

## Sexual Harassment, Discrimination, & Sexual Misconduct Policy, 2.02

### Chapter 2: Personnel

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**Responsible Office:** Human Resources

**Applies to:** Faculty, Staff and Students

**Approved:** 11/17/2020

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#### **Part I. Policy:**

Rhodes State College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment, discrimination, sexual misconduct and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment sexual misconduct or retaliation. Rhodes State values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process.

#### **Guidelines:**

##### **I. Non-Discrimination and College Standards**

Rhodes State College adheres to all federal, state and local civil rights laws prohibiting discrimination in employment and education. The College does not discriminate in its admissions practices, in its employment practices, or in its educational programs or activities on the basis of sex/gender. As a recipient of federal financial assistance for education activities, Rhodes State College is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender. Sexual harassment, sexual assault, dating and domestic violence, stalking and sexual exploitation are prohibited under Title IX and by College policy. The law and college policy prohibit discrimination and harassment of employees or discrimination and harassment between members of the College community: for example, between an instructor and a student, between two students, or between a student and an applicant or campus guest.

Rhodes State College also prohibits retaliation against any person participating in good faith in any discrimination investigation or complaint process internal or external to the institution; for bringing a complaint of discrimination or harassment; for assisting someone with such a complaint; for attempting to stop discrimination or harassment.

Any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, or social access opportunities and/or benefits of any member of the Rhodes State College community on the basis of sex is in violation of this policy.

Any person may report sex harassment, discrimination or other forms of sexual misconduct, whether or not the person reporting is the person alleged to have experienced the conduct. Reports may be made by telephone or email using the contact information listed below for the Title IX Coordinator. Reports can be made any time, including during

non-business hours, by contacting RSC Campus Security at 419-995-8499.

This policy applies in all College programs and activities, including, but not limited to, discrimination in athletics, instruction, grading, and employment. It is central to the values of the College that individuals who believe they may have been the target of unlawful discrimination or harassment feel free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution.

Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. All complaints or any concerns about conduct that may violate this policy and retaliation should be filed with the College's Title IX Coordinator:

Andrea Goings, Executive Director of Human Resources  
Title IX Coordinator Rhodes State College 4240 Campus Drive  
Lima, OH 45804  
419.995.8302  
[goings.a@RhodesState.edu](mailto:goings.a@RhodesState.edu)

## II. Scope of Policy

The purpose of this policy is the prohibition of sexual harassment, sexual misconduct and retaliation. When an alleged violation of this policy is reported, those allegations are subject to review and resolution using the colleges Grievance Process related to this policy. When the Respondent is a member of the Rhodes State community this Grievance Process will be available regardless of the status of the Complainant, who may or may not be a member of the Rhodes State community. The Rhodes State community includes students (including dual enrolled students), student organizations, faculty, administrators, staff and third parties such as guests, visitors, volunteers, invitees and campers.

The Grievance Procedures may be applied to incidents, patterns of behavior and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

## III. Definitions

- a. **Actual Knowledge:** Official notice of sexual harassment or misconduct allegations to the College's Title IX Coordinator or any other college official who has authority to institute corrective measures on behalf of the college.
- b. **Advisor:** A person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- c. **Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment based on a protected class; or retaliation for engaging in a protected activity.
- d. **Confidential Resource:** An employee who is not a Mandated Reporter of notice of harassment and/or retaliation.

- e. **Day:** A business day when the college is in normal operation.
- f. **Discrimination:** Conduct on the basis of sex/gender that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a College program or activity.
- g. **Education program or activity:** Locations, events, or circumstances where the college exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the college.
- h. **Final Determination:** A conclusion by a preponderance of the evidence that the alleged conduct did or did not violate policy.
- i. **Finding:** A conclusion by preponderance of the evidence that the conduct did or did not occur as alleged (as in a "finding of fact").
- j. **Formal Complaint:** A document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that the college investigate the allegation.
- k. **Formal Grievance Process:** A method of formal resolution designated by the college to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45) and with 6th Circuit rulings.
- l. **Hearing Decision-maker or Panel:** Refers to those who have decision-making and sanctioning authority within the College's Formal Grievance process.
- m. **Investigator:** The person or persons charged by the college with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence
- n. **Mandated Reporter:** An employee of the college who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator.
- o. **Notice:** An employee, student, or third-party who informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- p. **Official with Authority (OWA):** An employee or Board of Trustees Member of the College explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the College.
- q. **Preponderance of the Evidence:** The standard of evidence applied in

determining a violation of this policy. Generally considered to be “more likely than not” or “the greater weight of the evidence”.

