



## SECTION V: EMPLOYEES

## POLICY 5020

### ALCOHOL AND DRUG TESTING FOR BUS DRIVERS

#### Purpose

The purpose of this Policy is to prevent accidents and injuries resulting from alcohol or controlled substance use by drivers of commercial motor vehicles. This Policy is intended to comply with the School District's mandatory obligations under regulations issued by the United States Department of Transportation ("DOT").

#### Definition of Terms

4. Certain terms used in this Policy have the following meaning unless the context plainly shows otherwise:

~~2.1.~~ "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

~~3.2.~~ "Alcohol concentration" means the number of grams of alcohol (for example: 0.04) in 210 liters of expired deep lung air.

~~4.3.~~ "Alcohol confirmation test" means a subsequent test using an EBT (a breath testing device), following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

~~5.4.~~ "Alcohol screening device" ("ASD") means a breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration and appears on the Office of Drug & Alcohol Policy & Compliance's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications from NHTSA. placed on a conforming products list for such devices.

~~6.5.~~ "Alcohol use" means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.

~~7.6.~~ "BAT" means a qualified breath alcohol technician.

~~8.~~ "~~Blind specimen" means a specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from an employee specimen.~~

~~9.7.~~ "Cancelled test" means a drug or alcohol test that has a problem identified and cannot be or has not been corrected. A cancelled test is neither a positive nor a negative test.

~~8.~~ "CDL" means commercial driver's license.

~~10.9.~~ "Clearinghouse" means the Federal Motor Carrier Safety Administration (FMCSA) Commercial Driver's License Drug & Alcohol Clearinghouse.

~~11.10.~~ "Collection site" means a place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.



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- ~~12.11.~~ 12.11. “Confirmatory drug test” means a second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite. ~~urine specimen to identify and quantify the presence of a specific drug or drug metabolite.~~
- ~~13.12.~~ 13.12. “Confirmed drug test” means a confirmatory drug test result received by a MRO from a laboratory.
- ~~14.13.~~ 14.13. “Controlled substance” means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), opiates, or a metabolite of any of these substances.
- ~~15.14.~~ 15.14. “Designated employer representative” (“DER”) means an employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer.
- ~~16.15.~~ 16.15. “Dilute specimen” means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.
- ~~17.16.~~ 17.16. “Driver” means: (i) a school district employee who is required to have a CDL to perform the employee's duties; (ii) employees of independent contractors who are required to have CDLs; (iii) owner-operators; (iv) leased drivers; and (v) occasional drivers.
- ~~18.17.~~ 18.17. “EBT” means a device that is approved by NHTSA for the evidential testing of breath at the .02 and .04 alcohol concentrations, and appears on the Office of Drug & Alcohol Policy & Compliance’s Web page for “Approved Screening Devices to Measure Alcohol in Bodily Fluids” because it conforms to the model specifications available from NHTSA. ~~an evidential breath testing device on the National Highway Traffic Safety Administration's Conforming Products List for Evidential Breath Measurement Devices for the evidential testing of breath at the .02 and .04 alcohol concentrations.~~
- ~~19.18.~~ 19.18. “Federal Act” means the Omnibus Transportation Testing Act of 1991 and the regulations issued by the United States Department of Transportation pursuant to that Act.
- ~~20.19.~~ 20.19. “Oklahoma Act” means the Oklahoma Standards for Workplace Drug and Alcohol Testing Act.
- ~~21.20.~~ 21.20. “Initial drug test” means the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
- ~~22.21.~~ 22.21. “Initial validity test” means the first test used to determine if a specimen is adulterated, diluted, or substituted.



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~~23-22.~~ “Invalid drug test” means the result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.~~for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.~~

~~24-23.~~ “Medical review officer” (“MRO”) means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

~~25-24.~~ “Safety-sensitive function” means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work.

~~26-25.~~ “Screening Test Technician” (“STT”) means a person who instructs and assists employees in the alcohol testing process and operates an ASD.

~~27-26.~~ “Service agent” means any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with DOT drug and alcohol testing requirements.

~~28-27.~~ “Split specimen” means a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

~~29-28.~~ “Stand-down” means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed a verified test.

~~30-29.~~ “Substance Abuse Professional” (“SAP”) means a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

~~31-30.~~ “Substituted specimen” means a specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

~~32-31.~~ “Verified test” means a drug test result or validity testing result from a United States Department of Health and Human Services certified laboratory that has undergone review and final determination by the MRO.

### Required Testing and Consent



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The following testing is required of all drivers:

#### Pre-Employment Testing and Consent

A driver must pass an alcohol and controlled substance test prior to performing a safety-sensitive function. The test will be conducted during the hiring process or immediately before the driver first performs a safety-sensitive function.

#### 1. Alcohol Testing

A driver may not commence the performance of duties unless the test shows a concentration of less than 0.04. If the test shows a concentration of between 0.02 and 0.04, no safety-sensitive duties may be performed for a least 24 hours.

A pre-employment alcohol test will not be required if:

- i. The driver has undergone an alcohol test required by the Federal Act within the previous six weeks and tested under 0.04; and
- ii. The driver provides evidence that no prior employer of the driver has any record of alcohol misuse by the driver within the previous six months.

#### 2. Controlled Substances

The driver must receive a confirmed negative controlled substance test result from a medical officer, except that no testing is required if:

- i. The driver has participated within the previous 30 days in a drug testing program meeting the requirements of the Federal Act; and
- ii. While participating in the program, the driver either (a) was tested for controlled substances within six months prior to the date of employment application or (b) participated in a random controlled substance testing program for the 12 months prior to the date of the employment application; and
- iii. The driver provides evidence that no prior employer of the driver has any record of a violation of controlled substance use rules by the driver within the previous six months.

#### 3. Pre-employment Consent

The School District shall comply with the query requirements of FMCSA, including participation in the Clearinghouse. The participation is described in detail in the District's policy on Compliance with Regulations regarding the FMCSA Clearinghouse. As part of this compliance, until January 6, 2023 the school district shall request the driver's written



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~~consent to obtain the following information from DOT-regulated employers who have employed the driver during the three (3) years before the date of the driver's application to a position requiring safety-sensitive duties: request the driver's written consent to obtain the following information from DOT-regulated employers who have employed the driver during the three (3) years before the date of the driver's application to a position requiring safety-sensitive duties. The School District shall also request the driver's written consent to conduct a limited query of the Federal Motor Carrier Safety Administration (FMCSA) Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) to determine whether drug or alcohol violation information about the driver exists in the Clearinghouse.~~

- ~~i.~~ i. Alcohol tests with a result of 0.04 or higher alcohol concentration;
- ~~ii.~~ ii. Verified positive drug tests;
- ~~iii.~~ iii. Refusals to be tested (including verified adulterated or substituted drug test results);
- ~~iv.~~ iv. Other violations of DOT agency drug and alcohol testing regulations; and
- v. Documentation of the driver's successful completion of return-to-duty requirements (for those drivers who have violated a drug or alcohol regulation). If the previous employer does not have this documentation, the School District shall request that the driver produce it.

A driver may not perform safety-sensitive functions if s/he refuses to consent in writing to the release of the above information.

This records check shall be in addition to any queries conducted on the Clearinghouse website. After January 6, 2023, the school district shall continue to seek records from employers to the extent required by FMCSA and DOT regulations and shall seek consents when such records checks are required.

Drivers are responsible for furnishing the District with accurate information regarding their employment history, including accurate identification of all former DOT-regulated employers.

The School District shall maintain a written, confidential record of the information obtained or of the good faith efforts made to obtain the information. This record shall be maintained for three years from the date of the driver's first performance of safety-sensitive functions. ~~The School District shall also retain records of violations reported for five (5) years.~~

Prior to the driver's first performance of safety-sensitive functions, the School District shall ask the driver whether s/he has tested positive, or refused to test, on any pre-



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employment drug or alcohol test (1) administered by a DOT-regulated employer, (2) in connection with a position for which the driver applied, (3) involving the driver's failure to obtain safety-sensitive transportation work, and (4) over the period of ~~two-three~~ years preceding the date of the employee's application for employment with the ~~School-school District-district~~. If the driver admits to a positive test or a refusal to test within the past two years, the ~~School-school District-district~~ shall not allow the driver to perform safety-sensitive functions until and unless the driver documents successful completion of the return-to-duty process.

#### 4. Consequences Associated with Pre-employment Testing

The ~~School-school District-district~~ may decline to employ an applicant who fails drug testing, provides false information, or who fails to cooperate with the ~~District-district~~ in procuring testing and test results. To the extent the applicant has been offered employment or placed in an alternate position pending the receipt of test results, the offer may be withdrawn and alternate employment terminated in accordance with the ~~District's district's~~ policies and procedures applicable to employee termination.

#### Post-Accident Testing

##### 1. Alcohol

~~1.~~

As soon as practical following an accident, an alcohol test will be administered to the following drivers:

- i. Each surviving driver who was performing safety-sensitive functions with respect to the vehicle, if the accident involves loss of life.  
~~i.~~
- ii. Each surviving driver who received a moving traffic violation arising from the accident; within eight hours of the occurrence, if the accident involved:  
~~ii.~~
  - a) bodily injury to any person that necessitated immediate medical treatment away from the scene of the accident; or  
~~a)~~
  - b) at least one vehicle incurred disabling damage as a result of the accident that required the vehicle to be transported away from the scene by a tow truck or other vehicle.

If ~~T~~the test is ~~to be not~~ administered within ~~thirty-two (32)~~ hours of the accident, the employer must prepare and maintain a record of why the test was not administered. If the test is not administered within eight hours of the accident, ~~that time~~, the driver's supervisor shall cease attempts to administer an alcohol test and shall prepare a written report explaining why a test was not given.



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Drivers shall remain readily available for testing. A driver leaving the scene of an accident without a valid reason prior to submission to the test may be deemed to have refused to submit to testing.

A breath or blood alcohol test conducted by a law enforcement agency will be considered to meet these requirements if the test meets the requirements of the Federal Act and the test results are obtained by the School District.

#### 2. Controlled Substances

~~2.~~

As soon as practical following an accident, a test for controlled substances will be administered to the following drivers:

i. Each surviving driver who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life.

