

Sexual Harassment

Oak Hills Christian College Policy and Procedures
2020 - 2021 Academic Year
Dr. S. Glidden, SVP of Academics & Administration

Outcomes

- Understand OHCC responsibilities under the Dept. of Ed. Title IX 2020 Final Rules
- Know OHCC policy and procedures regarding sexual violence incidents among students and/or staff.
- Know your responsibilities regarding reporting sexual violence.

Title IX

Department of Education

- Insures equal access and fairness for men and women with regards to athletics, employment, admissions, financial aid, publications, educational programs, and student rights.
- Requires a school to promptly respond and investigate sexual harassment and violence.
- Now includes gender identity and sexual orientation. [OHCC Religious Exemption applies here.]

OHCC Religious Exemption

In 2016, OHCC requested a religious exemption, specifying the “tenets of [our] organization and the provisions of the law or regulation that conflict with those tenets”.

- Oak Hills Christian College and Associated Ministries Statement on Human Sexuality
 - Oak Hills Fellowship and Associated Ministries Statement on Sanctity of Human Life
- [S: drive/Everyone/Employee Documents/Guiding Principles Documents]

Exemption from regulatory provisions “to the extent that they are interpreted to reach gender identity or sexual orientation discrimination, and to the extent they restrict the College’s freedom to apply and enforce the Statement on the Sanctity of Human Life.”

The U.S. Department of Education’s Office for Civil Rights (OCR) granted a very specific and limited exemption in December 2017:

- Regulations governing... admission, preference in admission, recruitment, educational programs and activities, housing, comparable facilities, access to classes, counseling, financial assistance, employment assistance, health and insurance benefits, marital and parental status, athletics, employment
- “The College is exempt from these provisions to the extent that compliance would conflict with the controlling organization’s religious tenets.”
- “Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above.”

Sanctity of Human Life

Statement of Faith (Board of Directors Approved, June 22, 2012) item that speaks to the sanctity of human life.

- **MANKIND:** We believe that all human beings are made in the image of God and, therefore, have **dignity and worth**. We further believe that, through the fall of mankind in Adam, all are sinners by nature and stand in need of regeneration.

Statement on the Sanctity of Human Life

- We believe that all human life is sacred and created by God in His image. Human life is of inestimable worth in all its dimensions, including pre-born babies, the aged, the physically or mentally challenged, and every other stage or condition from conception through natural death. **We are therefore called to defend, protect, and value all human life.**

OHCC and Associated Ministries Statement on Human Sexuality

- “We will demonstrate **civility and compassion** as we engage in dialogue with others on these issues. The Bible calls upon us to **respect** people even though we may disagree with them and even though they may come under discipline for violating Oak Hills community standards for biblical living.”

Title IX 2020 Final Regulations: Purpose

1. Intended to effectuate Title IX's prohibition against sex discrimination
2. Obligate institutions to **respond promptly and supportively** to persons alleged to be victims of sexual harassment
3. Resolve allegations of sexual harassment promptly and accurately under a **predictable, fair grievance process** that **provides due process protections to alleged victims and alleged perpetrators** of sexual harassment
4. Effectively implement remedies for victims

Title IX 2020 FINAL REGULATIONS: OVERVIEW OF TOPICS

- Define conduct constituting sexual harassment
- Specify what triggers a college's legal obligation to respond
 - Conditions that activate a school's obligation to respond to a report of sexual harassment
 - Circumstances when a school must initiate its grievance process
- Specify how a school must respond
 - Set forth mandatory steps that the college must take as part of every response to sexual harassment
 - Establish required grievance process

DEPARTMENT OF EDUCATION

34 CFR Part 106

[Docket ID ED–2018–OCR–0064]

RIN 1870–AA14

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary of Education amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The final regulations specify how recipients of Federal financial assistance covered by Title IX, including elementary and secondary schools as well as postsecondary institutions, (hereinafter collectively referred to as “recipients” or “schools”), must respond to allegations of sexual harassment consistent with Title IX’s prohibition against sex discrimination. These regulations are intended to effectuate Title IX’s prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities. The final regulations obligate recipients to respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims. The final regulations also clarify and modify Title IX regulatory requirements regarding remedies the Department may impose on recipients for Title IX violations, the intersection between Title IX, Constitutional protections, and other laws, the designation by each recipient of a Title IX Coordinator to address sex discrimination including sexual harassment, the dissemination of a recipient’s non-discrimination policy and contact information for a Title IX Coordinator, the adoption by recipients of grievance procedures and a grievance process, how a recipient may claim a religious exemption, and prohibition of retaliation for exercise of rights under Title IX.