- r. **Remedies:** Post-finding actions following a determination of a violation of this policy, provided to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College’s educational program.
- s. **Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, sexual exploitation or retaliation for engaging in a protected activity.
- t. **Resolution:** The result of an informal or Formal Grievance Process.
- u. **Sanction:** A consequence imposed by the College on a Respondent who is found to have violated this policy.
- v. **Sexual Exploitation:** When a person takes non-consensual or abusive sexual advantage of another for anyone’s advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses.
- w. **Sexual Harassment:** The umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence as set forth in Title IX regulations (34 CFR §106.30) and identified in detail in this policy.
- x. **Title IX Coordinator:** The official designated by the College to ensure compliance with Title IX and the College’s Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- y. **Title IX Team:** The Title IX Coordinator, any deputy coordinators, and investigators responsible for overseeing designated elements of Title IX.

#### IV. Title IX Coordinator

The Title IX Coordinator is charged with coordinating the College’s compliance with federal civil rights laws, as set forth in College Policy 2.02. The Title IX Coordinator is not an advocate for either the Complainant or the Respondent. The Title IX Coordinator will explain to both parties the informal and formal processes outlined below and the confidentiality provisions. Where appropriate, the Title IX Coordinator will provide to both parties information about options for obtaining no contact orders, medical and counseling services; information about making a criminal report; information regarding academic support; information about receiving advocacy services, information about other helpful campus and community resources and safety measures.

The Title IX Coordinator will offer to coordinate with other campus officials, when appropriate, to implement interim remedial measures such as no-contact orders, rearrangement of living arrangements, or academic accommodations. The Title IX Coordinator will describe the process of a fair and impartial investigation. The Title IX

Coordinator will explain to both parties their rights to have a person of support with them during their interviews and during the hearing stage of these procedures to conduct cross-examination. If a party does not have an advisor, the college will provide one to accompany them to all meeting or interviews. If a party does not have an advisor for the hearing to conduct cross-examination the college must provide one. A party may not conduct cross examination personally.

If an individual does not want to pursue a complaint, the Title IX Coordinator will inform the individual that the College is limited in the actions it can take without the cooperation of the individual and will explain the full scope of supportive measures available. The individual making the report (Reporter) is encouraged to provide as much detailed information as possible to allow the Title IX Coordinator to investigate and respond as appropriate. The Title IX Coordinator may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to enable the Title IX Coordinator to conduct a meaningful and fair investigation.

A Complainant will not be denied supportive measure simply because they choose not to file a formal complaint. The Title IX Coordinator will also explain to parties and witnesses that retaliation for reporting alleged violations of the policy, or participating in an investigation of an alleged violation, is strictly prohibited and that any retaliation should be immediately reported and will be promptly addressed.

The Title IX Coordinator accepts anonymous and third-party reports of conduct alleged to violate this Policy and will follow up on such reports.

#### **V. Independence and Conflict of Interest**

The Title IX Coordinator and members of the Title IX Team acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the College President ([spiers.c@RhodesState.edu](mailto:spiers.c@RhodesState.edu) or 419-995-8200). Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct committed by the Title IX Coordinator should be reported to the College President ([spiers.c@RhodesState.edu](mailto:spiers.c@RhodesState.edu) or 419-995-8200) or designee. Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator.

#### **VI. Supportive Measures**

The College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or

preserve access to the College's education program or activity, including measures designed to protect the safety of all parties or the College's educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the College will inform the Complainant, in writing, that they may file a formal complaint with the College either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. The College will act to ensure as minimal an academic or occupational impact on the parties as possible.

The College will implement measures in a way that does not unreasonably burden the other party. These actions may include, but are not limited to:

- a. Referral to counseling, medical, and/or other healthcare services
- b. Referral to community-based service providers
- c. Student financial aid counseling
- d. Altering work arrangements for employees or student-employees
- e. Safety planning
- f. Providing campus safety escorts
- g. Implementing contact limitations (no contact orders) between the parties
- h. Academic support, extensions of deadlines, or other course/program-related adjustments
- i. Timely warnings
- j. Class schedule modifications, withdrawals, or leaves of absence
- k. Increased security and monitoring of certain areas of the campus
- l. Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

## **VII. Emergency Removal**

The College can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any

student or other individual justifies removal.

