

## **Oakland School for the Arts (OSA) Sexual Misconduct and Teen Dating Violence (TDV) Prevention and Response Policy**

This document is subject to change based on updates to federal, state, and district level requirements and guidance.

### **STATEMENTS AND DEFINITIONS**

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#### **Key Roles and Terms**

As used in this document, the following terms mean:

- *Principal's designee*: Assistant Principal or Dean of Students
- *Investigators*: Assistant Principal, Dean of Students (for complaints made by students) or Title IX Coordinator (for complaints made by employees)
- *Decision makers*: Principal or Executive Director
- *Complainant*: Person who experienced alleged misconduct
- *Respondent*: Person accused of alleged misconduct

#### **OSA Sexual Misconduct Policy Statement<sup>1</sup>**

Oakland School for the Arts (OSA) is committed to creating and sustaining an educational environment in which students, faculty, and staff can thrive in an atmosphere that is open, healthy, safe, and supportive. In alignment with this commitment and in interest of adhering to federal and state law requirements, OSA aims to establish an environment where sexual misconduct is not excused or ignored as these types of actions are damaging and traumatic to those affected and have no place in our school community. OSA will take any and all action needed to prevent, interrupt, correct, and discipline behavior that violates this standard of conduct. Due diligence will be used to ensure the disciplinary review and any appropriate action be taken as expeditiously as possible. OSA will make a diligent effort to educate students in regards to promoting healthy relationships, wellness, and the impact of sexual misconduct, train staff in appropriately promoting healthy relationships and addressing sexual misconduct, and provide assistance and support to complainants in a consistent and sensitive manner. This policy is applicable regardless of sexual orientation and/or gender identity of individuals engaging in sexual activity.

#### **OSA Definition of Sexual Misconduct**

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<sup>1</sup> OSA's Sexual Misconduct Policy is adapted from that of the Oakland Unified School District (OUSD).

Sexual Misconduct is an umbrella term for conduct of a sexual nature (encompassing terms like sexual harassment, sexual violence, and sexual assault) that is prohibited at OSA. Examples of types of conduct which are prohibited at OSA and which may constitute misconduct include, but are not limited to:

1. Unwelcome leering, sexual flirtations, or propositions.
2. Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments, or sexually degrading descriptions.
3. Graphic verbal comments about an individual's body, unwanted sexual comments or questions, or overly personal conversation or computer-generated images of a sexual nature.
4. Spreading sexual rumors
5. Teasing or sexual remarks about students enrolled in a predominantly single-sex class or activity.
6. Massaging, grabbing, fondling, stroking, or brushing the body.
7. Touching an individual's body or clothes in a sexual way.
8. Impeding or blocking an individual's movements or any physical interference with school activities when directed at an individual on the basis of sex or gender expression.
9. Displaying sexually suggestive objects.
10. Sexual assault, sexual battery, or sexual coercion.
11. Sexual violence which is the perpetration of a sexual act on a person without their affirmative consent.
12. Electronic communication containing comments, words, or images described above.

At OSA, sexual harassment includes all unwelcome sexual conduct that may include, but is not limited to, sexual violence, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, when made on the basis of sex and under the following conditions: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress.
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student.
3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment.
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding the benefits and services, honors, programs, or activities available at or through any OSA program or activity.

These acts, when reported, will trigger investigations by the OSA administration.

## **Mandated Reporting: Sexual Assault (SA) vs. Sexual Harassment (SH)**

While both sexual assault and sexual harassment are prohibited at OSA and will thus be investigated by the OSA administration when reported, the sexual assault of a minor must also be reported to Child Protective Services (CPS) in accordance with the Child Abuse and Neglect Reporting Act (CANRA). Sexual assault is included in the definition of the sexual abuse of a minor, which can entail:

- Rape; attempted rape; rape in concert (gang rape); incest; sodomy; fondling or unwanted sexual touching; lewd or lascivious acts upon a minor; forcing a minor to perform sexual acts such as oral sex or penetrating the perpetrator's body; penetration of the minor's body, child molestation; exhibitionism; masturbation in the presence of a minor or forcing the minor to masturbate; obscene phone calls or digital interaction; producing, owning, or sharing pornographic images or movies of children.

