

**ADMINISTRATIVE PROCEDURES  
OZARKA COLLEGE**

<p>SUBJECT AREA: <b>Governance</b> PROCEDURE: <b>Discrimination, Harassment, Retaliation and Sexual Misconduct Complaint/Grievance Procedure</b> Associated Policy: <b>BP 1.03, BP 1.04, BP 1.05</b> NUMBER: <b>AP 1.04</b> DATE ADOPTED: <b>February 2015, September 2015</b></p>
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**Nondiscrimination Statement**

Title IX protects the Ozarka College community from sexual discrimination, harassment and misconduct in a school's educational programs and activities. Title IX protects the Ozarka College community in connection with all academic, educational, extracurricular, athletic, and other programs, whether those programs take place on Ozarka College property, in Ozarka College transportation, at a class or training program sponsored by Ozarka College at another location or elsewhere.

All complaints or any concerns about conduct that may violate this Policy should be submitted to the Title IX Coordinator:

Vice President of Administration  
Administration Building  
P.O. Box 10, Melbourne, AR 72556  
870-368-2058  
870-368-2358  
titleix@ozarka.edu

**Procedure to follow if a Sex Offense Occurs**

In some instances, sexual misconduct may constitute both a violation of Ozarka College policy and criminal activity. The Ozarka College grievance process is not a substitute for instituting legal action. Ozarka College encourages individuals to report alleged sexual misconduct promptly to campus officials who will assist the victim in notifying law enforcement authorities if the victim so chooses. The victim is not required to cooperate or to report. Individuals may file a report directly with local law enforcement agencies by dialing 911.

All complaints or any concerns about sexual misconduct should be submitted to the Title IX Coordinator:

Vice President of Administration  
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P.O. Box 10, Melbourne, AR 72556  
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Individuals may also contact any of the following for assistance in filing a report with local law enforcement:

Izard County Sheriff's Department - 870-368-4203  
Fulton County Sheriff's Department – 870-895-2601  
Mammoth Spring Police Department – 870-625-7516  
Sharp County Sheriff's Department – 870-994-7329  
Ash Flat Police Department – 870-994-3061  
Stone County Sheriff's Department – 870-269-3825  
Mountain View Police Department – 870-269-4211

To report a crime or other non-emergency communications

Students are also encouraged to report crimes or suspicious activity to the Vice President of Administration or the campus security officer.

Vice President of Administration – Office - (870) 368-2058  
Mobile – (870) 368-2358

### **Preserving Evidence**

It is important that evidence of sexual assault be preserved, because it may be needed for prosecuting the criminal case. Victims and others should not alter the scene of the attack. The victim should not change clothes, bathe or shower, drink or eat anything, or brush her/his teeth before reporting the assault. Any items worn by the victim during the assault, but are not currently being worn, and any materials encountered during the assault should be placed in a plastic bag and brought along with the victim to a local hospital emergency department that has kits to collect and preserve evidence of rape and sexual assault.

### **Student and Visitor Responsibility to Report**

Students and visitors to Ozarka College are strongly encouraged to report allegations of discrimination, harassment, retaliation and sexual misconduct to the Title IX Coordinator and/or deputies. A report should be made as soon as possible after the incident in order to facilitate an effective response. The longer a report is delayed, the more difficult it will be for Ozarka College to investigate. Reports may be made by the person experiencing the misconduct or by a third party, such as a witness or someone who is told of the misconduct.

### **Mandatory Employee Reporting**

In order to enable Ozarka College to respond effectively and to proactively stop instances of discrimination, harassment, retaliation and sexual misconduct at Ozarka College, all employees must, within 24 hours of receiving information regarding a potential violation of this Policy, report information to the Title IX Coordinator and/or

deputy coordinator. Only employees who are statutorily prohibited from reporting such information (e.g., licensed health-care professionals) are exempt from these reporting requirements. This Policy is not intended to restrict curriculum or prohibit or abridge the use of particular textbooks or curricular materials.

### **Off-Campus Conduct**

Conduct that occurs off campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this Policy. Allegations of off-campus sexual misconduct are of particular concern and should be brought to Ozarka College's attention. When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options.

### **Confidentiality**

Subject to the other provisions of this procedure and the requirements of law, every possible effort will be made to ensure that all information received as part of Ozarka College's complaint/Grievance Procedure is treated discreetly. Ozarka College will protect the confidentiality of the victim and other necessary parties by: a.) completing publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the victim and b.) maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures. All parties to the complaint are required to maintain the confidentiality of all information received during this process. However, it is not possible to guarantee that all complaints will remain confidential because of Ozarka College's obligation to investigate allegations of misconduct. All requests to maintain confidentiality shall be directed to the Title IX Coordinator who has the authority to make such determinations. Except as compelled by law or in the interest of fairness, just resolution or health and safety considerations, disclosure of information contained in complaints, their substance, procedures and the results of investigations will be limited to the immediate parties, witnesses and other appropriate officials. Limited disclosure may also be necessary to conduct a full and impartial investigation.