~~i.~~

ii. Each surviving driver who received a moving traffic violation arising from the accident, if the accident involved:

~~ii.~~

a) bodily injury to any person that necessitated immediate medical treatment away from the scene of the accident; or

~~a)~~

b) at least one vehicle incurred disabling damage as a result of the accident that required the vehicle to be transported away from the scene by a tow truck or other vehicle.

~~b)~~

The test is to be administered within thirty-two (32) hours of the accident. If no test is made within that time period, then no test will be made and the driver's supervisor will prepare a written report stating the reasons for not administering a prompt test.

Drivers shall remain readily available for testing. A driver leaving the scene of an accident without a valid reason prior to submission to the test may be deemed to have refused to submit to testing.

A urine test for controlled substances administered by a law enforcement agency will be considered to meet these requirements if the test meets the requirements of the Federal Act and the results are obtained by the ~~School-shool District~~district.

#### Random Testing

~~3.~~

Random alcohol and controlled substances testing of drivers will be conducted throughout the year. Selection of the drivers to be tested will be made by a scientifically valid method, such as random-number table or a computer based random-generator matched with drivers' social security numbers, payroll identification numbers or other comparable identifying



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numbers. Dates for administering unannounced testing shall be unpredictable and spread reasonably throughout a nine (9) month period.

Drivers are to be tested while performing safety-sensitive functions, just before performing those functions, or just after ceasing those functions. A driver who is notified of selection for random alcohol or controlled substances testing must proceed to the test site immediately, unless the driver is performing a safety-sensitive function other than driving, in which case the driver must cease performing the safety-sensitive function and proceed to the test site as soon as possible.

The minimum annual percentage rate for random alcohol testing will be twenty five percent (25%) of the average number of driver positions, subject to adjustment of the percentage by the Federal Highway Administration. The minimum annual percentage rate for random testing for controlled substances will be fifty percent (50%) of the average number of driver positions.

#### Reasonable Suspicion Testing

4.

Alcohol and controlled substance testing will be conducted when there is reasonable suspicion to believe that a driver has violated a provision in this ~~Policy~~policy. Reasonable suspicion shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. Reasonable suspicion for controlled substance use may also be based on indications of the chronic and withdrawal effects of controlled substances.

Alcohol testing is authorized only if the observations are made during, just preceding or just after the period of the work day that the driver is performing a safety-sensitive function. A written record must be made as to why an alcohol test was not made within two hours following a determination of reasonable suspicion of misuse. No test is to be made if eight hours passed after the determination.

Persons designated to determine whether reasonable suspicion exists shall receive at least sixty (60) minutes of training on performance indicators of probable alcohol misuse. The required observations shall be made by a supervisor who has received training in detecting the symptoms of alcohol/controlled substance misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the alcohol test.

A written record will be made of the observations leading to a controlled substance reasonable suspicion test. The record will be signed by the supervisor who made the observations. The record will be made within twenty four (24) hours of the observed behavior or before the test results are received, whichever is earlier.

#### Return To Duty Testing

5.

1. Returning after Reasonable Suspicion of Alcohol Abuse Determination





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A driver suspected of being under the influence of or impaired by alcohol will not be permitted to perform a safety-sensitive function until: (i) an alcohol test shows a concentration of less than 0.02; or (ii) 24 hours have elapsed following a determination that there was reasonable suspicion to believe the driver has violated the rules in this Policy against alcohol misuse.

#### 2. Returning after Violation of Prohibitions in this Policy

A driver who has engaged in conduct prohibited by this Policy shall not be permitted to perform safety-sensitive functions until s/he first passes a controlled substance test and/or an alcohol test with an alcohol concentration of less than 0.02.

A driver who has violated a provision in this Policy cannot again perform any safety-sensitive duties for any employer until and unless the driver completes the SAP evaluation, referral, and education/treatment process.

#### Follow-Up Testing

~~6.~~

A driver who has been identified by a SAP as needing assistance in resolving problems with alcohol misuse or controlled substance use and who has returned to duty involving the performance of a safety-sensitive function will be subject to a minimum of six (6) unannounced follow-up alcohol and/or controlled substance tests over the following twelve (12) months. The SAP is the sole determiner of the number and frequency of follow-up tests, as well as whether the tests will be for drugs, alcohol or both. The SAP can direct additional testing during this period or for an additional period up to a maximum of sixty (60) months. The School District must carry out the SAP's follow-up testing requirements.

#### Test Procedures

Testing methodology will comply with the requirements of the Oklahoma Act, except that the requirements of the Federal Act stated in this Policy supersede the provisions of the Oklahoma Act. Alcohol testing must be conducted in a location that provides visual and aural privacy to the driver, sufficient to prevent unauthorized persons from seeing or hearing the test.

#### Alcohol Testing Procedures

##### 1. Initial Alcohol Screening Test

~~4.~~

- i. Procedures for an Alcohol Screening Test Using an EBT or Non-Evidential Breath ASD



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a) When the driver enters the testing location, the BAT or STT will require the driver to provide positive identification. If the driver requests, the BAT or STT will provide positive identification. The BAT or STT will explain the testing procedure. An individually-sealed mouthpiece is opened in the view of the driver and attached to the EBT. The driver will then blow into the mouthpiece for at least six (6) seconds or until the device indicates that an adequate amount of breath has been obtained. The BAT or STT will show the driver the displayed test results. If the EBT does not provide a printed result, the BAT or STT will record the test number, date, technician's name, location and test result in a log book. The driver will initial the log book. If the EBT provides a printed result, the result is either: (i) printed on the testing form; or (ii) affixed to the form with tamper-evident tape.

b) If the screening test result is less than 0.02, the BAT or STT will transmit the result in a confidential manner to the School District's DER, who is designated by the board of education or the school superintendent to receive and handle alcohol test results in a confidential manner.

b)

c) If the breath test is 0.02 or higher, a confirmation test is required. ~~The confirmation test must be conducted no less than fifteen (15) and no more than thirty (30) minutes after the screening test. Before a confirmation test is given, the BAT must conduct a "blank" test on the EBT to obtain a reading of 0.00. The remainder of the confirmation test is identical to the screening test for EBTs.~~

e)

d) If the confirmation test result is lower than 0.02, nothing further is required of the driver.

e) If the confirmation test result is 0.02 or higher, the driver must sign and date the ATF. The BAT will immediately transmit the result to the DER in a confidential manner.

e)

f) Refusal to take a required test has the same consequences as if the driver had tested 0.04 or more. The following constitutes a refusal to take a test: (1) failure to appear for any test within a time required to appear; (2) failure to provide an adequate amount of saliva or breath for testing without a valid medical explanation; (3) failure to cooperate with any part of the testing process; (4) failure to sign the alcohol testing form or ATF certification; (5) failure to remain at the testing site until the testing process is complete, unless the test is a pre-employment test; (6) failure to undergo a medical examination or evaluation due to insufficient breath sampling; (7) leaving the scene of an accident before being tested, except when reasonably necessary to receive medical treatment.



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#### ii. Procedure for an Alcohol Screening Test Using Saliva ASD

2.

- a) When the driver enters the testing location, the STT will require the driver to provide positive identification. If the driver requests, the STT will provide positive identification. The STT will explain the testing procedure. The STT will check the expiration date on the device and show it to the driver. An individually wrapped package containing the device will be opened in the presence of the driver, and the driver will be instructed to insert the device into his or her mouth and use it in the manner described by the manufacturer. If the driver chooses not to use the device, the STT must insert the device into the driver's mouth and gather saliva.
- b) If the screening test results is less than 0.02, the STT will transmit the result in a confidential manner to the school district's DER, who is designated by board of education or the school superintendent to receive and handle alcohol test results in a confidential manner.
- c) If the test result is an alcohol concentration of 0.02 or higher, a confirmation test is required.

a) \_\_\_\_\_

#### 2. Alcohol Confirmation Test

- i. All confirmation test must be conducted using an EBT. The confirmation test must occur no less than fifteen (15) minutes after the completion of the screening test and should occur no more than thirty (30) minutes after the completion of the screening test.
- ii. Before a confirmation test is given, the BAT must conduct a "blank" test on the EBT to obtain a reading of 0.00. The remainder of the confirmation test is identical to the screening test for EBTs described in section 1.i.a above.
- iii. If the confirmation test result is lower than 0.02, nothing further is required of the driver.
- iv. If the confirmation test result is 0.02 or higher the driver must sign and date the ATF. The BAT will immediately transmit the result to the DER in a confidential manner.
- v. Refusal to take a required test has the same consequences as if the driver had test 0.04 or more. The following constitutes a refusal to take a test: (1) failure to appear for any test within a time required to appear; (2) failure to provide an adequate amount of saliva or breath for testing without a valid medical explanation; (3) failure to cooperate with any part of the testing process; (4) failure to sign the alcohol testing form or ATF certification; (5) failure to remain at the testing site until the testing process is complete, unless the test is a pre-employment test; (6) failure to undergo a



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medical examination or evaluation due to insufficient breath sampling; (7) leaving the scene of an accident before being tested, except when reasonably necessary to receive medical treatment.

#### Controlled Substances Testing Procedures

In accordance with the Federal Act, testing for controlled substances may be conducted either through urine or oral fluid specimen testing. All collections must be collected as split specimens

#### 1. Procedures for Collection of Urine Specimens Under Direct Observation

~~1.~~

~~b) All urine collections must be split specimen collections.~~

i. The School District must direct an immediate ~~urine~~ collection under direct observation with no advance notice to the driver if:

~~e)~~

a) The laboratory reported to the Medical Review Officer (“MRO”) that a specimen is invalid and the MRO has reported that there is not an adequate medical explanation for the result; or

~~a)~~

b) The MRO reported that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed.

c) The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2mg / dL but less than or equal to 5mg / dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation.

~~b)~~

ii. The School District ~~must~~ direct a collection under direct observation of a driver if the drug test is a return-to-duty test or a follow-up test.

~~d) —~~

iii. A driver must receive an explanation of the reasons for a directly observed collection.

~~e)~~

~~iv.~~ iv. If a driver declines to allow a directly observed collection, that driver will be considered to have refused a test.