DATES: These regulations are effective August 14, 2020.

FOR FURTHER INFORMATION CONTACT: Alejandro Reyes, U.S. Department of

Room 4E308, Washington, DC 20202. Telephone: (202) 453–6639. Email: Alejandro.Reyes@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

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All 554 Pages!!

OHCC Responses to Title IX and Sexual Harassment Issues

I. Policy

II. Procedures

- Notification/Report
 - Responsible Authorities/ Reporting
 - Supportive Measures
- Formal Complaint and Grievance Procedures
 - Definitions ~ Who is involved
 - Informal Resolution
 - Investigation
 - Live Hearing
 - Appeal

The broader policy of OHCC

“Oak Hills Christian College will not tolerate any physical or verbal threats, intimidation, hazing, assault, or violence against another person *on the basis of race, color, national or ethnic origin, sex, disability, age, status with regard to public assistance or other applicable protected class status*. Such conduct is grounds for immediate disciplinary action, including dismissal, termination, fines, or arrest.”

- Within this, are the philosophy and standards practiced by Oak Hills Christian College in regards to sexual discrimination, harassment, assault and any other unwelcome conduct based on sex.
- This policy complies with the federal Department of Education 2020 Final Title IX Rules. In the event that the final result of the formal grievance process determines that a complaint does not constitute sexual discrimination or harassment under Title IX rules, Oak Hills Christian College maintains the right to further action based upon provisions in the college’s code of conduct for students and employees.
- The Title IX framework is applicable to both students and employees.

Title IX Definitions of Sexual Harassment

1. Quid pro quo sexual harassment by employees
 - Misconduct on the basis of sex that jeopardizes a student's right to or deprives a student of equal access to education
 - Misconduct using the submission to or rejection of sexual advances, requests, or demands by an individual as a basis for academic decisions
 - Misconduct on the basis of sex that explicitly or implicitly makes submission to such conduct a term or condition of an individual's employment/student status.
2. Sexual assault, dating violence, domestic violence, and stalking as defined by the Clery Act. [See definitions at the U.S. Department of Education, Campus Safety and Security site <https://ope.ed.gov/campussafety/#/> under Dictionary.]
3. Any other “unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it denies a person access to the college's education program or activity (hostile environment)”.

Level 1 - Notification/Report

WHAT TO DO IF YOU HAVE EXPERIENCED HARASSMENT OR ASSAULT

- *Talk to someone you trust for support.*
- *Notify the Title IX Coordinator and/or the Dean of Students.*

- Notifying the Title IX Coordinator does not constitute a formal complaint against the individual who has been reported to have committed harassment.
- A report to the Title IX Coordinator who has authority to act on behalf of the college is **the basis upon which the college has official knowledge of harassment**
- The Title IX Coordinator, the Dean of Students, and the President are the sole **persons with authority to institute corrective measures.**
- Any employee, student or person engaged in the college programs and activities (e.g. residing or present on OHF locations) with knowledge of a sexual discrimination or harassment of any nature must notify the Title IX Coordinator or the Dean of Students (if student involvement).

Level 1 - Notification/Report: What to expect

The Title IX Coordinator will:

- respond promptly
 - meet with you confidentially to discuss supportive measures
 - arrange to provide these supportive measures
 - discuss with you information regarding further actions which may be taken.
- Confidentiality will be maintained as long as it does not impair the ability of the college to provide measures
 - ***no disciplinary or punitive actions*** can be taken against an alleged perpetrator of harassment or assault without following the grievance process
 - the college reserves the right to independently initiate a formal grievance process ... when the safety of other persons may be at risk

Level 2 - Making a Formal Complaint

A formal complaint is made by the submission in writing of complete documentation of an alleged sexual harassment incident(s) to the Title IX Coordinator.

Documentation must include:

- date(s) and time(s) of the alleged incident(s)
- location and people involved in the alleged incident(s)
- specific details of what happened and resulting effects related to the incident(s)
- any action taken following the incident(s)
- physical or digital signature of the complainant

The Title IX Coordinator will initiate **the grievance process** in order to provide a prompt and equitable resolution of student and employee complaints.

