

# Oklahoma Christian University

Policy Against Sex Discrimination Including Sexual Harassment

*Title IX of the Education Amendments of 1972*

Effective: August 14, 2020

## I. Preamble:

Oklahoma Christian University is a safe place for all. The underlying Biblical basis on which Oklahoma Christian University complies with Title IX of the Education Amendments of 1972 is best summarized in two passages.

First, in Mark 12:30-31. A curious scribe, impressed with Jesus' answers to Sadducees question about the resurrection, asked Jesus, What is the most important commandment? Jesus told him **love the Lord your God with all your heart, soul, mind, and strength, and the second is like it, love your neighbor as yourself.**

Second, in Mathew 7:12 Jesus said in everything then **do to others as you would have them do to you.**

As members of the Oklahoma Christian University community we pledge to each other to live under the terms of the OC Covenant. This Covenant requires that we treat each other and ourselves with the same respect, care, and concern that Jesus expects. The following policy concerns Oklahoma Christian University's response when a community member alleges to have been harmed by another member of the community through unwanted conduct of a sexual nature.

James 2 provides the context in which Oklahoma Christian University will apply its process and procedures. Fairness for all will permeate the process, **without favoritism.**

## II. Definitions:

1. **Actual Knowledge** of an allegation of sexual harassment occurs when a Complainant informs either (1) the Title IX Coordinator, or (2) an official with authority to institute corrective measures on behalf of OC, of the allegation of sexual misconduct covered under Title IX. When OC has actual knowledge on such basis, its response obligations are triggered.
2. **Advisor** is an individual chosen by a Complainant or a Respondent to assist them in the Title IX process. The Advisor may be but need not be an attorney. If the Advisor is an attorney the attorney must register with the Chief Legal Counsel prior to being allowed to participate in any phase of the grievance procedures. Attorneys will be instructed in the limited scope of their involvement in the process and will be required to sign an affidavit of participation. If one party has an Advisor but the other does not the University shall

provide an Advisor of its choosing to assist the party without an Advisor of his or her own.

3. **Clery Act** (“The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990”) is a comprehensive crime reporting statute with implementing regulations providing specific uniform definitions of certain crimes.
4. **Complaint** is a written statement, signed by the Complainant, describing specific factual details related to unwanted conduct of a sexual nature allegedly committed by a respondent which is alleged to violate Title IX.
5. **Complainant** is an individual who is alleged to be a victim of conduct that could constitute sexual harassment.
6. **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim (Complainant). The existence of such a relationship shall be determined based on the reporting party’s (Complainant) statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
7. **Disciplinary sanctions** are punitive actions taken by the university against a respondent who has been determined to have engaged in unwanted conduct of a sexual nature, during a formal hearing. Such sanctions may include but are not limited to, dismissal, fine, suspension, removal from campus, or other steps intended to be punitive in nature.
8. **Domestic Violence** is a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim (Complainant); by a person with whom the victim (Complainant) shares a child in common; by a person who is cohabitating with or has cohabitated with the victim (Complainant) as a spouse or intimate partner; by a person similarly situated to a spouse of the victim (Complainant) under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
9. **Family Education Rights and Privacy Act (“FERPA”)** is a statute designed to protect the privacy rights of students in the education records. FERPA defines the term “education record” broadly to generally include any information directly related to a student that is maintained by the university.
10. **Formal Complaint** is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the university investigate the allegation.
11. **Informal Resolution** is a process for resolving complaints of sexual harassment between students, that is other than the hearing format of a Formal Resolution, outlined below. Informal resolution is always voluntary and mediated by a trained individual. Informal resolution can only proceed after a Formal Complaint has been filed, and only if both student parties voluntarily consent to informal resolution. Informal resolution is not available for an employee Respondent.

12. **Investigations** are a deliberate methodical process undertaken by trained volunteer OC employees, designed to gather facts and relevant evidence from the Complainant, Respondent, and any of their witnesses, in order to assist a decision maker in assessment of whether the complaint is substantially more likely than not to be true or false (i.e. by clear and convincing evidence).
13. **Religious Exemption** is a congressionally provided recognition that certain aspects of Title IX do not apply to religious universities, like Oklahoma Christian University, when application of that aspect would violate a sincerely held religious belief of the university, as such are determined by its Board of Trustees.
14. **Remedies** are restorative actions taken by the university for the benefit of a complainant against whom sexual harassment has been determined to occur, during a formal hearing.
15. **Respondent** is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
16. **Sexual Assault** is any type of sexual contact or behavior that occurs without consent of the recipient (Complainant). The definition includes sexual activity such as forced sexual intercourse, sodomy, molestation, incest, fondling, and attempted rape. It includes sexual acts against people who are unable to consent either due to age or lack of capacity.
17. **Sexual Harassment** is a form of sex discrimination that is either (1) "quid pro quo"<sup>1</sup> sexual harassment by an employee; or (2) unwelcome conduct, determined by a reasonable person, to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the university's education program or activities; or (3) sexual assault, dating violence, domestic violence or stalking as defined in the "Clery Act" and the "VAWA".
18. **Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. 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. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
19. **Standard of Evidence** is the relevant degree of satisfaction required in order to determine whether a fact, finding, or evidence is true. The standard of proof in all matters involving sexual harassment will be the clear and convincing evidence standard. Clear and convincing evidence is satisfaction of a fact that is substantially more likely than not.

