

## Oklahoma Baptist University Policy Against Sex Discrimination Including Sexual Harassment

Title IX of the Education Amendments of 1972

Effective October 15, 2020

### I. **Preamble:**

Oklahoma Baptist University (“OBU”) strives to be a place where all students mature, learn, and grow into their individual callings through Christ Jesus our Lord. In that aim, OBU strives to provide the premier learning environment in which all our students may succeed to their fullest potential. It is OBU’s belief that Title IX of the Education Amendments of 1972 helps provide the safe atmosphere in which our students can flourish.

Further, in Mark 12:30-31, Jesus answered the question of what is the most important commandment with this, “**love the Lord your God with all your heart, and with all your soul, and with all your mind, and with all your strength. The second is this: you shall love your neighbor as yourself.**” Additionally, in Matthew 7:12, Jesus said, “**in everything, do to others what you would have them do to you.**” It is with these passages in mind that OBU establishes the following policy in accordance with Title IX of the Education Amendments of 1972 regarding sex discrimination including sexual harassment.

### II. **Definitions:**

1. **Actual Knowledge** of an allegation of all forms of harassment including 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 OBU, of an allegation of sexual misconduct covered under Title IX. When OBU 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 Title IX Coordinator 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 inform the party who does not have an Advisor he/she has the right to select an attorney to serve as an Advisor of his/her choosing or choose an Advisor from the University’s staff.

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. **Coercion** is conduct or intimidation that would compel an individual to do something against their will by (1) the use of physical force, (2) threats of severely damaging consequences, or (3) pressure that would cause a reasonable person to fear severely damaging consequences. Coercion is more than an effort to persuade or attract another person to engage in sexual activity. Coercive

behavior differs from seductive behavior based on the degree and type of pressure someone uses to obtain consent from another.

5. **Complaint** is a written statement, signed by the Complainant, describing specific factual details related to unwanted conduct allegedly committed by a Respondent which is alleged to violate Title IX.

6. **Complainant** is an individual who is alleged to be a victim of conduct that could constitute sexual harassment or other forms of harassment.

7. **Consent** means the affirmative, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter which can be revoked at any time. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual activity. Although consent is not required to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual activity to obtain consent for that activity.<sup>1</sup>

The Definition of consent is subject to the following:

- i. Consent can only be given if an individual is of legal age. In Oklahoma, the legal age of consent is 16 years of age.
- ii. Consent is mutually understood and freely given “yes,” not the absence of “no.” Silence or failing to resist does not imply consent.
- iii. Consent to one sexual activity does not imply consent to other forms of sexual activity.
- iv. Consent can be withdrawn at any time. Once consent is withdrawn, the act for which the Consent was originally given must cease.
- v. The existence of previous relationships or previous consent does not imply consent to future sexual activity.
- vi. An existing sexual, romantic, dating, or marital relationship does not imply consent.
- vii. Prior sexual activity with other individuals does not imply consent to sexual activity with other individuals.
- viii. Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion.
- ix. An individual known to be, or who should be known to be, incapacitated, cannot consent to sexual activity initiated by another individual.
- x. Use of alcohol and/or drugs will never function to excuse actions which violate this Policy.

8. **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

---

<sup>1</sup> In accordance with 12 O.S. § 113

relationship will 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.

9. **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.

10. **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.

11. **Family Education Rights and Privacy Act ("FERPA")** is a statute designed to protect the privacy rights of students and their 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.

12. **Formal Complaint** is a document filed by a Complainant or signed by the Title IX Coordinator alleging harassment including sexual harassment against a respondent and requesting the University investigate the allegation.

13. **Incapacitation** means the inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. A person who is incapacitated cannot give valid consent to sexual contact.

Incapacitation due to the influence of drugs or alcohol requires more than being under the influence of drugs or alcohol. Where drugs and/or alcohol are involved, incapacitation is determined based on the facts and circumstances of the particular situation looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation, whether the individual was able to communicate decisions regarding consent, non-consent, or the withdrawal of consent, and whether such condition was known or reasonably known to the respondent or a reasonable person in respondent's position.

14. **Informal Resolution** is a process for resolving Complaints of all forms of harassment including 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.

15. **Investigations** are a deliberate methodical process undertaken by trained OBU employees and/or a designated outside entity in partnership with OBU, designated to gather facts and

relevant evidence from the Complainant, Respondent, any witnesses, and any other available methods of gathering evidence. Investigations are to be conducted without bias and shall produce a report which details the relevant facts and evidence gathered.

