



## **Sexual Misconduct Policy and Procedures**

### **Options For Immediate Assistance**

If you or someone you know may have been a victim of Sexual Assault, you are strongly encouraged to seek immediate assistance.

### **Law Enforcement Assistance**

#### **On Campus - Russellville**

Assistance can be obtained 24 hours a day, 7 days a week, from the Arkansas Tech University Department of Public Safety located at 716 N. El Paso Avenue and available by telephone at (479) 968-0222.

#### **Off Campus - Russellville**

Assistance can be obtained 24 hours a day, 7 days a week, from the Russellville Police Department by dialing 911.

#### **On Campus - Ozark**

Assistance can be obtained from 8 a.m. to 5 p.m., Monday through Friday by contacting Officer David Spicer, Public Safety Officer, located at the Collegiate Career Center, Room 100C, 1700 Helberg Lane or by telephone at (479) 508-3359.

#### **Off Campus – Ozark**

Assistance can be obtained 24 hours a day, 7 days a week, from the Ozark Police Department by dialing 911.

### **Medical Assistance**

#### **Russellville**

St. Mary's Regional Medical Center  
1808 W. Main Street  
Russellville, AR 72801

#### **Ozark**

Mercy Hospital Ozark  
801 W. River  
Ozark, AR 72949

Medical assistance can be requested by dialing 911 or going directly to the hospital. Nurses on staff in the emergency room are trained and equipped with the supplies necessary to perform a rape kit to preserve evidence. Treatment of injuries, preventative treatment for sexually transmitted diseases, and other health services are provided.

During business hours (8 a.m. to 5 p.m., Monday through Friday), you are also strongly encouraged to contact Amy Pennington, Arkansas Tech University's Title IX Coordinator by telephone at (479) 968-0407, by email at [apennington@atu.edu](mailto:apennington@atu.edu), or in person at the Doc Bryan Student Services Center, Suite 233, 1605 Coliseum Drive in Russellville, Arkansas, or Will Cooper, Deputy Title IX Coordinator, at (479) 968-0334, by email at [wcooper@atu.edu](mailto:wcooper@atu.edu), or in

person at the Doc Bryan Student Services Center, Suite 233, 1605 Coliseum Drive, Russellville, Arkansas, or Susie Nicholson, Deputy Title IX Coordinator, at (479) 964-3230, by email at [snicholson@atu.edu](mailto:snicholson@atu.edu), or in person at Tucker Coliseum, 1604 Coliseum Drive, Russellville, Arkansas, or Stacy Galbo, Deputy Title IX Coordinator, at (479) 964-0583 ext. 4717, by email at [sgalbo2@atu.edu](mailto:sgalbo2@atu.edu), or in person at the Doc Bryan Student Services Center, Suite 233, 1605 Coliseum Drive, Russellville, Arkansas, or Mitzi Reano, Deputy Title IX Coordinator for the Ozark Campus, at (479) 667-2117 ext. 6540, by email at [mreano@atu.edu](mailto:mreano@atu.edu), or in person at the Technology and Academic Support Building, Room 154, Ozark, Arkansas.

For additional information about seeking medical assistance and emotional support, as well as important contact information, including local law enforcement agencies and St. Mary's Hospital in Russellville and Mercy Hospital in Ozark, see Appendix "A" attached to this policy.

### **Options For Ongoing Assistance**

If you believe you have been involved in an incident of sexual misconduct, you have the right to pursue action through the University conduct system and/or the appropriate law enforcement authorities. Options for reporting sexual misconduct are provided below. Assistance is available upon request for individuals wishing to review these reporting options regardless of whether a formal complaint is filed with the Title IX Coordinator, or Deputy Title IX Coordinators, or to law enforcement officials.

#### **On Campus Resources**

The University encourages victims of sexual misconduct to talk to somebody about what happened so that victims can get the support they need, and so that the University can respond appropriately. Different employees on campus have different abilities to maintain a victim's confidentiality. Some employees are required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication." At Arkansas Tech, these employees are the licensed counselors staffed in the Health and Wellness Center (<https://www.atu.edu/csllcenter/>):

- Kristy Davis, [kdavis51@atu.edu](mailto:kdavis51@atu.edu), (479) 968-0329
- Craig Witcher, [cwitcher@atu.edu](mailto:cwitcher@atu.edu), (479) 968-0329
- Janis Taylor, [jtaylor78@atu.edu](mailto:jtaylor78@atu.edu), (479) 968-0329
- Nikki Templeton, [nearles@atu.edu](mailto:nearles@atu.edu), (479) 968-0329
- Josh Root, [jroot4@atu.edu](mailto:jroot4@atu.edu), (479) 968-0329
- Leann Watson, [lwatson12@atu.edu](mailto:lwatson12@atu.edu), (479) 968-0329

In addition, academic accommodations and interim measures may be provided to victims of sexual misconduct. That information is found in Article IV.

#### **Off Campus Resources**

##### **Victim Assistance Outreach Program**

The 5th Judicial District Prosecuting Attorney's Office's Victim Assistance Outreach Program provides assistance with:

- Orders of Protection
- Contacting Law Enforcement Agencies

- VINE (Victim Identification and Notification Everyday)
- Arkansas Crime Victims Reparations Program (assists with financial compensation, counseling, lost wages, and funeral expenses)
- Referrals to other community services such as the Ozark Rape Crisis Center, River Valley Shelter, and Crisis Intervention Center
- Information on the criminal court process

The Arkansas Victim Assistance Coordinator for Pope County, Melissa Vandever, can be reached at (479) 968-8600 and the coordinator for Johnson and Franklin County, Patricia Andrade, can be reached at (479) 705-0579.

### **Arkansas Coalition Against Sexual Assault**

The Arkansas Coalition Against Sexual Assault provides a 24 hour Sexual Assault Crisis Response Hotline. The hotline telephone number is (800) 656-4673 and the website can be located at <https://acasa.us>. Additional services include:

- Free and confidential assistance for all victims of sexual violence
- Compassionate accompaniment for victims needing medical help
- Comfort and support for victims going through the criminal justice system
- Crisis counseling and support groups for victims and families
- Information and referrals to available community resources
- Community public education on sexual violence issues
- Training for volunteers and other professions serving victims.

### **Ozark Rape Crisis Center**

The Ozark Rape Crisis Center, located in Clarksville, Arkansas, is a non-profit organization concerned with the serious problem of sexual violence. The mission of ORCC is to work toward the elimination of sexual violence through service, advocacy, and education. The Ozark Rape Crisis Center provides 24 hour crisis intervention along with many other services. The hotline telephone number is (800) 818-1189 and the website is <http://www.ozarkrapecrisis.com/>.

## **ARTICLE I. INTRODUCTION**

### **A. Notice of Nondiscrimination.**

As a recipient of federal funds, Arkansas Tech University is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. §1681 et seq. ("Title IX"), which prohibits discrimination on the basis of sex in educational programs or activities, admission, and employment. Under certain circumstances, Sexual Misconduct (defined below) constitutes sexual discrimination prohibited by Title IX. Inquiries concerning the application of Title IX may be referred to Arkansas Tech University's Title IX Coordinator or to the U.S. Department of Education's Office for Civil Rights. Arkansas Tech University's Title IX Coordinator is Amy Pennington, whose office is in Suite 233 of the Doc Bryan Student Services Center located at

1605 Coliseum Drive in Russellville, Arkansas. Amy Pennington may be contacted by telephone at (479) 968-0407 or by email at [apennington@atu.edu](mailto:apennington@atu.edu).

#### **B. Overview of this Policy.**

Arkansas Tech University ("the University") is committed to providing programs, activities, and an educational environment free from sex discrimination.

**Sexual misconduct, as that term is used in this policy, is any sexual act which violates the criminal laws of the State of Arkansas or laws of the United States including, but not limited to, sexual assault (non-consensual sexual contact or intercourse), domestic violence, dating violence, stalking, and sexual exploitation.**<sup>1</sup> Sexual misconduct can occur between strangers or acquaintances, and even people involved in intimate or sexual relationships. Sexual misconduct can be committed by men or women and can occur between individuals of the same or different gender. Any sexual activity which is entered into without consent of both or all persons involved is a violation of this policy.

The University is committed to fostering a community that promotes prompt reporting of all types of Sexual Misconduct and timely and fair resolution of Sexual Misconduct Complaints, and in furtherance of that commitment, this Policy sets forth available resources (Appendix A), describes prohibited conduct (Article II), and establishes procedures for responding to Complaints of Sexual Misconduct (Articles III-VI).

The University will make this Policy and information about recognizing and preventing Sexual Misconduct readily available to all students and other members of the University community.

#### **C. Applicability of this Policy.**

This Policy applies to any allegation of Sexual Misconduct made by or against a student or an employee of the University or a third party, regardless of where the alleged Sexual Misconduct occurred, if the conduct giving rise to the Complaint is related to the University's academic, educational, athletic, or extracurricular programs or activities. The University's disciplinary authority, however, may not extend to third parties who are not students or employees of the University. Additionally, while there is no geographical limitation to invoking this Policy, Sexual Misconduct that is alleged to have occurred at a significant distance from the University and/or outside of University property may be more difficult for the University to investigate. This policy applies to all students, employees, and third parties, regardless of sexual orientation or gender identity.

In the case of allegations of Sexual Misconduct, this Policy supersedes all other procedures and policies set forth in other University documents.

#### **D. Period of Limitations.**

A Complaint of Sexual Misconduct may be filed at any time, regardless of the length of time between the alleged Sexual Misconduct and the decision to file the Complaint. However, the

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<sup>1</sup> *Sexual misconduct also constitutes sexual harassment. The Sexual Misconduct Policy shall govern cases involving sexual assault, domestic violence, dating violence, stalking, and sexual exploitation. The University's Sexual Harassment policy shall be applicable in all other sexual harassment cases not involving sexual misconduct.*

University strongly encourages individuals to file Complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a Complaint may compromise the subsequent investigation, particularly if neither the Complainant nor the Respondent is employed by the University or enrolled as a student at the time.

