determination being appealed. If no written request for an appeal is received by the University within the time specified, the request for an appeal will not be reviewed and any sanctions imposed will be final.

An appeal must be based on one of the following bases:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The EEO/Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

PART THREE

INFORMATION SPECIFIC TO SEXUAL HARASSMENT & ASSAULT

3.1 IMMEDIATE PROCEDURES FOR SEXUAL ASSAULT VICTIMS

3.1.A Preserving Evidence: In order to best preserve evidence campus police/law enforcement officials should be contacted as soon as possible after an assault has occurred. If at all possible a sexual assault victim, who has the option of going for help at the nearest emergency room, should not shower, change clothes or brush his or her teeth. Preserving evidence may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protective order. Victims are encouraged to call the campus police or local law enforcement to initiate a report and to help preserve evidence. It is up to the victim if prosecution is pursued.

3.1.B If unable to get to the Emergency Room, get to a safe, secure place.

3.1.C Report by one of the following options:

- a. To report as a crime or emergency, notify Campus Police (580) 559-5555 and/or Ada PD or other local Police at 911.
- b. To report to the University and/or to have University officials assist you in notifying law enforcement, contact one of the following resources:
 - i. Housing and Residence Life
 1. Main office: 580-559-5602 (use this # during regular business hours) or report to Resident Director.
 - ii. The Title IX Coordinator: 580-559-217
 - iii. The Dean of Students: 580-559-5208

If you are a student and prefer not to notify law enforcement or responsible University officials, you may access campus services from the University Counseling Center. Or you can call the Crisis Control Center at (580) 924-3000 or call another support agency or office. If you are an employee and prefer not to notify law enforcement or responsible University officials, you may contact the Crisis Control Center at (580) 924-3000. Additionally, employees can contact the National Sexual Abuse Hotline at 800-656-4673. Resources may also be available through the Employee Assistance Program offered through Employment Services. Please remember that reluctance or unwillingness to make a complete report to campus security and the police will make it difficult for either the police or the University to take appropriate action or safety measures; this includes reporting the dangers to the campus community.

3.2 MANDATORY REPORTING - SEXUAL MISCONDUCT INVOLVING A CHILD OR A MINOR

Sexual misconduct involving a child/minor (anyone under 18 years of age) must be reported. Oklahoma state law requires that any person who has reason to believe that a minor is a victim of child abuse or neglect (including sexual misconduct) has an affirmative duty to make an oral report to the Department

of Human Services. You may do so using the Department of Human Services hotline at **1-800-522-3511**. Failure to report may result in criminal charges.

3.3 AMNESTY

The University strongly encourages students and employees to report instances of sexual misconduct. Therefore, students reporting an incident of sexual misconduct will not be disciplined by the University for offenses that are minor in scope and consequence that are connected to the incident of sexual misconduct. For offenses of a more serious scope, a diminished penalty will be considered if deemed appropriate under the conduct process so long as the offense is entangled in an instance of sexual misconduct and the individual requesting amnesty did indeed report the matter promptly.

3.4 RISK REDUCTION AND BYSTANDER INTERVENTION

Do not confuse risk reduction tips for victim-blaming. The Federal Violence Against Women Reauthorization Act of 2013 and associated Department of Education Regulations on the Violence Against Women Act (34 CFR Part 688) requires institutions of higher education to provide risk reduction tips to the campus community. These tips are offered in the hope that recognizing patterns can help men and women to reduce the risk of victimization. Generally, an assault by a known offender will follow a four step pattern:

1. An individual's personal space is violated in some way. For example, the perpetrator may touch the victim in a way that does not feel comfortable.
2. If the victim does not express discomfort, the perpetrator may begin to view the victim as an easy target because she/he is not acting assertively.
3. The perpetrator may take the victim to a location that is secluded and where the victim is vulnerable.
4. The victim feels trapped or unable to be assertive and is raped or assaulted.

If you find yourself in an uncomfortable sexual situation, these suggestions may help you to reduce your risk:

- Make your limits known as early as possible.
- Tell a sexual aggressor "NO" clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.