This risk analysis is performed by the Title IX Coordinator in conjunction with the Behavioral Intervention Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived.

A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX.

There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, existing provisions for interim action are applicable.

**VIII. Promptness**

All allegations are acted upon promptly by the College once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There may be exceptions and extenuating circumstances that cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in College procedures will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

**IX. Privacy**

Every effort is made by the College to preserve the privacy of reports. The College will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The College reserves the right to determine which College officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The people with this knowledge will preserve the parties' rights and privacy.

The College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first.

**X. Jurisdiction**

This policy applies to the education program and activities of the College, to conduct that takes place on the campus or on property owned or controlled by the College, at College-sponsored events, or in buildings owned or controlled by College's recognized student organizations. The Respondent must be a member of College's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to College's educational program. The college may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest.

Regardless of where the conduct occurred, the College will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial College interest includes:



- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of the College.

If the Respondent is unknown or is not a member of the College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Further, even when the Respondent is not a member of the College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from College property and/or events.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers [or to these policies and procedures to which their employer has agreed to be bound by their contracts].

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to the College where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

#### **XI. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the College will typically apply

the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

## **XII. Online Sexual Harassment and/or Retaliation**

The policies of the College are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College's education program and activities or use College networks, technology, or equipment.

Although the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the College's control (e.g., not on College networks, websites, or between College email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment and cannot legally be subjected to discipline. Supportive measures for Complainants will be provided.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the College only when such speech is made in an employee's role with the college.

## **Part II. Prohibited Conduct:**

### **I. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Ohio regard Sexual Harassment as an unlawful discriminatory practice.

Rhodes State has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community and in compliance with Title IX regulations (34 CFR §106.30). Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

#### **a. Quid Pro Quo:**

- i. | an employee of the college,
- ii. conditions the provision of an aid, benefit, or service of the college,
- iii. on an individual's participation in unwelcome sexual conduct.

- b. **Sexual Harassment:**
  - i. unwelcome conduct,
  - ii. determined by a reasonable person,
  - iii. to be so severe, and
  - iv. pervasive, and,
  - v. objectively offensive,
  - vi. that it effectively denies a person equal access to the College's education program or activity.
  
- c. **Sexual Assault, defined as:**
  - i. **Sex Offenses, Forcible:**

Any sexual act directed against another person without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent. This includes:

    - a) **Forcible Rape:**
      - a) Penetration,
      - b) no matter how slight,
      - c) of the vagina or anus with any body part or object, or
      - d) oral penetration by a sex organ of another person,
      - e) without the consent of the Complainant.
  
    - b) **Forcible Sodomy:**
      - f) Oral or anal sexual intercourse with another person,
      - g) forcibly,
      - h) and/or against that person's will (non-consensually), or
      - i) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  
    - c) **Sexual Assault with an Object:**
      - j) The use of an object or instrument to penetrate,
      - k) however slightly,
      - l) the genital or anal opening of the body of another person,
      - m) forcibly,
      - n) and/or against that person's will (non-consensually),
      - o) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  
    - d) **Forcible Fondling:**
      - p) The touching of the private body parts of another person (buttocks, groin, breasts),
      - q) for the purpose of sexual gratification,
      - r) forcibly,
      - s) and/or against that person's will (non-consensually),
      - t) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent

because of age or because of temporary or permanent mental or physical incapacity.

ii. **Sex Offenses, Non-forcible:**

Non-Forcible Sexual acts include:

a) **Incest:**

- Non-forcible sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by Ohio law.

b) **Statutory Rape:**

- Non-forcible intercourse,
- with a person who is under the statutory age of consent in Ohio

d. **Dating Violence, defined as:**

- i. violence,
- ii. on the basis of sex,
- iii. committed by a person,
- iv. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - a) The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:
  - b) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - c) Dating violence does not include acts covered under the definition of domestic violence.

e. **Domestic Violence, defined as:**

- i. violence,
- ii. on the basis of sex,
- iii. committed by a current or former spouse or intimate partner of the Complainant,
- iv. by a person with whom the Complainant shares a child in common, or
- v. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- vi. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Ohio, or
- vii. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Ohio.

