

Board Policies

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324.00 SEXUAL HARRASSMENT POLICY

It is the policy of Cowley College to comply with Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 et seq. "Title IX provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Members of the college community, guests and visitors have the right to be free from all forms of sex/gender harassment and misconduct, examples of which can include quid pro quo harassment, hostile environment harassment, sexual assault, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The college believes in a zero tolerance policy for all misconduct, including sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to a mandated reporters attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the reporting party and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

The College's sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside the classroom that include controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern.

The college uses the preponderance of the evidence (also known as "more likely than not") as a standard for proof of whether a violation occurred. The college never assumes that the respondent is in violation of college policy. The respondent is considered "not responsible" for violating College policy, unless and until a preponderance of the evidence proves that a violation of policy has occurred. Campus resolution proceedings are conducted to consider the totality of all evidence, from all relevant sources.

Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct. Often arises in the employment context or where an employee holds a position of authority over a student. This for That (i.e., quid pro quo); or
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; (Hostile Environment) or
- Sexual Assault (as defined in the Clery Act), Dating Violence, Domestic Violence, or stalking (as defined in the Violence Against Women Act (VAWA)).

Sexual Assault defined as any sexual act directed against another person, without consent of the Reporting Party, including instances where the Reporting Party is incapable of giving consent, including

- **Forcible rape:** Penetration no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Reporting Party.

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- **Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Reporting Party is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Sexual Assault with an Object:** The use of an object or instrument to penetrate however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Reporting Party is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Forcible Fondling:** The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Reporting Party is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Non-forcible: Incest:** Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Kansas state law.
- **Statutory Rape:** Non-forcible sexual intercourse, with a person who is under the statutory age of consent.

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 Reporting Party. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, emotional, psychological, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence means a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the Reporting Party; a person with whom the Reporting Party shares a child in common; a person who is cohabitating with, or has cohabitated with, the Reporting Party as a spouse or intimate partner; a person similarly situated to a spouse of the Reporting Party under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; any other person against an adult or youth Reporting Party 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. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Reporting Party must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Stalking as defined by VAWA, means engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

- **Course of conduct** means two or more acts, including, but not limited to acts with the Respondent 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.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the Reporting Party.

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- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) specific sexual activity. Consent can be withdrawn once given, as long as that withdrawal is clearly communicated. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts. In order to give effective consent, one must be of legal age. According to Kansas criminal law, the age of consent is 16 years old. That means anyone aged 15 and below cannot give legally-recognized consent to sexual activity, and any charges levied due to sexual conduct with someone 15 and below will be considered "statutory rape." This means that sexual activity by an adult with a person younger than 16 years old is a crime, as well as a violation of this policy, even if the minor wanted to engage in the act.

NOTE: There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force 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 by definition forced.

Force is the use of physical violence and/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. Okay, don't hit me, I'll do what you want.").

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction).

Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or, physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy. This policy also covers a person whose incapacity results from mental disability, developmental disability, sleep, and involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another person is a violation of this policy. Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.

Reporting Party means an individual who is alleged to be the victim of prohibited conduct.

Respondent means an individual who has been reported to be the perpetrator of prohibited conduct.

Formal Complaint means a document filed by a Reporting Party or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the College investigate the allegation of sexual harassment in accordance with this policy. At the time of filing a Formal Complaint, a Reporting Party must be participating in or attempting to participate in the College's education programs and activities. A document filed by a Reporting Party means a document or electronic submission (such as email) that contains the Reporting Party's physical or electronic signature or otherwise indicates that the Reporting Party is the person filing the Complaint.

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Interim Measures are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the College's Education Programs and Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report of the College's education environment, or to deter Sexual Harassment. Interim measures may include: counseling, extensions of academic or other deadlines, course related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Interim Measures may also include mutual restrictions on contact between the parties implicated by a report. Interim Measures will be made available to both Reporting Party and Respondent if requested.

Preponderance of the Evidence means the evidence shows it is "more likely than not" that College policy was violated.

Grievance Process means the operating procedure that sets out the grievance process for quid pro quo harassment, hostile environment harassment, sexual assault, sexual harassment, domestic violence, dating violence, and stalking, as those terms are defined in the Sexual Harassment Policy 428.00 and by state and federal law.

Actual knowledge means notice of Sexual Harassment or allegations of Sexual Harassment to any individual with a duty to report.

Duty to report means all employees have a duty to report any Sexual Harassment of which they become aware by or against a person participating in or attempting to participate in Cowley College's education programs or activity.

Notice means that an employee, student, or third party informs the Title IX Coordinator of the alleged occurrence of sex or gender discrimination, quid pro quo harassment, hostile environment harassment, sexual assault, sexual harassment, domestic violence, dating violence, stalking, and/or retaliatory conduct involving students, faculty, staff, or third parties.