#### 2. Procedures for Testing ~~of Urine Specimens~~ for Controlled Substances

~~2.~~

i. Testing ~~of urine samples~~ for controlled substances shall be performed by a laboratory certified for testing by a specimen of that kind by the federal Department of Health and Human Services (“DHHS”) under the National Laboratory Certification Program.

~~i.~~

ii. Controlled substance testing may only be performed for the following five drugs or classes of drugs: (a) marijuana metabolites, (b) cocaine metabolites, (c) amphetamines, (d) ~~opiate-opioids~~ metabolites, and (e) phencyclidine (PCP).



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- ~~iii.~~ iii. If the driver requests a test of a split specimen, the first laboratory will ship the unopened split specimen to a second DHHS-approved laboratory for testing. If the test of the split specimen fails to confirm the presence of a controlled substance, the entire test is cancelled.
- ~~iii.~~ iv. The driver must request a split specimen test verbally or in writing within 72 hours of being notified of a verified positive drug test or refusal to test because of adulteration or substitution.
- ~~iv.~~ v. If a driver does not make a request within 72 hours, the driver may present information to the MRO documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO, or other circumstances unavoidably prevented the driver from making a timely request.
- ~~v.~~ vi. If a driver makes a timely request for a split specimen test, the ~~School~~ school District ~~district~~ must ensure that the MRO, first laboratory and second laboratory perform the split-specimen testing functions in a timely manner. If necessary, the ~~School~~ school District ~~District~~ district must pay for the split specimen testing and seek reimbursement from the driver.
- ~~vi.~~ vii. The MRO will report split specimen test results to the DER and driver.
- ~~vii.~~ viii. The laboratory will report results directly to the MRO. The laboratory will not report the results to anyone else.
- ~~viii.~~ ix. In the case of a urine test, if the MRO finds a negative test was dilute, the district will require the employee to submit to a retest. Such a retest will only be under direct observation if directed by the MRO.
- ~~ix.~~ x. When the MRO receives a confirmed positive, adulterated, substituted, or invalid test result from the laboratory, the MRO will attempt to contact the driver to determine whether the driver wants to discuss the test result. If the MRO cannot reach the driver after reasonable efforts to do so, the MRO must contact the DER but cannot tell the DER that the driver has a confirmed positive, adulterated, substituted, or invalid test result. The DER must then attempt to contact the driver. If the DER makes contact with the driver, the DER should simply direct the driver to contact the MRO immediately and inform the driver of the consequences of failing to contact the MRO within the next 72 hours. If the DER is unable to reach the driver after making three (3) attempts, spaced reasonably, over a 24-hour period, then the DER may place the driver on temporary medically unqualified status or medical leave. Documentation must be kept by the DER of any actual and/or attempted contacts with the driver, including the dates and times of the contracts. If the DER is unable to contact the driver within the 24-hour period, the DER must leave a message for the driver by voicemail, e-mail or letter to contact the MRO and inform the MRO of the date and time of this message.



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- x. ~~MRO receives a confirmed positive, adulterated, substituted, or invalid test result from the laboratory, the MRO will attempt to contact the driver to determine whether the driver wants to discuss the test result. If the MRO cannot reach the driver after reasonable efforts to do so, the MRO must contact the DER but cannot tell the DER that the driver has a confirmed positive, adulterated, substituted, or invalid test result. The DER must then attempt to contact the driver. If the DER makes contact with the driver, the DER should simply direct the driver to contact the MRO immediately and inform the driver of the consequences of failing to contact the MRO within the next 72 hours. If the DER is unable to reach the driver after making three (3) attempts, spaced reasonably, over a 24-hour period, then the DER may place the driver on temporary medically unqualified status or medical leave. Documentation must be kept by the DER of any actual and/or attempted contacts with the driver, including the dates and times of the contacts. If the DER is unable to contact the driver within the 24-hour period, the DER must leave a message for the driver by voice mail, e-mail or letter to contact the MRO and inform the MRO of the date and time of this message.~~
- xi. Confirmation testing for controlled substances will be performed in accordance with the Oklahoma Act, except when the Oklahoma Act conflicts with Federal law.
- xii. The MRO may conduct additional testing of a specimen as authorized by the DOT if doing so is necessary to verify a test result.
- ~~xi.~~
- xiii. The MRO must verify a confirmed positive test result for marijuana, cocaine, amphetamines, semi-synthetic opioids (i.e. hydrocodone, hydromorphone, oxycodone, and oxymorphone) and/or PCP unless the driver presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in her or his system. In determining whether an employee's legally valid prescription consistent with the Controlled Substance Act for a substance in the categories constitutes a legitimate medical explanation, the MRO must not question whether the prescribing physician should have prescribed the substance.
- xiv. The MRO must verify a confirmed positive test result for opiates in the following circumstances:
- a) The MRO must verify the test result positive if the laboratory confirms the presence of 6-acetylmorphine (6-AM in the specimen)
  - b) In the absence of 6-AM, if the laboratory confirms the presence of either morphine or codeine at 15,000 ng/mL or above, the MRO must verify the test result positive unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in her or his system.
  - c) For all other opiate positive results, the MRO must verify a confirmed positive test result for opiates only if they determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate or opium derivate.



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### ALCOHOL AND DRUG TESTING FOR BUS DRIVERS

~~xii.~~

xv. As part of the verification decision, the MRO must conduct a medical interview that includes reviewing the driver's medical history and any other relevant biomedical factors presented by the driver, as well as directing the driver to undergo further medical evaluation.

~~xiii.~~

~~xiv.~~xvi. DOT tests must be completely separate from non-DOT tests in all respects, and DOT tests must take priority over non-DOT tests. DOT tests must be completed before a non-DOT test is begun. The results of a DOT test shall not be disregarded or changed based on the results of a non-DOT test.

#### Prohibitions

A driver will not be permitted to report to duty or to remain on duty requiring the performance of a safety-sensitive function if:

#### Alcohol

~~1.~~

i. The driver has an alcohol concentration of 0.02 or higher as measured on a breath test.

~~i.~~

ii. The driver displays behavior or appearance characteristics of alcohol misuse.

iii. The driver is under the influence of or is impaired by alcohol, as shown by behavioral, speech, and performance indicators of alcohol misuse.

iv. The driver possesses alcohol while on duty.

v. The driver uses alcohol during duty performance.

vi. The driver has used alcohol within the four hours prior to performing duties.

vii. The driver has had an accident within the last eight hours and has not taken a breath test showing clearance from prohibited alcohol levels.

viii. The driver has refused to take a breath test for alcohol use.

ix. The driver is taking any prescriptions or non-prescription medication containing alcohol, even if the driver has notified the driver's supervisor of the medication use.



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### ALCOHOL AND DRUG TESTING FOR BUS DRIVERS

- ~~vii. The driver has refused to take a breath test for alcohol use.~~
- ~~viii. The driver is taking any prescription or non-prescription medication containing alcohol, even if the driver has notified the driver's supervisor of the medication use.~~

#### Controlled Substances

~~2.~~

- ~~i. The driver uses any controlled substance, unless the use is pursuant to a physician's written certification stating that the use does not adversely affect the driver's ability to safely operate a motor vehicle.~~
- ~~ii. A supervisor or administrative employee has actual knowledge that a driver has used a controlled substance.~~
- ~~iii. The driver has a positive confirmed test for a controlled substance.~~
- ~~iv. The driver displays behavior or appearance characteristics of controlled substance use.~~
- v. The driver has refused to take a controlled substance test.

#### Refusal To Test

~~3.~~

A driver has refused to take an alcohol or controlled substance test if s/he:

- ~~i. Fails to appear for any test as directed by the ~~S~~school ~~D~~istrict.~~
- ~~ii. Fails to remain at the testing site until the testing is complete.~~
- ~~iii. Fails to provide a urine specimen.~~
- ~~iv. Fails to provide a sufficient amount of urine when there is no adequate medical explanation for the failure.~~
- ~~v. Fails to permit a directly observed or monitored collection.~~
- ~~vi. Fails or declines to take a second test the School District or collector has directed.~~
- ~~vii. Fails to undergo a medical examination or evaluation as directed by the MRO as part of the verification process or as directed by the DER when the urine sample was insufficient.~~
- ~~viii. Fails to cooperate with any part of the testing process (e.g. refuses to empty pockets when directed to do so, behaves in a confrontational way that disrupts the collection process).~~





## SECTION V: EMPLOYEES

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### ALCOHOL AND DRUG TESTING FOR BUS DRIVERS

- ix. Has a verified adulterated or substituted test result.

#### Standing Down Employees

4.

Stand-down is “the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.”

- ~~i.~~ i. DOT regulations prohibit employers from standing employees down, before the MRO has completed verification of the test result.
- ~~ii.~~ ii. A verified test is a drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.
- ~~iii.~~ iii. The District may assign a driver non-driving duties pending the receipt of a verified test result when the District has reasonable suspicion to believe the employee is impaired.
- iv. When the District does remove an employee from service, following verification of the drug test result, it will do so consistent with the confidentiality requirements, within its control, imposed by law.

#### Referral and Treatment

A driver who violates any of the Prohibitions in this Policy shall be advised of the resources available to the driver for evaluating and resolving problems associated with the misuse of alcohol or use of controlled substances, including the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs.

A driver who violates any of the Prohibitions in this Policy must be evaluated by a SAP who shall determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse or controlled substance use. The driver will not be permitted to perform safety-sensitive duties for any employer until and unless he or she completes the SAP evaluation, referral, and education/treatment process.

If the driver is identified as needing assistance in resolving problems associated with alcohol misuse or controlled substance use, the driver must be evaluated by a SAP to determine if the driver has properly followed the prescribed rehabilitation program. The driver must be subject to unannounced follow-up alcohol and/or controlled substance tests upon return-to-duty.

The SAP will provide a written report directly to the DER highlighting the SAP’s specific recommendations for a course of education and treatment with which the driver must comply prior to returning to the performance of safety-sensitive functions. Neither the driver nor the ~~S~~school



## **SECTION V: EMPLOYEES**

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### **ALCOHOL AND DRUG TESTING FOR BUS DRIVERS**

District shall seek a second SAP's evaluation in order to obtain another recommendation. Only the SAP who made the initial evaluation may modify his or her initial recommendations.

