

# Sexual Misconduct Policy (U-wide)

## SEXUAL MISCONDUCT POLICY

### POLICY STATEMENT

Ottawa University ("University") is committed to providing a learning, working, and living environment that promotes personal integrity, civility, and mutual respect in an environment free of discrimination on the basis of sex. The University considers sex discrimination in all forms to be a serious offense. Sex discrimination constitutes a violation of this policy, is unacceptable, and will not be tolerated. Sex discrimination includes discrimination based on pregnancy, gender identity as well as that based on the failure to conform to stereotypical notions of femininity and masculinity.

Sexual harassment, whether verbal physical, or visual, that is based on sex, is a form prohibited sex discrimination. Sexual harassment also includes sexual violence. The specific definitions of sexual harassment and sexual violence, including examples of such conduct, are set forth below.

### SCOPE

This policy applies to administrators, faculty, and other University employees; students; applicants for employment; customers; third-party contractors; and all other persons that participate in the University's educational programs and activities, including third-party visitors on campus (the "University Community"). This policy prohibits sex discrimination, sexual harassment, and sexual violence even when the complainant and alleged perpetrator are members of the same sex, and it applies regardless of national origin, immigration status, or citizenship status. The University's prohibition on sex discrimination and sexual harassment extends to all aspects of its educational programs and activities, including, but not limited to, admissions, employment, academics, athletics, housing, and student services.

### JURISDICTION

The University has jurisdiction over Title IX-related complaints regarding conduct that occurred on campus, conduct that occurred during an official University program or activity (regardless of location), off campus activities and online activities/actions when the conduct creates a hostile environment on campus, and conduct occurring in University housing and University-sponsored housing. The University will investigate all complaints made under this policy and, if necessary, take action to prevent the recurrence of sex discrimination and remedy its effects.

### TITLE IX STATEMENT ON POLICY

It is the policy of the University to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibit discrimination based on sex in the University's educational programs and activities. Title IX and its implementing regulations also prohibit retaliation for asserting claims of sex discrimination. The University has designated the following Title IX Coordinator to coordinate its compliance with Title IX and to receive inquired regarding Title IX, including complaints for sex discrimination:

Carrie Stevens

Director of University Compliance/Title IX Coordinator

1001 South Cedar Street

Ottawa, KS 66067

785-248-2326

Carrie.stevens@ottawa.edu

A person may also file a complaint of sex discrimination with the United States Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting [https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html) or by calling 1-800-421-3481.

### SEXUAL MISCONDUCT VIOLATIONS

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, Ottawa University has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Ottawa considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, Ottawa reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved. Violations include:

#### Sexual Harassment

Sexual harassment includes any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature including when: submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activities; submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting the individual; or such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive University environment.

Sexual harassment may occur when:

- Submission to such conduct is made or threatened to be made, either explicitly or implicitly, a term or condition of an individual's employment or education; or
- Submission to or rejection of such conduct by an individual is used or threatened to be used as the basis for academic or employment decisions affecting that individual; or
- Such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating what a reasonable person would perceive as an intimidating, hostile, or offensive employment, education, or living environment.

Examples of Sexual Harassment:

- Pressure for a dating, romantic, or intimate relationship
- Unwelcome touching, kissing, hugging, rubbing, or massaging
- Pressure for sexual activity
- Unnecessary references to parts of the body
- Sexual innuendos, jokes or humor
- Making sexual gestures
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail and Internet uses that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, and photos (electronic or otherwise)
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as flowers, chocolate, or lingerie that suggest the desire for a romantic relationship
- Commenting on a person's body, gender, sexual relationships, or sexual activities
- Sexual violence (as described in this policy)

### Non-consensual Sexual Contact

Non-consensual sexual contact is defined as:

- Any intentional sexual touching
- However slight
- With any object
- By a person upon another person
- That is without consent and/or by force

Sexual touching/contact includes, but is not limited to, any bodily contact with breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

### Non-consensual Sexual Intercourse

Non-consensual sexual intercourse is defined as:

- Any sexual penetration or intercourse (anal, oral, or vaginal)
- However slight
- With any object
- By a person upon another person
- That is without consent and/or by force

Sexual intercourse includes, but is not limited to, vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

### Sexual Violence

Collectively, Non-consensual Sexual Contact and Non-consensual Sexual Intercourse can be referred to as "Sexual Violence". Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity, because of his or her youth, or because of his or her incapacitation due to the use of drugs or alcohol.