### **Availability of Counseling and Advocacy**

Counseling and other mental health services for victims of sexual assault are available in the community. A current list of these services is available on the Ozarka College website. Family Violence Prevention, Inc. may assist with making referrals for individual counseling and support groups and in identifying community resources that may be of additional help and serve as a victim advocate upon request.

## Resources

Family Violence Prevention  
P.O. Box 2943  
Batesville, AR  
E-mail: [fvp2943@gmail.com](mailto:fvp2943@gmail.com)  
1-800-894-8821  
Arkansas Sexual Assault Crisis Response Hotline  
1-800-977-5776

Batesville Rape Crisis Center  
24 Hour Crisis Hotline  
Emergency Shelter Available for Victim Domestic Violence and Sexual Assault  
1-800-894-8821 or 1-870-793-8111

Ozarka College will provide a written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community.

### Education and Awareness Programs

Ozarka College's Title IX Coordinator, in conjunction with other campus offices, is responsible for planning and coordinating campus education and awareness programs about all forms of sexual assault, including rape, acquaintance rape, domestic violence, dating violence, stalking, and other sex offenses. Programs are presented regularly throughout the academic year in student orientation, academic classes, employee training and professional development, and in other settings that are likely to reach people throughout the campus community. Campus-wide education and awareness activities are also conducted during Sexual Assault Prevention and Awareness Month. Ozarka College has implemented primary prevention and awareness programs and ongoing prevention and awareness campaigns for students and employees that promote awareness of dating violence, domestic violence, sexual assault, and stalking.

The program is conducted primarily through an online coursework and includes the following components:

- A statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking.
- The definition of "dating violence," "domestic violence," "sexual assault," and "stalking."
- The definition of "consent."
- A description of safe and positive options for bystander intervention.
- Information on risk reduction.

- Ozarka College's institutional policies and procedures regarding Discrimination, Harassment, Retaliation and Sexual Misconduct Complaints including information on:
  - A description of educational programs to promote the awareness of dating violence, domestic violence, sexual assault, and stalking.
  - Procedures to follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred.
  - Information about how the institution will protect the confidentiality of victims and necessary parties.
  - A statement that the institution will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, student financial aid, and other services available for victims, both within the institution and in the community.
  - A statement that the institution will provide a written notification to victims about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures.
  - An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking.
  - A statement that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, Ozarka College will provide the student or employee a written explanation of the student's or employee's rights and options.
  - Conduct proceedings, notification, and investigations.

### **Policy Expectations with Respect to Consensual Relationships**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, or supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of Policy. Ozarka College does not wish to interfere with private choices regarding personal relationships when those relationships do not interfere with the goals and policies of Ozarka College. However, for the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student or employee) are prohibited except in extraordinary circumstances.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons

with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisors. This will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or will shift the student or employee out of being supervised or evaluated by someone with whom he or she has established a consensual relationship. Failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee, up to and including termination.

### **Complaint/Grievance Procedure**

These procedures are intended to apply to all grievances involving discrimination, harassment, retaliation and sexual misconduct as described in the Ozarka College Board of Trustees Policies 2.48, 2.48.1, 4.24 including but not limited to those brought by a student against an employee and/or fellow student, employee against fellow employee and/or student, and third party against employee and/or student. All other grievances by students, employees or third parties shall be addressed through other grievance procedures detailed in the Ozarka College Catalog.

Ozarka College benefits from formal and informal procedures that encourage prompt resolution of complaints and concerns raised by members of the Ozarka College community.

### **Informal Complaint Process**

Ozarka College does not require a Complainant to utilize the Informal Complaint Process if doing so is impracticable or unsafe, or if the Complainant believes that the conduct cannot be effectively addressed through informal means. For example, the Informal Complaint Process should not be used to address allegations of sexual assault. However, in other circumstances where it is practical and safe to do so, every reasonable effort should be made to constructively resolve issues with students, faculty, staff and administrators before pursuing the Formal Complaint Process. Under the Informal Complaint Process, a Complainant may elect to resolve his/her complaint by discussing it with the offending party. If the offending party is an employee and satisfactory resolution cannot be reached after discussion, the Complainant may also contact the individual's direct supervisor to resolve the complaint. If these efforts are unsuccessful, the Formal Complaint Process may be initiated.