**E. Definitions Applicable to this Policy.**

The definitions applicable to this Policy are set forth in Appendix B.

**ARTICLE II. STATEMENTS OF POLICY**

**A. Prohibition on Sexual Misconduct.**

This Policy is designed to protect the rights and needs of alleged victims, Complainants (if not the alleged victim), and Respondents. Creating a safe environment is the responsibility of all members of the University community.

The University strongly encourages accurate and prompt reporting of all types of Sexual Misconduct and is committed to fostering a community that promotes a prompt, fair, and impartial resolution of Sexual Misconduct cases.

**B. Prohibition on Retaliation.**

Retaliation against any person for filing, supporting, providing information in good faith, or otherwise participating in the investigative and/or disciplinary process in connection with a Complaint of Sexual Misconduct is strictly prohibited. Violations of this prohibition will be addressed through this Policy and/or other University disciplinary procedures and will result in strong responsive action by the University. Any person who feels that he or she has been subject to retaliation should notify the Title IX Coordinator, Amy Pennington, or the Deputy Title IX Coordinators, Will Cooper, Susie Nicholson, Stacy Galbo, or the Deputy Title IX Coordinator for the Ozark Campus.

**C. Prohibition on Providing False Information.**

Any individual who knowingly files a false Complaint under this Policy, or knowingly provides false information to University officials, or who intentionally misleads University officials who are involved in the investigation or resolution of a Complaint may be subject to disciplinary action.

**D. Confidentiality.**

Generally, a person may report an incident of Sexual Misconduct confidentially to the professional counselors located in the Arkansas Tech University Health and Wellness Center.

Reports of Sexual Misconduct made to “responsible employees” are not confidential.

For more detailed information on whom a victim can and cannot speak to confidentially, please see the full discussion of confidentiality found in attached “Appendix C.”

If an alleged victim’s request for confidentiality limits the school’s ability to investigate a particular matter, the University may take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the alleged victim. Examples include: providing increased monitoring, supervision, or security at locations or activities where the misconduct was alleged to have occurred; providing training and education materials for students and

employees; revising and publicizing the University's policies on sexual misconduct; and conducting climate surveys regarding sexual misconduct.

**E. Related Misconduct and Limited Immunity/Amnesty.**

The University considers the reporting and adjudication of Sexual Misconduct cases on campus to be of paramount importance. The University does not condone illegal drug use, underage drinking, or other violations of the Student Code of Conduct. However, the University may extend limited immunity from punitive sanctioning in the case of illegal alcohol or drug use to victims, witnesses, and those reporting incidents and/or assisting the victims of Sexual Misconduct, provided that they are acting in good faith in such capacity. Stated another way, the University wishes to encourage all persons to report incidents of Sexual Misconduct, and therefore reserves the right to waive disciplinary charges against victims, witnesses, and those reporting incidents and/or assisting the victims of Sexual Misconduct, for certain circumstances surrounding the incident. For example, an underage victim who had been drinking alcohol would not typically face charges for violating alcohol policies.

**F. Individuals with Disabilities.**

The University will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to participate in the steps and procedures outlined in this Policy. Requests for accommodations must be made to the Disability Services Office (located in Doc Bryan Student Services Center) and available by telephone at (479) 968-0302.

**G. Standard of Evidence.**

In a Formal Resolution on a Complaint alleging Sexual Misconduct, the standard of evidence that will be used by the Hearing Board to determine if the Sexual Misconduct Policy has been violated will be the preponderance of the evidence.

**H. Educational Programming.**

Arkansas Tech University requires educational programs to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. This educational campaign shall also be for on-going prevention and awareness. These education programs shall include primary prevention and awareness programs for all incoming students and new employees which shall include: 1) the statement that the University prohibits domestic violence, dating violence, sexual assault, and stalking; 2) the definitions of domestic violence, dating violence, sexual assault, and stalking as well as the definition of "consent" in reference to sexual activity; 3) Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene in cases of a risk of domestic violence, dating violence, sexual assault, or stalking; 4) Information on risk reduction and how to recognize warning signs of abusive behavior and how to avoid potential attacks; and 5) ongoing prevention and awareness campaigns for students and faculty on all of the items above.

Educational programming and training is provided to faculty, staff, and students in an effort to create a University community free of sexual harassment, sexual assault (non-consensual sexual contact or intercourse), domestic violence, dating violence, stalking, and sexual exploitation or any other type of sexual misconduct. The Jerry Cares campaign promotes shared responsibility by all members of the University community in an effort to reduce the risk of sexual violence

and to equip members with the tools, training, and resources necessary to take action in stopping sexual misconduct. This includes prevention programs and educational training in risk reduction and bystander intervention, equipping members of the University community to play a role in preventing and interrupting incidents of sexual misconduct. Training on campus resources and step-by-step procedures on how to report incidents of Sexual Misconduct is also provided. For more detailed information, please visit the Jerry Cares website at <http://www.atu.edu/jerrycares/>.

#### **I. Sexual Misconduct Policy.**

This Sexual Misconduct Policy: 1) sets out the procedures that a victim of Sexual Misconduct should follow; 2) sets out the procedure for University disciplinary action; and 3) provides equal opportunity for both the alleged victim and the Respondent on their choice of advisor at the Formal Resolution hearing.

#### **J. Annual Training.**

Training for employees conducting investigations and formal resolution hearings will be conducted at least annually.

#### **K. VAWA/Campus SaVE Act.**

Arkansas Tech University acknowledges that the Violence Against Women Act and the Campus SaVE Act add domestic violence, dating violence, and stalking to “sexual assault” as reportable events in the Annual Security Report required by the Clery Act.

#### **L. Duty to Report.**

All employees (except those employees statutorily barred from sharing such information, ex. licensed counselors, medical professionals) have a duty to immediately report to the Title IX Coordinator or the Deputy Title IX Coordinators information related to Sexual Misconduct.

### **ARTICLE III. HOW AND WHERE TO FILE A COMPLAINT ALLEGING SEXUAL MISCONDUCT**

For information regarding seeking medical assistance and emotional support, as well as important contact information for local law enforcement agencies and hospitals, see “Appendix A” attached to this Policy.

Because Sexual Misconduct may in some instances constitute both a violation of University policy and criminal activity, and because the University grievance process is not a substitute for instituting legal action, the University encourages individuals to report alleged Sexual Misconduct promptly to campus officials and to law enforcement authorities, where appropriate.

**Individuals may, however, choose not to report alleged Sexual Misconduct to such campus officials and/or law enforcement authorities.** The University respects and supports the individual’s decision with respect to reporting; nevertheless, the University may notify appropriate law enforcement authorities if required or warranted by the nature of the allegations at issue.

Individuals may file a Complaint at any time, but the University strongly encourages individuals to file Complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding.

#### **A. Filing a Complaint with Local Law Enforcement:**

Individuals may file a complaint directly with local law enforcement agencies by dialing 911. Individuals may contact any of the following for assistance in filing a complaint with local law enforcement:

- i. The Arkansas Tech University Department of Public Safety, 24 hours a day, 7 days a week (available by telephone at (479) 968-0222 and located at 716 N. El Paso Avenue on the Russellville campus.
- ii. Arkansas Tech University's Title IX Coordinator, Amy Pennington, from 8 a.m. to 5 p.m., Monday through Friday available by telephone at (479) 968-0407 or by e-mail at [apennington@atu.edu](mailto:apennington@atu.edu), or in Suite 233 of the Doc Bryan Student Services Center, located at 1605 Coliseum Drive, Russellville, AR, 72801.
- iii. Arkansas Tech University's Deputy Title IX Coordinator, Will Cooper, from 8 a.m. to 5 p.m., Monday through Friday available by telephone at (479) 968-0334 or by email at [wcooper@atu.edu](mailto:wcooper@atu.edu), or in Suite 233 of the Doc Bryan Student Services Center, located at 1605 Coliseum Drive, Russellville, AR, 72801.
- iv. Arkansas Tech University's Deputy Title IX Coordinator, Stacy Galbo, from 8 a.m. to 5 p.m., Monday through Friday available by telephone at (479) 964-0583 ext. 4714 or by email at [sgalbo2@atu.edu](mailto:sgalbo2@atu.edu), or in Suite 233 of the Doc Bryan Student Services Center, located at 1605 Coliseum Drive, Russellville, AR, 72801.
- v. Arkansas Tech University's Deputy Title IX Coordinator, Susie Nicholson, from 8 a.m. to 5 p.m., Monday through Friday available by telephone at (479) 964-3230 or by email at [snicholson@atu.edu](mailto:snicholson@atu.edu), or in Tucker Coliseum, 1604 Coliseum Drive, Russellville, Arkansas.
- vi. Arkansas Tech University's Deputy Title IX Coordinator for the Ozark Campus, Mitzi Reano, from 8:00 a.m. to 5 p.m., Monday through Friday available by telephone at (479) 667-2117 ext. 6540 or by email at [mreano@atu.edu](mailto:mreano@atu.edu), or in the Technology and Academic Support Building, Room 154, Ozark, Arkansas.

Individuals may inform law enforcement authorities about Sexual Misconduct and discuss the matter with a law enforcement officer without making a formal criminal complaint (or a University Complaint). Individuals who make a criminal complaint may also choose to pursue a University Complaint simultaneously.

A criminal investigation into the matter does not preclude the University from conducting its own investigation (nor is a criminal investigation determinative of whether Sexual Misconduct, for purposes of this Policy, has occurred). However, the University's fact-finding aspect of the investigation may be delayed temporarily while the criminal investigators are gathering evidence. The University will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process. In the event of such a delay, the University may take interim measures when necessary to protect the alleged victim and/or the University community.

Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate the matter is determinative of whether Sexual Misconduct, for the purposes of this Policy, has occurred.

#### **B. Filing a Complaint with the University:**



Individuals may choose not to report alleged Sexual Misconduct to campus officials. The University respects and supports the individual's decision with respect to reporting; however, if information about Sexual Misconduct comes to the attention of the University, the University may (1) start an investigation even in the absence of a filed Complaint and/or (2) notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

Anyone wishing to make a Complaint under this policy should contact one of the following individuals or offices:

- i. **Title IX Coordinator.** Arkansas Tech University's Title IX Coordinator is Amy Pennington, whose office is in Suite 233 of the Doc Bryan Student Services Center. Ms. Pennington may be contacted during business hours (8 a.m. to 5 p.m., Monday through Friday) by telephone at (479) 968-0407 or by email at [apennington@atu.edu](mailto:apennington@atu.edu). As the Title IX Coordinator for Arkansas Tech University, Ms. Pennington receives, investigates, and supervises investigators reviewing reports of discrimination, including sexual misconduct. The Title IX Coordinator has ultimate oversight responsibility for handling Title IX-related complaints and for identifying and addressing any patterns or systematic problems involving Sexual Misconduct. The Title IX Coordinator is available to meet with individuals who are involved with or concerned about issues or University processes, incidents, patterns, or problems related to Sexual Misconduct on campus or in University programs. All allegations involving Sexual Misconduct should be directed to the Title IX Coordinator or other designated University individuals or offices as outlined herein. More information about the investigation process can be found in Article IV below. The Title IX Coordinator may designate the Deputy Title IX Coordinator to serve in her stead for any requirements contained in this policy.
- ii. **Deputy Title IX Coordinators.** Arkansas Tech University's Deputy Title IX Coordinators are Will Cooper, whose telephone number is (479) 968-0334, his email address is [wcooper@atu.edu](mailto:wcooper@atu.edu), or he may be contacted in person at Suite 233 in the Doc Bryan Student Services Center, 1605 Coliseum Drive, Russellville, Arkansas, Susie Nicholson, whose telephone number is (479) 964-3230, her email address is [snicholson@atu.edu](mailto:snicholson@atu.edu) or she may be contacted in person at Tucker Coliseum, 1604 Coliseum Drive, Russellville, Arkansas, and Stacy Galbo, whose telephone number is (479) 964-0583 ext. 4714, her email address is [sgalbo2@atu.edu](mailto:sgalbo2@atu.edu) or she may be contacted in person at Suite 233 in the Doc Bryan Student Services Center, 1605 Coliseum Drive, Russellville, Arkansas.
- iii. **Deputy Title IX Coordinator-Ozark Campus.** Arkansas Tech University Ozark Campus' Deputy Title IX Coordinator is Mitzi Reano, whose telephone number is (479) 667-2117 ext. 6540, her email address is [mreano@atu.edu](mailto:mreano@atu.edu), or she may be contacted in person at Room 154 of the Technology & Academic Support Building, 1700 Helberg Lane, Ozark, Arkansas.
- iv. **Public Safety.** The Arkansas Tech University Public Safety Department is located at 716 N. El Paso Avenue on the Russellville campus. The Public Safety Department is also available by telephone at (479) 968-0222. Public Safety officers are available 24 hours a day, 7 days a week.

v. **Public Safety – Ozark Campus.** The Arkansas Tech University Public Safety Department for the Ozark Campus is located at 1700 Helberg Lane, Collegiate Center, Room 100C. The Public Safety Officer is David Spicer, available by telephone at (479) 508-3359, Monday through Friday, 8 a.m. to 5 p.m.

vi. **Human Resources Office.** The Human Resources Office is located in Brown Hall, Suite 434. The Human Resources Office is available during business hours (8 a.m. to 5 p.m., Monday through Friday) by telephone at (479) 968-0396.

*If one of the parties designated above is the Respondent or is otherwise at issue in a Complaint, or if an individual is otherwise uncomfortable making a complaint to one of the parties listed above, the individual may report alleged Sexual Misconduct to any other party or office in the above list.*

If an employee of the University Public Safety Department or the Human Resources Office receives a report of alleged Sexual Misconduct, that employee must notify the University's Title IX Coordinator.

**Confidential Disclosure.** The University encourages victims of sexual misconduct to talk to somebody about what happened so that victims can get the support they need, and so that the University can respond appropriately. Different employees on campus have different abilities to maintain a victim's confidentiality. Some employees are required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication." At Arkansas Tech, the following employees are the licensed counselors staffed in the Health and Wellness Center (<https://www.atu.edu/cslcenter/>) located in Doc Bryan Student Services Center, Suite 119:

**Kristy Davis**, [kdavis51@atu.edu](mailto:kdavis51@atu.edu), (479) 968-0329

**Craig Witcher**, [cwitcher@atu.edu](mailto:cwitcher@atu.edu), (479) 968-0329

**Janis Taylor**, [jtaylor78@atu.edu](mailto:jtaylor78@atu.edu), (479) 968-0329

**Nikki Templeton**, [nearles@atu.edu](mailto:nearles@atu.edu), (479) 968-0329

**Josh Root**, [jroot4@atu.edu](mailto:jroot4@atu.edu), (479) 968-0329

**Leann Watson**, [lwatson12@atu.edu](mailto:lwatson12@atu.edu), (479) 968-0329

Disclosures made to the counseling staff at the Health and Wellness Center will be held in strict confidence and will not serve as notice to the Title IX Coordinator requiring an initiation of a review of the disclosed conduct. Please note that all University employees, except for the counseling staff and the medical professionals, serve as mandatory reporters who are required to share immediately all reports of sexual misconduct that they receive with the Title IX Coordinator or the Deputy Title IX Coordinators.

If the counseling staff member determines that the alleged perpetrator(s) pose a serious and immediate threat to the University community, the Department of Public Safety may be called upon to issue a timely warning via the ATU Alert system. Any such warning will not include any information that identifies the victim.

**All other University employees who are not barred by statute have a duty to immediately report all the details of an incident of Sexual Misconduct** (including the identities of both the

victim and alleged perpetrator, any witnesses, and other relevant facts, including date, time, and specific location of alleged incident) to the Title IX Coordinator or the Deputy Title IX Coordinators. A report to these employees constitutes a report to the University and generally obligates the University to investigate the incident and take appropriate steps to address the situation. When a victim reports an incident of Sexual Misconduct, the victim has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

To the extent possible, information reported to an employee will be shared only with people responsible for handling the University's response to the report and will not be shared with law enforcement without the victim's consent or unless the victim has also reported the incident to law enforcement. If the victim requests confidentiality, the employee will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the employee will inform the Title IX Coordinator of the victim's request for confidentiality.

An individual may report alleged Sexual Misconduct to a faculty or staff member other than those referenced above. No member of the University community may discourage an individual from reporting alleged incidents of Sexual Misconduct. A faculty or staff member with any knowledge (including firsthand observation) about a known or suspected incident of Sexual Misconduct (other than health-care professionals and others who are statutorily barred from reporting) must immediately report the incident to the Arkansas Tech University Public Safety Department or the University's Title IX Coordinator. No employee is authorized to investigate or resolve Complaints without the involvement of the University's Title IX Coordinator or Deputy Title IX Coordinators.

**Anonymous Reporting.** Although the University encourages victims to talk to someone, Arkansas Tech provides an online form for anonymous reporting. The system will notify the user that entering personally identifying information may serve as notice to the University for the purpose of triggering an investigation. The form can be found at this link: <https://www.atu.edu/psafe/crime-report-form.php>. Individuals who choose to file anonymous reports are advised that it may be very difficult for the University to follow up or take action on anonymous reports, where corroborating information is limited. Anonymous reports may be used for Clery Act data collection purposes.

#### **ARTICLE IV. PROCEDURES APPLICABLE TO COMPLAINTS OF SEXUAL MISCONDUCT**

##### **A. Overview**

- i. **Oversight.** The Title IX Coordinator and/or deputy Title IX Coordinators or Title IX Investigators will be responsible for conducting the prompt, fair, and impartial investigation of Complaints filed with the University.
- ii. **Conflicts.** If any administrator or employee that is designated by this Policy to participate in the investigation or resolution of a Complaint is the Respondent (including, but not limited to, the Title IX Coordinator), then the President will appoint another University administrator to perform such person's duties under this Policy.
- iii. **Timing.** The University 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. The University's investigation and resolution of a Complaint (not including an appeal, if applicable) will generally be completed within 60 calendar days of the receipt of the Complaint, absent extenuating circumstances. Hearings, if any, 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 seven (7) business days of the conclusion of the hearings.

Any party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request. The Title IX Coordinator may modify any deadlines contained in this Policy as necessary and for good cause. Both parties will be notified if and when a modification is made with a brief explanation of the need for the modification.

- iv. Request Not to Pursue Complaint.** A Complainant (or alleged victim, if not the Complainant) may determine after filing a Complaint that he or she does not wish to pursue resolution of the Complaint through the University. The University takes such requests seriously. However, such individuals are advised that such requests may limit the University's ability to take action in response to a Complaint. Title IX requires the University to evaluate the request(s) that a Complaint not be adjudicated in the context of the University's commitment to provide a reasonably safe and non-discriminatory environment. In order to make such an evaluation, the Title IX Coordinator, or designee, may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh the request(s) against the following factors:

1. The seriousness of the alleged Sexual Misconduct;
2. The Complainant's and/or alleged victim's age;
3. Whether there have been other Complaints of Sexual Misconduct against the Respondent;
4. The Respondent's right to receive information about the allegations if the information is maintained by the University as an "education record" under FERPA, and;
5. The applicability of any laws mandating disclosure.