Examples of Sexual Violence

- Rape or sexual assault: sexual intercourse (anal, vaginal, or oral) with any object or body part that is committed by force, threat, or intimidation
- Unwilling sexual penetration (anal, vaginal, or oral) with any object or body part that is committed by force, threat, or intimidation
- Sexual touching with an object or body part, by a man or woman upon a man or woman, without consent
- Sexual touching with an object or body part, by a man or woman upon a man or woman, committed by force, threat, or intimidation
- The use of force or coercion to effect sexual intercourse or some other form of sexual contact with a person who has not given consent
- Having sexual intercourse with a person who is unconscious because of drug or alcohol use
- Hazing that involves penetrating a person's vagina or anus with an object
- The use of the "date rape drug" (or similar drug) to effect sexual intercourse or some other form of sexual contact with a person
- One partner in a romantic relationship forcing the other to have sexual intercourse without the partner's consent
- Exceeding the scope of consent by engaging in a different form of sexual activity than a person has consented to
- Knowingly transmitting a sexually transmitted disease such as HIV to another person through sexual activity
- Coercing someone into having sexual intercourse by threatening to expose their secrets
- Secretly videotaping sexual activity where the other party has not consented
- Prostituting another student/employee

### Intimate Partner Relationship Violence (Domestic and Dating Violence)

The offenses of domestic violence and dating violence or abuse occurs between those in an intimate interaction and/or relationship to each other

Examples:

- A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
- An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
- A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
- Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.

### Stalking/Cyberstalking

Persons who violate Ottawa University's policy against stalking/cyberstalking, as found in the Student Handbook, will be subject to disciplinary action through the Ottawa University Office of Student Affairs who administers the Code of Conduct, unless the alleged violation is also being brought in a complaint under this Sexual Misconduct Policy. In that case, the violation may be determined in conjunction with the Title IX Complaint. Stalking is a course of conduct directed at a specific person that would cause a reasonable person to feel fear. Course of conduct is defined as "a pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct."

- Examples of Stalking
  - o A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together.
  - o A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together".

### Sexual Exploitation

An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose, the act or acts of sexual exploitation are present even if the behavior does not constitute another sexual misconduct offense. Sexual exploitation may involve individuals who are known to one another, have an intimate sexual relationship, and /or may involve individuals now known to each other.

Examples of Sexual Exploitation:

- Sexual voyeurism (such as watching person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).

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- Invasion of sexual privacy
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide and observe sexual activity, or disseminating sexual pictures without the photographed person's consent).
- Prostitution
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation
- Gathering information about an individual from friends, family, and acquaintances
- Threats to harm self or others
- Defamation – lying to others about the reporting party
- Vandalism

## Special Guidance Concerning Complaints of Sexual Violence, Domestic Violence, Dating Violence, or Stalking

1. If you are the victim of a crime sexual violence, domestic or dating violence, or stalking, do not blame yourself. These crimes are never the victim's fault. When physical violence of a sexual nature has been perpetrated against you, the University recommends that you immediately go to the emergency room of a local hospital and contact local law enforcement (call 911 if an emergency), in addition to making a prompt complain to the Title IX Coordinator. You may also wish to contact the National Sexual Assault Hotline at 800-656-HOPE or one of the additional resources listed in this policy.
2. If you are the victim of sexual violence, domestic violence, or dating violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence by may be necessary for proof of the crime in obtaining a protection order. Victims of sexual violence, domestic violence, or dating violence should not bathe, urinate, douche, brush teeth, ordering liquids until after they are examined and, if necessary, a rape examination is completed. Clothes should not be changed. When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination.
3. Under the Violence Against Women Act ("VAWA"), Ottawa University is required to disclose certain information regarding sexual violence, domestic and dating violence, and stalking. You may find Ottawa University's information, which includes state-specific statutes for criminal violations of these offenses, in Appendix D of the Student Handbook.