### **Formal Complaint Process**

Upon receiving a report of alleged or possible violation of this Policy, the Title IX Coordinator and/or deputy will evaluate the information received and determine what further actions should be taken. The Title IX Coordinator will follow the procedures described in this Policy. The Title IX Coordinator and/or deputy will take steps, either directly with the complainant or through a reporting employee, to provide information about the Ozarka College's Complaint/Grievance Procedure, as well as available health and advocacy resources and options for criminal reporting.

## **Investigation**

The Title IX Coordinator will be responsible for overseeing the prompt, fair, and impartial investigation and resolution of complaints filed with Ozarka College. The Title IX Coordinator or his/her designee will investigate all complaints of discrimination, harassment, retaliation and sexual misconduct and determine any accommodations or other remedial short-term actions necessary in light of the individual circumstances presented.

The Title IX Coordinator or his/her designee will apprise the President and the Vice President for the appropriate division of the complaint. The investigation will be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

The Title IX Coordinator or his/her designee, who will have been properly trained and do not have a conflict of interest or bias for or against the accuser or the accused, will:

- identify the correct policies allegedly violated;
- conduct an immediate initial investigation to determine if there is reasonable cause to charge the Respondent(s);
- meet with the Complainant to finalize the complaint;
- prepare the notice of charges on the basis of initial investigation;
- develop a strategic investigation plan which may include a witness list, an evidence list, an intended timeframe, and an order of interviews for all witnesses, including the Respondent;
- conduct a thorough, reliable and impartial investigation during which witnesses may or may not be given notice prior to the interview;
- complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- make a written finding on the case, based on a preponderance of the evidence, which indicates that it is more likely than not that a Policy violation has or has not occurred, and identifies appropriate remedies and/or sanctions, if any; and
- prepare a complete report on the investigation and findings.

As noted above, an investigation of the complaint will be conducted by the Title IX Coordinator or his/her designee unless it is clear from the face of the complaint or the Title IX Coordinator's initial meetings with the parties that no reasonable grounds exist for believing that the conduct at issue violates this Policy.

In the event that the complaint was made by someone other than the alleged victim, the Title IX Coordinator will consider the following factors in determining whether it is reasonable to investigate the complaint:

- the source and nature of the information,
- the seriousness of the alleged incident,
- the specificity of the information,

- the objectivity and credibility of the source of the information,
- whether the alleged victims can be identified, and
- whether those individuals wish to pursue the matter.

In the event that the Title IX Coordinator determines that an investigation of the complaint should not be conducted, he/she will determine and document (in consultation, as necessary, with the alleged victim, the Respondent and any other Ozarka College administrators) the appropriate resolution of the complaint and inform the parties of the same.

With all complaints, if the Title IX Coordinator determines that an investigation should be conducted, the Title IX Coordinator will promptly investigate the matter. The existence of concurrent criminal investigations or proceedings shall not delay the investigation of any complaint filed under this Policy.

If another individual is designated to investigate the matter, the Title IX Coordinator will share the investigator's name and contact information with the alleged victim and the Respondent and will forward the complaint to the investigator. Within three (3) days of such appointment, the investigator, the alleged victim or the Respondent may identify to the Title IX Coordinator in writing any real or perceived conflicts of interest posed by assigning such investigator to the matter. The Title IX Coordinator will carefully consider such statements and will assign a different individual as investigator if it is determined that a material conflict of interest exists.

Upon receipt of the complaint, the Title IX Coordinator will promptly begin the investigation, which shall include but is not limited to the following:

- conducting interviews with the Complainant, the alleged victim (if not the Complainant), the Respondent, and third-party witnesses (including expert witnesses, where applicable) and summarizing such interviews in written form;
- visiting, inspecting, and taking photographs at relevant sites; and
- where applicable, collecting and preserving relevant evidence (in cases of corresponding criminal reports, this step may be coordinated with law enforcement agencies).

Throughout the investigation, the Title IX Coordinator will remain neutral. The Title IX Coordinator should obtain, where applicable and where possible, the written consent of any third-party witnesses to the disclosure, as contemplated by this Policy, of any personally identifiable information contained in the Complaint, the Investigative Report, and for any other documents the disclosure of which is contemplated by this Policy in order to further the resolution of the complaints.