Level 2 - The Grievance Process

1. An Investigation
2. A Live Hearing
3. A Determination of Responsibility and Measures to Take
4. The Possibility of an Appeal
5. Review Board of any Appeal
6. Conclusions
7. At any point prior to or during the process: possibility of informal resolution process under specific conditions

Level 2 - The Investigation

- The Title IX Coordinator will appoint two or more investigators
- Each party will have advisors with them throughout the process.
- The investigation team will interview both the complainant (accuser), the respondent (accused), and witnesses.
- The investigation team will prepare a report of the evidence they have collected.

Investigators:

- Must not have a conflict of interest or have a bias for or against any party involved
- Must be fair and equitable to all parties in the entire process
- Must assume the respondent non-responsible during the investigation process
- Must understand what is relevant in terms of evidence

Level 2 - The Live Hearing

The Live Hearing allows the advisors of both the complainant and the respondent to ask questions and cross-examine the other party and witnesses under the supervision of a decision-maker.

- Can be in separate room with technology connected them
- Is recorded
- Deals only with 'relevant' evidence

The Decision-maker

- Cannot be the Title IX Coordinator, any of the investigators, or any party involved in the investigation (complainant, respondent, advisors, witnesses)
- No conflict of interest or bias
- Will read the investigative report and lead the live hearing.
- Will determine the result of the grievance process and any disciplinary sanctions and new or continued supportive measures.

Level 2 - An Appeal and a Review Board

Either the complainant or the respondent may appeal if they are not in agreement with the final determination of the decision-maker.

- If they see a procedural irregularity in the grievance process that affected the outcome.
- If there is new evidence not reasonably available earlier
- If they allege conflict of interest or bias in the Title IX Coordinator, investigation team or decision-maker.

- The Title IX Coordinator will appoint a review board of four OHF members (both genders) to review the investigation report, process, and findings of the live hearing.
- The review board will uphold the findings of the decision-maker or recommend a modified or alternate conclusion.
- The final decision is communicated to all parties and the college will implement the decision.

Level 1 and 2 - NO RETALIATION

- No retaliatory action will be taken against any person who in good faith reports conduct that he or she believes may violate this policy.
- No retaliatory action will be taken against any individual for assisting or participating in an investigation, proceeding or hearing related to a harassment complaint.
- Any person who violates these provisions may be subject to discipline, up to and including termination of employment or student status.

Local Resources

On Campus

- | | |
|---|------------------------------|
| | 218-751-8670 |
| • Title IX Coordinator (Dr. Glidden) | 218-333-1959 |
| • Dean of Student Life (Ron Maixner) | 218-407-3865 |
| • Associate Dean of Student Life (Shelly Mustful) | 218-760-2821 |
| • Men's Resident Director (Dalton Miller) | 405-274-3550 |
| • Security Director (Brad DeJager) | 218-556-1224 |
| • Port-O-Wild's Security Services | 218-759-7615 or 218-766-9614 |

Local Resources

Off Campus

- Bemidji Police Department 911
- Bemidji Police Non-Emergency 218-333-9111
- Sanford Regional Hospital 218-751-5430
- Support Within Reach 218-444-9524 or 1-800-708-2727
- Evergreen Community Services 218-751-8223

Reference Documents

Federal Register/Vol. 85, No. 97/Tuesday, May 19, 2020/Rules and Regulations. Accessed July 18, 2020 at <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>

Summary of Major Provisions of the Department of Education's Title IX Final Rule, pp. 1-9. Accessed July 15-20 at <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

National Association of Independent Colleges and Universities (NAICU) Executive Summary of Final Title IX Rules. PDF. Accessible at <http://www.naicu.edu/issues-advocacy/title-ix-regulations-update>

National Association of Independent Colleges and Universities (NAICU) Technical Summary of Final Title IX Rules, May 11, 2020. PDF. Accessible at <http://www.naicu.edu/issues-advocacy/title-ix-regulations-update>

Nash, Kathryn and Emily Mawer. Webinar from trainED (Lathrop GPM), Minnesota Office of Higher Education Title IX Training. June 2020.

Investigator/Decision-maker Training Module

In addition to careful review of the general training information above, all investigators and decision-makers should master the following information.

Completion of this training module should be reported directly to the Title IX Coordinator.

General Facts to Bear in Mind

Institutions with actual knowledge of sexual harassment (i.e. a person with authority to act has been notified) in an education program or activity are required to respond to complaints of harassment in a manner that is **not deliberately indifferent**.

“Deliberate indifference” is defined as a response to sexual harassment that is clearly unreasonable in light of the known circumstances.

An institution’s treatment of both victims and accused students may constitute discrimination on the basis of sex under Title IX.