- Understand and respect personal boundaries.
- DON'T 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/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

3.4.A. Safe and Positive Options for Bystander Intervention

Reducing instances of sexual assault and other gender-based misconduct must be a team effort, involving all members of the campus community. We must all take it upon ourselves to respond appropriately when we notice something inappropriate or dangerous. The following are positive options for bystander intervention:

- Notice the Incident. Bystanders first must notice the incident taking place. Obviously, if they don't take note of the situation there is no way they can help.
- Interpret Incident as Emergency. Bystanders also need to evaluate the situation and determine whether it is an emergency, or at least one in which someone needs assistance. Again, if people do not interpret a situation as one in which someone needs assistance, then there is no need to provide help.
- Assume Responsibility. Another decision bystanders make is whether they should assume responsibility for giving help. One repeated finding in research studies on helping is that a bystander is less likely to help if there are other bystanders present. When other bystanders are present responsibility for helping is diffused. If a lone bystander is present, he or she is more likely to assume responsibility. Defeat this tendency by assuming responsibility and helping whenever you can safely do so, whether you are alone or in a group of bystanders.
- Attempt to Help. Whether this is to help the person leave the situation, confront a behavior, diffuse a situation, or call for other support/security.
- Tips for Intervening: In a situation potentially involving sexual assault, relationship violence, or stalking:
 - Approach everyone as a friend
 - Do not be antagonistic
 - Avoid using violence
 - Be honest and direct whenever possible
 - Recruit help if necessary
 - Keep yourself safe

- If things get out of hand or become too serious, contact the police

3.5 NOTIFICATION OF RELEVANT LAWS

In accordance with the Violence Against Women Reauthorization Act of 2013, please be advised that the following definitions are applicable should you wish to pursue Oklahoma state criminal or civil actions. These definitions may differ from the University's administrative policy definitions noted above. The University's administrative system and disciplinary procedures are separate and distinct from those available to someone in a state civil or criminal action. Individuals may seek administrative remedies in accordance with this policy and also may seek state or federal civil or criminal remedies for the same incident through the applicable systems. The definitions set forth below are reviewed and verified annually; for a more frequently updated resource, please consult the Oklahoma State Court Network website at <http://www.oscn.net>.

1. DEFINITION OF RAPE Oklahoma Penal Code, 21 O.S. §1111 defines rape as: Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances: 1. Where the victim is under sixteen (16) years of age; 2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent; 3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person; 4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; 5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused; 6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape; 7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim; or 8. Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system. 9. Where the victim is nineteen (19) years of age or younger and is in the legal custody of a state agency, federal agency or tribal court and engages in sexual intercourse with a foster parent or foster parent applicant. i. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

2. DEFINITION OF CONSENT Oklahoma Penal Code, 21 O.S. §1114, indicates consent is not effective in cases of: a. rape committed by a person over eighteen (18) years of age upon a person under fourteen (14) years of age; or b. rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or c. rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; or d. rape accomplished

where the victim is at the time unconscious of the nature of the act and this fact is known to the accused; or e. rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or f. rape by instrumentation resulting in bodily harm is rape by instrumentation in the first degree regardless of the age of the person committing the crime; or g. rape by instrumentation committed upon a person under fourteen (14) years of age.

3. DEFINITION OF DOMESTIC/DATING VIOLENCE Oklahoma Penal Code, 21 O.S. §644, defines domestic and dating violence as: “...any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of domestic abuse.” 4. Definition of Stalking Oklahoma Penal Code, §21-1173, defines stalking as: “Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that: a. Would cause a reasonable person or a member of the immediate family of that person as defined in subsection F of this section to feel frightened, intimidated, threatened, harassed, or molested; and b. Actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested...”

PART FOUR

VICTIM CARE, PROTECTIVE, AND REMEDIAL MEASURES

4.2 SUPPORTIVE MEASURES²³

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The University will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The EEO/Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

These supportive measures may include

- Referral to counseling and health services or to the Employee Assistance Program
- Altering the housing situation of an accused student or resident employee (or the complainant, if desired).
- Altering work arrangements
- Providing campus escorts
- Implementing contact or geographic limitations between the parties
- Offering adjustments to academic deadlines, course schedules, dining arrangements, etc.
- Impose an interim suspension on an employee or student.
- Ban specific contractors or visitors from campus.
- Re-assignment of job tasks or supervisory authority
- Provision of immediate alternative office location or workstation
- Support and guidance for obtaining a protective order

Medical treatment is available through local physicians or at Mercy Hospital where evidence may be collected to preserve the option of prosecution if the complainant so chooses.

