

704 Sexual and Gender-Based Misconduct Policy

Effective Date: 08/06/2020

Statement:

The Cankdeska Cikana Community College (henceforth called CCCC or the College) is committed to the safety, respectful, and non-discriminatory learning and working environment for all members of the College community. The College adopts this policy with a commitment to eliminating sexual and gender-based misconduct, preventing its recurrence and addressing its effects. This policy sets forth the College's strategy and response to incidents of sexual and gender-based misconduct in compliance with federal and state laws.

Purpose:

This policy is designed to ensure a safe and non-discriminatory educational and work environment and to meet legal requirements, including: Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in the College's programs or activities; relevant sections of the Violence Against Women Reauthorization Act; and Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex in employment. It does not preclude application or enforcement of other College policies.

Offenses prohibited under this policy include, but are not limited to: sex discrimination (including sexual orientation discrimination and gender identity or gender expression discrimination), sexual harassment, sexual violence to include non-consensual sexual contact, non-consensual sexual intercourse, sexual coercion, domestic/dating violence, stalking, and sexual exploitation.

Scope:

This policy applies to sexual or gender-based misconduct that is committed by students, faculty, staff, or third parties, when the discrimination and harassment occurs in the school's education program or activity, against a person in the United States. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the discrimination or harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus, including online instruction.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business

hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.

Individuals are responsible for immediately reporting any knowledge or information concerning sexual harassment to the CCCC Title IX Coordinator identified in this policy which covers unwelcome conduct of a sexual or gender-based nature, whether committed on-campus, or off-campus where CCCC has control over the respondent or the context of the harassment.

Contacts at Cankdeska Cikana Community College:

Title IX Coordinator 701-766-1131 titleix@littlehoop.edu	Title IX Deputy Coordinator 701-766-1333	Title IX Deputy Coordinator 701-766-1319
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Title IX Staff and Duties:

The President of the Cankdeska Cikana Community College shall designate CCCC officials responsible for the coordination of Title IX. The designation of a CCCC official responsible for prescribed actions shall automatically include the official's designee in instances where an official is unable, unavailable or has concluded that the official may have a conflict of interest that causes the official to recuse from involvement in the matter. The official's designee shall have the same authority as the official in matters involving this policy.

- **Title IX Coordinator:** The Title IX Coordinator is charged with monitoring the College's compliance with Title IX, ensuring appropriate education and training; coordinating the College's investigation, response, and resolution of all reports under this policy; and ensuring appropriate actions to eliminate sexual and gender-based misconduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is available to meet with any student, employee, or third party to discuss this policy or the accompanying procedures.
- **Deputy Title IX Coordinators:** CCCC has also designated Deputy Title IX Coordinators who may assist the Title IX Coordinator in the discharge of these responsibilities. The Title IX Coordinator and Deputy Title IX Coordinators receive appropriate training to discharge their responsibilities.
- **Title IX Investigator:** The Title IX Investigator may include but is not limited to a CCCC security officer or staff member. The primary responsibility of the investigator is to collect statements and any evidence directly related to any allegations of a Title IX policy violation as directed by the Title IX Coordinator. The Investigator cannot be a Title IX Coordinator or Deputy Title IX Coordinator. The Investigator will receive appropriate Title IX and trauma informed training.
- **Title IX Hearing Officer:** The Title IX Hearing Officer may include a CCCC administrator or external legal counsel. The primary responsibility of the Hearing Officer will be to ensure both parties receive due process in the event allegations of a

Title IX policy violation are directed to a hearing by the Title IX Coordinator. The Hearing Officer will receive appropriate Title IX and trauma informed training.

- **Title IX Hearing Member:** The Title IX Hearing Member(s) may include CCCC faculty or staff members. The primary responsibility of the hearing member is to listen to both sides of the complaint. Each hearing member will evaluate the information being provided by both parties to make a decision whether or not a Title IX policy violation took place. Hearing members will receive appropriate Title IX training.