Required Characteristics and Behaviors for Investigators and the Decision-Maker 1

- Diligently and consistently avoid any conflict of interest
- Diligently avoid any bias toward the complainant(s) and the respondents(s) and toward the process itself
- Be aware of and diligently avoid relying on sexual stereotypes
- Be prompt in progressing through the grievance process

Required Characteristics and Behaviors for Investigators and the Decision-Maker 2

Concerning Evidence:

- Include an objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence (supporting guilt or innocence of the respondent)
- Maintain carefully the presumption that the respondent is not responsible until the entire grievance process is done
- Seek prior written consent before requesting confidential medical information; do not make assumptions if such consent is not given. Lack of consent cannot be the sole basis for any final determination of responsibility.
- Preserve all parties legally recognized rights, unless these are waived. Title IX processes do not supersede the Constitution.
- Understand and maintain the 'clear and convincing evidence' standard.

Required Characteristics and Behaviors 3

The Title IX Coordinator will make an initial assessment of the risk to the health and safety of a student or other individual. Investigators may also assess and determine that an immediate risk is involved. In such case, a student may be removed from campus, provided a notice and an opportunity to respond is given. Likewise, an employee may be placed on administrative leave.

Failure to maintain these characteristics and behaviors during the grievance process on the part of any person with authority to act (Title IX Coordinator, Dean of Students or President), the investigators, or the decision-maker are grounds for an appeal.

The Investigative Phase 1

Institutions are required to follow the grievance process for conduct set forth in a formal complaint. Unless an informal resolution is agreed upon and concluded, allegations of sexual harassment will lead to investigations of allegations.

Institutions must dismiss formal complaints alleging conduct if any of the following conditions are not met:

1. Does not meet the definition of sexual harassment
2. Has not occurred within the institution's educational program or activity
3. Did not occur against a person in the United States

Institutions may dismiss formal complaints if any of the following conditions occur:

1. The victim withdraws the complaint
2. The accused individual is no longer a student or employee at the institution
3. Circumstances prevent the institution from gathering sufficient evidence to reach a determination

The Investigative Phase 2

During the investigation:

- The investigators assume the responsibility for gathering evidence.
- Both parties must have equal opportunity to present witnesses.
- Both parties must have opportunity to have their advisor accompany them to proceedings, but their participation may be limited.

(NAICU Title IX Technical Summary, Pg. 5)

The Investigative Phase 3

- Provide equal access to the evidence and the chance to respond to such evidence.
- Provide written notice and time to prepare for any meetings.
- Allow delays in the investigation for a good reason (absence of parties, law enforcement activity, etc.)
- Disclose all evidence, even if not relied on for reaching a determination.
- Produce the investigative report and provide it to both parties for review and written response.

(NAICU Title IX Technical Summary, Pg. 5)

The Decision-Maker and the Live Hearing 1

The role and responsibilities of the Decision-Maker:

- Read and evaluate the investigative report and any written responses from either party.
- Obtain a written list of requested witnesses from both parties and establish that they are relevant based on knowledge of the person requesting them or events in the allegation.
- Schedule a live hearing, following guidelines for notifications to all parties, including witnesses.
- Schedule the room(s) and technology needed for the hearing. Either party may request the hearing to occur with parties in separate rooms.
- Prepare the means to audio record the hearing and make it available to both parties following the hearing.

The Decision-Maker and the Live Hearing 2

Lead the live hearing, allowing the advisors for both parties to ask relevant questions and cross-examine the other party and witnesses.

- Determine for each question and each cross-examine whether the question is relevant and provide a reason if a question is excluded.
- Questions and cross-examination may not include questions about the complainant's sexual behavior or disposition, unless offered to establish consent or demonstrate that a person other than the respondent is responsible for committing the alleged violation.
- Do not take into consideration statements made by a party or witness who does not submit to cross-examination.
- Evaluate evidence based on the 'clear and convincing' standard.

The Decision-Maker and the Live Hearing 3

The Decision-Maker must prepare a final written determination of responsibility regarding the complaint, including the sanctions and remedies to be implemented.

- The written report should be given to the Title IX Coordinator and both parties.
- The report should include information on when, how and on what basis an appeal may be made.

Written records and the audio recording of the hearing will be kept by the college for seven years.

Conclusion

The documents used for reference in establishing the college's policy and procedures for dealing with sexual harassment are a good source for researching any further questions. The Title IX Coordinator can also assist and research further any questions that arise.