If the SAP recommends that the driver continue treatment, aftercare or support group services after returning to safety-sensitive duties, the School District may require the driver to participate in the recommended treatment or services as part of the return-to-duty agreement.

These requirements do not apply to drivers refusing to be tested or drivers having a preemployment test of 0.04 or more.

The School District is not required to return a driver to safety-sensitive duties just because the driver complies with the SAP's recommendations.

#### **Educational Materials**

Each driver shall receive educational materials that explain: (1) the alcohol misuse prevention requirements; (2) the School District's policies and procedures; (3) the identity of a contact person knowledgeable about the materials; (4) factual information on the effects of controlled substance use and alcohol misuse on personal life, health and safety; (5) where help can be obtained, including information regarding the School District's Employee Assistance Program; (6) categories of employees subject to testing; (7) a description of prohibited conduct and the circumstances that trigger testing; (8) testing procedures and safeguards; (9) what constitutes a refusal to submit to testing and the consequences; (10) signs and symptoms of an alcohol or controlled substance problem; (11) consequences for drivers with an alcohol test level of 0.02 or more but less than 0.04; and (12) the consequences of violating the rules in this Policy. The District's staff will prepare and distribute appropriate educational materials as provided for in this section.

#### **Training for Supervisors**

The School District shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and at least an additional 60 minutes of training on controlled substance use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing as stated in this Policy. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

#### **Maintenance of Records**

Upon written request, a driver is entitled to obtain copies of any Sschool Ddistrict records concerning the driver's use of alcohol or controlled substances, including test results. The Sschool Ddistrict shall not release individual test results or medical information about a driver to third parties without the employee's specific written consent to the release of a particular piece of information to a particular person or organization. Notwithstanding this prohibition, the Sschool Ddistrict may release information pertaining to a driver's drug or alcohol test without the employee's consent in certain legal proceedings.



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### ALCOHOL AND DRUG TESTING FOR BUS DRIVERS

#### Disciplinary Action

Employees who violate any prohibition in this Policy will be subject to disciplinary measures, including employment termination. Likewise, employees whose test results are positive for alcohol or controlled substances are subject to disciplinary actions, including employment termination. The same disciplinary consequences face individuals who provide false information in connection with the testing process or who fail to cooperate with the District's efforts to fulfill its testing obligations.

#### Clearinghouse Participation

The school district shall report to the Clearinghouse in any situation required by 49 C.F.R. §382.705(b) and shall supply all required information. MROs and SAPs shall also be required to report to the Clearinghouse any situation to which they are required to provide information under 49 C.F.R. §382.705. The situations where reporting is required are described in detail in the school district's policy on Compliance with Regulations regarding the FMCSA Clearinghouse.

#### Other Policies

This Policy does not supersede any other ~~S~~school ~~D~~istrict policy pertaining to alcohol misuse or controlled substance use by ~~S~~school ~~D~~istrict employees, except to the extent that this ~~P~~policy is specific to drivers performing safety-sensitive functions. To the extent permitted by federal law, this ~~P~~policy is to be interpreted consistent with Oklahoma's Act regarding drug and alcohol testing of personnel.

Source: *Broken Arrow Board of Education policy adoption, July 13, 2009*  
*Broken Arrow Board of Education policy revised, November 9, 2020.*  
*Broken Arrow Board of Education policy revised, <DATE>*



## **SECTION V: EMPLOYEES                      POLICY 5195**

### **LACTATION POLICY**

#### LACTATION POLICY

The purpose of this policy is to provide school district employees who are lactating with accommodations should they desire to express breast milk during the workday while separated from their newborn child.

The board of education shall provide any employee who is lactating reasonable paid break time each day to use a designated lactation room for the purpose of maintaining milk supply and comfort. The break time may run concurrently with any break time, paid or unpaid, already provided to the employee. If the break time is unpaid, the lactating employee must be completely relieved from duty.

The board shall make a reasonable effort to designate a private, secure and sanitary room or other location, other than a bathroomtoilet stall, where an employee can pump or express her milk or breastfeed her child. The designated area shall be a space where intrusion from co-workers, students and the public can be prevented, and one where an employee who is using this area can be shielded from view.

#### Contact Information

Any employee who has experienced gender-based harassment, discrimination, bullying, or similar misconduct, including discrimination based on a pregnancy-related condition, or has additional questions regarding the information contained in this policy should contact:

Rusty Stecker  
Title IX Coordinator  
Broken Arrow Public Schools  
701 S Main St Broken Arrow OK 74012  
918-259-5700

Reference: 29 U.S.C. § 207(r); OKLA. STAT. tit. 70, § 5-149.3

Source: *Broken Arrow Board of Education policy adoption, October 11, 2021.*  
*Broken Arrow Board of Education policy revised, <DATE>.*



## SECTION V: EMPLOYEES

## POLICY 5250

### PROFESSIONAL CONDUCT BY STAFF

The Board of Education counts on staff to adhere at all times to recognized standards of professional conduct. Teachers, administrators, and support employees are role models and must exemplify ethical behavior in their relationships with students, patrons, and other staff members. The board expects staff to be mindful that they are professionals and their conduct, particularly in relation to students, patrons, and other staff, must be consistent with professional standards. Staff members must never engage in conduct which detracts from a safe, positive or appropriate learning environment.

The Board of Education believes that all staff members have a responsibility and professional obligation to be familiar with, and abide by, the laws of Oklahoma, the policies of the Board, and the administrative regulations designed to implement them – as they affect the employee’s job and commitments to students and others.

The Oklahoma State Board of Education has directed that every school district permit those Staff and teachers wishing to do so to participate in voluntary prayer.

It is the district’s policy that Staff and teachers may engage in voluntary prayer, including at district athletic events and graduation ceremonies. However, school district employees shall not teach, or instill by way of repetition, any sectarian or religious doctrine.

Any district employee who has not been permitted to participate in voluntary prayer should notify the relevant school building principal or supervisor of the violation of this policy. The district will investigate all reports that a district employee has not been permitted to participate in voluntary prayer pursuant to this policy.

The OSDE *Standards of Performance and Conduct* set forth standards for the professional conduct of teachers. The Board, like the State Department of Education, requires teachers in the school system to adhere to this code. It expects its administrators also to adhere to requirements for administrators. In addition, the Board approves specific ethical standards that should guide the conduct of all staff members.

#### Specific Responsibilities

Essential to the success of ongoing school district operations and the instructional program are the following responsibilities, required of all personnel:

1. Support and enforcement of policies of the Board and regulations of the school district administration in regard to students.
2. Concern and attention toward their own and the district’s legal responsibilities for the safety and welfare of students, including the need to assure that students are reasonably supervised within the constraints presented.
3. Avoidance of exploitation of relationships with students, other staff members, or district patrons.
4. Consistently and promptness in attendance at work.



## SECTION V: EMPLOYEES

## POLICY 5250

### PROFESSIONAL CONDUCT BY STAFF

5. Diligence in submitting required reports promptly at the times specified.
6. Care and protection of school district property.

#### Staff - Student Relationships

Exploitation of staff-student relationships is inconsistent with obligations owed to students. Commercial and business dealings between students and staff members are prohibited. A staff member may not use a teacher/administrator relationship with a student for personal gain. Likewise, staff members may not use student property for personal use or benefit. Staff members who suspect or recognize an inappropriate relationship between a student or staff member or who observe inappropriate conduct toward or contact with a student are required to report this in writing to their supervisor, the Superintendent, or other District official.

#### Exploitation of a Student

Exploitation of a student may result from an improper personal relationship encouraged by a teacher, administrator or support employee. Staff members should be aware that gestures and physical conduct, even though innocent and properly motivated, may be misinterpreted by students or parents. Therefore, teachers, administrators, and support employees must avoid any conduct that might be characterized as evidencing an improper or unprofessional personal attachment toward a student. Sexual or romantic involvement with a student and sexual harassment by any employee, regardless of the student's age or the student's placement in or out of the teacher's class, is prohibited. School officials will seek criminal investigation and prosecution of any employee suspected of engaging in child exploitation.

#### Standards of Behavior

Staff is expected, in their capacity as role models, to establish an example of acceptable behavior for students. Teachers, administrators and support employees must refrain from the use of vulgar or obscene language and conduct in the presence of students. Similarly, discussion with students of issues personal to the staff member, such as divorce, sexual issues, or similar highly personal subjects, is inappropriate. The use of alcohol by any staff member in the presence of students is prohibited. Likewise, the use of illegal or illicit drugs by employees, in or outside the presence of students, is prohibited and grounds for disciplinary action, including dismissal.

Staff members are required to limit communication with students via computers or wireless telecommunication devices to matters concerning the student's education or extra-curricular activities for which the staff member has assigned responsibility. Even when communication is related to school related matters, employees should avoid frequent messaging - particularly when messaging is to a single student. No staff member may establish an internet site for the purpose of communicating with students regarding school matters without the express written permission of the Superintendent or other designated school official.

Employees who engage in job-related communications with students are required to publish to students' class guidelines or activity-based guidelines for communicating with students that the instructor, coach, or sponsor will follow. In instances where a student's communications are



## **SECTION V: EMPLOYEES**

## **POLICY 5250**

### **PROFESSIONAL CONDUCT BY STAFF**

inappropriate or personal and outside permissible school boundaries (with the instructor, coach, sponsor or those in similar relationship to the student) the employee has the responsibility to stop the inappropriate communication, report the communication to his or her supervisor and take prompt action to re-direct the student's communication.

Staff members are expected to refrain from comments or statements, even in jest, reflecting adversely on any person or group with reference to race, religion, sex, national origin, sexual orientation, or handicapping conditions. Racial, ethnic, or sexual slurs in the presence of students or during work or work related activities or programs constitute unprofessional conduct.

#### Exploitation by Supervisors of Subordinate Employees

The exploitation by supervisors of subordinate employees is improper and prohibited. In particular, any employee who supervises, directs, evaluates or makes any employment recommendations with regard to any other employee (i.e. acts as a supervisor) is prohibited from engaging in any commercial, business, romantic, sexual or other similar type of personal relationship with any employee who is or may be subordinate to the supervisor.

#### Fiscal Management

It is imperative that sound fiscal management procedures be followed by staff to ensure maximum benefit for each dollar expended. Accordingly, misuse of district property and/or funds constitutes unacceptable behavior. Employees must adhere to accepted procedures of sound accounting, reporting, business and purchasing practices.