### **Initial Meeting with Complainant and/or Alleged Victim**

As soon as is practicable, the Title IX Coordinator will contact the Complainant and the alleged victim (if not the Complainant) to schedule an initial meeting to, as applicable:

- provide a copy of this Policy;
- provide a copy of the Discrimination, Harassment and Sexual Misconduct Complaint Form on which the Complainant may, if he or she agrees to disclose the information, provide details regarding the allegation, including the name of the accused individual and the date, location and general nature of the alleged violation of Policy (the Complaint Form may be completed by Complainant or dictated to the Title IX Coordinator, who will confirm the accuracy of his or her documentation with the Complainant);
- explain avenues for resolution;
- explain the steps involved in an investigation under this Policy;
- discuss confidentiality standards and concerns;
- determine whether the Complainant or the alleged victim (if not the Complainant) wish to pursue a resolution through Ozarka College or no resolution of any kind;
- refer to law enforcement, counseling, medical, academic or other resources, as appropriate;
- explain that accommodations or protective measures are provided if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to College personnel or law enforcement.
- discuss, as appropriate, possible interim measures that can be provided during the pendency of the investigative and resolution processes.
- Provide a written notification to the Complainant and/or alleged victim about options for, available assistance in, and how to request changes to:
  - Academic situations
  - Living Situations
  - Transportation Situation
  - Working Situation
  - Protective Measures

### **Interim Measures**

Unless circumstances dictate otherwise, the Title IX Coordinator will promptly issue a “No Contact” order to all parties upon notice of any sexual assault complaint. In all cases, Ozarka College may implement any necessary interim measures, deemed appropriate and reasonably available, regardless of whether a complaint has been filed (with either campus administrators or law enforcement agencies) or whether an investigation has commenced (by either campus administrators or law enforcement agencies). Interim measures may include, but are not limited to:

- issuing no-contact orders;
- providing an escort to ensure that an individual can move safely between classes, work, and/or activities;
- changing work arrangements or location;
- rescheduling class work, assignments, and examinations;
- arranging for the Complainant to take an incomplete in a class;
- reassigning class section;
- permitting a temporary withdrawal from Ozarka College;

- providing alternative course completion options;
- providing counseling services; and
- providing academic support services.

Following the initial meeting with the Complainant and the alleged victim (if not the Complainant), the Title IX Coordinator will, if applicable, promptly determine the interim measures to be provided to the alleged victim. Such determination will be promptly communicated to the alleged victim, and no later than the point at which it is communicated to the Respondent.

### **Initial Meeting with Respondent**

If the Complainant or alleged victim (if not the Complainant) wishes to pursue resolution through Ozarka College or if Ozarka College otherwise deems that a further investigation is warranted, as soon as is reasonably practicable after the Title IX Coordinator's initial meeting with the Complainant (and, if applicable, the alleged victim), the Title IX Coordinator will schedule an initial meeting with the Respondent. During the initial meeting with the Respondent, the Investigator will, as applicable:

- provide sufficient written information, consistent with privacy laws and any request for confidentiality, to allow Respondent to address the allegation (e.g., the name of the Complainant/alleged victim, the date, location, nature of the alleged violation of Policy, etc.);
- provide a copy of this Policy;
- explain Ozarka College's procedures for resolution of the complaint;
- explain the steps involved in an investigation under this Policy;
- discuss confidentiality standards and concerns;
- discuss non-retaliation requirements;
- inform of any interim measures already determined and being provided to the Complainant and/or the alleged victim that would directly affect the Respondent (e.g., changing his or her class schedule, etc.);
- refer to law enforcement, counseling, medical, academic or other resources, as appropriate; and discuss, as appropriate, possible interim measures that can be provided to the Respondent during the pendency of the investigative and resolution processes.

### **Investigative Report**

The Title IX Coordinator shall complete a written investigative report ("Investigative Report") that shall include the following items:

- the name and sex of the alleged victim and, if different, the name and sex of the person reporting the allegation (It should also include any other relevant protected class characteristics if the complaint involves a violation of this Policy based on a protected status other than gender);

- a statement of the allegation, a description of the incident(s), and the date(s) and time(s) (if known) of the alleged incident(s);
- the date that the complaint or other report was made;
- the date the Complainant and alleged victim (if not the Complainant) were interviewed;
- the date the Respondent was interviewed;
- the names and sex of all persons alleged to have committed the alleged violation of this Policy (It should also include any other relevant protected status characteristics if the complaint involves a violation of this Policy based on a protected status other than gender);
- the names and sex of all known witnesses to the alleged incident(s);
- the dates that any relevant documentary evidence (including cell phone and other records as appropriate) was obtained;
- any written statements of the Complainant (or victim, if different from the Complainant), the Respondent and any witnesses;
- summaries of all interviews conducted, photographs, and descriptions of relevant evidence, summaries of relevant electronic records, and a detailed report of the events in question;
- a written finding on the case, based on a preponderance of the evidence which indicates whether or not it is more likely than not that a Policy violation has occurred;
- the policy or policies violated and, in consultation, as necessary, with the Complainant, alleged victim (if different than the Complainant), Respondent, and other Ozarka College officials, any remedial and/or disciplinary action deemed appropriate under the circumstances;
- the response of Ozarka College personnel including any interim measures and permanent steps taken with respect to the Complainant, alleged victim (if different than the Complainant) and the Respondent; and
- a narrative of all action taken to prevent recurrence of any harassing incident(s), including any written documentation.