As such, sexual assault triggers not only an investigation on the part of OSA, but also a report to CPS, which may result in a criminal investigation. Sexual harassment does not necessarily trigger a report to CPS and may be handled internally by the school.

Sexual harassment and sexual assault are not always easily distinguishable, and the alleged act will be classified at the discretion of the OSA administration and in conversation with the involved parties and their families when appropriate.

## **Title IX**

Title IX of the Education Amendments of 1972 prohibits sex discrimination in education, including K-12 schools. Title IX is a federal law that has been used to promote equity in education by ensuring that girls and women receive equal resources and treatment in the classroom and provides protections for students who are sexually harassed and discriminated against and/or bullied based on their gender. In addition to this federal law, the California Education code similarly prohibits schools discriminating against its students on the basis of sex (Education Codes 220-221.1).

Who is covered under Title IX?

1. Harassment by students (peer to peer)
2. Harassment by administrators/teachers/staff
3. Harassment by volunteers or school visitors

## **Title IX Definition of Sexual Harassment**

As of 2020, Title IX defines sexual harassment by three types of sexual misconduct:

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
3. Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA)

These acts, when reported, will trigger Title IX investigations by the OSA administration in accordance with federal law. Some will also trigger mandated reporting to Child Protective Services. Forms of sexual harassment not listed here may still be investigated by the OSA administration in accordance with California state law and OSA's Sexual Misconduct Policy (see below).

## **Teen Dating Violence (TDV)<sup>2</sup>**

Teen dating violence (TDV) includes a broad continuum of abusive behaviors, all of which are prohibited by this policy. Some of these abusive behaviors can and do constitute other categories of misconduct such as sexual assault, sexual harassment, or cyber-harassment, and as such violate other OSA, OUSD, state and federal policies. TDV can be better understood by considering the following prohibited behaviors:

- Abusive behavior: Intentional use of physical, sexual, verbal, or emotional abuse against a peer or intimate partner, including bullying, harassment, dating violence, sexual violence, or using technology to cause abuse.
- Emotional/ mental abuse: Invoking sustained emotions and/or mental states to control behavior and/or intimidate.
- Nonconsensual sexting: The sending or sharing of nude, semi-nude images, or sexually explicit messages electronically, without the subject's permission.
- Physical abuse: Any unwanted and intentional contact with a person's body by either the respondent or an object within the respondent's control, regardless of whether such contact causes pain or injuries to the complainant. This include:
  - Pushing or shoving, being held down, biting, kicking, slapping, punching, choking, pulling hair, being thrown against a wall or ground, being stabbed or shot, being tied up, throwing objects at the complainant, depriving of food/ water/ sleep.
- Sexual violence (SV): Any type of violence that is sexual in nature. Any type of sexual contact or behavior that occurs without the explicit consent of the recipient, through coercion, force, and/or duress, by any person, regardless of their relationship to the complainant. This definition includes, but is not limited to:
  - Forced intercourse
  - Forcible sodomy
  - Child molestation
  - Sexual battery
  - Incest
  - Fondling
  - Sexual exploitation and trafficking
  - Attempted rape
- Stalking: Conduct and/or surveillance that would cause a reasonable person to 1) fear for their safety or the safety of a third person or 2) suffer emotional distress. This conduct could include, but is not limited to:
  - Unwanted phone calls, texts, or emails
  - Vandalism
  - Monitoring a person's habits or whereabouts
- Sex trafficking or exploitation: The act of forcing and/or coercing an individual into the commercial sex trade.
- Verbal abuse: The use of words to control or intimidate.

## **Affirmative Consent Definition**

OSA uses an affirmative consent standard to define consent. According to the California Education Code Section 67380 - 67386, "Affirmative consent" means affirmative, conscious,

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<sup>2</sup> OSA's TDV policy is adapted from that of the Los Angeles Unified School District.

and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.”