**Every employee of this school district has the duty to abide by this professional conduct policy in all respects. Failure to do so may lead to disciplinary action including dismissal or non-renewal from employment, referral to law enforcement authorities for prosecution, or other action appropriate to the nature, gravity, and effect of the relationship on students, other staff members, or school operations.**

**Reference: OKLA. STAT. tit. 70, § 11-101.1**  
**O.A.C. 210: 35-3-251**

Source: *Broken Arrow Board of Education policy adoption, July 13, 2009*  
*Broken Arrow Board of Education policy revised, July 10, 2017.*  
*Broken Arrow Board of Education policy revised, <DATE>.*



**TITLE IX—SEX DISCRIMINATION AND SEXUAL HARASSMENT**

**Policy and Purpose**

The Broken Arrow Public Schools will address all incidents of sex discrimination and sexual harassment reported to the district’s Title IX Coordinators in compliance with Title IX of the Education Amendments of 1972, as amended. The Title IX Coordinators Rusty Stecker, Chief Human Resources Officer and Derek Blackburn, ~~Assistant Superintendent~~~~Executive Director~~ of Security and Student Services are located in the Education Service Center 701 S. Main Street, Broken Arrow, OK 74012, 3<sup>rd</sup> Floor phone number 918-259-5700, or email [rstecker@baschools.org](mailto:rstecker@baschools.org) or [dblackburn@baschools.org](mailto:dblackburn@baschools.org).

This policy informs all students and all district employees of policies and procedures regarding sex discrimination and sexual harassment to which all students, instructional staff, and non-instructional personnel are expected to adhere. In addition, comprehensive information is provided regarding the reporting of sex discrimination and sexual harassment and avenues to seek immediate assistance.

The district seeks to create a positive educational environment on and off campus through our academic programs, services, activities, policies and procedures aimed at providing protection against sex discrimination and harassment. To that end, the district condemns discrimination in its education programs and activities based on sex or gender, sexual orientation, gender identity or expression, sexual harassment, sexual violence, dating violence, and stalking. Notice of sex discrimination or a sexual harassment incident to the district’s Title IX Coordinator charges the district with actual knowledge and triggers its response obligations.

**Scope of the Policy**

The district must respond when sex discrimination and harassment occur in the school’s education programs or activities. Education programs and activities include locations, events, or circumstances in which the district exercises substantial control over both the respondent and the context in which the discrimination or harassment occurred. Title IX applies to all of the district’s education programs or activities, whether such programs or activities occur on-campus or off-campus, including online instruction.

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





Individuals are responsible for immediately reporting any knowledge or information concerning sexual harassment to the district’s Title IX Coordinators. The district encourages victims of sexual harassment to talk with a counselor. Different employees within the scope of district’s resources have different abilities to maintain a victim’s confidentiality.

- **Counselors** are required to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.” Disclosures to these employees will not trigger an investigation into an incident against the complainant’s wishes.
- **District Employees** are required to report all the details of an incident (including the identities of both the complainant and respondent) to the Title IX Coordinators. A report to district employees (called “responsible employees”) constitutes a report to district and places district on notice to take appropriate steps to address the situation.

This policy also applies to retaliation by district or any person against any other person for the purpose of interfering with Title IX rights, or because the person has participated or refused to participate in any manner in a proceeding under Title IX that is prohibited.

**Assistance Following an Incident of Sexual Harassment**

- Immediate Assistance:

Persons who have complaints of sexual harassment may file their complaints with the Title IX Coordinators Rusty Stecker, Chief Human Resources Officer or Derek Blackburn, ~~Assistant Superintendent~~~~Executive Director~~ of Security and Student Services, located in the district Education Service Center, 701 S. Main Street, Broken Arrow, OK 74012, 3<sup>rd</sup> floor, phone number 918-259-5700, or email [rstecker@baschools.org](mailto:rstecker@baschools.org) or [dblackburn@baschools.org](mailto:dblackburn@baschools.org).

Victims of sexual violence should get to a place of safety and call Police. Obtain necessary medical treatment; time is a critical factor for evidence collection and preservation. An assault should be reported directly to a law enforcement officer, and district officials will assist in facilitating this process. Filing a police report will not obligate the complainant to prosecute, nor will it subject the reporting party to scrutiny or judgmental opinions from officers. Filing a police report will ensure that a victim of sexual violence receives the necessary medical treatment and tests, at no expense to the complainant to the extent provided for by Oklahoma law, and provide the opportunity for collection of evidence helpful in prosecution, which cannot be obtained later.

COMPLAINANT OR WITNESS: CALL BROKEN ARROW POLICE DEPARTMENT 918-259-8400 FOR IMMEDIATE ASSISTANCE.



- Ongoing Assistance:

In order to ensure the safety and well-being of the complainant, district may take interim measures such as changing academic schedules, work schedules, extracurricular activity modifications, addressing transportation issues, withdraw from/retake a class without penalty, academic support (e.g., tutoring), leaves of absence, counseling, campus escort services, distance learning arrangements, or similar measures. In addition, while an investigation is pending district may initiate a “no contact order” between the parties that carries a sanction of short- or long-term suspension if violated.

The district offers internal counseling options. District officials and representatives are available to facilitate access to support services. Several service organizations in Oklahoma have provided telephone numbers and made available other services for students, staff and campus community members. District will assist any interested person, needing assistance, in contacting these agencies.

- Statewide Support Services:

Oklahoma Safeline - 1-800-522-7233 (SAFE)

Oklahoma Safeline - Oklahoma City Metro Area - 405-522-7233 (SAFE)

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

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

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

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

Oklahoma Coalition Against Domestic Violence/Sexual Assault - 405-524-0700 (M-F/9-5)

- Other Support Services

Daybreak Family Services

1516 Boston Ave. Ste. 1

Tulsa, OK 74119

918-561-6000

[www.daybreakfamilyservices.com](http://www.daybreakfamilyservices.com)

Family & Children’s Services

2325 S. Harvard Ave. Unit 400

Tulsa, OK 74114

[www.fcsok.org](http://www.fcsok.org)

EEOC-Sexual Harassment

<https://www.eeoc.gov/sexual-harassment>



## **SECTION V: EMPLOYEES**

## **POLICY 5400**

### **TITLE IX – SEX DISCRIMINATION AND SEXUAL HARASSMENT**

Domestic Violence Intervention Services, Inc.  
3124 E. Apache St.  
Tulsa, OK 74110  
918-743-5763  
[www.dvis.org](http://www.dvis.org)

Mental Health Association of Oklahoma  
5330 E. 31<sup>st</sup> Street  
Tulsa, OK 74135  
918-585-1213  
[www.mhaok.org](http://www.mhaok.org)

OK Attorney General Office of Victim Services  
<http://www.oag.ok.gov/victim-services>

#### **Title IX Coordinator and Staff**

- Title IX Coordinators have primary responsibility for overseeing the process of coordinating district's compliance efforts, receiving complaints, investigations, hearing, sanctions, appeals, and education and training associated with this policy. To file a complaint or submit questions concerning actions governed by this policy contact the Title IX Coordinators.
- Deputy Title IX Officers have the secondary responsibility and assist with the duties of the Title IX Coordinators. Deputy Title IX Officers include:
- Tony Sappington, Executive Director Secondary Education – Education Service Center  
701 S. Main Street Broken Arrow, OK 74012 2<sup>nd</sup> Floor 918-259-5720
- Jennifer Peterson, Executive Director Elementary Education – Education Service Center  
701 S. Main Street Broken Arrow, OK 74012 2<sup>nd</sup> Floor 918-259-7723
- Karen Schwab, Executive Director of Human Resources – Education Service Center  
701 S. Main Street Broken Arrow, OK 74012 1<sup>st</sup> Floor 918-259-5743
- Lindsay Drake, Director of Recruitment & Staffing – Education Service Center  
701 S. Main Street Broken Arrow, OK 74012 1<sup>st</sup> Floor 918-259-5713
- Dustin Smith, Executive Director of Athletics – Varsity Training Center  
2200 N. 23<sup>rd</sup> Street Broken Arrow, OK 74012 2<sup>nd</sup> Floor 918-259-5900



## **SECTION V: EMPLOYEES**

## **POLICY 5400**

### **TITLE IX – SEX DISCRIMINATION AND SEXUAL HARASSMENT**

- Amanda Snider, Associate Director of Athletics – Varsity Training Center 2200 N. 23<sup>rd</sup> Street Broken Arrow, OK 74012 2<sup>nd</sup> Floor 918-259-5900
- Title IX Investigators may include but not be limited to district administration. The primary responsibility of the investigator relates to formal complaints. The investigator is to collect statements and any evidence directly related to any allegations of a Title IX policy violation as directed by the Title IX Coordinators. Investigators will receive appropriate Title IX training.
- Title IX Hearing Officer (decision-maker) may include a district administrator, legal counsel or specially designated officer. The primary responsibility of the hearing officer is to ensure both parties receive due process in the event allegations of a Title IX policy violation are directed to a hearing by the Title IX Coordinators. Hearing Officers will receive appropriate Title IX training.

#### **Definitions**

The district defines sex discrimination and sexual harassment broadly to include any of three types of misconduct on the basis of sex (or gender), all of which jeopardize the equal access to education that Title IX is designed to protect:

1. Any instance of quid pro quo harassment by a school's employee;
2. Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; and
3. Any instance of sexual assault, dating violence, domestic violence, or stalking as defined by Federal law.

Offenses prohibited under the district's policy include, but are not limited to: sex discrimination (including sexual orientation discrimination and gender identity or gender expression discrimination), sexual harassment, sexual violence to include nonconsensual sexual contact, nonconsensual sexual intercourse, sexual coercion, domestic/dating violence, stalking, and sexual exploitation.

- A. Sex Discrimination: includes sexual harassment and is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their education or employment, or school-related benefits, on account of sex or gender (including sexual orientation, gender identity, and gender expression discrimination). It may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.