Even when the University is in receipt of a request not to pursue an investigation, Title IX requires the University to take reasonable action in response to the information known to it; thus, the University may take such measures and impose such discipline as are deemed necessary by the Title IX Coordinator. The Complaint may also be used as an anonymous report for data collection purposes under the Clery Act.

- v. Interim Measures.** If at any point during the complaint, investigative or disciplinary processes, the Title IX Coordinator reasonably believes that a Respondent who is a member of the University community poses a substantial threat of harm to any member of the campus community; threatens or endangers University property; or

disrupts the stability and continuance of normal University operations and functions, the Title IX Coordinator may take actions such as the following:

1. For student Respondents:
  - a. summarily suspend the Respondent from campus housing on an interim basis and/or restrict his or her movement on campus; or
  - b. suspend the Respondent from campus.
2. For employee Respondents' request that the individual authorized to make personnel decisions regarding the employee at issue:
  - a. take such steps as are reasonable, appropriate, and necessary to restrict the Respondent's movement on campus; or
  - b. reassign the Respondent or place him or her on administrative leave.

These actions may be appealed by student Respondents to the Vice President for Student Affairs and by employees to the respective Vice President or Athletic Director over their division.

**B. Initial Meetings with the Title IX Coordinator or Deputy Title IX Coordinator.**

- i. **Complainant's Initial Meeting with the Title IX Coordinator or Deputy Title IX Coordinator.** As soon as is practicable after receiving notice of a Complaint, the Title IX Coordinator or Deputy Title IX Coordinator will contact the Complainant to schedule an initial meeting. If the Complainant is not the alleged victim, the Title IX Coordinator or Deputy Title IX Coordinator also will contact the alleged victim as soon as possible to schedule an initial meeting and will discuss item number 5 listed below with the alleged victim rather than the Complainant. All mentions of the "Complainant" in items 1-9 of this subsection also apply to the alleged victim if the Complainant is not the alleged victim. At this initial meeting (or these initial meetings, in the case of a Complainant who is not the alleged victim), the Title IX Coordinator or Deputy Title IX Coordinator will, as applicable:

1. Provide the Complainant a copy of this Policy;
2. Provide the Complainant with a Sexual Misconduct Complaint Form (a copy of which is attached as Appendix D) 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 Sexual Misconduct (the Complainant may either complete the form him or herself or he or she may choose to dictate the information to the Title IX Coordinator or Deputy Title IX Coordinator, who will confirm the accuracy of his or her documentation with the Complainant);
3. Explain avenues for formal resolution and informal resolution (mediation) of the Complaint;
4. Explain the steps involved in a Sexual Misconduct investigation;
5. Discuss confidentiality standards and concerns with the Complainant;

6. Determine whether the Complainant wishes to pursue a resolution (formal or informal) through the University, or no resolution of any kind;
7. Refer the Complainant to the Counseling Center or other resources, as appropriate; and
8. Discuss with the Complainant, as appropriate, possible interim measures that can be provided to the Complainant, at no cost, during the pendency of the investigative and resolution processes. The University may implement such measures if requested, appropriate, and reasonably available, whether a formal Complaint has been filed (with either the Title IX Coordinator or law enforcement agencies) or whether an investigation has commenced (by either the Title IX Coordinator or law enforcement agencies). Interim measures may include, but are not limited to:
  - a. issuing no-contact orders to prevent any contact between the Complainant, the Respondent, witnesses and/or third parties;
  - b. providing the Complainant an escort to ensure that he or she can move safely between classes, work, and/or activities;
  - c. changing a Complainant's or a Respondent's on-campus housing or dining, if any, to a different on-campus location and providing assistance from University support staff in completing the relocation;
  - d. arranging to dissolve a campus housing contract and offering a pro-rated refund;
  - e. changing work arrangements;
  - f. rescheduling class work, assignments, and examinations without penalty;
  - g. arranging for the Complainant to take an incomplete in a class; or
  - h. moving the Complainant or the Respondent from one class section to another without penalty;
  - i. permitting a temporary withdrawal from the University;
  - j. providing alternative course completion options without penalty;
  - k. providing counseling services;
  - l. suspension of Respondent's social privileges;
  - m. taking disciplinary action against the Respondent before resolution of the Complaint;
  - n. providing academic support services such as tutoring.
9. A Complainant will receive written notification of the availability of the interim measures set forth in section 8 above whether or not the Complainant chooses to report the incident to the University Public Safety Department or local law enforcement.

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 Complainant (and to the alleged victim, if not the Complainant). Such determination will be promptly communicated to the Complainant and/or alleged victim, as applicable (and no later than the point at which it is communicated to the Respondent) and the Respondent.

- ii. **Respondent's Initial Meeting with the Title IX Coordinator or Deputy Title IX Coordinator.** If the alleged victim wishes to pursue a formal or informal resolution

through the University or if the University otherwise deems that a further investigation is warranted, as soon as is reasonably practicable after the Title IX Coordinators or Deputy Title IX Coordinator's initial meeting with the Complainant (and if applicable, the alleged victim), the Title IX Coordinator or Deputy Title IX Coordinator will schedule an initial meeting with the Respondent.

During the initial meeting with the Respondent, the Title IX Coordinator or Deputy Title IX Coordinator will, as applicable:

1. Provide Respondent with a copy of the Complaint;
2. Provide Respondent with a copy of this policy;
3. Explain the University's procedures for formal resolution and informal resolution (mediation) of the Complaint;
4. Explain the steps involved in a Sexual Misconduct investigation;
5. Discuss confidentiality standards and concerns with the Respondent;
6. Discuss non-retaliation requirements with the Respondent;
7. Inform the Respondent of any interim measures already determined and being provided to the Complainant and/or the alleged victim (if not the Complainant) that directly affect the Respondent (e.g. changing his or her class schedule, or moving him or her to an alternate residence hall);
8. Refer the Respondent to the Counseling Center or other resources, as appropriate; and;
9. Discuss with the Respondent, as appropriate, possible interim measures that can be provided to the Respondent during the pendency of the investigative and resolution processes. The University may implement such measures if requested, appropriate, and reasonably available, whether a formal Complaint has been filed or whether an investigation by either campus administrators or law enforcement agencies has commenced.

### **C. The Investigation.**

- i. Upon receipt of the Complaint, the Title IX Investigator will promptly begin his or her investigation, taking steps such as:
  1. Conducting interviews with the Complainant, the alleged victim (if not the Complainant), the Respondent, and third-party witnesses and summarizing such interviews in written form;
  2. Visiting, inspecting, and taking photographs at relevant sites; and
  3. Where applicable, collecting and preserving relevant evidence (in cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies pursuant to a Memorandum of Understanding).

Through the investigation, the Title IX Investigator will remain neutral. The Title IX Coordinator, Deputy Title IX Coordinators, and Title IX Investigators will receive annual training on issues related to sexual harassment, sexual assault, intimate partner violence, and stalking.

The Title IX Coordinator, Deputy Title IX Coordinators, and Title IX Investigators 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/or any other documents the disclosure of which is contemplated by this Policy in order to further the resolution of this Complaint.<sup>2</sup>

The Title IX Investigator will complete a written investigative report that includes items such as 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 (“the Investigative Report”). The Title IX Investigator will provide the Investigative Report to the Title IX Coordinator. The Title IX Coordinator will provide the Investigative Report to the Deputy Title IX Coordinator who will distribute the Investigative Report, concurrently, to the alleged victim and the Respondent. The Deputy Title IX Coordinator will serve as the Chair of the Hearing Board. All parties to whom the Investigative Report is distributed pursuant to this Policy must maintain it in confidence; the Investigative Report may only be disclosed as contemplated by this Policy.

#### **D. Formal Versus Informal Resolution.**

At any time before the Chair of the Hearing Board provides the Notice of Appointment in accordance with Section V(b)(ii)(2), the alleged victim may elect to resolve his or her Complaint through the informal resolution (mediation) process in accordance with Article VI of this Policy, provided that:

- i. The Respondent agrees to such resolution;
- ii. The alleged victim and the Respondent are both students or are both employees of the University;
- iii. The Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving the complaint; and;
- iv. The Complaint does not involve Sexual Assault.

Otherwise, a Complaint will proceed to formal resolution in accordance with Article V of this Policy.

### **ARTICLE V. FORMAL RESOLUTION**

#### **A. Respondent’s Acknowledgment of Responsibility Prior to Hearing.**

At any time prior to the date of his or her designated hearing, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged Sexual Misconduct. In such a situation, the Title IX Coordinator will propose sanction(s). If the victim and the Respondent agree to such proposed sanction(s), then the Complaint will be resolved without a hearing and without any further rights of appeal by any party. If either the victim or the Respondent objects to such proposed sanction(s), then the Sexual Misconduct Hearing Board will convene for the exclusive purpose of determining a sanction, which determination may be subject to appeal pursuant to Section V(b)(v) of this Policy.

#### **B. The Formal Resolution Process.**

In the case of formal resolution, the Sexual Misconduct Hearing Board will conduct a hearing in which it will question the Complainant, the alleged victim (if not the Complainant), the

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<sup>2</sup> If the Title IX Investigator is unable to obtain the consent of such 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.



Respondent, and any witnesses or other third parties whose testimony the hearing board deems relevant. The Sexual Misconduct Hearing Board will determine whether there has been a violation of the Sexual Misconduct Policy, and if there has been, will determine the sanction to be imposed on the Respondent.

- i. **The Sexual Misconduct Hearing Board.** The Sexual Misconduct Hearing Board shall have three members. The composition of the Hearing Board will be two faculty/staff members and will be chaired by the Deputy Title IX Coordinator. By August 15th of each year, the President of the University shall appoint faculty and staff members to serve as Sexual Misconduct Hearing Board members for a period of one year. Each member of the Hearing Board will receive training annually.
- ii. **Notice of Appointment.** Upon receipt of the Investigative Report from the Title IX Coordinator, the Deputy Title IX Coordinator will appoint two faculty/staff members from the group of Sexual Misconduct Hearing Board members. Promptly after appointing the members of the Hearing Board, the Deputy Title IX Coordinator will provide concurrent written Notice of Appointment of the Hearing Board to the alleged victim and the Respondent, setting forth the names of the individuals selected to serve on and chair the Sexual Misconduct Hearing Board, as well as the alleged policy violation along with information related to the formal conduct hearing.