### **Cyber-harassment**<sup>3</sup>

OSA prohibits the use of electronic information and communication devices to willfully harm either a person or persons through the medium of electronic text, photos, or videos. Examples of this behavior include but are not limited to:

1. Sending false, cruel, or vicious messages
2. Creating websites that have stories, cartoons, pictures, and jokes ridiculing others
3. Breaking into an online account and sending vicious or embarrassing materials to others
4. Engaging someone in electronic communication, tricking that person into revealing sensitive personal information and forwarding that information to others
5. Posting or sharing a picture of an individual without their permission

Bullying of this nature creates a hostile, disruptive environment on OSA’s campus and is a violation of a student or staff’s right to be safe and secure. Cyber bullying and harassment will not be tolerated. Actions deliberately threatening, harassing, or intimidating an individual or group of individuals, placing an individual in reasonable fear of harm or damaging the individual’s property, or disrupting the orderly operation of the school will not be tolerated.

In the case of sexually suggestive or sexually explicit images, OSA staff will take all reasonable measures to not view nor receive/retain copies of the images and will contact the appropriate authorities for investigation.

Please also see the [OSA’s Acceptable Use of Technology Agreement](#) for more information on the use of OSA technology.

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<sup>3</sup> OSA’s Cyber-harassment Policy is adapted from that of the San Ramon Valley Unified School District.

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### **Duty to Report Child Abuse and Neglect**

All OSA employees are mandatory reporters of child abuse and neglect in accordance with the California Child Abuse and Neglect Reporting Act (CANRA).

OSA faculty are required to note in their class syllabi that they are mandated reporters, with a brief description of what it means to be a mandated reporter. OSA shall provide a template of this language where necessary.

### **How to File a Title IX/Sexual Misconduct Complaint**

A sexual misconduct complaint may be filed with the OSA Principal, Assistant Principal, Dean of Students, or Title IX Coordinator. If a teacher or staff member at OSA receives a disclosure of alleged sexual misconduct, they shall notify one of the aforementioned parties immediately with a detailed report of the alleged incident as they understand it. [Complaint forms](#) are available in the Assistant Principal's Office and in the Title IX Coordinator's office. Complaints may also be made verbally. To issue a complaint, please contact one of the following OSA administrators:

The Title IX Coordinator/Assistant Principal:

- Katy Zaugg, Assistant Principal
- Email: [kzaugg@oakarts.org](mailto:kzaugg@oakarts.org)

The Principal:

- Mike Oz, Principal
- Email: [moz@oakarts.org](mailto:moz@oakarts.org)

The Dean of Students:

- Anna DeRoos, Dean of Students
- Email: [aderoos@oakarts.org](mailto:aderoos@oakarts.org)

### **Remote Reporting**

The reporting process detailed below can be implemented remotely. Should a student or employee wish to disclose, that student or employee should email [aderoos@oakarts.org](mailto:aderoos@oakarts.org), [kzaugg@oakarts.org](mailto:kzaugg@oakarts.org), or [moz@oakarts.org](mailto:moz@oakarts.org) and request a Zoom meeting, which will serve as the intake meeting. Students are advised not to detail personal information over email, but instead

provide a statement during a subsequent Zoom meeting. From there, forms will be administered electronically and any investigation will take place remotely.

### **Reporting Process and Complaint Procedures**

Any student who believes that they have been subjected to sexual harassment by another student, an employee, or third party who has witnessed sexual harassment is strongly encouraged to report the incident to a teacher, an administrator, or other available school employee at OSA.

Upon receipt of such a report, within one day of receiving a report of harassment, the school employee shall forward the report to the OSA Principal or their designee (e.g. Assistant Principal or Dean of Students). In addition, any school employee who observes an incident of sexual harassment involving a student shall report their observation to the OSA Principal or their designee. The employee shall take these actions, whether or not the complainant files a complaint.

The Assistant Principal and the Dean of Students shall serve as investigators of alleged Title IX violations at OSA and alleged OSA sexual misconduct policy violations at OSA. Before investigating an alleged Title IX violation, the investigators must initiate a formal Title IX investigation with the Title IX Coordinator.

The Title IX Coordinator shall serve as the investigator of alleged Title IX violations concerning staff at OSA.

The Principal and Executive Directors shall serve as decision makers, reviewing the investigations and offering final decisions once the investigation is complete.