Definitions:

CCCC defines sex discrimination and sexual harassment broadly to include any of three types of misconduct on the basis of sex (or gender), all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of quid pro quo harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

- **Advisor:** A person who has agreed to assist a complainant or respondent during the Title IX process. The advisor may be a person of the student's choosing, including but not limited to a CCCC faculty or staff member, a friend or an attorney.
- **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- **Consent:** is the act of willingly agreeing to engage in sexual contact or conduct. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and the absence of "No" may not mean "Yes".
 - Consent is informed, 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 permission regarding the conditions of sexual activity.
 - Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
 - Previous relationships or consent does not imply consent to future sexual acts.
 - Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity.
 - In order to give effective consent, one must be of legal age and have the capacity to consent. Incapacity may result from mental disability, intellectual disability, unconsciousness/sleep, age, or use of alcohol, drugs, medication, and/or other substances. Consent given by someone who one should know to be, or based on the circumstances, reasonably should have known to be, mentally or physically incapacitated, is a policy violation. Incapacitation is a state where someone

cannot make rational, reasonable decisions because he or she lacks capacity to give knowing consent. Use of alcohol, medications, or other drugs will not excuse behavior that violates this policy.

- *Note:* indications of consent are irrelevant if the initiator knows or should reasonably have known of the incapacity of the other person.
 - *Examples:* of when a person should know the other is incapacitated include, but are not limited to:
 - The amount of alcohol, medication or drugs consumed,
 - Imbalance or stumbling,
 - Slurred speech,
 - Lack of consciousness or inability to control bodily functions or movements, or vomiting, or
 - Mental disability or incapacity.
- **Dating Violence:** is violence between individuals in the following circumstances: The party is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - The existence of such a relationship shall be determined based on a consideration of the following factors:
 - Length of the relationship
 - Type of relationship
 - Frequency of interaction between the persons involved in the relationship
 - **Domestic Violence:** under CCCC policy means violence committed by a current or former spouse of the victim;
 - A person with whom the victim shares a child in common;
 - A person who is cohabitating with or has cohabitated with the victim as a spouse;
 - A person similarly situated to a spouse of the victim under Oklahoma domestic or family violence laws;
 - Any other person against an adult or youth victim who is protected from that person's acts under Oklahoma domestic or family violence laws.
 - **Formal Complaint:** a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and stating the date, time, place, name(s) of person(s) involved (e.g. the accused, witnesses) and sufficient detail to make a determination regarding basic elements of the formal complaint process.
 - **Gender-Based Harassment:** is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the College's education or work programs or activities.

- **Hostile Environment:** can be created by persistent or pervasive conduct or by a single severe episode. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment.
- **Non-Consensual Sexual Contact:** is any intentional touching, however slight, whether clothed or unclothed, of the victim's intimate body parts (primarily genital area, groin, inner thigh, buttock or breast) with any object or body part, without consent and/or by force. It also includes the touching of any part of a victim's body using the perpetrator's genitalia and/or forcing the victim to touch the intimate areas of the perpetrator or any contact in a sexual manner even if not involving contact of or by breasts, buttocks, groin, genitals, mouth or other orifice. This definition includes sexual battery and sexual misconduct.
- **Non-Consensual Sexual Intercourse:** is defined as any sexual intercourse or penetration of the anal, oral, vaginal, genital opening of the victim, including sexual intercourse or penetration by any part of a person's body or by the use of an object, however slight, by one person to another without consent or against the victim's will. This definition includes rape and sexual assault, sexual misconduct, and sexual violence.
- **Quid Pro Quo Sexual Harassment:** exists when individuals in positions of authority over the complainant:
 - Make unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
 - Indicate, explicitly or implicitly, that failure to submit to or the rejection of such conduct will result in adverse educational or employment action or where participation in an educational program or institutional activity or benefit is conditioned upon the complainant's submission to such activity.
 - *Examples:* of Quid Pro Quo Sexual Harassment include, but are not limited to:
 - An instructor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student agrees to the request.
 - The instructor probes for explicit details, and demands that students respond to him or her, though they are clearly uncomfortable and hesitant.
- **Rape:** is 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 victim. This definition includes any gender of victim or perpetrator. Sexual penetration means the 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. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.
- **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination or sexual harassment.