The parties may challenge the participation of any member of the Hearing Board by submitting a written objection to the Title IX Coordinator within three (3) business days of receipt of the Notice of Appointment. Such objection must state the specific reason(s) for the objection. The Title IX Coordinator will evaluate the objection and determine whether to alter the composition of the Hearing Board. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the composition of the Hearing Board. Any changes in the composition of the Hearing Board will be provided in writing to both parties prior to the date of the hearing.

iii. **Hearing Policies and Procedures.**

1. **Submission of Written Material by the Parties.** Within five (5) business days of receipt of the Notice of Appointment of the Hearing Board, the alleged victim and the Respondent may provide the Chair of the Hearing Board with (1) a list of witnesses, if any, that they propose that the Hearing Board call and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute, (2) a written statement of position, and (3) copies of all documents to be presented at the hearing. Failure to provide this information in a timely manner may result in the loss of the ability to provide this information. The Title IX Investigator will present the Investigative Report at the hearing.
2. **Notice of Hearing.** Not less than five (5) business days but not more than ten (10) business days after delivery of Notice of Appointment of the Hearing Board to the parties, the Hearing Board will provide a separate notice to the alleged victim, the Respondent, and any witnesses or other third parties whose testimony the Hearing Board deems relevant, requesting such individuals to appear before the Hearing

Board. The notice should set forth, as applicable, the date, time, and location of the hearing. In this Notice of Hearing, the Hearing Board will provide the names of witnesses or other third parties that the Hearing Board plans to call.

3. **Failure to Appear.** If the alleged victim or the Respondent fails to appear before the Hearing Board if requested to do so, and such party was provided with proper notice of the hearing as set forth above, then absent extenuating circumstances, the Hearing Board will proceed to determine the resolution of the Complaint.
4. **Support Persons.** The alleged victim and the Respondent each have the right to be assisted by one advisor of their choice, and at their expense. The alleged victim and the Respondent are each responsible for presenting his or her own information. An Advisor may communicate with his or her advisee privately, but he or she may not address the Hearing Board, cross-examine witnesses, or have any other speaking role. The alleged victim and the Respondent must notify the Chair of the Hearing Board who they are bringing at least two (2) business days prior to the hearing. Failure to meet this deadline may result in the loss of the ability to have the advisor present. The alleged victim and Respondent should select an advisor whose schedule allows attendance at the schedule date and time of the hearing; delays will not normally be allowed due to the scheduling conflicts of an advisor. The advisor must maintain confidentiality regarding any and all communications exchanged pursuant to this Policy.
5. **Other Advisors.** Absent accommodation for disability and except as set forth in this Section V(b)(iii)(4), the parties may not be accompanied by any other individual during the hearing process.
6. **Evidentiary Matters.** The alleged victim and the Respondent will have an equal opportunity to present evidence during their respective hearings. Formal rules of evidence will not be observed during the hearings.

Evidence of past sexual histories of the alleged victim or the Respondent will not be permitted at the hearing, with the following exception:

- a. The alleged victim's prior sexual conduct with the Respondent.

The Hearing Board shall clarify that evidence of a prior consensual dating or sexual relationship between the parties does not imply consent or preclude a finding of sexual misconduct in the instant case.

7. **Conduct of the Hearings.**
  - a. **Generally.** The hearings will be conducted in an inquisitorial manner, which means that the Hearing Board will be responsible for asking questions of the parties and the witnesses and developing evidence through testimony. The Deputy Title IX Coordinator, as Chair of the Hearing Board, will resolve any questions concerning procedure or the admission of evidence or testimony (including the relevancy and reliability of the evidence and testimony). Members of the University community are expected to provide truthful testimony. Any falsification of information or false testimony by any party or witness may subject that party or witness to disciplinary action.

- b. **Testimony of the Respondent.** The Respondent may choose not to testify or appear before the Hearing Board; however, his or her exercise of that option will not preclude the Hearing Board from making a determination regarding the Complaint filed against the Respondent.
  - c. **Private.** Hearing shall normally be conducted in private. 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 the hearing proceedings, except as may be required or authorized by law.
  - d. **Separate Hearings.** In hearings involving more than one respondent, the Deputy Title IX Coordinator, as Chair of the Hearing Board, may at his or her discretion, permit the hearings concerning each Respondent to be conducted separately or jointly.
  - e. **Cross examination.** The alleged victim and Respondent will not be allowed to directly cross-examine each other or witnesses.
  - f. **Witnesses.** Witnesses other than the alleged victim and Respondent will be excluded from the hearing except during their specific witness testimony.
  - g. **Record.** There shall be a single verbatim record, such as a digital recording, of all hearings before the Hearing Board, not including deliberations. The recording shall be the property of the University.
  - h. **Separation of parties.** The Hearing Board may accommodate concerns for the personal safety, wellbeing, retaliation, and/or fears of the confrontation of the alleged victim, Respondent, and/or other witnesses during the hearing by providing a visual screen, or permitting participation by telephone, video conferencing, or by other means.
- iv. **Outcome.**
- 1. **The Decision of the Hearing Board.** Following the conclusion of the hearing, the Hearing Board 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<sup>3</sup> that the Respondent violated the Sexual Misconduct Policy. The deliberation portion of the hearing is closed to all but the Hearing Board members.
  - 2. **Sanctions.**
    - a. **Generally.** Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct. Sanctions may include, without limitation, withholding a promotion or pay increase, reassigning employment, terminating employment,

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<sup>3</sup> In other words, the standard of proof will be “the preponderance of the evidence” standard.

The Hearing Board will determine sanctions, giving 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 discriminatory effects of the violation of the Complainant, and if applicable, the University community at large.

- ## v. Appeals.

- The alleged victim or the Respondent may appeal, in writing, the decision of the Hearing Board and/or the sanction imposed on the Respondent within seven (7) business days from the date of the Final Outcome Letter. The decision of the Hearing Board and the sanction imposed on the Respondent may, if desired, be appealed simultaneously. The only basis for appeal shall be:

- Students should appeal to Dr. Keegan Nichols, Vice President for Student Affairs, located in the Student Affairs, Doc Bryan Student Services Center, Suite 202, (479) 968-0238, [knichols@atu.edu](mailto:knichols@atu.edu). Employees should appeal to the appropriate Vice

President or Athletic Director. Typically a decision on the appeal will be issued within seven (7) business days of receipt of the appeal.

**2. Respondent is a faculty member.**

The alleged victim may appeal following the process set forth in Section 1 above. If the Respondent is a faculty member with tenure or with a special or probationary appointment and the sanction issued by the Hearing Board is dismissal before the end of a specified term, the procedures set forth Chapter II, Section E of the Faculty Handbook shall govern the Respondent's appeal. If the Hearing Board issues a sanction which imposes a penalty other than dismissal, the procedures set forth in Chapter II, Section G of the Faculty Handbook shall govern the Respondent's appeal.

**ARTICLE VI. INFORMAL RESOLUTION (MEDIATION)**

Informal resolution is only appropriate if (1) the alleged victim requests it, (2) the Respondent agrees to such resolution, (3) the alleged victim and the Respondent are both students or are both employees of the University, (4) the Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving the Complaint, and (5) the Complaint does not involve sexual assault. Informal Resolution is not a prerequisite to pursuit of a formal resolution.

Informal resolution may not be selected for less than all of the misconduct alleged in the Complaint (for example the parties may not choose to resolve a claim of Sexual Assault according to the formal resolution process but mediate all other claims). If the parties agree to informal resolution (and informal resolution is appropriate for all of the claims at issue), then all of the claims must be resolved according to the informal resolution process.

The alleged victim has the right to terminate the informal resolution process at any time and proceed with formal resolution. Furthermore, the Title IX Coordinator may, where appropriate, terminate or decline to initiate informal resolution, and proceed with formal resolution instead. In such cases, statements or disclosure made by the parties in the course of the informal resolution process may be considered in the subsequent formal resolution proceeding.

**A. Respondent's Acknowledgment of Responsibility.**

At any time prior to the imposition of sanctions, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged Sexual Misconduct. In such a situation, the Title IX Coordinator will propose sanction(s) for the Respondent. If both the alleged victim and the Respondent agree to such proposed sanction(s), then the Complaint will be resolved without any further rights of appeal by either party.

If either the alleged victim or the Respondent objects to the proposed sanction(s), then the Hearing Board will convene for the exclusive purpose of determining sanctions, which determination may be subject to appeal by either party pursuant to Section V(b)(v) of this Policy. For purposes of this sanction hearing, all of the other provisions of this Policy relating to the imposition of a sanction for Sexual Misconduct shall apply.

**B. The Informal Resolution Process.**

- i. **The Mediation.** The Presiding Officer. When the Complaint is to be resolved according to the informal resolution process, there will be a mediation overseen by the Title IX Coordinator or a Deputy Title IX Coordinator.