B. Sexual Harassment: is unwelcome and discriminatory speech or conduct undertaken because of an individual’s gender or is sexual in nature and is so severe, pervasive, or persistent, objectively and subjectively offensive that it has the systematic effect of unreasonably interfering with or depriving someone of educational, institutional, or employment access, benefits, activities, or opportunities. Students, vendors and visitors who are subject to or who witness unwelcome conduct of a sexual nature are encouraged to report the incident(s) to the Title IX Coordinators or any district employee. District employees who witness or learn of such conduct are required to report it to the Title IX Coordinators.

1. Hostile Environment: Sexual harassment includes conduct that is sufficiently severe, pervasive, or persistent, objectively and subjectively offensive that it alters the conditions of education or employment or institutional benefits of a reasonable person with the same characteristics of the victim of the harassing conduct. Whether conduct is harassing is based upon examining a totality of circumstances, including but not limited to the following:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- Whether the conduct was deliberate, repeated humiliation based upon sex;
- The effect of the conduct on the alleged victim’s mental or emotional state from the perspective of a reasonable person;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Continued or repeated verbal abuse of a sexual nature, such as gratuitous suggestive comments and sexually explicit jokes; and
- Whether the speech or conduct deserves constitutional protections.

2. Quid Pro Quo Sexual Harassment exists when individuals in positions of authority over the complainant engage in the following behaviors:

- Make unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
- Indicate, explicitly or implicitly, that failure to submit to or the rejection of such conduct will result in adverse educational or employment action or where participation in an educational program or district activity or benefit is conditioned upon the complainant’s submission to such activity.

Examples of Harassment:



- A teacher insists that a student have sex or engage in sexual acts with him/her in exchange for a good grade. This is harassment regardless of whether the student agrees to the request.
  - A student repeatedly sends sexually oriented jokes around in an email list he or she created, even when asked to stop, causing one recipient to avoid the sender on campus or in connection with classes or school sponsored events in which both are involved.
  - The teacher's assistant probes for explicit details of a student's sexual history, and demands that the student respond, though the student is clearly uncomfortable and hesitant.
  - An administrator asks a student for nude or semi-nude pictures to be sent via Snapchat or other social media.
  - The coach provides explicit details of his sexual past or describes his sexual relationship with his spouse or girlfriend.
  - An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to his clear discomfort and embarrassment.
- C. Sexual Violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age, school status, or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties.
1. Nonconsensual Sexual Contact is any intentional touching, however slight, whether clothed or unclothed, of the victim's intimate body parts (primarily genital area, groin, inner thigh, buttock or breast) with any object or body part, without consent and/or by force. It also includes the touching of any part of a victim's body using the perpetrator's genitalia and/or forcing the victim to touch the intimate areas of the perpetrator or any contact in a sexual manner even if not involving contact of or by breasts, buttocks, groin, genitals, mouth or other orifice. This definition includes sexual battery and sexual misconduct.
  2. Nonconsensual Sexual Intercourse is defined as any sexual intercourse or penetration of the anal, oral, vaginal, genital opening of the victim, including sexual intercourse or penetration by any part of a person's body or by the use of an object, however slight, by one person to another without consent or against the victim's will. This definition includes rape and sexual assault, sexual misconduct, and sexual violence.
    - a) Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent



of the victim. This definition includes any gender of victim or perpetrator. Sexual penetration means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

3. Sexual Coercion is the act of using pressure (including physical pressure, verbal pressure or emotional pressure), alcohol, medications, drugs, or force to have sexual contact against someone’s will or with someone who has already refused. This includes rape, sexual assault, sexual exploitation and sexual misconduct.
4. Dating Violence is violence between individuals:
  - The party is or has been in a social relationship of a romantic or intimate nature with the victim;
  - The existence of such a relationship shall be determined based on a consideration of the following factors:
    - Length of the relationship
    - Type of relationship
    - Frequency of interaction between the persons involved in the relationship
- D. Advisor - a person who has agreed to assist a complainant or respondent during the Title IX process. The advisor may be a person of the student’s choosing, including but not limited to a district faculty or staff member, a friend or an attorney.
- E. Complainant - an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- F. Respondent – an individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination or sexual harassment.
- G. Formal complaint – a document filed by a complainant or signed by the Title IX Coordinators alleging sexual harassment against a respondent and requesting that the school investigate the allegation(s) of sexual harassment and stating the date, time, place, name(s) of person(s) involved (e.g., the accused, witnesses) and sufficient details to make a determination regarding basic elements of the formal complaint process.



- H. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
- I. Supportive measures - individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

**Consent**

Consent is the act of willingly agreeing to engage in sexual contact or conduct. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and the absence of “No” may not mean “Yes”.

- A. Consent is informed, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity.
- B. Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- C. Previous relationships or consent does not imply consent to future sexual acts.
- D. Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity.
- E. In order to give effective consent, one must be of legal age and have the capacity to consent. Incapacity may result from mental disability, intellectual disability, unconsciousness/sleep, age, or use of alcohol, drugs, medication, and/or other substances. Consent given by someone who one should know to be, or based on the circumstances, reasonably should have known to be, mentally or physically incapacitated, is not consent. Incapacitation is a state where someone cannot make rational, reasonable decisions because he or she lacks capacity to give knowing consent. Note: indications of consent are irrelevant if the initiator knows or should reasonably have known of the incapacity of the other person.

Examples of when a person should know that another is incapacitated include, but are not limited to the following:

- The amount of alcohol, medication or drugs consumed,
- Imbalance or stumbling,
- Slurred speech,





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- Lack of consciousness or inability to control bodily functions or movements, or vomiting, or
- Mental disability or incapacity.

F. Use of alcohol, medications, or other drugs will not excuse behavior that violates this policy.

#### **Reporting**

##### **A. Mandatory Reporting**

All district employees are responsible for taking all appropriate action to prevent sex discrimination or sexual harassment, to correct it when it occurs, and must promptly report it to the Title IX Coordinators. Failure to do so may result in disciplinary action up to and including termination. All district employees are considered responsible employees with a duty to report any incident to the Title IX Coordinators. The only exception to the mandatory duty to report is a licensed counselor for whom the report is considered a privileged exchange.

##### **B. Confidential Reporting**

Resources are available through staff and counselors. Victims' advocates are available to speak with any person who wishes to report an incident and remain anonymous. All forms of sexual harassment should be reported, no matter the severity. In addition, the district should be made aware of possible threats to the campus community in order to issue timely warnings.

##### **C. Reporting to the Police**

The district strongly encourages anyone to report sexual violence and any other criminal offenses to the police. This does not commit a person to prosecution, but will allow the gathering of information and evidence. The information and evidence gathered preserve future options regarding criminal prosecution, district disciplinary actions and/or civil actions against the respondent.

- If the incident happened on campus, it can be reported to the district's SRO or ~~SRO-Officer~~ [Director of Campus Security](#) Jeff Martin at 918-259-5751, or an officer of the Broken Arrow Police Department at 918-259-8400. If the incident happened anywhere else, it can be reported to the local law enforcement with jurisdiction in the location where it occurred. Please know that the information you report can be helpful in supporting other reports and/or preventing further incidents.



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- Reporting for Faculty and Staff (Non-Student) Instances: Faculty and staff shall report any instances of sexual harassment by another faculty or staff member to the Title IX Coordinators. As stated above, the district also strongly encourages reporting any instances to the police.
- Employee Obligation to Report (Student Instances): In compliance with Title IX, employees who become aware of a student instance of sexual harassment shall immediately report such instance to the Title IX Coordinators, including the name(s) of the persons involved.

#### **D. Student Reporting**

Students shall report any instances of sex discrimination or sexual harassment to any district employee and/or the Title IX Coordinators. Only victims or their parents or guardians can file a formal complaint of sexual harassment. A complaint should be filed as soon as possible. If either the complainant or the respondent is a student, the incident will be addressed through the Title IX process. The report can be made in person, by phone, mail, or email using the contact information listed for the Title IX Coordinators or by any other means that result in the Coordinators receiving the report. The report can be made any time, even during non-business hours.

After receiving a report or notice of an incident, the Title IX Coordinators will promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. A complainant's wishes with respect to whether the district investigates will be respected unless the Title IX Coordinators determine that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

The district will promptly take necessary steps to protect the complainant and ensure safety as necessary, including taking interim steps before the final outcome of any investigation once a report or knowledge of sexual harassment has occurred. In some instances, the district may implement an emergency removal of a student when a safety and risk analysis indicate that an imminent threat exists to the physical health or safety of a party. A party subject to an emergency removal shall have an opportunity to challenge the decision immediately following the removal. An employee may be placed on administrative leave or suspended during the pendency of the grievance process. Periodic updates on the status of the investigation will be provided to the complainant. If the school determines that sexual violence occurred, the district will continue to take steps to protect the complainant and ensure safety at school or related activities. The district will provide the complainant with available resources, such as victim advocacy, academic support,



counseling, disability services, health and mental health services, and assistance in reporting a crime to local law enforcement.

#### **Written Notice of Complaint**

Upon receipt of a formal complaint, the Title IX Coordinators will provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. Written notice includes:

- a. Notice of the grievance process, including any informal resolution process;
- b. Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response;
- c. A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- d. Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- e. Notice that knowingly making false statements or providing false information in the grievance process is a violation of the code of conduct of students or a violation of performance and conduct standards for employees.

#### **Investigation**

An investigator will be designated to investigate the allegations contained in the complaint or which are developed in the course of the investigation. The burden of gathering evidence and burden of proof must remain on the district—not on the parties.

An investigation will be conducted by a district Title IX official. This investigation will include:

- Meeting personally with the complainant (unless extraordinary circumstances prevent a personal meeting),
- Meeting personally with the respondent (unless extraordinary circumstances prevent a personal meeting),
- Presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made,
- Collecting any physical evidence,
- Meeting personally with any witnesses (unless extraordinary circumstances prevent a personal meeting with one or more witnesses),
- Reviewing any documentary evidence, and
- Preparing a report of the investigation.