If the Title IX Coordinator is unable to obtain the consent of third-party witnesses, he or she will redact the Investigative Report to the extent necessary to avoid inappropriate disclosure of such witness's personally identifiable information, while ensuring that such redaction does not prevent resolution of the complaint.

If the Title IX Coordinator determines and documents, based on the investigation, that reasonable grounds exist to believe that the conduct at issue constitutes a violation of this Policy, the Title IX Coordinator will determine the appropriate remedy and/or sanction to be imposed and will include the appropriate remedy and/or sanction in the Investigative Report. Imposition of the appropriate remedy and/or sanction will be imposed only after all appeals have been exhausted.

## **Sanctions**

In determining the appropriate remedy and/or sanction, Ozarka College will act to end the discrimination, harassment, retaliation or sexual misconduct, prevent its recurrence and remedy its effects on the victim and/or Ozarka College community. Sanctions will depend upon the nature and gravity of the misconduct, any record of prior discipline for a violation of this Policy, or both. Sanctions may include, without limitation, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, compensation adjustments, expulsion or suspension from Ozarka College, disciplinary probation, mandated counseling and/or educational sanctions as deemed appropriate.

The Title IX Coordinator shall complete and distribute the Investigative Report, concurrently, to the alleged victim and Respondent within thirty (30) calendar days following receipt of a complaint. Along with the investigative report, this institution will provide, concurrently, the institution's procedures for the accused and the victim to appeal the result of the proceeding. All parties to whom the Investigative Report is distributed pursuant to this Policy should maintain it in confidence. The Investigative Report may only be disclosed as contemplated by this Policy.

If the Title IX Coordinator finds no reasonable grounds to believe that the conduct at issue constitutes a violation of this Policy, then the Title IX Coordinator will determine and document the appropriate resolution of the complaint in the Investigative Report and will promptly notify the parties of that determination.

## **Appeal involving Faculty/Staff**

All appeals where the Respondent is an Ozarka College faculty or staff member shall be made to the President or his/her designee. Both the alleged victim and the Respondent may appeal any or all of the Title IX Coordinator's decision in writing to the President or his/her designee within ten (10) days of receipt of the Investigative Report. The appealing party must also provide a copy of the appeal to the Title IX Coordinator within the same time period. The appeal should include a brief statement describing any or all parts of the Investigative Report that is being appealed and the reason for appeal. Acceptable means of notification include email, facsimile, hand delivered notification or postal delivery. The Title IX Coordinator will promptly inform the other party of the appeal.

Within thirty (30) days of receipt of the appeal, the President or his/her designee will make a final determination as to whether the complaint should be closed, whether a violation of Policy has occurred, and/or whether any additional or different remedial action or sanctions are warranted. The President or his/her designee will concurrently notify the alleged victim and the Respondent of his/her decision.

All faculty and staff members of Ozarka College are at-will employees who may be terminated at any time, with or without cause. With regard to such faculty and staff,

nothing in this Policy shall create an expectation of continued employment with Ozarka College or be construed to prevent or delay Ozarka College from taking any disciplinary action deemed appropriate (including suspension and immediate termination of employment) for any violation of state law, federal law or Ozarka College policy.

### **Appeal Involving a Student**

In those instances where the Respondent is an Ozarka College student, the alleged victim and/or the Respondent may appeal any or all of the Title IX Coordinator's decision to a Hearing Panel by providing a written appeal to the President or his/her designee with a copy also being provided to the Title IX Coordinator. The appeal must be submitted within ten (10) days of receipt of the Investigative Report and must include a brief statement describing any or all parts of the Investigative Report being appealed and the reason for appeal. Acceptable means of notification include email, facsimile, hand delivered notification or postal delivery.

Within three (3) days of receiving the appeal, the President or his/her designee will appoint the members of the Hearing Panel, to include at least three faculty and/or staff members. The President or his/her designee will select one member of the Hearing Panel to act as the Chair. The Title IX Coordinator will provide a copy of the complaint and the Investigative Report to each member of the Hearing Panel and, if only a portion of the Title IX Coordinator's findings and determinations are appealed, the Title IX Coordinator will specify which part(s) of the alleged misconduct will be the subject of the hearing.

Promptly after the appointment of the members of the Hearing Panel, the Title IX Coordinator will provide concurrent written notice to the alleged victim and the Respondent, setting forth the names of the individuals selected to serve on and chair the Hearing Panel. If only a portion of the findings and determination are appealed, the Title IX Coordinator will also specify in the notice which part(s) of the alleged misconduct will be the subject of the hearing.