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<sup>1</sup> A school employee conditioning education benefits on participation in unwelcome sexual conduct.

20. **Supportive Measures** are free individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party, designed to provide or preserve equal educational access, protect safety, or deter sexual harassment.
21. **Title IX Coordinator** is the person appointed by the university to oversee the application of its Title IX program and compliance.
22. **Violence Against Women Reauthorization Act of 2013 (“VAWA”)** is a Federal statute providing certain definitions related to violent acts against women in various settings. Certain definitions found in VAWA amend definitions found in the Clery Act by reference. The definitions in this policy applying to dating violence, domestic violence, and stalking are Clery Act definitions amended by VAWA.

### **III. Grievance Procedures**

**The grievance procedure always begins with a written complaint.**

1. **Complaint:** Oklahoma Christian University’s Title IX procedures begin by the filing of a signed formal written complaint, delivered by a Complainant to the Title IX Coordinator. OC must dismiss a complaint that alleges conduct (1) that is not covered in the regulation’s definition of sexual harassment, or (2) that did not occur in the university’s academic program or activities, or (3) that is not against a person in the United States. This mandatory dismissal is only with regard to Title IX. Other university disciplinary procedures may apply even though Title IX may not.

The university may, but is not required to dismiss a formal complaint if (1) the Complainant informs the Title IX Coordinator, in writing, that the Complainant desires to withdraw its formal complaint, or (2) if the Respondent is no longer enrolled in or employed by the university, or (3) if specific circumstances prevent the university from gathering sufficient evidence to make a determination. If the university dismisses a complaint it will provide written notice of the dismissal to both parties concurrently.

When the Title IX Coordinator is aware of a repeated pattern of sexual misconduct by an individual the Title IX Coordinator may initiate the grievance procedure on behalf of the university, as the institutional Complainant, through a written complaint signed by the Title IX Coordinator.

2. **Advisors:** Each party is allowed to have an Advisor of their choosing present with them during each stage of the formal process. An Advisor may, but need not be, an attorney. Attorneys serving as Advisors, must register with the Chief Legal Counsel prior to participation in any phase of any resolution process. If one party has an Advisor but the other does not, the University will provide an Advisor of its choosing, for the party without an Advisor.

**The Title IX Coordinator will immediately implement supportive measures when necessary to ensure equal access to OC programs.**

3. **Supportive Measures:** The Title IX Coordinator must implement Supportive Measures as soon as practicable, when necessary or requested, which are designed to ensure equal access to Oklahoma Christian University's academic programs and benefits. These measures are non punitive and non disciplinary.

**The Title IX Coordinator then provides contemporaneous notice of the complaint and enough detail to provide the Complainant and Respondent the ability to participate meaningfully in the first interview. (See *Informal Resolution* below for student on student complaints where both parties agree to informal resolution.)**

4. **Notice:** The Title IX Coordinator will notify both parties contemporaneously of the allegations contained in the complaint, with enough specificity for each party to understand the complaint, the relevant parties, and to be able to prepare for the first interview with the investigators.

**The Title IX Coordinator will prepare an investigatory plan and assign proper investigators to begin the collection of facts and evidence.**

5. **Investigation:** The Title IX Coordinator will create a written investigation plan and assign investigators to gather relevant facts and information in an unbiased and fair manner from the Complainant, Respondent, their witnesses and other individuals with potentially relevant facts or evidence related to the complaint. Each party may provide inculpatory and exculpatory evidence and fact witnesses to the investigators. The burden for gathering evidence and substantiating the burden of proof lies with the university, not the parties. Interviews may be electronically recorded at the sole discretion of the investigators. During the investigation, the university will not access treatment records without the voluntary written consent of the party. The university will protect the privacy of the party supplying its treatment record, as best as is possible without unfairly jeopardizing the unbiased nature of the investigation. If the treatment record is relevant to the ultimate issue in the investigation, the other party will be provided access to the record, just like all other relevant evidence. The investigation will result in a written report summarizing the evidence and the process employed to gather the evidence. The final written investigative report, along with copies of all evidence, will be provided to the Complainant and Respondent, at least three (3) days prior to the hearing.