The investigation of complaints will be adequate, reliable and impartial. The investigation process can take up to 60 days. When investigating a complaint and throughout the grievance process, the district must do the following:

1. Ensure that the burden of proof and of gathering evidence rests on district rather than the parties;
2. Provide an equal opportunity for the parties to present witnesses and evidence;
3. Not restrict either party's ability to discuss the allegations or gather and present evidence;
4. Provide the parties with the same opportunities to have others present during interviews or related proceedings, including an advisor;
5. Provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose, and location of any investigative interview, hearing or other meeting with enough time to allow the party to prepare and participate;
6. Provide both parties and their advisors an equal opportunity to review all evidence directly related to the allegations in the formal complaint (both exculpatory and inculpatory) at least 10 days prior to the completion of the final investigation;
7. Ensure that if the district obtains additional information from or about the respondent or complainant, during the course of the investigation, that was not included in the original notice to the parties—both parties will be provided written notice of additional allegations and a reasonable opportunity to respond in writing to the new information or documents;
8. Prepare a written report that fairly summarizes the relevant evidence and provide the report to both parties and their advisors for review and written response at least 10 days before a hearing or determination of responsibility; and
9. Ensure that parties will have 10 calendar days to respond to the investigator's report; any response will be considered in connection with any hearing that is conducted.

The Title IX Coordinators will determine if a Title IX hearing is necessary. In making this determination, the Coordinators will consider whether both parties request or consent to a hearing and will agree to participate in a hearing. If it is determined that the district will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing.

#### **Mandatory or Permissive Dismissal**

Mandatory dismissal must occur when it is determined in the course of the investigation that allegations in a formal complaint: (1) did not occur in the district's program or activity; (2) did not constitute sexual harassment as defined, or (3) did not occur against a person within the United States. Both parties must receive written notice of a mandatory dismissal and reasons.

Permissive dismissal may occur at any time during the investigation or hearing when: (1) a complainant notifies the Title IX Coordinators in writing that they would like to withdraw; (2) the respondent is no longer enrolled or employed by the district; or (3) specific circumstances prevent the district from gathering evidence sufficient to reach a determination. Both parties must receive written notice of a permissive dismissal and reasons.



The district may still address allegations of misconduct under the Student Code of Conduct or employee disciplinary procedures.

**District Action**

A. Informal resolution is available in some circumstances. Informal resolutions are unavailable unless a formal complaint of sexual harassment is filed. Informal resolution may include conflict resolution or a restorative agreement between the parties with a trained Title IX Officer presiding over the informal resolution conference. Participation in informal resolution is never mandatory, and will only take place with the full consent of both parties involved. Informal resolution may only be used:

1. When a formal complaint of sexual harassment is filed;
2. Prior to a Notice of Hearing being issued;
3. When a Title IX Officer determines this is a suitable option for resolving the concern, and both the complainant and respondent agree to use the process;
4. When the complaint does not involve sexual violence as defined in the Title IX Policy; and
5. When both parties acknowledge receipt of written notice of their rights under this policy and both parties provide written, voluntary consent.

Informal resolution is not available when the complaint alleges a district employee sexually harassed a student.

Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted. However, either the Complainant or the Respondent may withdraw from informal resolution at any time prior to the entry of a voluntary resolution agreement and proceed with the Title IX hearing. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Title IX Coordinators to a Title IX Hearing. No offers to resolve the conflict that were made or discussed during the informal voluntary resolution process may be introduced during the Title IX Hearing.

B. Title IX Hearing

The district has determined that, unless extraordinary circumstances are present, the hearing process will be conducted through written exchanges but a live hearing will not be conducted.

The Title IX Hearing Officer’s responsibilities include but are not limited to the following, regardless of whether a hearing is conducted through written exchanges, ~~or a live hearing:~~



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- Read and understand the Title IX Policy and Procedures, which include the hearing process;
- Read and understand all of the information of the Title IX case provided by the Coordinator prior to the hearing as part of a hearing packet;
- Read and understand the procedures of the Title IX hearing (~~live or non-live~~) provided by the Coordinator prior to the hearing as part of a hearing packet;
- Have a clear understanding of the incident(s) in question before making a decision;
- Decide the outcome and sanctions if needed based on the information presented, hearing notes, and the district Title IX Policy;
- Maintain copies of all notes made. The hearing officer will inform the parties of the decision ~~at the live hearing~~ and send a letter as described in this policy;
- Ensure that parties have had ample time and opportunity to ask questions and obtain responses before the hearing officer renders a decision (live or non-live); and
- Ensure that the determination (decision) includes a statement of and rationale as to each allegation, a determination of responsibility, any disciplinary sanctions, and whether remedies to restore equal access to the district's educational programs or activities will be provided to the complainant.

#### Complainant's Rights:

- Be given a written explanation of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during ~~the entire live hearing~~ or be fully aware of the process. ~~used in a non-live hearing~~;
- Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students should provide district with the name and contact information for the student's advisor as soon as practical but at least three (3) calendar days prior to the hearing;
- Be given a timely ~~hearing~~ ~~live or non-live hearing~~;
- Be assured of exclusion of evidence of the victim's past sexual history from discussion during the hearing. The past sexual history of the victim with persons other than the respondent shall be presumed irrelevant;
- Be permitted to clarify that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent (remember students cannot consent to sexual harassment) or preclude a finding of sexual harassment;
- Be provided written notification of the outcome of the hearing including any sanctions, remedies/accommodations for the complainant, additional remedies for the school community;



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- Be provided written notification of any external counseling services that may be available;
- Be provided written notification of options for changing academic, extracurricular, transportation, school-site, or work-site situations, if reasonable;
- Be provided written notification of an avenue for appeal.

#### Respondent's Rights:

- Be given written notice of the allegations and the hearing process;
- Be given access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Have no violation presumed until found responsible;
- Be given a timely hearing;
- Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students should provide the district with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing;
- Be informed that evidence of the victim's past sexual history will be excluded from discussion during the hearing or hearing process. Similarly, the past sexual history of the victim with persons other than the respondent shall be presumed irrelevant;
- Be provided written notification of the outcome of the hearing including any sanctions, remedies/accommodations for the complainant or respondent, additional remedies for the school community;
- Be provided written notification of external counseling services that may be available;
- Be provided written notification of options for changing academic, extracurricular, transportation, school-site, or work-site situations, if reasonable; and
- Be provided written notification of an avenue for appeal.

#### **Live Hearings**

~~A live hearing will not be conducted unless students who are parties to the complaint are at least 18 years of age or extraordinary circumstances are present. The complainant and respondent will be notified in writing of the hearing date, the alleged policy violation(s) and issued a notice to appear at the hearing. The Notice of Hearing will be hand-delivered or mailed to the physical or electronic addresses of the parties. Parties are responsible for ensuring that a current physical and electronic mail address is included in district records. The live hearing will include opening statements, each party's evidence and witnesses, cross-examination, and closing statements. Students are permitted to have an advisor accompany the Student throughout the disciplinary hearing. Students should provide district with the name and contact information for the Student's advisor at least 3 calendar days prior to the hearing. Parties are present during the disciplinary~~



~~hearing (except during deliberations of the hearing officer). Parties are permitted to make statements, present witnesses and present evidence during the hearing which has been previously collected and approved during the investigative process.~~

**~~Non-Live~~All Hearings**

~~Non-live hearings will have similar rights and responsibilities, except that t~~The hearing officer will conduct the hearing via written or oral exchanges ~~officer~~ and neither the complainant nor the respondent will confront one another; no cross-examination will occur. However, both parties will be invited to submit questions, receive answers, and present relevant written arguments in connection with the claims and defenses. Parties will have at least 10 days to respond to the receipt of information or documents to which they wish to respond. The investigator’s report, all submissions by the parties, the exchange of information, documents and arguments will provide the basis for the hearing officer’s decision.

**All Hearings**

Witnesses and evidence need to be directly related to the claims. Parties will be notified in any instance in which responses, information or documents are not available because of a privilege (not waived by the party who asserts the privilege) or irrelevant information is involved (.e.g., information involving prior sexual behavior or sexual predisposition is irrelevant; a privilege such as an attorney-client or doctor-patient or other privilege bars introduction of certain evidence). The standard of proof used in district Title IX Hearings is the preponderance of the evidence, which means the determination to be made is whether it is more likely than not a violation occurred. This is significantly different than proof beyond a reasonable doubt, which is required for a criminal prosecution.

**Outcomes**

If it is determined under the preponderance of evidence standard (more likely than not to have occurred) that the respondent is not responsible for a Sexual Harassment policy violation the complaint will be dismissed.

If it is determined under the preponderance of evidence standard that the respondent is responsible for a Sexual Harassment policy violation the following sanctions will be considered. The listing of sanctions below is not intended to be exclusive; actions may be imposed singularly or in combination when a violation of this policy is found.

Discrimination (includes gender discrimination) may include the following sanctions on the student(s) found responsible:





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- Restriction – A limitation on a student’s privileges for a period of time and may include but not be limited to, the denial of the use of facilities or access to parts of campus, denial of the right to represent the district, or denial of participation in extracurricular activities.
- Service Project – Community service or an education class or project beneficial to the individual and campus or community.
- Probation – A specified period of time during which the student is placed on formal notice that he/she is not in good social standing with the district and that further violations of district policies will subject the student to suspension from school.
- Suspension – If warranted by the severity of the incident, removal from classes and other privileges or activities for a definite period of time not to exceed the remainder of the semester in which the incident occurred and the following semester and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from the district are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Principal. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the student’s transcript will not be made; however, a permanent record of the action will be maintained in the student’s record.

Sexual Harassment may include the following sanctions on the student(s) found responsible.

- Restriction – A limitation on a student’s privileges for a period of time and may include but not be limited to the denial of the use of facilities or access to parts of campus, denial of the right to represent district.
- Service Project – Community service or an education class or project beneficial to the individual and campus or community.
- Behavioral Change Requirement – Required activities including but not limited to, seeking academic counseling, substance abuse assessment, decision making class, writing a reflection paper, etc.
- Probation – Students are prohibited from participating in any extracurricular activities not directly associated with academics (e.g., intramural sports, attending athletic events, student organizations/clubs/associations, leadership positions or other organizations). Students must apply to be removed from probation by submitting documentation of their significant proactive efforts to become good citizens of the community and engage in responsible, productive behavior.
- Suspension – If warranted by the severity of the incident, removal from classes and other privileges or activities for a definite period of time not to exceed for the remainder of the semester in which the incident occurred and the following semester and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from district are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Principal. Conditions to conclude a suspension and reinstatement process will be stated in



the written notification. Notation on the student’s transcript will not be made; however, a permanent record of the action will be maintained in the student’s record.