## CONSENT, FORCE, AND INCAPACITATION

Consent: is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Consent is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn once given, as long as the withdrawn is clearly communicated.

Consent to some sexual contact (such as kissing) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred an any similar previous patterns that may be evidenced.

Force: Force is the use of physical violence an/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("have sex with me or I'll hit you"). Coercion is unreasonable pressure for sexual activity. Coercive behavior different from seductive behavior based on the type of pressure someone uses to get consent from another when someone makes clear that they do not want a sexual activity to occur, continued pressure can be coercive. Note: Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not be definition forced.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacity has violated this policy. It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why or how") of their sexual interaction). This policy also covers a person whose incapacity results form mental disability, involuntary physical restraint and/ or from the taking of incapacitating drugs.

A person who is legally considered a minor cannot consent to sexual activity. This means that sexual contact by an adult with a person considered a minor by the State may be a crime and a potential violation of this policy, even if the minor wanted to engage in the act.

## ROLES AND RESPONSIBILITIES

### Title IX Coordinator

It is the responsibility of the Title IX Coordinator to: (1) receive complaints under this policy; (2) coordinate dissemination of information and education and training programs; (3) assist members of the University Community in understanding that sexual misconduct is prohibited by this policy; (4) answer questions about this policy; (5) appoint investigators and ensure that they are trained to respond to and investigate complaints of sexual misconduct; (6) ensure that employees and students are aware of the procedures for reporting and addressing complaints of sexual misconduct; and (7) to implement the Complaint Resolution Procedures or to designate appropriate persons for implementing the Complaint Resolution Procedures. If circumstances require, the Executive Vice President/Chief Financial Officer may designate another person to oversee the process as stated in this Policy, should a conflict arise or should the Coordinator otherwise be unavailable to fulfill the duties herein.

### Administrators, Deans, and Other Managers

It is the responsibility of administrators, deans, and other supervisory staff (i.e., those that formally supervise other employees) to:

- Inform employees under their direction or supervision of this policy
- Work with the Title IX Coordinator to implement education and training programs for employees and students
- Implement any corrective actions that are imposed as a result of findings of a violation of this policy

## All Employees

It is the responsibility of all employees to review this policy and comply with it. All employees, including Administrators, Deans, Managers, Faculty, Staff, Graduate Assistants, Residential Life Professional Staff, and others, are “mandatory reporters”. As a mandatory reporter, one must inform the appropriate supervisor and/or the Title IX Coordinator upon receiving any information which might be a violation of this policy.

## Students

It is the responsibility of all students to review this policy and comply with it.

## The University

When the University is aware that a member of the University Community may have been subjected to or affected by conduct that violates this policy, the University will take prompt action, including a review of the matter and, if necessary, an investigation and appropriate steps to stop and remedy the sexual misconduct. The University will act in accordance with its Complaint Resolution Procedures.

## ACADEMIC FREEDOM

While the University is committed to the principles of free inquiry and free expression, sexual misconduct is neither legally protected expression or the proper exercise of academic freedom.

## EDUCATION

Because the University recognizes that the prevention of sexual misconduct, as well as domestic violence, dating violence, intrapersonal violence, and stalking, is important, it offers educational programming to a variety of groups such as: campus personnel; incoming students and new employees participating in orientation; and members of student organizations. Among other elements, such training will cover relevant definitions, procedures, and sanctions; will provide safe and positive options for bystander intervention; and will provide risk reduction information, including recognizing warning signs of abusive behavior and how to avoid potential attacks. To learn more about education resources, please contact the Title IX Coordinator.

## AMNESTY FOR REPORTING PARTY AND WITNESSES

The University encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to University officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to university officials, and that witnesses come forward to share what they know. To encourage reporting, Ottawa University maintains a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident. However, this policy does not prevent the University from requiring educational and/or counseling options when needed to those who offer assistance under this policy.