The parties may challenge the participation of any member of the Hearing Panel by submitting a written objection to the President or his/her designee within three (3) days of receipt of the notice of the composition of the Hearing Panel. Any objection must state the specific reason(s) for the objection. The President or his/her designee will evaluate the objection and determine whether to alter the composition of the Hearing Panel. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the composition of the Hearing Panel. Any changes in the composition of the Hearing Panel will be provided in writing to both parties prior to the date of the hearing.

### **Submission of Written Materials**

Within five (5) days of receipt of the notice of the initial composition of the Hearing Panel, the alleged victim and the Respondent may provide the Chair of the Hearing

Panel with a list of witnesses, if any, that they propose that the Hearing Panel call and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute, any supporting documents or other evidence, and a written statement of position.

### **Notice of the Hearings**

Not less than five (5) days but not more than ten (10) days after delivery of notice of the initial composition of the Hearing Panel to the parties, the Hearing Panel will provide a separate notice to the alleged victim, Respondent and any witnesses or other third parties whose testimony the Hearing Panel deems relevant, requesting such individuals to appear before the Hearing Panel. The notice should set forth the date, time, and location for the individual's requested presence. The Hearing Panel shall provide the names of the witnesses or other third parties that the Hearing Panel plans to call in its notices to the alleged victim and the Respondent. The hearing shall be conducted within twenty (20) days but no sooner than ten (10) days of the receipt of the appeal.

### **Failure to Appear**

If any party fails to appear before the Hearing Panel if requested to do so, and such party was provided proper notice of the hearing as set forth above, then absent extenuating circumstances, the Hearing Panel will proceed to determine the resolution of the complaint.

### **Support Persons**

Both the alleged victim and the Respondent may be accompanied by one support person to assist them during the hearing process. This support person can be anyone, including an attorney, but the support person may not take part in the hearing. The support person may not address the Hearing Panel, present evidence, make objections or statements, ask questions of any party or witness or otherwise participate in the hearing, beyond privately communicating with the party that he/she is supporting. The Chair must be notified five (5) business days in advance of the hearing if a party will be accompanied by a support person. The Chair may disallow the attendance of any support person if he/she is also a witness or if, in the discretion of the Chair, such person's presence would be disruptive or obstructive to the hearing or otherwise warrant removal. All support persons must agree to keep any and all information presented in the hearing confidential in order to attend. Absent accommodation for disability, the parties may not be accompanied by any other individual during the hearing process except as set forth in this Policy. Ozarka College officials may seek advice from the University's Office of General Counsel on questions of law and procedure at any time during the process.

### **Evidentiary Matters**

The alleged victim and the Respondent will have an equal opportunity to present

evidence during their hearing. Formal rules of evidence will not be observed during the hearings. The alleged victim, the Respondent, and appropriate officials will be given timely and equal access to information that will be used during informal and formal disciplinary meetings hearings.

### **Prior Sexual Conduct**

Evidence of the prior sexual conduct of the alleged victim and the Respondent with others will not be permitted at the hearings, with the following exceptions:

- evidence is permitted to show that the alleged victim has in the past been formally disciplined by Ozarka College for falsely filing complaints alleging a violation of this Policy;
- evidence is permitted to show that the Respondent has in the past been either convicted in a criminal proceeding or formally disciplined by Ozarka College for conduct which would violate this Policy, if deemed relevant; and
- evidence regarding the past sexual activity of the Respondent (regardless of whether the Respondent was formally charged with a violation of the Policy with respect to such conduct) may be permitted to show that the Respondent has engaged in a pattern of behavior similar to the alleged violations of policy at issue before the Hearing Panel, provided that (1) the Respondent has not been found “not responsible” by Ozarka College in a proceeding related to such conduct and (2) the Chair has made written findings both that the evidence is reliable and trustworthy and that the conduct is sufficiently and substantially similar to the conduct at issue before the Hearing Panel to suggest a pattern of behavior.

### **Hearing Procedure**

The Hearing Panel will conduct a hearing during which it will interview and question the Complainant, the alleged victim, the Respondent, and any witnesses or other third parties whose testimony the Hearing Panel deems relevant. The parties will not be allowed to personally question or cross-examine each other during the hearing, but will be allowed to question witnesses. The Chair will resolve all questions concerning procedure or the admission of evidence or testimony, including the relevancy and reliability of the evidence and testimony. All participants at the hearing are expected to provide truthful testimony. The Complainant and/or alleged victim have the option not to be in the same room with the alleged Respondent during the hearing. Any party may choose not to testify or appear before the Hearing Panel; however, his/her exercise of that option will not preclude the Hearing Panel from making a determination regarding the complaint filed against the Respondent.