- ii. **Notice of the Mediation.** The Title IX Coordinator, or Deputy Title IX Coordinator, will provide concurrent written notice to the alleged victim and the Respondent, setting forth the date, time, and location of the mediation.
- iii. **No Contact Prior to Mediation.** The parties may not contact each other outside of the mediation, even to discuss the mediation.
- iv. **Attendance.** Both the alleged victim and the Respondent are expected to attend the mediation. If either party fails to appear at the mediation, and such party was provided proper notice of the mediation as set forth above, then absent extenuating circumstances, the Title IX Coordinator, or Deputy Title IX Coordinator, may either direct that resolution of the Complaint be determined according to the formal resolution process set forth above, or if the alleged victim fails to appear without good cause, dismiss the Complaint.
- v. **The Mediation.**
  - 1. **The Alleged Victim's Rights.** During the mediation, the alleged victim may:
    - a. Confront the Respondent in the presence of, and facilitated by, the Presiding Officer.
    - b. Communicate his or her feelings and perceptions regarding the incident and the impact of the incident (either by communicating directly with the Respondent or by communicating indirectly with the Respondent through the Presiding Officer), and/or;
    - c. Relay his or her wishes and expectations regarding protection in the future.
  - 2. **Resolution.** During the mediation, the Presiding Officer will attempt to facilitate the parties' resolution of the Complaint. If the mediation results in a resolution between the parties and the Title IX Coordinator finds the resolution to be appropriate under the circumstances (giving consideration to the extent to which the resolution will protect the safety of the alleged victim and the entire University community), the informal disciplinary procedure will be concluded and the Complaint will be closed. If the parties are unable to reach a resolution, the formal resolution process outlined in Article V of this Policy will promptly commence.
- vi. **Privacy 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 informal resolution process is not open to the general public. Accordingly, documents prepared in anticipation of the mediation (including the Investigative Report and the Notice of Mediation) and other information introduced at the mediation may not be disclosed outside of the mediation, except as may be required or authorized by law.

## **Appendix A to SEXUAL MISCONDUCT POLICY AND PROCEDURES**

### **Suggested Actions for Victims of Sexual Assault**

While all types of Sexual Misconduct are inappropriate and taken seriously by the University, actions involving Sexual Assault (as defined in Appendix B) are particularly concerning. Thus, if you are the victim of a Sexual Assault, the University's first priority is to help you take steps to

address your safety, medical needs, and emotional well-being. You are encouraged to take the following actions, as applicable, regardless of whether you have made a decision about whether to pursue criminal or University disciplinary charges.

1. **Ensure Your Physical Safety.**

You may seek help from local **law enforcement agencies** or by contacting the **Arkansas Tech University Department of Public Safety**. The Department of Public Safety can assist you and are on duty at the University Police Department 24 hours a day, 7 days a week.

2. **Seek Medical Assistance and Treatment.**

Local options for medical care include the **ATU Health and Wellness Center** on the Russellville campus, **Saint Mary's Regional Medical Center** in Russellville, and **Mercy Hospital** in Ozark. It is crucial that you obtain medical attention as soon as possible after a Sexual Assault to determine the possibilities of physical injury and to prevent or treat sexually transmitted diseases. Medical facilities can also screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs).

Employees at the ATU Health and Wellness Center can help you contact a support person, such as a family member, a friend, or roommate.

If you choose to have an evidence collection kit (or "rape kit") completed, it is important to do so within 72 hours. Even if you have not decided to file charges, it is advisable to have the evidence collection kit completed so that you can preserve the options of obtaining a protective order and/or filing criminal charges at a later date. Saint Mary's Regional Medical Center administers evidence collection kits. Individuals in Russellville may go directly to Saint Mary's Regional Medical Center or may be referred to the hospital by the ATU Health and Wellness Center. Those in Ozark may go directly to Mercy Hospital Ozark.

In order to best preserve evidence for an evidence collection kit, it may be advisable to avoid showering, bathing, going to the bathroom, or brushing your teeth before the kit is collected. You should also wear (or take with you in a paper, not plastic, bag) to the hospital the same clothing that you were wearing during the assault. An evidence collection kit can still be completed even if you have showered or bathed.

3. **Obtain Emotional Support.**

The **Arkansas Tech University Health and Wellness Center** can help victims sort through their feelings and begin the recovery process. The professionals at Counseling Services are trained to provide crisis intervention on short term and emergency issues.

Counseling Services can also provide referral services for outside providers and law enforcement. Counseling is free of charge to all students. In some instances, the law may require the disclosure of information shared by students with counselors. However, absent a legal mandate to the contrary, counseling services are strictly confidential, are not part of students' University records, and will not be reported to other University personnel.

4. **Obtain Information/Report Misconduct.**

You are encouraged to report incidents of Sexual Assault to the University's Title IX

Coordinator or other designated University individuals or offices as outlined in the Sexual Misconduct Policy and Procedures (even if you have filed a report directly with law enforcement). Further information about how to report Sexual Assault is provided in the body of the Arkansas Tech University Sexual Misconduct Policy and Procedures. University personnel can help you access resources and can provide you with support and information, including information on the University's procedures for investigating and addressing instances of Sexual Assault.

## **IMPORTANT CONTACT INFORMATION**

### **University Resources**

Arkansas Tech University's **Title IX Coordinator** is Amy Pennington, whose office is located in Suite 233 of the Doc Bryan Student Services Center. Ms. Pennington may be contacted from 8 a.m. to 5 p.m., Monday through Friday by telephone at (479) 968-0407 or by email at [apennington@atu.edu](mailto:apennington@atu.edu).

Arkansas Tech University's **Deputy Title IX Coordinators** are Will Cooper, Susie Nicholson, and Stacy Galbo. Mr. Cooper may be contacted from 8 a.m. to 5 p.m., Monday through Friday by telephone at (479) 968-0334 or by email at [wcooper@atu.edu](mailto:wcooper@atu.edu). Ms. Nicholson may be contacted from 8 a.m. to 5 p.m., Monday through Friday by telephone at (479) 964-3230 or by email at [snicholson@atu.edu](mailto:snicholson@atu.edu). Ms. Galbo may be contacted from 8 a.m. to 5 p.m., Monday through Friday by telephone at (479) 964-0583 ext. 4714 or by email at [sgalbo2@atu.edu](mailto:sgalbo2@atu.edu).

Arkansas Tech University's **Deputy Title IX Coordinator for the Ozark Campus** is Mitzi Reano, whose office is located in the Technology and Academic Support Building, Room 154. Ms. Reano may be contacted from 8 a.m. to 5 p.m., Monday through Friday by telephone at (479) 667-2117 ext. 6540 or by email at [mreano@atu.edu](mailto:mreano@atu.edu).

The **Arkansas Tech University Department of Public Safety** is located at 716 N. El Paso Avenue on the campus in Russellville, Arkansas, and is available by telephone at (479) 968-0222. University Police Officers are available 24/7.

The **Arkansas Tech University Department of Public Safety for the Ozark Campus** is located in the Collegiate Center, Room 100C on the Ozark Campus, and is available by telephone at (479) 508-3359, Monday through Friday from 8 a.m. to 5 p.m. or by email to Officer David Spicer at [dspicer1@atu.edu](mailto:dspicer1@atu.edu).

The **Office of Human Resources** is located in Brown Hall, Suite 434, and is available by telephone at (479) 968-0396. The office is staffed from 8 a.m. to 5 p.m. Monday through Friday.

The **Arkansas Tech University Health and Wellness Center** is located in Doc Bryan Student Services Center, Suite 119, and is available by telephone at (479) 968-0329. The Center is staffed from 8 a.m. to 5 p.m. Monday through Friday, <http://www.atu.edu/hwc/index.php>

### **Community Resources**

**Russellville Police Department** and the **Ozark Police Department** can be reached by calling 911.

**Saint Mary's Regional Medical Center** is located at 1808 West Main Street, Russellville, Arkansas. The Emergency Department can be reached at (479) 968-6211.



**Mercy Hospital** in Ozark is located at 801 W. River, Ozark Arkansas, 72949 and can be reached at (479) 667-4138.

**Ozark Rape Crisis Center** is located at 715 W. Main Street, Clarksville, AR, 72830 and can be reached at (479) 754-6869. More information can be found at <http://www.ozarkrapecrisis.com/>.

5th Judicial District Prosecuting Attorney's Office's **Victim Assistance Outreach Program** can be reached at (479) 705-0579 or (479) 968-8600.

**Arkansas Coalition Against Sexual Assault** can be reached at (501) 246-3276. More information can be found at [www.acasa.us](http://www.acasa.us).

## **Appendix B to SEXUAL MISCONDUCT POLICY AND PROCEDURES**

### **Definitions**

**Clery Act.** The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("the Clery Act") is a federal statute codified at 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 F.R. 668.46. The Clery Act requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses as well as to give timely warning of dangers on campus.

**Complainant.** A "Complainant" is an individual who reports or files a Complaint. A Complainant may be someone other than the person who may have been subjected to the Sexual Misconduct.

**Complaint.** A "Complaint" is an allegation of Sexual Misconduct asserted against another party and reported to or filed with the University.

**Consent.** "Consent" is informed, freely and actively given and mutually understandable words or actions that indicate a willingness to participate in a mutually agreed-upon sexual activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to engage in certain conduct with each other. Consent cannot be gained by ignoring or acting in spite of the objections of another. Consent can be withdrawn at any time. Coercion, force, or threat of either invalidates consent.

Consent cannot be inferred from:

1. Silence, passivity, or lack of resistance alone;
2. A current or previous dating or sexual relationship alone (or the existence of such a relationship with anyone else);
3. Attire;
4. The buying of dinner or the spending of money on a date; or
5. Consent previously given (i.e. consenting to one sexual act does not imply consent to another sexual act.)

Consent is not effective if it is obtained through the use of physical force, violence, duress, intimidation, coercion, or the threat, expressed or implied, of bodily injury. Whether a party used intimidation or coercion to obtain consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.

Consent may never be given by:

1. A person in Arkansas under the age of 14.
2. A mentally disabled person, if their disability was reasonably knowable to a sexual partner who is not mentally disabled.
3. Persons who are incapacitated (whether as a result of drugs, alcohol, or otherwise), unconscious, asleep, or otherwise physically helpless or mentally or physically unable to make informed, rational judgments. The use of alcohol or drugs does not excuse conduct that constitutes Sexual Misconduct under this Policy.