Regardless of whether a formal complaint is filed, the investigators shall take steps to determine whether the alleged incident is a violation of Title IX, a violation of the OSA sexual misconduct policy, and/or constitutes a mandated report to child protective services. If a report to child protective services is mandated, the Principal or their designee shall make that report. If the alleged incident violates Title IX and the complainant is interested in a formal Title IX investigation, the Title IX Coordinator shall be consulted to initiate an investigation (whether the incident involves staff or students). If Title IX has not been allegedly violated but the OSA sexual misconduct policy has been allegedly violated, the investigators shall proceed with an investigation without the participation of the Title IX Coordinator.

In any case of sexual harassment involving the Principal, their designee, or any other person to whom the incident would ordinarily be reported or filed, the report may instead be submitted to the Executive Director or designee who shall determine who will investigate the complaint.

When a report or complaint of sexual harassment involves off-campus conduct, the OSA Principal or their designee shall assess whether the conduct may or has create(d) or contribute(d) to the creation of a hostile school environment. If the Principal or their designee determines that a hostile environment may be or has been created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred on campus.

## **Intake Meeting**

Within one day of receiving a report of harassment or otherwise becoming aware of harassment, employees must inform the Principal, Assistant Principal, or Dean of Students. Upon receiving a report of harassment or becoming aware of harassment, the designated or their designee shall immediately schedule an intake meeting with the student(s) reportedly harassed. If requested by the student(s) or required by law, the designated OSA staff member shall inform their parent(s) or guardian(s) of the report and invite them to attend the scheduled intake meeting. In all cases, the student(s) shall be informed that they may bring a support person of their choice with them to the meeting. If a student requests that another student act as their support person, that student shall be excused from class or required activities to enable them to attend the intake meeting. A student may request to reschedule the intake meeting to a later date to enable their support person to attend. At the intake meeting, the student will be informed that:

1. The school will take immediate steps to protect the safety and emotional well-being of the reporting student(s);
2. Student(s) may file a formal written complaint in accordance with the school's uniform complaint procedure and/or Title IX, and the time limit for filing a uniform complaint;
3. There is a school [complaint form](#)
4. Complaints and allegations of sexual harassment will be kept confidential except as necessary to carry out the investigation or take other necessary action;
5. The circumstances under which an OSA staff member would be required to make a report to child protective services and/or law enforcement;
6. Retaliation against persons for making a report or participating in an investigation of sexual harassment is prohibited, and how to report any retaliation they experience;
7. After the complaint is investigated, the OSA Principal or their designee will make a recommendation regarding how to proceed and that, to the extent permitted by law, OSA and OUSD policy, the student(s) may have input into that decision;
8. Students are asked to explain in their own words what occurred, how it has affected them, and what they need to feel safe at school;
9. Students may present additional evidence, or information leading to evidence, at any time during the investigation;

## **Confidentiality**

When a complainant of sexual misconduct notifies the school of the misconduct but requests confidentiality, the OSA Principal or their designee shall inform the complainant that the request may limit the school's ability to investigate the harassment or take other necessary action. They shall also explain that the school cannot keep the reporting student's name confidential from the respondent if doing so would undermine the school's ability to ensure a safe and nondiscriminatory environment for all students, including the complainant. When honoring a request for confidentiality, the school will nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.

## **Retroactive Reporting**

If a student reports a past act of sexual misconduct and the complainant, the respondent or both are no longer on campus or accessible to the administration, OSA will still document the report and look into the matter to the best of the administration's ability. Under Title IX, there is



no jurisdiction to investigate a complaint if the complainant has either graduated or dropped out before a complaint was filed, even if the respondent is still on campus. However, OSA's sexual misconduct policy allows for this complaint to be documented and investigated to the best of the school's ability.

### **Response Pending Investigation/Interim Measures**

When an incident of sexual misconduct is reported, the Principal or designee shall determine whether interim measures are necessary pending the results of the investigation. The Principal/designee shall take immediate measures necessary to stop misconduct and protect students and/or ensure their access to the educational program. The complainant will be provided an [accommodation request form](#) to explore potential options. To the extent possible, such interim measures shall not disadvantage the complainant of the alleged misconduct. Interim measures may include placing the individuals involved in separate classes, transferring a student to a class taught by a different teacher, separation of reported complainant and respondent, security measures, emotional and psychological support, or other academic accommodations, as appropriate, in accordance with the law, OSA, and OUSD policies. The school should notify the complainant of their options to avoid contact with the respondent and allow the complainant to change academic arrangements, as appropriate, in accordance with the law, OSA, and OUSD policies. The school shall make the complainant aware of resources and assistance that are available.