### **Decision of the Hearing Panel**

Following the conclusion of the hearing, the Hearing Panel will confer and by majority vote determine whether the evidence (including the information provided in and by the Investigative Report, the parties’ written statements, if any, the evidence presented at the hearings, and the testimony of the parties and witnesses) establishes that it is more likely than not that the Respondent committed a violation of this Policy. In other words,

the standard of proof will be the preponderance of the evidence. If the Hearing Panel determines that more likely than not the Respondent committed a violation of this Policy, the Hearing Panel will recommend sanctions and give consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation. The Hearing Panel will forward its recommendations regarding sanctions to the President or his designee, who will make the final determination regarding all sanctions. Sanctions for a finding of responsibility will depend upon the nature and gravity of the misconduct, any record of prior discipline for a violation of this Policy, or both.

Sanctions may include, without limitation, expulsion or suspension from Ozarka College, disciplinary probation, expulsion from campus housing, mandated counseling, and/or educational sanctions deemed appropriate by the Hearing Panel.

Ordinarily, sanctions will not be imposed until the resolution of any timely appeal under this Policy. However, if it is deemed necessary to protect the welfare of the victim or the Ozarka College community, the Hearing Panel may recommend and the President or his/her designee may determine that any sanctions be imposed immediately and continue in effect until such time as the appeal process is exhausted.

At such time that the appeal process is exhausted, the Title IX Coordinator will determine the final accommodations to be provided to the victim, if any, and the Title IX Coordinator will communicate such decision to the victim and the Respondent to the extent that it affects him/her. Both the victim and the Respondent will also be notified of any change to the result concurrently.

The Title IX Coordinator will also take steps to prevent any harassment of or retaliation against the Complainant, the victim (if not the Complainant), or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing training for the campus community, and providing counseling for the Respondent. The Title IX Coordinator will also take steps to prevent the harassment of or retaliation against the Respondent.

Furthermore, the Title IX Coordinator will take prompt corrective action if the Complainant or the victim (if not the Complainant) experiences retaliation or is subjected to further violation of this Policy or if the original sanctions imposed on the Respondent are ineffective to protect the safety and well-being of the Complainant, the victim (if not the Complainant), or other members of the Ozarka College community. The Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created, such as conducting trainings and disseminating informational materials. In taking the above-outlined steps, the Title IX Coordinator will make every reasonable effort to minimize the burden on the Complainant and/or alleged victim.

### **Final Outcome Letter**

Within ten (10) calendar days following the conclusion of the hearings, the Hearing Panel will issue a written decision letter (the "Final Outcome Letter") concurrently to the

Respondent and the alleged victim. The Final Outcome Letter will set forth (1) the name of the Respondent, (2) the violation(s) of this Policy for which the Respondent was found responsible, if any, (3) the recommended sanctions imposed on the Respondent, if any, and it may set forth names of other individuals, such as a victim or witness, provided that such other individuals provide their written consent to such inclusion.

In order to comply with FERPA, the letter will not include information considered part of a party's "education record" (as that term is defined by FERPA) that is not otherwise exempt from disclosure under the Act, or other information about sanctions that do not relate to the victim.

### **Confidentiality and Disclosure**

In order to comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, documents prepared in anticipation of the hearings (including the complaint, the Investigative Report, the notices of hearing, and the pre-hearing submissions referenced above) and documents, testimony, or other information introduced at the hearings may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law. Compliance with these provisions does not constitute a violation of section 444 of the General Education Provisions Act, commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

### **Time Periods**

Ozarka College will make every reasonable effort to ensure that the investigation and resolution of a complaint occurs in as timely and efficient a manner as possible. Ozarka College's investigation and resolution of a complaint (including an appeal, if applicable) will generally be completed within 60 calendar days of the receipt of the complaint, absent extenuating circumstances. Hearings, if at all, will take place after the conclusion of the investigation. If hearings have taken place, both the Complainant and the Respondent generally will receive a Final Outcome Letter within ten (10) calendar days of the conclusion of the hearing.

Any party may request an extension of any deadline by providing the Title IX Coordinator or his or her respective deputies with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request.

The prompt, fair, and impartial proceeding will be conducted in a manner that:

- Is consistent with Ozarka College's policies and procedures and transparent to the Respondent and the alleged victim.
- Includes a timely notice of meetings at which the Respondent and the alleged victim, or both, may be present.

- Provides timely and equal access to the Respondent, the alleged victim, and appropriate officials to any information that will be used during the informal and formal disciplinary meetings and hearings.

