

## **Section 5-12      Campus Procedures for Sexual Misconduct/Assaults**

### A. Introduction

Carl Albert State College will not tolerate nor condone any form of sexual misconduct, whether physical, mental or emotional in nature. This includes actions that are demeaning and includes, but is not limited to, rape (whether the accuser does or does not know the aggressor and includes “date rape”, “acquaintance rapes”, and “gang rape”), sexual assault or sexual harassment, dating violence, stalking, and domestic violence. Even if law enforcement and criminal justice authorities choose not to prosecute a particular matter, the college may still pursue the matter as a student misconduct concern warranting non-academic disciplinary action by the institution. Where it is determined that sexual misconduct is more likely than not to have occurred, college disciplinary sanctions can include suspension or expulsion.

CASC has determined that the nature of sexual assault crimes require judicial proceedings that differ from the procedures followed for other violations.

### B. Definitions

1. Accuser shall mean the person alleging to have been sexually assaulted.
2. Accused shall mean a person accused of sexual assault.
3. Intimate parts shall mean the genital area, groin, inner thighs, buttocks, or breasts.
4. Past sexual behavior shall mean sexual behavior other than the sexual behavior upon which the sexual assault is alleged.
5. Serious personal injury shall include physical injuries, psychological stress, or other physical or mental trauma, pregnancy, disease, or loss of impairment of a sexual or reproductive organ.
6. Personal injury shall include minor physical injuries, psychological stress, or other physical or mental problems resulting from the assault.
7. Sexual contact shall mean intentional touching of the accuser’s sexual or intimate parts or intentional touching of the accuser’s clothing covering the immediate area of the accuser’s sexual or intimate parts. Sexual contact shall also mean the touching by the accuser of the accuser’s sexual or intimate parts when such touching is intentionally caused by the accused. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party.
8. Sexual penetration shall mean sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight of any part of the accuser’s or accuser’s body, or any object manipulated by the accused into the genital, oral or anal openings of the accuser’s body which can be reasonably construed as being for non-medical or non-health purposes. Sexual penetration shall not require emission of semen.
9. Dating Violence shall mean violence by a person who has been in a romantic or intimate relationship with the accuser. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.
10. Stalking shall mean a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others’ safety, or to suffer substantial emotional distress.
11. Domestic Violence shall include asserted violence misdemeanor and felony offenses committed by the accuser’s current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.
12. Consent shall mean the positive cooperation in act or attitude pursuant to an exercise of free will. The persons consenting must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. The determination regarding the presence or absence of consent shall be based upon the totality of the circumstances present in a particular case, including the context in which the alleged incident occurred. Consent will not be implied from silence or passivity alone.

### C. Violations

Incidents defined in subsection B as sexual contact, sexual penetration, dating violence, stalking, or domestic violence will be considered a violation of policy. Due to the sensitive and often violent nature of incidents involving sexual misconduct, the following definitions are provided for

informational use by students and for guidance in the investigation and adjudication of alleged cases of sexual misconduct. It is possible a particular action may constitute sexual misconduct even if not specifically mentioned in the examples.

1. Rape means all acts of sexual intercourse involving vaginal or anal penetration accomplished without consent and with a male or female (who may be of the same or opposite sex as the perpetrator).
2. Rape by instrumentation means any act in which an inanimate object or part of the human body, not amounting to sexual intercourse, is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person.
3. Sexual battery shall mean the intentional touching, mauling, or feeling of the body or private parts of any person in a lewd and lascivious manner and without the consent of that person. Sexual battery includes, but is not limited to, the touching of a person's genitalia, buttocks, or breasts.

#### D. Services

Carl Albert State College has taken the following steps aimed at preventing a sexual assault on the college campus:

1. The college provides educational programs to enhance awareness of sexual assault and the conditions that foster this offense on college campuses. These include offering sexual assault awareness programs at no charge to any interested group, including classes, organizations and clubs. These programs attempt to dispel myths, provide information and give practical measures to increase safety.
2. The college provides counseling services for survivors of sexual assaults which occur on institutional property or who are affiliated with the college. Counselors are available to listen, provide support, answer questions about sexual assault, and discuss options available to the accuser.