Advisor of Choice means that from the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, The Reporting Party and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearing that are a part of the investigation, adjudication, and appeal process. The advisor may be a friend, faculty or staff member, or family member, and each party is allowed only one advisor. The advisor may be, but is not required to be, an attorney, but cannot be someone that is a direct witness or party in the investigation. Except for the questioning of witnesses during the hearing the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the College about the matter without the party being included in the communication. In the event a party's advisor of choice engages in material violation of the parameters specified in this section, the College may preclude the advisor from further participation, in which case the party may select a new advisor of their choice. In the event a party is not able to secure an advisor to attend the hearing, and requests the College to provide an advisor, the College will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party. The College will have sole discretion to select the advisor it provides. The advisor the College provides may be, but is not required to be, an attorney. The College is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing and requests the College to provide an advisor. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

Appeal means any Party may appeal a dismissal or a determination in writing to the Title IX Coordinator within five days of the delivery of the Notice of Outcome. The appeal process will be

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included in the dismissal or determination letter (Notice of Outcome). Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator(s), or Hearing Officer(s) had a conflict of interest or bias for or against Reporting Party's or Respondents generally or the specific Reporting Party or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Title IX Coordinator and/or Appeals Chair, the parties and their Advisors will be notified in writing of the denial and the rationale. If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Title IX Coordinator and/or Appeals Chair will notify the other party(s) and their Advisors, and, when appropriate, the Investigator(s) and/or the original Hearing Officer(s).

Upon the conclusion of the Appeal process, a written determination of the appeal will be simultaneously provided to the Reporting Party and Respondent.

Special Procedural Provisions

- **College as Complainant or Reporting Party:** As necessary, the College reserves the right to initiate a complaint, to serve as complainant/reporting party, and to initiate conduct proceedings without a formal complaint by the victim of misconduct.
- **False Reporting:** The College will not tolerate intentional false reporting of incidents. It is a violation of the Student/Employee Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.
- **Immunity for Victims and Witnesses:** The College encourages the reporting of Conduct of Code violations, especially sexual misconduct. Sometimes, victims or witnesses are hesitant to report to college officials or participate in grievance processes because they fear they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of this community that as many victims as possible choose to report to college officials, and that witnesses come forward to share what they know. To encourage reporting, the college pursues a policy of offering victims of sexual misconduct and witnesses limited immunity from being charged for policy violations related to the sexual misconduct incident. While violations cannot be completely overlooked the college will provide educational rather than punitive responses, in such cases.
- **Retaliation:** It is a violation of College policy to retaliate against any person making a report of sexual harassment or against any person cooperating in the investigation of any allegation of sexual harassment (including testimony as a witness). For these purposes, "retaliation" includes intimidation, threats, harassment and other adverse action threatened or taken against any such reporting party, respondent, or third party. Retaliation should be reported promptly to the Title IX Coordinator and may result in disciplinary action independent of the sanction imposed in response to the sexual harassment allegations.

Sanctions:

The following sanctions may be imposed upon any member of the college community found to have violated this sexual harassment policy. The following are typical sanctions that may be imposed upon employees, students or organizations singly or in combination.

Student Sanctions: Include but are not limited to warning, probation, suspension, expulsion, withholding diploma, revocation of degree, transcript notation, organizational sanctions, other.

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Employee Sanctions: Include but are not limited to warning – written or verbal, performance improvement plan, required counseling, required training or education, demotion, loss of annual pay increase, suspension without pay, suspension with pay, revocation of tenure, termination, other.

**The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.*

CONFIDENTIALITY AND REPORTING OF OFFENSES UNDER THIS POLICY

All college employees (faculty, staff, and administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate college officials – thereby offering options and advice without obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will act when an incident is reported to them.

The following describes the two confidential reporting options at Cowley College:

CONFIDENTIAL REPORTING – ON CAMPUS

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

On-campus licensed professional counselors and staff

On-campus health service providers and staff

On-campus members of the clergy/chaplains working within the scope of their licensure or ordination

Athletic trainers if licensed, privileged under state statute and/or working under the supervision of a health professional

OFF-CAMPUS

Licensed professional counselors

Local rape crisis counselors

Domestic violence resources

Local or state assistance agencies

Clergy/Chaplains

All of the above employees will maintain confidentiality except in the extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors and/or the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit timely, quarterly, semesterly, yearly anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, patient or parishioner.

FORMAL REPORTING OPTIONS

All college employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects’ research, or events such as Take Back The Night marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees. Remedial actions may result without formal college action. If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request in writing to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or

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violence, the College will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures. Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the respondent. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's or respondent's rights and privacy. Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

Jim Brown (LMSW)
Room 103 Brown Center
Phone: 620-441-5557
Email: Jim.Brown@cowley.edu

Federal Statistical Reporting Obligations

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that college administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The college will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

Persons who wish to report a concern or complaint relating to discrimination or harassment may do so by reporting the concern to the College Title IX Coordinator. Email Jim.Brown@cowley.edu or call 620-441-5557.

Individuals with complaints of this nature also always have the right to file a formal complaint with the United States Department of Education:

Office for Civil Rights (OCR)
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>
Office for Civil Rights (OCR) for Region VII

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U.S. Department of Health and Human Services
601 East 12th Street – Room 353
Kansas City, MO 64106
Phone: (800) 368-1019
Fax: (816) 426-3686
TDD: (800) 537-7697 Equal Employment Opportunity Commission (EEOC)
Contact: <http://www.eeoc.gov/contact/>

The Kansas Human Rights Commission (KHRC)
Contact: www.khrc.net

Notification of Outcomes

The outcome of a campus hearing is part of the educational record of both the reporting party and respondent, and is protected from release under a federal law, FERPA.

Alternative Testimony Options

For sexual misconduct complaints, and other complaints of a sensitive nature, whether the reporting party is serving as the complainant or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the reporting party to testify outside the physical presence of the responding party, such as by Skype or Zoom. While these options are intended to help make the reporting party more comfortable, they are not intended to work to the disadvantage of the respondent.

Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures. If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

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