**Dating Violence.** “Dating Violence” means violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - a. The length of the relationship,
  - b. The type of relationship, and;
  - c. The frequency of interaction between the persons involved in the relationship.

**Domestic Violence.** “Domestic Violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Arkansas, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the State of Arkansas.

**FERPA.** The Family Educational Rights and Privacy Act (“FERPA”) is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 CFR Part 99. FERPA protects the privacy of student education records. FERPA grants to parents or eligible students the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to the disclosure of education records.

**Rape.** “Rape” is the act of sexual intercourse or penetration (anal, oral, or vaginal), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without Consent, including vaginal penetration by a penis, object, tongue, or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact).

**Respondent.** A “Respondent” is an individual who has been accused of committing Sexual Misconduct by the report or filing of a formal or informal Complaint.

**Retaliation.** “Retaliation” means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a Complaint of Sexual Misconduct, including, but not limited to, direct and indirect intimidation, threats, and harassment.

**Sexual Assault.** “Sexual Assault” means any actual, attempted, or threatened sexual act with another person without that person’s Consent. Sexual Assault includes, but is not limited to:

1. Rape and attempted Rape;
2. Intentional and unwelcome sexual touching (including disrobing or exposure), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without effective Consent, or a person's breasts, buttocks, groin, or genitals (or clothing covering such areas), or coercing, forcing, or attempting to coerce or force another to touch you, themselves, or a third party with any of these body parts or areas when such touching would be reasonably and objectively offensive.
3. Any sexual act in which there is force, violence, or use of duress or deception upon the victim;
4. Any sexual act perpetrated when the victim is unable to give Consent; and
5. Sexual intimidation, which includes, but is not limited to:
  - a. Threatening, expressly or impliedly, to commit a sexual act upon another person without his or her Consent,
  - b. Stalking or cyber-stalking, and/or;
  - c. Engaging in indecent exposure.

**Sexual Exploitation.** "Sexual Exploitation" means any act of taking non-Consensual, unjust, or abusive sexual advantage of another person for one's own advantage or benefit or to benefit or advantage anyone other than the person being exploited. Sexual Exploitation includes, but is not limited to:

1. Causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such person;
2. Prostituting another person (i.e. personally gaining money, privilege or power from the sexual activities of another);
3. Non-Consensual videotaping, photographing, or audio-taping of sexual activity and/or distribution of these materials via media such as, but not limited to, the Internet;
4. Exceeding the boundaries of Consent (e.g., allowing another person to observe Consensual sex without the knowledge of or Consent from all participants);
5. Voyeurism; and/or;
6. Knowingly or recklessly transmitting a sexually transmitted disease (including HIV) to another individual.

**Sexual Harassment.** "Sexual Harassment" is defined as unwelcome conduct that is severe and pervasive, which substantially interferes with the learning, working, or living environment, and which would detrimentally affect a reasonable person under the circumstances. Harassment is extreme, outrageous or persistent acts or communications that are intended or reasonably likely to harass, intimidate or humiliate another. Whether the alleged conduct constitutes prohibited harassment depends on the entire circumstances, including the nature, frequency, type, and duration of the conduct. Examples of sexual harassment may include, but are not limited to, the following:

- i. Verbal abuse of a sexual nature, which is considered to include, but is not limited to, epithets, derogatory comments, sexual advances, invitations, propositions, comments, or requests for sexual favors;
- ii. Intimate unwelcome physical contact;
- iii. Repeated unwanted discussions of sexual matters;
- iv. Use of sexual jokes, stories, analogies, or images which are not related to the subject of the class or work situation;
- v. Ogling, leering, or prolonged staring at another person's body;
- vi. Display or use of sexual graffiti or sexually-explicit pictures or objects;
- vii. Sexually suggestive jokes, comments, e-mails, or other written or oral communications;
- viii. Condition, explicitly or implicitly, academic or employment decisions upon an individual's submission to requests for sexual favors or conduct.

Sexual harassment by any faculty, staff, or student is a violation of both federal regulatory law and University policy and will not be tolerated at Tech. The University considers sexual harassment to be a very serious issue and shall subject the offender to dismissal or other sanctions following the University's investigation and substantiation of the complaint and compliance with due process requirements.

The determination of what constitutes sexual harassment will vary with the particular circumstances, but it may be generally described as repeated and unwanted sexual behavior, such as physical contact and verbal comments or suggestions that adversely affect the working or learning environments of others.

EEOC Guidelines define sexual harassment as unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a. Submission to such conduct is either explicitly or implicitly made a condition of an individual's employment with the University or a factor in the educational program of a student, and/or;
- b. Submission to or a rejection of such conduct by an individual is used as the basis for an employment or academic decision affecting such individuals, and/or;
- c. Such conduct has the purpose or effect of substantially interfering with an individual's right to achieve an educational objective or to work in an environment free of intimidation, hostility, or threats stemming from acts or language of a sexual nature.

Although sexual harassment most frequently occurs when there is an authority differential between the persons involved (faculty member and student, supervisor and staff member), it may also occur between persons of the same status (e.g. faculty-faculty, staff-staff, student-student). Both men and women may be victims of sexual harassment, and sexual harassment may occur between individuals of the same gender.

Because of the unique situations which exist between students, faculty, supervisors, and staff, relationships in the workplace and on campus should at all times remain professional. In particular, due to the professional power differential between faculty and students, faculty members are encouraged to remain professional in all relationships with students. As teachers, professors encourage the free pursuit of learning by their students. They hold before them the best scholarly standards of their discipline. Professors demonstrate respect for students as

individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.

Sexual harassment may create a hostile, abusive, demeaning, offensive, or intimidating environment. It is manifested by verbal or physical actions, including gestures and other symbolic conduct. Sexual harassment is not always obvious and overt; it can also be subtle and covert. A person who is subject to sexual advances may nevertheless be a victim of sexual harassment if those advances were unwelcome.

If a professor's speech or conduct takes place in the teaching context, it must also be persistent, pervasive, and not germane to the subject matter. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

**Sexual Misconduct.** "Sexual Misconduct" means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without Consent. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex. The University encourages reporting of all Sexual Misconduct. Sexual Misconduct includes, but is not limited to:

1. Dating violence;
2. Domestic violence;
3. Non-forcible sex acts, which are unlawful sexual acts where Consent is not relevant, such as sexual contact with an individual under the statutory age of Consent, as defined by State law, or between persons who are related to each other within degrees wherein marriage is prohibited by law.
4. Sexual Assault;
5. Sexual Exploitation;
6. Sexual Harassment; and
7. Stalking.

**Stalking.** "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for his or her safety or the safety of others; or
2. Suffer substantial emotional distress.

**Student.** A "student" is any student who is registered at the University or enrolled at the University (a) at the time of the alleged Sexual Misconduct and (b) at the time a Complaint is filed.

## **Appendix C to SEXUAL MISCONDUCT POLICIES AND PROCEDURES**

### **Reporting and Confidentially Disclosing Sexual Violence:**

#### **Know the Options**

Arkansas Tech University encourages victims of sexual violence to talk to somebody about what happened - so victims can get the support they need, and so the University can respond appropriately.

Different employees on campus have different abilities to maintain a victim's confidentiality.

- Some are required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication."
- Other employees may talk to a victim in confidence, and generally only report to the University that an incident occurred without revealing any personally identifying information. Disclosures to these employees will not trigger a University investigation into an incident against the victim's wishes.
- Thirdly, some employees are required to report all the details of an incident (including the identities of both the victim and alleged perpetrator) to the Title IX Coordinator. A report to these employees (called "responsible employees") constitutes a report to the University - and generally obligates the University to investigate the incident and take appropriate steps to address the situation.

This policy is intended to make students aware of the various reporting and confidential disclosure options available to them - so they can make informed choices about where to turn should they become a victim of sexual violence. The University encourages victims to talk to someone identified in one or more of these groups.

#### **The Options**

##### **A. Privileged and Confidential Communications.**

###### **Professional Counselors**

Professional, licensed counselors who provide mental-health counseling to members of the school community (and including those who act in that role under the supervision of a licensed counselor) are generally not required to report any information about an incident to the Title IX Coordinator without a victim's permission.

The following is the contact information for these individuals who are all located in the Health and Wellness Center (<https://www.atu.edu/cscenter/>) in Doc Bryan Student Services Center, Suite 119:

**Kristy Davis**, [kdavis51@atu.edu](mailto:kdavis51@atu.edu), (479) 968-0329

**Craig Witcher**, [cwitcher@atu.edu](mailto:cwitcher@atu.edu), (479) 968-0329

**Janis Taylor**, [jtaylor78@atu.edu](mailto:jtaylor78@atu.edu), (479) 968-0329

**Nikki Templeton**, [nearles@atu.edu](mailto:nearles@atu.edu), (479) 968-0329

**Josh Root**, [jroot4@atu.edu](mailto:jroot4@atu.edu), (479) 968-0329

**Leann Watson**, [lwatson12@atu.edu](mailto:lwatson12@atu.edu), (479) 968-0329

A victim who speaks to a professional counselor must understand that, if the victim wants to maintain confidentiality, the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator.

Even so, these counselors will still assist the victim in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working, or course schedules.

A victim who at first requests confidentiality may later decide to file a complaint with the University or report the incident to local law enforcement, and thus have the incident fully investigated. These counselors will provide the victim with assistance if the victim wishes to do so.

### **Medical Professionals**

The medical professionals who work in the campus health center can generally talk to a victim without revealing any personally identifying information about an incident to the University. A victim can seek assistance and support from these individuals without triggering a University investigation that could reveal the victim's identity or that the victim has disclosed the incident.

While maintaining a victim's confidentiality, these individuals or their office should report the nature, date, time, and general location of an incident to the Title IX Coordinator. This limited report, which includes no information that would directly or indirectly identify the victim, helps keep the Title IX Coordinator informed of the general extent and nature of sexual violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Coordinator, these individuals will consult with the victim to ensure that no personally identifying details are shared with the Title IX Coordinator.