The University will provide written notification to victims about options for, available assistance in, and how to request changes to a working situations or other protective measures. The University will

²³ 85 Fed. Reg. 30225

provide these measures if the victim requests them and if they are reasonably available regardless of whether the victim chooses to report the crime to campus police or local law enforcement. This written notification will also include options for existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services if they are available for victims within the University or the local community. This written notification may be in the form of a brochure-style pamphlet.

4.2 SANCTIONS

4.2.A Possible Sanctions for Students Under This Policy:

- **Warning.**
- **Customized Restrictions or Projects:** Including but not limited to: letter of apology, presentation of a workshop, preparation of a research paper or project, social probation, community service, assessment or evaluation, counseling, no contact orders (may include restricted access to campus services/amenities/enrollment/facilities/etc.) , assigned a mentor/role model, required community/organizational involvement, restitution for damages, punitive fines, eviction from residence halls, loss of privileges (i.e. visiting privileges in housing or denial of access to computer or other campus services) prohibiting membership or leadership in campus organizations; or denial of participation in any official athletic or non-athletic extracurricular activity, including practices or travel; or withholding of official transcript or degree; or blocking from enrollment for a specified period of time; intervention program (may require a fee); or any combination of the above.
- **Conduct probation:** A student may be placed on conduct probation for a specified time frame. If a second violation occurs while a student is on probation, disciplinary action will be based on both charges. If the student has a Dean's disciplinary hold on the student records, it is removed at the discretion of the Conduct Officer.
- **Suspension:** A student may be suspended from the University for a definite period of time not less than the remainder of the current semester in which student is enrolled. The student who has been suspended may apply for readmission at the close of the period for which the student was suspended.
- **Expulsion:** When a student is expelled, a record of this action will be noted on the student's transcript and it will be a part of the student's permanent record in the Office of the Registrar. A student who is expelled will not be allowed to re-enter the university.
- **Temporary suspension (Emergency Removal):** A student may be temporarily suspended from the university or university housing to ensure safety and well-being of members of the university community or preservation of university property; to ensure a student's own physical or emotional safety and well-being; and/or if the student poses an ongoing threat or disruption. During the temporary suspension, a student may be denied access to university housing and/or all other university activities, privileges, and property for which the student might otherwise be

eligible, as the conduct officer may determine to be appropriate. The temporary suspension does not replace the regular process, which shall proceed on the normal schedule, up to and through a student hearing and appeal, if required. The student will be notified in writing of this action and the reasons for the temporary suspension. The notice shall include the time, date, and place of an initial hearing at which the student may show cause why his or her continued presence on the campus or in university housing does not constitute a threat.²⁴

4.2.B Possible Sanctions for Employees Under This Policy:

- **Warning:** A warning is a formal method of informing an employee of a violation of University rules, guidelines, and/or policies. Additional violations will initiate the progressive disciplinary process.
- **Mandated Assessment** by a university approved licensed psychologist, physician or healthcare provider.
- **Access restrictions:** geographically defined as needed.
- **Reassignment:** relocation to new job location or new job duties either physically or structurally.
- **Demotion:** A reduction in rank or status.
- **Administrative Leave:** Temporary emergency removal of an employee from performing his/her work duties.
- **Nonrenewal**
- **Termination:** If the nature of the violation is so problematic and/or harmful to the campus community that a warning or a suspension is not appropriate; the University's recommendation will be to terminate employment.

4.2.C Possible Sanctions for Contractors and Visitors Under this Policy

- **Warning:** A warning is a formal method of informing a contractor or visitor of a violation of University rules, guidelines, and/or policies.
- **Ban:** Individuals or groups may be formally banned from University property or sponsored events
- **Termination:** Contractor agreement will be terminated.

²⁴ Title IX Regulations refer to Temporary Suspension as "Emergency Removal." When a student is being temporarily suspended *in a matter categorized as a Title IX investigation*, such emergency removal is permitted provided that the University undertakes an individualized safety and risk analysis, 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 provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. In such instances, the challenge of the removal will take place in a manner consistent with the Temporary Suspension policies in the Student Code of Conduct while complying with the requirements of the Title IX regulations

RECORD COPY

This updated version of policy takes effect on August 14th, 2020.