#### E. Procedures

Procedures to be implemented when sexual misconduct occurs on campus include:

1. Notification by accuser. The accuser should report the incident to the Human Resources Director (Title IX Coordinator), Campus Police, Vice President for Student Affairs (Title IX Deputy Coordinator), or the Resident Life Coordinator on the Poteau Campus or the Director of the Sallisaw Campus or Human Resources Director (Title IX Coordinator) at the Sallisaw Campus. Upon receiving the initial complaint, the complaint will be forwarded to the Human Resources Office; the accuser should fill out the Campus Concern/Grievance Form which includes the Complainant's name and contact information, identify the complained-of individual, and describe the complained-of conduct, including but not limited to dates, times, places, and witnesses, if any, along with the Complainant's preferred outcome for resolving the matter. The complaint should be turned into the CASC Human Resources Office immediately, but no later than one hundred eighty (180) calendar days after the last complained-of incident. The Human Resources Director will determine, whether a complaint of Sexual Harassment and Sexual Assault will be resolved by formal or informal means; however, the accuser or respondent may request a formal process at any time. If either the accuser or the accused are students, the incident may be addressed through the Student Affairs Student Conduct process once a complaint is filed. The accuser should not douche, bathe, shower, or change clothes before reporting the incident. The accused shall receive written notification of the allegation/s/ including sufficient details, which include:
  - Parties identities
  - Specific section of the Code of Conduct allegedly to have violated
  - Precise conduct respondent/accused allegedly committed
2. Responsibility of the Campus Police. Upon receiving a report of sexual assault, the Campus Police:
  - a) May contact the Poteau or Sallisaw Police Department and other appropriate law enforcement agencies, as applicable. They will inform the person of his/her options (this does not mean must proceed with prosecution).
  - b) Will provide transportation of the accuser to the Eastern Oklahoma Medical Center, Sequoyah County Medical Center, or other medical facility. At the medical facility, the person will be given a medical examination to assess his/her medical condition and to collect medical evidence. This evidence will be needed if one decides to pursue prosecution and is only available immediately after the attack. The State Accuser Compensation Fund will pay for

the initial sexual assault medical exam, but certain conditions, which can be explained by the medical staff, apply. A police officer will arrive at the hospital to take the accuser's statement as soon as practicable.

- c) Will contact the Vice President for Student Affairs.
  - d) Will work the campus crime scene in coordination with other law enforcement agencies.
  - e) Will make arrest(s) if the suspect(s) can be identified.
3. Responsibility of the Vice President for Student Affairs (Deputy Title IX Coordinator)
- a) Advise the accuser of the option to file criminal charges with the District Attorney's Office and/or to initiate the on-campus disciplinary process.
  - b) Refer the accuser to counseling services at Cavanal Counseling, the LeFlore County Health Department, the Women's Crisis Center of LeFlore County, or Health in Crisis located in Sallisaw. The accused may also request counseling services.
  - c) Once an allegation has been made or an on-campus disciplinary process has been initiated, the Vice President for Student Affairs and/or the Title IX Coordinator can implement the following confidential Interim Measures and notify the accuser *and* accused of these options:
    - Assistance in Reporting: Student Affairs can assist in filing a complaint with the institution conduct process and the appropriate law enforcement agencies against the student(s) who caused harm.
    - No Contact Order: A "No Contact Order" between the complainant and respondent can be put in place, which would prohibit contact between both parties through any means of communication, as well as not having others make contact on their behalf.
    - Emergency Protective Order: Student Affairs/Student Life and/or Campus Police can assist in filing for an Emergency Protective Order in court with LeFlore or Sequoyah County District Attorney's Office. This is a court-ordered petition that prohibits contact between the accuser and accused.
    - Safety Measures: Student Affairs/Student Life can coordinate any reasonable arrangements that are necessary for ongoing safety. This includes transportation arrangements or providing an escort.
    - Living Arrangements: Student Affairs can assist in changing accuser on-campus living arrangements or that of the accused to ensure safety and a comfortable living situation.
    - Academic Arrangements: Student Affairs can assist in adjusting academic schedules as well as assist in providing access to academic support services.
    - Other Interim Measures: Student Affairs can coordinate any reasonable arrangements to address the effects of the sexual violence, including connecting accuser and accused with counseling, health care or academic support resources.
    - Any form of retaliation or harassment shall be grounds for a separate judicial action or considered as aggravating circumstances by the courts/hearing panel in assessing sanctions.

#### F. Student Conduct

1. Once the allegation has been investigated and determined to have merit, the Office of Student Affairs will implement the Student Conduct process, if an informal resolution has not been reached.
2. The false report or false accusation of sexual assault by a student, whereby a student recants testimony or admits that an assault did not occur, may be grounds for disciplinary action against the student.
3. Advise the accuser and accused that both parties have the right of counsel during the proceedings (parent, other adult, or licensed attorney, at the student's own expense) if legal charges are pending. Counsel may consult or advise, not conduct the hearing.

#### G. Notification of the Accused

1. If informal resolution is not reached and the allegation has been investigated and determined to have merit, the Office of Student Affairs will notify the accuser and accused within five (5) working days of a disciplinary hearing if a hearing is to be held. The disciplinary hearing will be conducted to determine if a sexual assault was more likely than not to have occurred.

2. The notice of allegations against the accused shall include a statement of the allegations written by the accuser, the name of the person making the accusation, the date, time, and place of the hearing.
3. The Vice President for Student Affairs, is authorized to enforce a “No Contact” order, and make all necessary arrangements on a temporary basis – prior to a determination by the Hearing Panel to enforce and designate alternatives to classes, class attendance, campus residency, campus sponsored activities, extracurricular activities, and/or any other college related activity, if the circumstances or the proximity of the accuser and accused warrant such arrangements.