**Following the conclusion of the investigation the Title IX Coordinator will assemble a hearing panel from the pool of trained panelists and a date will be set for the hearing.**

6. **Hearing:** At the conclusion of the formal investigation a formal resolution process will conclude with a live hearing.

  - a. **Hearing Panel:** The hearing is conducted in the presence of a three (3) person hearing panel whose role is to determine whether it is substantially more likely than not that the facts and evidence in the complaint are either true or false.
  - b. **Cross Examination:** The live hearing will include the ability of each party to indirectly cross examine the other party. Neither party will be allowed to address the other party directly, but may only do so through his or her Advisor. Cross examination will be live, oral, and in real time, but is limited to only information relevant to the complaint. Prior sexual conduct of a Complainant is always irrelevant, unless it offered to prove that someone other than the respondent committed the sexual misconduct, or to prove consent. Instances of prior sexual conduct between the parties by itself, is not dispositive of consent. Even though the cross examination will be live and in real time, either party may request to participate in the hearing via online video conferencing rather than being in the hearing room. Generally, cross examination questions must be submitted to the panel at least five (5) days prior to the hearing so that the panel will have adequate time to determine the relevancy of the proposed questions as each pertains to the allegations in the complaint. Follow up questions are allowed during the hearing, but must be submitted to the panel to determine relevance, prior to being asked of the party, during the hearing. In determining responsibility, the panel may not rely on any statement of a party or witness who refuses to participate in cross-examination. Notwithstanding, the panel may not draw an inference regarding responsibility merely because a party declines to participate in cross-examination or is absent from the hearing.
  - c. **Recording:** The hearing will be recorded electronically or transcribed.

**Shortly after the hearing panel returns its decision each party will be contemporaneously informed of the panel's decision.**

7. **Determination:** At the conclusion of the hearing, the hearing panel will convene in private to make a determination of whether it is substantially more likely than not, based on the totality of the evidence presented, that the conduct complained of happened in accordance with the facts alleged in the complaint, and if so, whether the conduct violates Title IX. The panel's determination will be in writing and will be communicated to the Title IX Coordinator, the Complainant and the Respondent, concurrently. The written determination will articulate findings of fact, conclusions on the ultimate matter, its rationale as to each allegation contained in the complaint, the disciplinary sanctions imposed by the panel and whether remedies are available to the Complainant. The Title IX Coordinator is responsible and empowered to ensure that the panel's sanctions are implemented.

**Either party may appeal the decision.**

8. **Appeal:** Either party may appeal the decision of the hearing panel. The appeal must be made in writing and presented to the Title IX Coordinator within five (5) days of the date on which the determination has been communicated to the parties. If the decision involves an employee, and employment sanctions are involved, then the Chief Human Resources Officer shall be the appellate review officer. If the appeal involves only students then the Dean of Students shall be the appellate officer. If either appellate officer has a conflict of interest in the outcome of the appeal then the Chief Operations Officer shall be the appellate officer for students and the Chief Legal Officer for employees.

**Generally, after the appeal decision has been contemporaneously communicated appropriate sanctions will be implemented against a respondent who has been determined to have violated Title IX. In some circumstances it may be necessary to implement disciplinary sanctions immediately, even though the decision is still appealable, but this is rare.**

9. **Sanctions:** The hearing panel will assess sanctions. Prior to assigning sanctions, generally the panel will consult with the Dean of Students regarding appropriate sanctions for students determined to have violated Title IX. Prior to assigning sanctions the panel will generally consult with the Chief Human Resources Officer for employees determined to have violated Title IX.

**Student sanctions** include but are not limited to (1) withdrawal of a right or privilege, (2) mandatory training, (3) mediated restitution, if appropriate, (4) fine or other penalty (5) removal from campus housing, without expulsion (6) suspension for a time, (7) expulsion for a semester, or (8) permanent expulsion as a student at OC.

**Employment sanctions** may include, but are not limited to (1) mandatory training, (2) mediated restitution, if appropriate (3) loss of a right or privilege of employment (4) altered work schedule (5) temporary paid or unpaid suspension or (6) termination of employment.

**The Title IX Coordinator will assist the complainant by implementing remedies designed to allow the complainant to continue receiving academic benefits and services at Oklahoma Christian University.**

10. **Remedies:** The Title IX Coordinator will work with the complainant through an interactive process to determine appropriate remedies that will allow the complainant to continue

accessing the academic programs and benefits provided by Oklahoma Christian University.