## COMPLAINTS

Ottawa University encourages the reporting of misconduct and crimes by witnesses and victims. This Section addresses the method and details of filing a complaint and the following Section addresses the Complaint Resolution Procedures.

### Making a complaint

Complaints may be made directly to the Title IX Coordinator, Carrie Stevens, at 785-248-2326 or [carrie.stevens@ottawa.edu](mailto:carrie.stevens@ottawa.edu) or with the Deputy Title IX Coordinator, Brittney Kellar, who is located at the Surprise, AZ campus, and can be reached at 623-233-7546 or [Brittney.kellar@ottawa.edu](mailto:Brittney.kellar@ottawa.edu). A person may also tell any employee who can assist in relaying the information to the Title IX Coordinator. Students may also file a complaint with the Department of Education’s Office of Civil Rights, as set forth above.

Complaints will be resolved as set forth in this policy under the heading, “Complaint Resolution Procedures”, below.

### Timing of Complaints

There is no statute of limitations for complaints under the Sexual Misconduct Policy. However, the University encourages persons to make complaints of sexual misconduct as soon as possible because late reporting may limit the University’s ability to investigate and respond to the conduct complained of.

### Faculty and Employees

All University faculty and employees have a duty to promptly report sexual misconduct to the Title IX Coordinator when they observe such conduct or a report of sexual misconduct is made to them. This does not apply to employees who may maintain confidentiality as described in this policy.

### Students

Students are encouraged to file a report under this policy when they experience or witness sexual misconduct. Students who wish to report sexual misconduct should file a complaint with the Title IX Coordinator. Students should be aware that all faculty and employees at the University, except those who may maintain confidentiality as described in this policy, have an obligation to report sexual misconduct to the Title IX Coordinator if they observe such conduct or receive a report of such conduct.

### Vendors, Contractors, and Third Parties

This policy applies to the conduct of vendors, contractors, and third parties. If any of these people believe they have been subject to sexual misconduct in violation of the policy, they should make a report as instructed in this policy.

Likewise, members of the University Community may file complaints under this policy against vendors, contractors, and third parties.

### Content of the Complaint

So that the University has sufficient information to investigate a complaint, the complaint should include: (1) the date(s) and time(s) of the alleged conduct; (2) the names of all person(s) involved in the alleged conduct, including possible witnesses; (3) all details outlining what happened; and (4) contact information for the complainant so that the University may follow up appropriately.

### Conduct that Constitutes a Crime

Any person who wishes to make a complaint of sexual misconduct that also constitutes a crime – including sexual violence, domestic violence, dating violence, or stalking – is encouraged to make a complaint to local law enforcement. If requested, the University will assist the complainant in notifying the appropriate law enforcement authorities. In the event of an emergency, please contact 911. A victim may decline to notify such authorities.

### Confidential Reports

If a person desires to talk confidentially about the situation, that person may contact numerous on-and off- campus resources. These resources are available to assist you and will not report your circumstances to the University for investigation without your permission. Notwithstanding, crimes reported to confidential resources at Ottawa University will be reported to the appropriate University personnel for inclusion in the University’s annual crime statistics disclosure, though your name will be withheld from this report.

### University-wide Confidential Resources

University Chaplain Dr. John Holtzhuter 785-248-2334 or [john.holtzhuter@ottawa.edu](mailto:john.holtzhuter@ottawa.edu)

Ottawa University Counseling Services 785-248-2582

### Arizona Confidential Resources

- Arizona Coalition to End Sexual & Domestic Violence 800-782-6400 or [www.acesdv.org](http://www.acesdv.org)
- Banner Medical Center 623-524-4000

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## Kansas Confidential Resources

- The Trauma and Abuse Care Center 785-843-8985
- The Willow Domestic Violence Center 800-770-3030

## National Confidential Resource

The Rape, Abuse & Incest National Network (RAINN) is the nation's largest anti-sexual assault organization. RAINN operates the National Sexual Assault Hotline at 1-800-656-HOPE or [www.rainn.org](http://www.rainn.org), provides confidential services and support to victims and supporters.