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

f. **Stalking, defined as:**

- i. engaging in a course of conduct,
- ii. on the basis of sex,
- iii. directed at a specific person, that
  - a) would cause a reasonable person to fear for the person's safety, or
  - b) the safety of others; or
  - c) Suffer substantial emotional distress.
- v. For the purposes of this definition, course of conduct means two or more acts, including, but not limited to:
  - a) acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
  - b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
  - c) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## II. Sexual Exploitation

Occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:

- a. Prostituting another person;
- b. Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- c. Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- d. Going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- e. Engaging in non-consensual voyeurism;
- f. Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;
- g. Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals;
- h. Possessing, distributing, viewing or forcing others to view illegal pornography.

## III. Title IX Regulatory Dismissal Standards

Under 34 CFR §106.45 (B)(3) the college must dismiss the formal complaints if they do not meet the following standards:

- a. If the conduct does not constitute sexual harassment as defined above (34 CFR §106.30)
- b. If the college does not have control over the harasser
- c. If the incident did not occur in a program or activity of the college
- d. If the incident did not occur in the United States
- e. If the complainant is not a member or seeking to become a member of the college community

However, 6<sup>th</sup> Circuit court decisions apply a requirement for live hearings and cross examination for all sex-based harassing or discriminatory conduct, or sexual based misconduct that could create a discriminatory impact. Therefore, the college will pursue all prohibited conduct as defined in this policy, subject to the jurisdiction as defined in this policy and will proceed with the formal resolution process as outlined in the Grievance Procedures that accompany this policy.

### **Part III. Standards for Assessing Conduct:**

As used in the offenses above, the following definitions and understandings apply:

#### **I. Consent is:**

- a. knowing, and
- b. voluntary, and
- c. clear permission
- d. by word or action
- e. to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>1</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

## **II. Force**

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

## **III. Incapacitation**

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## **IV. Coercion**

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<sup>1</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

## Part IV. College Standards

### I. Mandated Reporting

All College employees (faculty, staff, and administrators) are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

### II. Confidentiality of Complaints and Reports

Parties in these processes, including the Complainant, the individual accused of a Policy Violation (“Respondent”), and witnesses, have privacy rights and reasonable expectations of confidentiality in the investigation of matters subject to this procedure.

In addition, the integrity of the process depends on ensuring reasonable expectations of confidentiality. The Title IX Coordinator will keep confidential the complaint, report, witness statements, and any other information provided by the Complainant, Respondent, or witnesses and will disclose this information only to the Complainant, Respondent, or witnesses, as necessary to give fair notice of the allegations and to conduct the investigation; to law enforcement consistent with state and federal law; to other College officials as necessary for coordinating interim measures or for health, welfare, and safety reasons, and to government agencies who review the College’s compliance with federal law. The investigation report will be disclosed only to the Complainant, Respondent, Title IX Coordinator, Discipline Authority as necessary, and College officials as necessary to prepare for subsequent proceedings (e.g., College President and College Legal Counsel). Information about complaints and reports, absent personally identifiable information, may be reported to College officials and external entities for statistical and analysis purposes pursuant to federal and state law and College policy.

### III. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.



The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

#### **IV. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under College policy.

#### **V. Amnesty for Drug or Alcohol Possession and Consumption Violations**

The College strongly encourages students to report instances of sex-based discrimination, sexual harassment, and sexual misconduct involving students. Therefore, students who report information about sex-based discrimination, sexual harassment, or sexual misconduct involving students will not be disciplined by the College for any violation of the College's drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident.

#### **VI. Free Speech and Academic Freedom**

This policy shall not be construed or applied to restrict academic freedom at the College, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

The College recognizes and protects full freedom of inquiry, teaching, research, discussion, study, publication, and for artists, the creation and exhibition of works of art, without hindrance, restriction, equivocation, or reprisal. This right extends to other facets of campus life to include the right of a faculty member or student to speak on general educational questions or about the College. In addressing all complaints and reports under this policy, the College will take all permissible actions to ensure the safety of students and employees while complying with free speech requirements for students and employees. While the College will protect students' and employees' rights against sex discrimination under this policy, this policy does not apply to curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials.