#### **IV. Informal Resolution, if applicable.**

**A written complaint is delivered to the Title IX Coordinator.**

1. **Complaint:** The Title IX procedures for Informal Resolution begin by the filing of a formal written complaint, by a Complainant with the Title IX Coordinator. OC must dismiss a complaint that alleges conduct (1) that is not covered in the regulation's definition of sexual harassment, or (2) that did not occur in the university's academic program or activities, or (3) that is not against a person in the United States. This mandatory dismissal is only with regard to Title IX. Other University disciplinary procedures may apply even though Title IX may not.

The university may, but is not required to dismiss a formal complaint if (1) the Complainant informs the Title IX Coordinator, in writing, that the Complainant desires to withdraw its formal complaint, or (2) if the Respondent is no longer enrolled in or employed by the university, or (3) if specific circumstances prevent the university from gathering sufficient evidence to make a determination. If the university dismisses a complaint it will provide written notice of the dismissal to both parties concurrently.

**The Title IX Coordinator will immediately implement supportive measures when necessary to ensure equal access to OC programs.**

2. **Supportive Measures:** The Title IX Coordinator must implement Supportive Measures as soon as practicable, when necessary or requested. Supportive Measures are designed to ensure equal access to Oklahoma Christian University's academic programs and benefits. These measures are non punitive and non disciplinary.

**The Title IX Coordinator then provides contemporaneous notice of the complaint and enough detail to provide both parties the ability to participate in the process, meaningfully.**

3. **Notice:** The Title IX Coordinator will notify both parties contemporaneously of the allegations contained in the complaint, with enough specificity for each party to understand the complaint, the relevant parties, and to be able to prepare for the first interview with the investigators.

**Both parties may agree, after giving informed written consent to the Title IX Coordinator, to participate in an informal resolution process not involving a hearing panel.**

4. **Informal Resolution Methods and Requirements:** If both parties are students and each agree through an informed written consent to participate in an informal resolution process, the Title IX Coordinator may invoke the informal resolution processes which may involve a mediated resolution, restorative processes, acceptance of responsibility, or other informal means, especially processes that mirror the tone and steps in the Gospel of Matthew Chapter 18. The parties' Advisors may participate with them in the informal resolution process. Generally, Advisors will not be allowed to speak during informal resolution processes.
5. **Revocation of Consent to Participate:** Prior to the resolution agreement either party may withdraw from the informal resolution process and the formal resolution process will commence. All information provided or gleaned, during the informal resolution process, may be included in the file and provided to investigators in the Formal Resolution process.

## **V. General Provisions**

1. **Retaliation** against any individual for participation in a Title IX complaint, allegation, or procedure, or for enforcing any right protected by Title IX is strictly prohibited. Retaliation by an individual against another individual is a separate violation of the student conduct code or employee conduct expectations and such individual will be subject to sanctions in addition to any appropriate sanction or remedy assessed under this Title IX policy. Charging an individual with a code of conduct violation not involving sexual harassment that arises out of the same facts or circumstances contained in a report of sexual harassment, for the purpose of interfering with a right or privilege protected by Title IX, is retaliation.
2. **Amnesty** is provided to Complainants for other related student code of conduct violations occurring as a part of the factual circumstances surrounding or derived from the alleged unwanted conduct of a sexual nature described in the complaint. The purpose of this privilege is to remove barriers to the reporting of incidents of sexual misconduct.
3. **Privacy** of the complainant, respondent, and witnesses will be protected as best as is possible considering the nature of the complaint and the university's need to conduct a full and complete investigation and determine the matter. FERPA applies to proceedings, reports, investigations, and all communications related to the processing of a Title IX complaint.

**4. Reporting** a potential violation of Title IX occurs when the Complainant communicates the allegation to the Title IX Coordinator or another employee with the authority to redress instances of sexual harassment. Reporting the potential violation is not an official complaint.

- a. **Confidential Reporting:** A Complainant may also wish to discuss the circumstances confidentially. The following four (4) employees are sources for confidential reporting of allegations: (1) Campus Ministers Summer Lashley (405) 425-5098 and Jeff McMillon (405) 425-5919 and (2) Campus Counselors Sheldon Adkins (405) 425-5250 and Brenda Gunter (405) 425-5250.
- b. **Criminal Conduct:** A Complainant should immediately report any instance of criminal sexual assault or sexual misconduct to the **Oklahoma Christian University Police Department (405) 425-5500**, or the Oklahoma City Police Department by dialing 911.