#### H. Composition of Hearing Panel

The Hearing Panel shall be composed of five members: The Vice President for Student Affairs, who will serve as chair, along with four current members of the Student Conduct Committee. Of the four Committee members, one must be a student, and the other three either faculty or staff of CASC that has been trained in Title IX. The Hearing Panel will consist of mixed gender and will not have a conflict of interest or prejudice to either the accuser or the accused. A majority decision of the Hearing Panel is required for all decisions rendered by the Panel. The Hearing Panel shall be instructed that all deliberations and proceedings are to be confidential.

#### I. Hearing Panel Procedures

1. The hearing shall be closed to the public. No tape recordings may be made of the hearings or the deliberations of the Panel. Except as specifically outlined below, only the Hearing Panel and college legal counsel will be allowed at the hearing deliberations.
2. The accuser and accused may be accompanied by no more than one person and have the right of counsel during the proceedings (parent, other adult, or licensed attorney, at the student’s own expense) if legal charges are pending. Counsel may consult or advise, not conduct the hearing.
3. The Hearing Panel will interview the accuser, and attempts to learn all that is relevant to the sexual assault incident. The accused shall not have the right to be present during the interview between the accuser and the Panel. If the accuser refuses to appear, the Panel reserves the right to render a finding on the basis of evidence submitted.
4. The Hearing Panel will interview the accused any time after interviewing the accuser and will attempt to learn all that is relevant to the sexual conduct incident. The accuser shall not have the right to be present during the interview between the accused and the Panel. If the accused refuses to appear before the Panel, the Panel reserves the right to render a finding on the basis of evidence submitted.
5. The accuser or the accused may provide to the Hearing Panel the names of individuals who witnessed the event or events leading up to or following the alleged assault. After interviewing the accuser and the accused, the Hearing Panel shall have the discretion to interview witnesses in person or to accept written statements from witnesses who can provide information relevant to the alleged assault. Neither the accuser nor the accused has the right to be present during witness testimony or to have access to witness statements. The Hearing Panel has the discretion to disclose to either party information gained from witness testimony, if such disclosure is relevant to the finding. The Hearing Panel shall keep witnesses’ names confidential. The Hearing Panel may require subsequent interviews with the accuser, the accused, or witnesses.

#### J. Procedural Rules

1. No tape recordings of the hearing or the Panel’s deliberation may be made by any party present at the hearing.
2. At the discretion of the Hearing Panel reviewing a particular case, the following procedures may be deemed appropriate for use in conducting a review hearing regarding a case of alleged sexual misconduct. The Hearing Panel shall have no duty to grant such measures in any case under review but should consider the appropriateness of permitting such accommodation. The Hearing Panel may, at its discretion, exclude evidence regarding the past sexual history of the alleged accuser with persons other than the alleged perpetrator and consider it to be irrelevant.
3. The use of alcohol or drugs by the accuser or the accused at the time of the alleged assault may be introduced by either party, but such use does not take away responsibility for behavior or the consequences of the behavior.
4. The Hearing Panel may consider any evidence relevant to establishing a finding; however, the lack of physical evidence that a sexual assault occurred will not be grounds for dismissal of a charge.

5. The standard of proof used in the college hearings is preponderance of the evidence, which means the determination to be made is whether it is more likely than not a violation occurred. This is significantly different than proof beyond a reasonable doubt, which is required for a criminal prosecution. "Preponderance" means more than half; a conscientious and rational judgment on the whole record.
6. The Hearing Panel will deliberate in closed session and determine if a sexual assault was more likely than not to have occurred. If the Hearing Panel concludes a sexual assault was more likely than not to have occurred, the Vice President for Student Affairs will assess sanction(s).
7. This policy does not preclude the abiding by other applicable local, state, or federal laws pertaining to sexual assault.

**K. Notification of Finding**

The Vice President for Student Affairs will notify, in writing, both the accuser and the accused of the finding within 48 hours (two working days) from the end of the deliberation of the Hearing Panel. The notice will be sent to the last known physical address of both parties.

**L. Appeal**

Either the accuser or the accused may file an appeal to the President of the college within ten (10) working days of the decision of the Hearing Panel. The college President will then consider the matter on the basis of written statements by the accused, the accuser and/or the Hearing Panel. The President may request a personal interview with the accuser or the accused prior to making a decision. The President will then make a decision as to whether there is reasonable cause to believe a sexual assault took place. If the President concludes that a sexual assault occurred, the President will uphold the decision of the Hearing Panel. If the President concludes that a sexual assault did not occur, the case will be dismissed. The decision of the President is final and cannot be appealed.

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**Section 5-13– 5-15                   (Reserved for Future Use)**