## Protecting the Complainant and Respondent

**Interim Measures:** Pending the final outcome of an investigation in accordance with the Complaint Resolution Procedures, the University will take steps to protect the complainant from further discrimination or harassment. This may include issuing a no-contact order between the parties, assisting and allowing the complainant to change his or her academic, transportation, work, or living situation if options to do so are reasonably available. Such changes may be available regardless of whether an investigation has begun, or a finding has been made.

**Legal Orders:** If either party has obtained an order of protection, temporary restraining order, other no-contact order against the other party, the information should be provided to the Title IX Coordinator, Dean of Student Affairs, or campus manager. The University will then take all reasonable and legal action to implement the order.

**Policy Against Retaliation:** it is a violation of this policy to retaliate against any member of the University Community who reports or assists in making a complaint of sexual misconduct or who participates in the investigation of a complaint in any way. Person who believe they have been retaliated against in violation of this policy should make a complaint in the manner set forth in this Policy. Complaints of retaliation will be handled as a matter separate from the Sexual Misconduct Complaint and will be sanctioned as a separate policy violation.

**Bad Faith Complaints:** While the University encourages all good faith complaints of sexual misconduct, the University has the responsibility to balance the rights of all parties. Therefore, if the University's investigation reveals that a complaint was knowingly false, the complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline.

## Investigation and Confidentiality

All complaints of sexual misconduct will be promptly and thoroughly investigated in accordance with the Complaint Resolution Procedures, and the University will take disciplinary action where appropriate. The University will make reasonable and appropriate efforts to preserve an individual's privacy and protect the confidentiality of information when investigating and resolving a complaint as it applies to both complainant and respondent.

However, because of laws relating to reporting and other state and federal laws, the University cannot guarantee confidentiality to those who make complaints. In the event a complainant requests confidentiality or asks that a complaint not be investigated, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, the University's ability to respond may be limited. The University reserves the right to initiate an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University Community. The Title IX Coordinator is the person responsible for evaluating requests for confidentiality.

## Special Guidance Concerning Complaints of Sexual Violence, Domestic Violence, Dating Violence, or Stalking

4. If you are the victim of a crime sexual violence, domestic or dating violence, or stalking, do not blame yourself. These crimes are never the victim's fault. When physical violence of a sexual nature has been perpetrated against you, the University recommends that you immediately go to the emergency room of a local hospital and contact local law enforcement (call 911 if an emergency), in addition to making a prompt complaint to the Title IX Coordinator. You may also wish to contact the National Sexual Assault Hotline at 800-656-HOPE or one of the additional resources listed in this policy.
5. If you are the victim of sexual violence, domestic violence, or dating violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence by may be necessary for proof of the crime in obtaining a protection order. Victims of sexual violence, domestic violence, or dating violence should not bathe, urinate, douche, brush teeth, or order liquids until after they are examined and, if necessary, a rape examination is completed. Clothes should not be changed. When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination.
6. Under the Violence Against Women Act ("VAWA"), Ottawa University is required to disclose certain information regarding sexual violence, domestic and dating violence, and stalking. You may find Ottawa University's information, which includes state-specific statutes for criminal violations of these offenses, in Appendix D of the Student Handbook.

## COMPLAINT RESOLUTION PROCEDURES

### General Principle

- A. **Applicability**

These Complaint Resolution Procedures apply to the resolution of all reports under the Sexual Misconduct Policy. They apply to the resolution of complaints against students, faculty, administrators, staff, and third parties, and they are the exclusive means of resolving complaints of sexual misconduct.
- B. **Administration and Training**

For purposes of administering this policy:

  1. "Investigating Officer" means the person or persons appointed by the Title IX Coordinator to conduct a formal investigation of a Title IX report. The Investigating Officers are selected from a group of employees selected by the Title IX Coordinator in consultation with the Executive Vice President & Chief Financial Officer and the Director of Human Resources. The Investigating Officer(s) shall have responsibility for administering these complaint resolution procedures. At their discretion, the Title IX Coordinator may appoint multiple Investigating Officers to work together in administering these complaint resolution procedures. Depending on the circumstances, one or two investigators may be appointed to a particular situation.
  2. The Investigating Officers are trained on an annual basis and are provided supplemental training material that is available at all times. They are trained on issues related to sexual misconduct, domestic violence, dating violence, and stalking. They are also trained on how to conduct an investigation and the process that protects the safety of victims and promotes accountability.
- C. **Promptness, Fairness, and Impartiality**