The school is responsible for determining how to resolve complaints. If it is determined that a violation of the school's sexual misconduct policy has taken place, the school may utilize resolutions that target eliminating the misconduct, preventing its recurrence, and repairing the harm caused by the harassment. OSA shall assess whether corrective and preventive action should be taken not only on an individual level, but on a schoolwide level.

### **Prompt and Equitable Investigation Process**

Investigation into the alleged violation of the OSA sexual misconduct policy will take a maximum of 60 days whenever possible.

In determining whether a violation of the sexual harassment policy has taken place, the school shall apply a "preponderance of the evidence" standard. This standard is met if the allegation is more likely to be true than not.

In determining whether sexual conduct was welcome or unwelcome, the school shall use an "affirmative consent" standard, as defined in the Statements and Definitions section of this policy. OSA shall not consider the past sexual history of the complainant in making their determination.

Both the complainant and respondent are entitled to an advisor throughout the investigative process. Advisors may be a family member, family friend, or professional. OSA's mental health counselors will be available as advisors if/when a student wants/needs their advisor to be an OSA staff member.

In conducting the investigation, the investigator shall collect all available documents and review all available records, notes, or statements related to the complaint. The investigator may visit any reasonably accessible location where the actions are alleged to have taken place.

The investigator shall interview all available witnesses, including the respondent(s), with

information relevant to the complaint. Interviews shall be conducted in a confidential matter. After interviewing the respondent, the investigator shall provide the reporting student with an additional opportunity to submit evidence or make a statement in response.

The investigator shall investigate not only whether the conduct allegedly occurred, but also its effect on the reporting student's experience of school, including but not limited to any effect on their ability to concentrate in class, grades, participation in activities, and ability to move freely around campus.

The findings of the investigation shall be sent to the Principal or Executive Director (decision makers) who will issue a Final Written Decision. The Final Written Decision shall include the findings of fact based on the evidence gathered, the school administrator's or designee's conclusion as to whether a violation of the OSA sexual harassment policy took place, and if a uniform complaint has been filed. To determine whether a hostile educational environment, in violation of OSA and OUSD policies, has been created, the school designee shall consider the factors set forth in the Uniform Complaint Procedures: AR 1312.3. The Final Written Decision shall also include the corrective action(s) to be imposed.

The decision makers' Final Written Decision shall be based on their independent assessment of all of the relevant circumstances, including but not limited to the age of both students, the severity of the harassment, the impact of the harassment on the complainant, and whether any previous complaints have been made regarding the harassing student's behavior.

The Final Written Decision shall inform the complainant of their right to appeal the Final Written Decision to the OSA Principal or Executive Director within five calendar days of its receipt. An appeal shall comply with the procedures set forth for Level II Appeals in AR 1312.3(4)(a)(f), Uniform Complaint Procedures, even if a uniform complaint has not been filed.

### **Student Support**

Student shall be offered options for assistance following an incident of sexual abuse, verbal abuse, emotional abuse, physical abuse, or relationship violence. These include, but are not limited to:

1. Crisis Intervention: Provide contact information for resources available in immediate response to a crisis situation. These resources may include school counselors, wellness counselors, sexual assault counselors, or local mental health counselors; provide emergency numbers for local law enforcement, and other first responders, including local child advocacy centers, and child abuse reporting hotlines, when appropriate.

2. Longer Term Treatment: Ensure students are aware of the options to seek physical and/or emotional treatment and support, such as long-term therapy or counseling.

3. Academic Accommodations and Interim Measures: Provide support services to ensure the safety and well-being of students, such as altering academic schedules for either the complainant or respondent, allowing students to withdraw from/retake a class without penalty, providing extended time for completion of assignments, and providing assistance for students to move safely between classes or other activities, as deemed necessary.

**Access to forms**

OSA utilizes the following forms in the reporting and investigation process

- [Sexual Misconduct Complaint Form](#)
- [Informal Title IX Resolution Form](#)
- [Appeal Form](#)
- [Accommodation Request Form](#)
- Title IX Checklist (administrative use only)