Following is contact information for these Medical Professionals:

**Brandye Bisek**, Advanced Practice Registered Nurse, [bbisek@atu.edu](mailto:bbisek@atu.edu)

**Robin Koontz**, Advanced Practice Registered Nurse, [rkoontz@atu.edu](mailto:rkoontz@atu.edu)

**Kyle Wewers**, Advanced Practice Registered Nurse, [kwewers@atu.edu](mailto:kwewers@atu.edu)

**Heather Stout**, Registered Nurse, [hstout1@atu.edu](mailto:hstout1@atu.edu)

**Cori Poore**, Registered nurse, [cpoore1@atu.edu](mailto:cpoore1@atu.edu)

**Health and Wellness Center**, Doc Bryan Student Services Center, Suite 119,  
(<http://www.atu.edu/hwc/index.php>), (479) 968-0329

**NOTE:** While the professional counselors and medical professionals may maintain a victim's confidentiality vis-a-vis the University, they may have reporting or other obligations under state law. For example, mandatory reporting to law enforcement in case of minors; instances of imminent harm to self or to others; or being subpoenaed to testify in a criminal case

**ALSO NOTE:** If the University determines that the alleged perpetrator(s) pose a serious and immediate threat to the University community, those individuals who serve as Campus Security Authorities under the Cleary Act may be called upon to issue a timely warning to the community. Any such warning should not include any information that identifies the victim.

## **B. Reporting to “Responsible Employees.”**

A “responsible employee” is a University employee who has the authority to redress sexual violence, who has the duty to report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty. When a victim tells a responsible employee about an incident of sexual violence, the victim has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A responsible employee **must report** to the Title IX Coordinator all relevant details about the alleged sexual violence shared by the victim and that the University will need to determine what happened, including the names of the victim and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time, and specific location of the alleged incident.

To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the University’s response to the report. A responsible employee should not share information with law enforcement without the victim’s consent or unless the victim has also reported the incident to law enforcement.

The following employees (or categories of employees) are the University’s responsible employees:

**Resident Directors, Resident Assistants, Area Coordinators, Associate Deans, Dean of Students, President, Chancellor, Vice Presidents, Vice Chancellors, Assistant Vice Presidents, Academic Department Heads, Academic Deans, Athletic Director, Assistant Coaches, Head Coaches, Faculty Advisors for Student Groups, employees in the Department of Public Safety.**

Before a victim reveals any information to a responsible employee, the employee should ensure that the victim understands the employee’s reporting obligations and, if the victim wants to maintain confidentiality, direct the victim to confidential resources.

If the victim wants to tell the responsible employee what happened but also maintain confidentiality, the employee should tell the victim that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Coordinator of the victim’s request for confidentiality.

Responsible employees will not pressure a victim to request confidentiality, but will honor and support the victim’s wishes, including for the University to fully investigate an incident. By the same token, responsible employees will not pressure a victim to make a full report if the victim is not ready to.

### **Requesting Confidentiality From the University: How the University Will Weigh the Request and Respond.**

If a victim discloses an incident to a responsible employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University must weigh that request against the University’s obligation to provide a safe, non-discriminatory environment for all students, including the victim.



If the University honors the request for confidentiality, a victim must understand that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.

Although rare, there are times when the University may not be able to honor a victim's request in order to provide a safe, non-discriminatory environment for all students.

The University has designated the following individual(s) to evaluate requests for confidentiality once a responsible employee is on notice of alleged sexual violence:

**Amy Pennington, Title IX Coordinator**

When weighing a victim's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:
  - whether there have been other sexual violence complaints about the same alleged perpetrator;
  - whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
  - whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
  - whether the sexual violence was committed by multiple perpetrators;
  - whether the sexual violence was perpetrated with a weapon;
  - whether the victim is a minor;
  - whether the University possesses other means to obtain relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence);
  - whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the University to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the University will likely respect the victim's request for confidentiality.

**If the University determines that it cannot maintain a victim's confidentiality,** the University will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response.

The University will remain ever mindful of the victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or University employees, will not be tolerated. The University will also:

- assist the victim in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus (see portion of policy identifying these);

- provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and
- inform the victim of the right to report a crime to campus or local law enforcement - and provide the victim with assistance if the victim wishes to do so.

The University may not require a victim to participate in any investigation or disciplinary proceeding. Because the University is under a continuing obligation to address the issue of sexual violence campus-wide, reports of sexual violence (including non-identifying reports) will also prompt the University to consider broader remedial action, such as increased monitoring, supervision, or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

If the University determines that it can respect a victim's request for confidentiality, the University will also take immediate action as necessary to protect and assist the victim.

### **Miscellaneous**

#### **Take Back the Night and other public awareness events**

Public awareness events such as "Take Back the Night," the Clothesline Project, candlelight vigils, protests, "survivor speak outs", or other forums in which students disclose incidents of sexual violence, are not considered notice to the University of sexual violence for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the University will provide information about students' Title IX rights at these events.

#### **Anonymous Reporting**

Although the University encourages victims to talk to someone, the University provides an online system for anonymous reporting. The system will notify the user (before s/he enters information) that entering personally identifying information may serve as notice to the University for the purpose of triggering an investigation. The website is:

<https://www.atu.edu/psafe/crime-report-form.php>.

#### **Off-campus Counselors and Advocates**

Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the University unless the victim requests the disclosure and signs a consent or waiver form.

Following is contact information for these off-campus resources:

##### **Victim Assistance Outreach Program**

The 5th Judicial District Prosecuting Attorney's Office has a "Victim Assistance Outreach Program" which provides assistance with:

- Orders of Protection
- Contacting Law Enforcement Agencies
- VINE (Victim Identification and Notification Everyday)

- Arkansas Crime Victims Reparations Program (assists with financial compensation, counseling, lost wages, and funeral expenses).
- Referrals to other community services such as the Ozark Rape Crisis Center, River Valley Shelter, and Crisis Intervention Center.
- Information on the criminal court process.

The contact person for this program is Patricia Andrade. Her telephone number is (479) 705-0579.

#### **Ozark Rape Crisis Center**

Located in Clarksville, Arkansas, this entity provides 24 hour crisis intervention. The hotline telephone number is (800) 818- 1189 and the website is:

<http://www.ozarkrapecrisis.com/>

#### **Arkansas Coalition Against Sexual Assault**

The Arkansas Coalition Against Sexual Assault provides a 24 hour Sexual Assault Crisis Response Hotline. The hotline telephone number is (800) 977-5776. Additional services include: Free and confidential assistance for all victims of sexual violence; Compassionate accompaniment for victims needing medical help; Comfort and support for victims going through the criminal justice system; Crisis counseling and support groups for victims and families; Information and referrals to available community resources; Community public education on sexual violence issues; Training for volunteers and other professions serving victims.

**NOTE:** While these off-campus counselors and advocates may maintain a victim's confidentiality vis-a-vis the University, they may have reporting or other obligations under state law in instances such as mandatory reporting to law enforcement in case of minors; imminent harm to self or others; requirement to testify if subpoenaed in a criminal case.

### **Appendix D to SEXUAL MISCONDUCT POLICY AND PROCEDURES**

Arkansas Tech University Complaint Form

### **Appendix E to SEXUAL MISCONDUCT POLICY AND PROCEDURES**

The following sanctions may be imposed singularly or in combination upon any student found to have violated the Student Code of Conduct:

- A. **Warning.** A notice in writing to the student that the student has violated institutional regulations.
- B. **Probation.** A written reprimand for violation of specified regulations. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to be violating any institutional regulation(s) during the probationary period.
- C. **Loss of Privileges.** Suspension or denial of rights and privileges for a designated period of time, including participation in athletic or extracurricular activities.
- D. **Monetary Fines.** A penalty imposed by the conduct body involving the collection of fees from the student.

- E. **Restitution.** Compensation for loss, injury, damage to or misappropriation of University property. This may take the form of appropriate service and/or monetary or material replacement.
- F. **Educational Sanctions.** The conduct body may also impose educational sanctions that promote learning and understanding. These sanctions may be developed as necessary by a conduct body including, but not limited to:
  - 1. Sponsorship of an education program;
  - 2. Attendance at educational programs;
  - 3. Requirement of members to complete the TIPS for the University training program or other educational training programs;
  - 4. Attendance in conflict management training;
  - 5. Educational service hours;
  - 6. Attendance in ethics workshop/training;
  - 7. Reflective exercises.
- G. **Discretionary Sanctions.** Work assignments, service to the University, or other related sanctions. Students who violate the alcohol/drug policies may be subject to completion of alcohol and other drug education programs.
- H. **Holds.** Withholding of grades, right to register for classes, official transcript, and/or degree.
- I. **Denial of degree.** University degree may be denied, revoked, and/or a diploma may be withdrawn.
- J. **Loss of Scholarship.** Scholarships awarded by the University or University-related programs may be partially or fully revoked.
- K. **Housing Suspension.** Separation of the student from University housing for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- L. **Housing Expulsion.** Permanent separation of the student from University housing.
- M. **University Suspension.** Separation of the student from the University for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- N. **University Expulsion.** Permanent separation of the student from the University.
- O. **Revocation of Admission and/or Degree.** Admission to or a degree awarded from Tech may be revoked for fraud, misrepresentation, or violations of the Student Code of Conduct committed by a student prior to graduation.

Arkansas Tech may withhold awarding a degree otherwise earned until the completion of the process set forth in this policy, including the completion of all sanctions imposed, if any.

A disciplinary sanction may become part of the student's permanent academic record. A student's permanent academic record includes any disciplinary sanction that comprises:

- 1. Expulsion

2. Any revocation of degree

End of Sexual Misconduct Policy and Procedures