These procedures provide for prompt, fair, and impartial investigations and resolutions. The Investigating Officer shall discharge his or her obligations under these procedures fairly and impartially. If the Investigating Officer determines that he or she cannot apply

these procedures fairly and impartially because of the identity of a complainant, respondent, or witness, or due to any other conflict of interest, the Investigating Officer shall inform the Title IX Coordinator so that another appropriate individual can be designated to administer these procedures.

### Investigation and Resolution of the Complaint

#### 1. Timing of the Investigation

The University will endeavor to conclude its investigation and resolution of the complaint within sixty (60) calendar days of receiving it. Both the complainant and the respondent will be given periodic updates regarding the status of the investigation. If either the complainant or respondent needs additional time to prepare or to gather their witnesses or information, they shall notify the Investigating Officer in writing explaining how much additional time is needed and why it is needed. The Investigating Officer shall respond to any such request within three (3) days.

#### 2. Preliminary Inquiry

Following receipt of notice or a report of misconduct, the Title IX Coordinator engages in a preliminary inquiry to determine if there is reasonable cause to believe the Sexual Misconduct Policy has been violated. The preliminary inquiry is typically 1-3 days in duration. This inquiry may also serve to help the Title IX Coordinator to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the reporting party has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Title IX Coordinator may respect a reporting party's request for no action, and will investigate only so far as necessary to determine appropriate remedies. As necessary, Ottawa University, reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party.

In cases where the reporting party wishes to proceed, or Ottawa University determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Coordinator will direct a formal investigation to commence and the allegation will be resolved through the process as stated in these Resolution Procedures. If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator determines that there is no reasonable cause to believe that policy has been violated, the process will end unless the reporting party requests that the Title IX Coordinator makes an extraordinary determination to re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator.

#### 3. Informal Resolution

Informal means of resolution, such as mediation, may be used in lieu of the formal investigation and determination procedure. However, informal means may only be used with the complainant's voluntary cooperation and the involvement of the Title IX Coordinator. The complainant, however, will not be required to work out the problem directly with the respondent. Moreover, the complainant may terminate any such informal means at any time. In any event, informal means, even on a voluntary basis, will not be used to resolve complaints alleging any form of sexual violence.

#### 4. Interim Measures

At any time during the investigation, the Investigating Officer, in coordination with the Title IX Coordinator, may determine that interim remedies or protections for the parties involved or witnesses are appropriate. These interim remedies may include separating the parties, placing limitations on contact between the parties, suspension, or making alternative class-placement or workplace arrangements. Failure to comply with the terms of these interim remedies or protections may constitute a separate violation of the Sexual Misconduct Policy.

#### 5. Support Person

During the investigation process, both a complainant and a respondent may ask a support person to accompany him or her at all stages of the process. In cases involving multiple complainants or respondents, the support person cannot be another complainant or respondent. The support person does not serve as an advocate on behalf of the complainant or respondent, may not be actively involved in any proceedings, and he or she must agree to maintain the confidentiality of the process.

#### 6. Pending Criminal Investigation

Some instances of sexual misconduct may also constitute criminal conduct. In such instances, the complainant is also encouraged to file a report with the appropriate law enforcement authorities and, if requested, the University will assist the complainant in doing so. The pendency of a criminal investigation, however, does not relieve the University of its responsibilities under Title IX. Therefore, to the extent doing so does not interfere with any criminal investigation, the University will proceed with its own investigation and resolution of the complaint.

#### 7. Rights of the Parties

During the investigation and resolution of a complaint, the complainant and respondent shall have equal rights. They include:

- Equal opportunity to identify and have considered witnesses and other relevant evidence;
- Similar and timely access to all information considered by the Investigating Officer;
- Equal opportunity to review any statements or evidence provided by the other party; and
- Equal access to review and comment upon any information independently developed by the Investigating Officer.