Sexual Violence may include the following sanction on the student(s) found responsible.

- Long-term Suspension – Suspension of student status for an indefinite period not to exceed the maximum period permitted by law. The conditions for readmission, if any, shall be stated in the hearing outcome letter. In addition, a student, though readmitted to the school by operation of law, may be denied the opportunity to participate in extracurricular activities for as long as the student is enrolled in the district. Notation on the student’s transcript will not be made; however, a permanent record of the action will be maintained in the student’s record. Removal should be reserved and used only in cases involving the most severe instances of misconduct.

Both parties will be notified of the outcome in writing at the same time by certified mail or other agreed upon form of notice within five business days after the hearing. Both parties have the right to appeal the decision reached through the hearing process within five days after the hearing.

### **Appeal Procedures**

An appeal is not a new hearing, but is a review of the record of the original hearing. It serves as a procedural safeguard for the student or other party. The burden of proof shifts from the district to the party found responsible for the policy violation. The appealing party must show one or more of the listed grounds for an appeal.

- A. Appeals must be submitted in writing to the Superintendent within five (5) district working/calendar days of receiving the decision. Failure to file an appeal within the prescribed time constitutes a waiver of any right to an appeal.
- B. The appeal must cite at least one of the following criteria as the reason for appeal and include supporting argument(s):
  1. The original hearing was not conducted in conformity with prescribed procedures and substantial prejudice to the complainant or the respondent resulted.
  2. The evidence presented at the previous hearing was not “sufficient” to justify a decision against the student or group.
  3. New evidence which could have substantially affected the outcome of the hearing has been discovered since the hearing. The evidence must not have been available at the time of the original hearing. Failure to present information that was available is not grounds for an appeal.
  4. The sanction is not appropriate for the violation. This provision is intended to be utilized when a determined sanction is inherently inconsistent with district procedures



or precedent. Simple dissatisfaction with a sanction is not grounds for overturning a sanction under this provision.

- C. The Superintendent will review the record of the original hearing, including documentary evidence. It is the Superintendent’s discretion to convert any sanction imposed to a lesser sanction, to rescind any previous sanction, or to return a recommended sanction to the original hearing officer for review/or reconsideration. If there is new evidence (unavailable at the time of the hearing through no fault of the parties) which is believed to substantially affect the outcome, or evidence presented at the previous hearing was “insufficient” to justify a decision against the student or group, or a finding that a substantial procedural error resulting in prejudice occurred, the matter may be remanded to either a rehearing of the entire matter or reconsideration of specific issues. If remanded to the original hearing officer, either or both students may appeal the hearing officer’s decision to the Superintendent and the procedures set out above shall control the appeal.
- D. The final decision will be communicated in writing by the Superintendent to both parties. The decision will be communicated within ten (10) calendar days of receiving the hearing officer’s decision.
- E. The decision of the Superintendent on appeal shall be final.

**Retaliation**

The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a district’s attention, including publicly opposing sexual harassment or filing a sexual harassment complaint with the district or any State or Federal agency, it is unlawful for the district to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or district’s investigation or proceeding. Therefore, if a student, parent, teacher, sponsor, coach, or other individual complains formally or informally about sexual harassment or participates in an OCR or district investigation or proceedings related to sexual harassment, the district is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual’s complaint or participation. Individuals who, apart from official associations with district, engage in retaliatory activities will also be subject to district’s policies insofar as they are applicable to third party actions.

The district will take steps to prevent retaliation against a student who filed a complaint on his or her own behalf or reported on behalf of another student, or against those who provided information as witnesses. Complaints of retaliation will follow the same process of investigation, hearing, and appeal.



If it is determined under the preponderance of evidentiary standard (more likely than not to have occurred) that a student is responsible for retaliation the following sanction will be imposed.

- Suspension – Removal from classes and other privileges or activities for a definite period of time not to exceed the maximum period permitted by law and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from district are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Principal. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record.

**District Officers and Designees**

The designation of a district official responsible for prescribed actions shall automatically include the official’s designee in instances where an official is unable, unavailable or it appears that the official may have a conflict of interest that causes the official to recuse from involvement in the matter. The official’s designee shall have the same authority as the official in matters involving this policy. In connection with an appeal the Superintendent may appoint a neutral individual, not employed by the district, to consider and decide the appeal.

**Timelines**

Unless otherwise stated, a reference to days, refers to calendar days. The intent of this policy is to complete the grievance process within 60 days of the filing of a formal complaint; however, the timeline can be affected by one or both parties’ right to at least 10 days to review and respond, consistent with the procedural protections provided both parties. An extension of timelines by agreement or to ensure one or both parties’ opportunity to respond will not violate this policy even if the timeline for resolution of a grievance through appeal, for good cause, exceeds 60 days.

**Recordkeeping Protocol**

The district will document all reports and complaints of sex discrimination and provide copies of those reports to the Title IX Coordinators. The district Title IX Office will maintain a secured electronic file system of all Title IX cases, reports, and complaints by academic year. The cases will include all information related to the individual case, which includes but is not limited to the initial complaint, letters sent to all parties, response from the respondent, immediate or other assistance, investigation notes, informal resolution agreement (if applicable), ~~notice of hearing,~~ committee selection, hearing notes, hearing decision, written notice of the outcome, and any recordings made ~~of the live hearing or~~ in the course of the investigation. The time period to maintain the case records will be no less than seven (7) years from the date of district’s final action or decision (whether through report of the investigation, informal resolution, hearing, or appeal).



The confidential reporting of the number of incidents and types will be sent to district Security for the preparation of the Annual Crimes Report.

#### **Prevention and Education**

##### **A. Education**

District requires all employees to take sexual harassment educational training courses on an annual basis. Failure to have a confirmation of this required training may result in appropriate disciplinary action. Additional in-person trainings are also offered periodically and upon request.

##### **B. Bystander Intervention**

If you witness sexual harassment, or behaviors that may lead to sexual harassment (a violation of district policy), there are a variety of things you can do as a bystander:

- Divert the intended victim (e.g., “help me; I don’t feel well!”)
- Distract the perpetrator (e.g., “looks like your car is being towed; a police officer is on the way!”)
- Delegate to a person of authority (e.g., if at a party let a parent, or other adult know of the situation)
- Direct, confront the perpetrator (e.g., “don’t speak to her that way; you are in trouble”)

##### **C. Risk Reduction Tips**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to blame victims, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you reduce your risk of experiencing a nonconsensual sexual act.

- Make your personal limits known as early as possible.
- Be aware of your alcohol or drug intake. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Never leave a party or event with a person you don’t know.
- Never consent to send another person a picture of any part of your body without clothing.
- Take care of your friends or colleagues and ask that they take care of you.



- Never leave a friend at a party or allow the friend to leave a party with someone not known to them. Contact trusted adults to intervene.

#### D. Potential Aggressor

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about age; about someone's sexual availability; about whether they are attracted to you; about how far you can go; or about whether they are physically and/or mentally able to consent.
- If there are any questions or ambiguity, then you DO NOT have consent.
- Remember that students cannot consent to sexual behavior.

Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. You must respect the boundaries for sexual behaviors.

- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size.
- Don't abuse that power. Understand that consent to one form of sexual behavior (e.g., kissing) does not automatically imply consent to other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent.
- Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

#### Training

Training on sexual misconduct: discrimination, harassment, and violence is included in district's education program.

~~In-person training for student groups and students will be conducted through a variety of presentations, student orientation, and other meetings. In-person training for Active Bystander Intervention skills may include: on-going campus campaigns and information at a variety of events~~



~~concerning this policy and appropriate behaviors. Information will be placed on the district's website and brochures devoted to educating students will be presented at prevention workshops.~~

Mandatory training for employees will be provided through ~~in-person~~ training on sexual misconduct to include: discrimination, harassment, violence and mandatory reporting obligations. ~~In-person training for Active Bystander Intervention skills may include: ongoing campus campaigns and information provided at events. Training will include an explanation of the district's policy, appropriate behaviors, bystander intervention strategies, location of information on the district's website, and brochures devoted to educating employees.~~

Resources available to all of the district community:

Broken Arrow Police Department – 918-259-8400

Call Rape/Tulsa Rape Crisis-(918) 585-3143-provides confidential resources off-campus

Tulsa Police Department-911 for emergencies; (918) 596-9222 for non-emergencies

Tulsa 211 Helpline - (918)836-4357

Oklahoma Coalition Against Domestic Violence and Sexual Assault (405)524-0700-provides confidential resources off campus

Oklahoma Safeline - (800) 522-7233 – provides confidential resources off campus

### **Free Speech and Academic Freedom**

Members of the district community enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution. This policy is intended to protect members of the district community from discrimination and is not designed to regulate protected speech. No provision of this policy shall be interpreted to prohibit conduct that is legitimately related to course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state antidiscrimination laws.

### **Availability of other Complaint Procedures**

In addition to seeking criminal charges through local law enforcement, members of the district community may also file complaints with the following entities regardless of whether they choose to file a complaint under this procedure:

Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100



## **SECTION V: EMPLOYEES**

## **POLICY 5400**

### **TITLE IX – SEX DISCRIMINATION AND SEXUAL HARASSMENT**

Customer Service Hotline: (800) 421-3481

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Office for Civil Rights:

Kansas City Field Office: [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov), (816) 268-0550;

Washington D.C.: [OCR@ed.gov](mailto:OCR@ed.gov) 1-800-421-3481

Equal Employment Opportunity Commission:

Oklahoma City Field Office: 1-800-669-4000;

Washington D.C.: 1-800-669-4000, [Eeoc.gov/contact](http://Eeoc.gov/contact)

#### **Distribution**

The district shall: prominently display on its website the required contact information for the Title IX Coordinators; post training materials used to train Title IX Coordinators and related Title IX Officials, Investigators, and Hearing Officers on its website; and notify applicants for employment, parents or legal guardians of elementary and secondary school students, and employee organizations—of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinators.

Source: *Broken Arrow Board of Education policy adoption, November 9, 2020.*

*Broken Arrow Board of Education policy revised, May 9, 2022.*

*Broken Arrow Board of Education policy revised, November 6, 2023.*

*Broken Arrow Board of Education policy revised, <DATE>.*