#### **VII. Minors**

Ohio law establishes that an individual is considered a minor until the age of 18. Rhodes State College expects all employees to maintain the highest standards of personal behavior at all times when interacting with minor students. Under Ohio law 2151.021 any college official who becomes aware of abuse or suspected abuse of a minor must report this to campus security immediately. College policy requires this information to be reported by Campus Security to the Title IX Coordinator as well. Abuse encompasses infliction of physical or mental harm, sexual abuse or exploitation or negligent treatment or maltreatment.

#### **VIII. External Complaints**

If a person filed a complaint with the Title IX Coordinator and believes the College's response was inadequate, or otherwise believes the College has discriminated on the basis of sex, including sexual harassment, or retaliation, the individual may file a complaint with the:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Andrea Goings  
Executive Director  
Human Resources  
Title IX Coordinator  
Rhodes State College  
4240 Campus Drive  
Lima, OH 45804  
Phone: 419-995-8302  
[goings.a@RhodesState.edu](mailto:goings.a@RhodesState.edu)  
[www.RhodesState.edu](http://www.RhodesState.edu)

## IX. Resources

The College's Safety and Security Annual Report of on-campus crime statistics includes forcible and non-forcible sex offenses, in lieu of the single category of rape used on previous reports, as well as statistics on dating violence, domestic violence, and stalking, in compliance with the Campus Security Act.

Copies of the Safety and Security Annual Report (required by the Student Right-to-Know and Campus Security Act of 1990) which details on-campus crime statistics for the three previous calendar years may be obtained at the following locations:

- a. Student Affairs, Public Service Building, Room 216
- b. Human Resources Department, Public Service Building, Room 223
- c. Campus Security Office, Tech Lab, Room 140

Crime prevention materials concerning personal safety on campus, rape and date or acquaintance rape are available at the Office of Student Activities, 066 Galvin Hall or the Campus Security Office, 140 Tech Lab.

During the academic year, the Campus Security Office and the Office of Student Affairs may provide sex crime prevention information and direct presentations to student groups upon request.

The College offers counseling services to its students. Students needing counseling can contact the Counseling office at (419) 995-8133. Additional counseling services are also available through the Allen County Crime Victim Services, Tel: (419) 222-8666.

## X. Criminal Reporting

Please remember that if someone is in immediate danger or needs immediate medical attention, the first place to report is 911. You may also report to the College's Campus Security (dial 8499), or to the Ohio State University Police Department/Division (567-242-7400). Some forms of discrimination and harassment may also be crimes. For example,

sexual assault, stalking and rape are crimes. Criminal reports should be made to law enforcement, even if it is uncertain whether the particular conduct is a crime. Calling local law enforcement can help you: Obtain emergency and nonemergency medical care; get immediate law enforcement response for your protection; understand how to provide assistance in a situation that may escalate to more severe criminal behavior; arrange a meeting with victim advocate services; find counseling and support; initiate a criminal investigation; and answer questions about the criminal process.

In order to preserve any physical evidence of a sexual offense, victims of sexual assault are urged not to bathe, shower, use any feminine douche or change clothing. Such victims should go immediately to a medical facility of their choice to receive medical treatment if needed and to insure that the appropriate examinations are conducted to collect the necessary physical evidence of the assault. (3) The cost of medical treatment or examination of the victim of a sexual assault for physical evidence shall be charged to the political sub-division where the offense occurred (Ohio Revised Code Statutes 2907.28 and 2907.29). There is no cost to the crime victim for such medical treatment or examination in Ohio.

**XI. Grievance Resolution Process**

(see Sexual Harassment, Discrimination, and Sexual Misconduct Grievance Resolution Procedure 2.02a)

**Related Policies or Procedures:**

[Sexual Harassment, Discrimination & Sexual Misconduct Grievance Resolution Procedure, 2.02\(a\)](#)

|                 | <b>Date:</b> | <b>Reason:</b>   |
|-----------------|--------------|--|
| <b>Issued:</b>  | 08/18/2020   | Replaces Policy 5.2 (Sexual Harassment, Discrimination and Sexual Misconduct Policy & Procedure). Note: This policy was formally approved on August 18, 2020 but was operational on August 14, 2020. |
| <b>Revised:</b> | 11/17/2020   | Section on Minors added  |
|                 |              |  |

*This policy and / or procedure provides operating principles for Human Resources issues at Rhodes State College. It supersedes any prior policy covering specific subject. This policy and / or procedure may be suspended, modified or cancelled as determined by the College. This policy and / or procedure does not create a contract of employment, nor is it a condition of employment between the College and its employees.*