#### 8. Commencement of the Investigation

Once a complaint is made, the Investigating Officer will commence an investigation of it as soon as practicable, but not later than seven (7) days after the complaint is made. The purpose of the investigation is to determine whether it is more likely than not that the alleged behavior occurred and, if so, whether it constitutes sexual misconduct. During the course of the investigation, the Investigating Officer may receive counsel from University administrators, the University's attorneys, the Title IX Coordinator, or other parties as needed.

#### 9. Content of the Investigation

During the investigation, the complainant will have the opportunity to describe his or her allegations and present supporting witnesses or other evidence. The respondent will have an opportunity to respond to the allegations and present supporting witnesses or other evidence. The Investigating Officer will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review documentary materials, and take other appropriate action to gather and consider information relevant to the complaint. All parties and witnesses involved in the investigation are expected to cooperate and provide complete and truthful information.

#### 10. Resolution (including Sanctions) of Complaints Against Student Respondents

At the conclusion of the Investigating Officer's investigation, the Investigating Officer will prepare a draft written report. The report will explain the scope of the investigation and identify findings of fact. The Investigating Officer will present the report to the Title IX Coordinator who will review the draft, revise as necessary, and finalize.

If the final written report finds that any allegations in the complaint were found to be substantiated by a preponderance of the evidence

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resulting in a policy violation, the Title IX Coordinator will consult with the Provost/Dean with jurisdiction over the complainant and respondent to determine discipline and remedial measures. The Title IX Coordinator will prepare an addendum setting forth the discipline and remedial measures. Examples of such measures include: no-contact orders, classroom reassignment, the provision of counseling or other support services, suspension of campus activities, educational programming and training, and discipline for the perpetrator including up to probation, suspension in abeyance, suspension, expulsion, and other appropriate institutional sanctions. This document will explain the scope of the investigation, identify findings of fact (if any), and state whether any allegations in the complaint were found to be substantiated by a preponderance of the evidence resulting in a policy violation.

The final written determination shall be final subject only to the right of appeal set forth in this policy, below.

## 11. Resolution (including Sanctions) of Complaints Against Employee, Faculty, and Third-Party Respondents

At the conclusion of an Investigating Officer's investigation, the Investigating Officer will prepare a draft written report. The report will explain the scope of the investigation and identify findings of fact. The Investigating Officer will present the report to the Title IX Coordinator, and the Title IX Coordinator will review the draft, revise as necessary, and finalize it.

If the final written report finds that any allegations in the complaint were found to be substantiated by a preponderance of the evidence resulting in a policy violation, the Title IX Coordinator will consult with the University administrator with jurisdiction of the complainant and respondent to determine discipline and remedial measures. The Title IX Coordinator will prepare an addendum setting forth the discipline and remedial measures. Examples of sanctions may include: no-contact orders, classroom reassignment, the provision of counseling or other support services, referral to the EAP program, training, discipline for the perpetrator including up to probationary status, termination, and other appropriate institutional sanctions. Discipline may be directly imposed for, in cases with faculty member respondents, a referral may be made for further proceedings in accordance with faculty discipline proceedings.

The Title IX Coordinator will notify the parties of the outcome in writing as described below.

## 12. Notification of Outcome

The Title IX Coordinator will provide written notification of the outcome of the investigation and any addendum to the complainant and the respondent within three (3) days of its completion. If necessary, the version of the addendum provided to the complainant and/or respondent will be redacted to ensure that information concerning any remedial and/or disciplinary measures is disclosed in a manner consistent with Title IX, the Family Educational Rights and Privacy Act (FERPA), and the Clery Act.

## 13. Special Procedure for Complaints Against the Chancellor, the Title IX Coordinator, or Other Administrators Ranked Higher than the Title IX Coordinator.