16. **Religious Exemption** is a congressionally provided recognition that certain aspects of Title IX do not apply to religious universities, like Oklahoma Baptist University, when application of that aspect would violate a sincerely held religious belief of the university, as such are determined by the Board of Trustees and the Baptist Faith and Message 2000.

17. **Remedies** are restorative actions taken by the University for the benefit of a Complainant against whom any form of harassment including sexual harassment has been determined to occur, during a formal hearing.

18. **Respondent** is an individual who has been reported to be the perpetrator of conduct that could constitute any form of harassment including sexual harassment.

19. **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.

20. **Sexual harassment** is a form of sex discrimination on the basis of sex that is either (1) “quid pro quo”<sup>2</sup> sexual harassment by an employee; or (2) unwelcomed conduct leading to a hostile environment, determined by a reasonable person, to be so severe, pervasive and objectively offensive that effectively denies a person equal access to the University’s education programs or activities; or (3) sexual assault, dating violence, domestic violence or stalking as defined in the “Clery Act” and the “VAWA”.

21. **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 of the victim.

22. **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 preponderance of the evidence standard.

23. **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.

---

<sup>2</sup> A school employee conditioning education benefits on participation in unwelcome sexual conduct.

24. **Title IX Coordinator** is the person appointed by the University to oversee the application of its Title IX program and compliance. The Title IX Coordinator and his/her information is listed herein and on the University's website.

25. **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 Baptist University's Title IX procedures begin by the filing of a signed formal written complaint, delivered by a Complainant to the Title IX Coordinator. OBU 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 withdrawal his/her 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 Title IX Coordinator prior to participation in any phase of any resolution process. If one party has an Advisor but the other does not, the University shall inform the party who does not have an Advisor he/she has the right to select an attorney to serve as an Advisor of his/her choosing or choose an Advisor from the University's staff.

The Title IX Coordinator will immediately implement supportive measures when necessary to ensure equal access to OBU 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 Baptist 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 seven (7) calendar 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 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 by the preponderance of the evidence, 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 is 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 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 Seven (7) calendar days of the date on which the determination has been communicated to the parties. The only grounds for appeal are as follows: a procedural error that significantly impacted the outcome, to consider new evidence unavailable during the original investigation, a conflict of interest or bias by an investigator, Title IX coordinator, or a member of the hearing panel that substantially impacted the outcome of the investigation or adjudication, or the sanctions imposed are substantially disproportionate to the severity of the violation. The request for appeal shall include on what grounds the appeal is made, and an explanation of how the grounds apply to the party's case.

If the decision involves an employee, and employment sanctions are involved, then the Director of Human Resources shall be the appellate review officer. If the appeal involves only students, then the Dean of Students & Vice President of Campus Life shall be the appellate officer. If either appellate officer has a conflict of interest in the outcome of the appeal, then an appellate officer selected from the Executive Cabinet will be appointed by the President.

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 a decision is still appealable, but this is rare.

9. **Sanctions:** The hearing panel will assess sanctions.

**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, or (7) expulsion from the University.

**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 from the University.

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 Baptist University if applicable.

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 Baptist University. The University will also seek to ensure the Respondent's access to academic programs and benefits provided by Oklahoma Baptist University but may be limited based on the official sanctions.

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

A written complaint is delivered to the Title IX Coordinator.

1. **Complaint:** Oklahoma Baptist University's Title IX procedures begins by the filing of a signed formal written complaint, delivered by a Complainant to the Title IX Coordinator. OBU 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 does not mean "must be a US citizen"). 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 withdrawal 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 OBU 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 Baptist 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.)

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 process 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, allegations, or procedures, 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 sanctions 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 shall be considered retaliation.
2. **Amnesty** is provided to Complainants for other related student code of conduct violations occurring as 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 employees are sources for confidential reporting of allegations - counseling center.
- b. **Criminal Conduct:** A Complainant should immediately report any instance of criminal sexual assault or sexual misconduct to the Oklahoma Baptist University Police Department or the Shawnee City Police Department by dialing 911.
- c. In the event the Complainant is below the age of majority, the State of Oklahoma requires that any person knowing of sexual misconduct must report that misconduct to the Department of Human Services.