For purposes of calculating all time periods set forth in this complaint and Grievance Policy, a business day is defined to mean normal operating hours, Monday through Friday, excluding recognized national and state holidays and Ozarka College closings. Timelines may be modified in cases where information is not clear, judged to be incomplete, relevant parties are not available for interview, and/or other related circumstances as may arise. The Title IX Coordinator may also modify any deadlines contained in this Policy as necessary and for good cause.

### **Acknowledgement of Responsibility**

At any time prior to the issuance of the Investigative Report or the date of his/her designated hearing, the Respondent may elect to acknowledge his/her actions and take responsibility for the alleged policy violation. In such situation, the Title IX Coordinator will propose sanction(s). If either party objects to the proposed sanction(s), they may appeal the sanction pursuant to this Policy.

### **No Retaliation**

Retaliation against any person who files a complaint, participates in an investigation, or opposes a discriminatory employment or educational practice or policy is prohibited. A person who believes retaliation has occurred should notify the Title IX Compliance Officer as soon as possible.

### **False Reports**

Willfully making a false report of sexual harassment is a violation of Ozarka College policy and is a serious offense. Any person who willfully makes or participates in making a false or frivolous report of discrimination, harassment, retaliation or sexual misconduct will be subject to disciplinary action. False reporting may also violate state criminal statutes and civil defamation laws.

### **Office of Civil Rights Complaint**

Although Complainants are encouraged to resolve their grievances related to discrimination by utilizing this Complaint/Grievance Procedure, they have the right to file a complaint directly with the U.S. Department of Education, Office for Civil Rights (OCR). Information regarding applicable timelines and procedures is available from OCR. You may call 1-800-421-3481 to obtain further information about filing a complaint with OCR.

### **Effective Date**

Ozarka College reserves the right to make changes and amendments to this Policy as

needed, with appropriate notice to the community. However, the Policy in force at the time that a complaint is filed will be the Policy used throughout the investigation, hearing and any appeals that are heard.

### **Documentation**

Ozarka College will retain documentation (including but not limited to the written complaint, notifications, the Investigative Report, any written findings of fact, petitions for appeal, hearing transcripts or recordings (if any), and any written communication between the parties), for at least three (3) years. Documentation pertaining to terminations, expulsions or educational sanctions may be retained indefinitely.

### **Reporting Requirement**

In all cases when a complaint is made, both formal and informal, the incident must be reported to the President.

### **Definition**

#### **Sexual Harassment**

It is the policy of Ozarka College that sexual harassment (as defined under 29 CFR Ch XIV, subsection 1504.11, Section 703 of Title VII of the Civil Rights Act of 1964, as amended, and Arkansas Act 563 of 1985) unconscionable and will not be tolerated. Persons who commit or knowingly permit acts of sexual harassment will be subject to disciplinary action up to and including immediate dismissal. No employee or student at the College may attempt in any way to retaliate against a person who makes a claim of sexual harassment.

**Sexual harassment** is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

1. Submission to or toleration of such conduct on or off campus is made a term or condition of instruction, employment, or participation in other College activities.
2. Submission or rejection of such conduct by an individual is used as a basis for evaluation in making employment or academic decisions affecting the individual.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or employment performance or creating an intimidating, hostile, or offensive college environment.

#### **Stalking and Domestic/Dating Violence**

**Stalking** is a criminal act in which one person purposely and knowingly causes another person substantial emotional distress or reasonable fear of bodily injury or death by repeatedly harassing, threatening, or intimidating the victim. Stalking includes, but is not limited to the following behaviors:

- Repeated following or pursuing;

- Threatening or obscene gestures;
- Non-consensual communication;
- Trespassing;
- Vandalism; and/or
- Non-consensual touching.

**Cyberstalking** (also known as online harassment or electronic stalking) is offensive, threatening communication through the internet, via e-mail, chat rooms, instant messaging, etc. For the legal description, see Arkansas Criminal Code 5-71-229.

**Domestic/Dating Violence** is a pattern of behavior in which one partner uses fear and intimidation to establish power and control over a family/household member or intimate partner, often including the threat or use of violence. This form of violence may include, but is not limited to, actions that cause bodily injury through physical, emotional, psychological, economic, or sexual means; and may cause reasonable fear of harm on the part of the victim/survivor, or threaten children or pets. Such violence may be done knowingly or negligently on the part of the perpetrator. Violence in domestic and dating relationships tends to escalate in frequency and intensity over time. The longer it continues, the greater the risk of the victim being seriously injured or killed. Domestic/dating violence and abuse occur among all races, ages, classes, and religious groups. For legal descriptions, see Arkansas Criminal Code Title 5, Chapter 26, Subchapter 3.