If a complaint involves alleged conduct on the part of the University's Chancellor, the University's Board of Trustees will designate the Investigating Officer(s). Based on the information gathered by the investigation, Trustees will prepare and issue the written report determining the complaint. The determination of the Board of Trustees is final and not subject to appeal. If a complaint involves alleged conduct on the part of the Title IX Coordinator, a Vice President of the University, or the University Provost, the University's Chancellor will designate the Investigating Officer(s). Based on the information gathered by the investigation, the Chancellor will prepare and issue

the written report determining the complaint. The determination of the Chancellor is final and not subject to appeal.

The Investigating Officers may be chosen from outside sources.

## 14. Withdrawal or Resignation While Charges Pending

**Students:** Ottawa University does not permit a student to withdraw if that student has an allegation pending for violation of the Sexual Misconduct Policy. Should a student decide to leave and/or not participate in the investigation, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to Ottawa University unless all sanctions have been satisfied. The student will not have access to an official academic transcript until the allegations have been resolved.

**Employees:** Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status, and any Ottawa University responses to future inquiries regarding employment references for that individual will indicate the former employee is ineligible for rehire.

## APPEALS

Either party may appeal the final determination (finding of violation or severity of sanction).

### Grounds for Appeal

The complainant or respondent may appeal the determination of a complaint only on the following grounds:

- There is a substantial likelihood that newly discovered information not available at the time evidence was presented to the Investigating Officer would result in a different decision;
- There was a procedural error significant enough to call the outcome into question;
- There was a clear error in factual findings;
- Bias or prejudice on the part of the Investigating Office; or
- The punishment or the corrective action imposed is disproportionate to the offense.

### Method of Appeal

Either party may appeal the final outcome determination. The appeal is submitted to the following parties, depending on the identity of the respondent:

- Appeals from complaints that allege a student or faculty have committed sexual misconduct shall be directed to the University Provost, Dr. Terry Haines.
- Appeals from complaints that allege an employee or third-party has committed sexual misconduct shall be directed to the Executive Vice President/Chief Financial Officer, Clark Ribordy.

The official to which the appeals are submitted (i.e., the University Provost or the Executive Vice President/Chief Financial Officer) shall be referred to as "Appeals Officials". The appeal must be filed within ten (10) days of receipt of the written report determining the outcome of the complaint. The appeal must be in writing and contain the following:

- Name of complainant;
- Name of respondent;
- A statement of the determination of the complaint, including corrective action if any;
- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it; and
- Requested action, if any.

The appellant may request a meeting with the appropriate Appeal Official, but the decision to grant a meeting is within the Appeal Official's discretion. However, if a meeting is granted, then the other party will be granted a similar opportunity.

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### Resolution of Appeal

The Appeal Official will resolve the appeal within fifteen (15) days of receiving it and may take any and all actions that he/she determines to be in the interest of a fair and just decision. The decision of the Appeal Official is final. The Appeal Official shall issue a short and plain, written statement of the resolution of the appeal, including any changes made to the Title IX Coordinator's previous written determination. The written statement shall be provided to the complainant, respondent, and the Title IX Coordinator within three (3) days of the resolution. In some cases involving faculty member respondents, the discipline imposed may result in additional process following the appeal.

### Documentation

Throughout all stages of the investigation, resolution, and appeal, the Investigating Officer, the Title IX Coordinator, and the Appeal Officials as the case may be, are responsible for maintaining documentation of the investigation and appeal, including documentation of all proceedings conducted under these complaint resolution procedures, which may include written findings of fact, transcripts, and audio procedures.

### Intersection with Other Procedures

These complaint resolution procedures are the exclusive means of resolving complaints alleging violations of the Sexual Misconduct Policy. To the extent that there are any inconsistencies between these complaint resolution procedures and other University grievance, complaint, or discipline procedures, these complaint resolution procedures will control resolution of complaints alleging violations of the Sexual Misconduct Policy.

Questions on this Policy should be directed to:

Carrie Stevens

Director of Compliance/Title IX Coordinator

1001 South Cedar Street

Ottawa, KS 66067

785-248-2326

Carrie.stevens@ottawa.edu

### Revisions

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. Ottawa University reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Title IX Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

*This policy and procedure was most recently revised September 30, 2018.*