- **Sex Discrimination:** includes sexual harassment and is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education, or institutional benefits, on account of sex or gender (including sexual orientation, gender identity, and gender expression discrimination). It may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.
- **Sexual Coercion:** is the act of using pressure (including physical pressure, verbal pressure or emotional pressure), alcohol, medications, drugs, or force to have sexual contact against someone's will or with someone who has already refused. This includes rape, sexual assault, sexual exploitation and sexual misconduct.
- **Sexual Harassment:** is unwelcome and discriminatory speech or conduct undertaken because of an individual's gender or is sexual in nature and is so severe, pervasive, or persistent, objectively and subjectively offensive that it has the systematic effect of unreasonably interfering with or depriving someone of educational, institutional, or employment access, benefits, activities, or opportunities. Whether conduct is harassing is based upon examining a totality of circumstances, including but not limited to:
 - The frequency of the conduct;
 - The nature and severity of the conduct;
 - Whether the conduct was physically threatening;
 - Whether the conduct was deliberate, repeated humiliation based upon sex;
 - The effect of the conduct on the alleged victim's mental or emotional state from the perspective of a reasonable person;
 - Whether the conduct was directed at more than one person;
 - Whether the conduct arose in the context of other discriminatory conduct;
 - Continued or repeated verbal abuse of a sexual nature, such as gratuitous suggestive comments and sexually explicit jokes; and
 - Whether the speech or conduct deserves constitutional protections.
 - *Examples:* of Sexual Harassment include, but are not limited to:
 - A student repeatedly sends sexually oriented jokes around in an email list he or she created, even when asked to stop, causing one recipient to avoid the sender on campus.
 - An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to his clear discomfort.
- **Sexual Violence:** refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties.

- **Supportive Measures:** are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

Resources, Assistance, and Supportive Measures:

CCCC is committed to ensuring complainants and respondents receive assistance. For direct services provided by the College, please contact the Director of Student Services.

Below is a non-exhaustive list of contacts that may be available to support or assist.

Local

Spirit Lake Victim Assistance Program: 1-701-766-1816

On Call Crisis Numbers:

701-381-2930

701-351-2724

701-381-2856

701-381-2488

Spirit Lake Recovery and Wellness: 1-701-766-4285

Spirit Lake Youth Healing and Wellness: 1-701-766-4236

Spirit Lake Mental Health: 1-701-766-1613

Lake Region 24-hour CRISIS Line: 701-662-5050

Lake Region Human Service Center: 701-665-2200

Alcoholics Anonymous: 701-665-1041

State

North Dakota Crisis Help Line: 1-800-472-2911

The Village Family Service Center: 1-866-838-6776

Altru Hospital: 1-701-780-5000

National

Native Youth Crisis Hotline: 1-877-209-1266

National Domestic Violence Hotline - 1-800-799-7233 (SAFE)

Rape, Abuse & Incest National Network Hotline - 1-800-656-4673 (HOPE)

Communication Services for the Deaf (TTY) - 1-800-252-1017 (TTY)

Communication Services for the Deaf (Voice) - 1-866-845-7445 (Voice)

National Suicide Prevention Lifeline: 1-800-273-8255 (TALK)

Center for Psychiatric Care: 1-877-731-2511

Local law enforcement that covers the CCCC campus is the Bureau of Indian Affairs:

Bureau of Indian Affairs

816 3rd Ave., North

Fort Totten, North Dakota 58335

Phone: (701)-766-4545