

OWENS COMMUNITY COLLEGE
PROCEDURES

Anti-Discrimination and Harassment

Board Policy No.: 3358:11-4-17

PROCEDURES AND GUIDELINES:

(A) Introduction

Owens Community College strongly opposes and will not tolerate harassment or discrimination on the basis of age, color, disability, national origin, race, religion, sex, sexual orientation, gender identity, military status, or veteran status. This prohibition extends to discrimination or harassment, based on the protected classes, including the creation of an intimidating, hostile, or offensive working or learning environment through on-campus conduct (or off-campus conduct or the online/virtual environment if the conduct is in connection with College operations or a College-sponsored program). Sexual harassment includes sex offenses such as sexual assault, dating violence, domestic violence and stalking. Such acts of sexual misconduct are further defined in the College's Title IX/Sexual Misconduct Procedures, which also detail the specific steps and rights afforded to victims of a sex offense, dating violence, domestic violence or stalking.

These procedures are applicable to all aspects of College operations and programs. It applies to all College students and employees, including student-employees, administrators, faculty and staff (bargaining and non-bargaining unit members) as well as to visitors or guests on campus to the extent that there is an allegation of harassment or discrimination made by them against College students or employees. It also applies to all third-party vendors, contractors, subcontractors, and others who do business with the college.

(B) Definitions

- (1) The term "harassment" includes, but is not limited to slurs, jokes and other verbal, graphic or physical conduct; including electronic forms of e-mail, internet, and texting usage in prohibited sections relating to an individual's race, color, sex, religion, national origin, age, or disability; including same sex harassment. Harassment based on race, color, religion, national origin, age or disabilities are all forms of illegal discrimination. Examples of these forms of discrimination occur when:
 - (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an employment decision or action.
 - (b) Submission to or rejection of such conduct by an individual is used as the basis for an employment-decision affecting such individual.
 - (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working/teaching/learning environment.
- (2) "Sexual harassment" is particularly defined as an unwelcome sexual advance, a request for sexual favor and other verbal or physical conduct of a sexual nature, including sexual

violence, dating violence, domestic violence and stalking, Examples of sexual harassment may include:

- (a) Deliberate, unsolicited sexually oriented comment or gesture;
 - (b) Display of offensive sexually oriented graphic material;
 - (c) Physical contact such as patting, pinching or frequent brushing against another's body;
 - (d) Demand for a sexual favor with an implied promise of preferential treatment or threat.
- (3) "Hostile work environment" is defined as unwelcome conduct of a sexual nature that creates an uncomfortable work environment for some employees and/or students.
- (a) Discriminatory harassment based on protected class, gender (see 2 above); includes party alleging harassment or those witnessing such actions;
 - (b) Discriminatory harassment involving acts or remarks based on protected classes; age; color; national origin; race; religion; sexual orientation; gender identity; military status; and/or veteran status;
 - (c) Discriminatory harassment exhibited by acts or remarks designed to make an employee quit in retaliation for actions (i.e. filing a complaint, reporting confirmed safety violations);
 - (d) Discriminatory harassment based on acts, remarks of a violent behavior and/or threats of a violent nature.

(C) Reporting Discrimination or Harassment

Any person who believes he or she has been a victim of discrimination or harassment is strongly encouraged to pursue relief by reporting the discriminatory or harassing behavior to the appropriate individual(s). Grievants are expected to report complaints within sixty (60) calendar days of the alleged discrimination. Reports can be made directly to:

**Lisa Nagel, General Counsel & Vice President, Administration
(Human Resources Representative)**

- **Department of Human Resources**
- **Room 268, Administration Hall building**
- **(567) 661-7292**
- **Email: lisa_nagel@owens.edu**

The College complies with federal anti-discrimination statutes including:

Titles VI, VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act of 1990, Age Discrimination in Employment Act of 1967, Pregnancy Discrimination Act of 1978, Age Discrimination Act (students), Executive Order 11246, Sections 503 and 504 of the Vocational Rehabilitation Act of 1973, and Vietnam Era Veterans' Readjustment Act of 1974, and regulations of the office of federal contract compliance program.

Alternatively, a grievant may report the behavior to:

**Officers within the Department of Public Safety – (567) 661-7575
(Alumni Hall building)**

Any employee receiving a report or who has knowledge of discrimination or harassment must promptly inform the Human Resources Representative.

An acknowledgment of the receipt of a report of discrimination will be made within five (5) business days. The Human Resources representative will be available to answer any questions or concerns regarding these procedures, how to file a complaint or the progress or outcome of a complaint.

(D) Assessment/Investigation of Report

Upon receipt of a formal or informal report of discrimination or harassment, such complaint will be appropriately documented. A prompt and impartial assessment of such report will be conducted. While taking into consideration the sensitive nature of these matters, it will often be necessary for the College to conduct an investigation in order to determine whether and what action may be warranted.

The following steps will normally be taken in an investigation:

- (1) Notice will be provided to the grievant and accused that an investigation is in progress.
- (2) Interim measures to prevent continued discrimination or harassment will be considered and implemented during the investigation period as deemed appropriate.
- (3) Relevant witnesses, including the alleged grievant, accused and all first-hand witnesses will be identified and separately interviewed. The parties (grievant or accused) will have the opportunity to provide names of witnesses.
- (4) Parties will be permitted to bring a support person, but the support person will not be able to participate directly in the investigation.

- (5) Parties will be permitted to present relevant evidence to the investigator. It is the expectation of the investigator that parties are truthful and forthright in providing information and will not withhold or omit information.
- (6) Confidentiality concerns and the College's policy on retaliation will be discussed with grievant, accused and all witnesses.
- (7) All witnesses will be asked to put their statements in writing.

Findings of fact will be made by the Human Resources Representative. The Human Resources Representative will complete a written report with a summary of the investigation and findings of fact based on the preponderance of the evidence. Specific recommendations may be provided as necessary. The summary of the findings will be provided to both parties. If the preponderance of the evidence indicates that a violation of policy has occurred, the grievant and the accused will be immediately notified of this finding.

The College will work to complete its investigation in a timely matter, within the reasonable timeframe. A reasonable amount of time will be determined on a case-by-case basis, depending on factors such as the number of parties to be interviewed and their immediate availability to meet. In the event that the investigation is to exceed sixty (60) days, the investigator will contact the parties to inform them of the delay.

(E) Adjudication

The written summary of the factual findings by the investigator may include a recommendation that the person alleged to have violated this policy be subjected to appropriate discipline and will be forwarded to the appropriate department for further adjudication based on the preponderance of the evidence:

- (1) The Human Resources Representative (for reports of discrimination or harassment in which the **accused is an employee**) will review the investigator's finding to determine whether conduct is actionable and/or an appropriate sanction is warranted. A pre-disciplinary process will be conducted in accordance with the College's Standards of Conduct and Disciplinary Process Policy and/or the disciplinary provisions outlined in an applicable collective bargaining agreement; or
- (2) The Director of Student Life and Student Conduct (for reports of discrimination or harassment in which the **accused is a student**) will review the investigator's finding to determine whether conduct is actionable and/or an appropriate sanction is warranted in accordance with the Student Code of Conduct.
- (3) The Executive Director for Operations (for reports of harassment in which the **accused is a vendor, contractor, subcontractor, or another doing business with the college**) will review in accordance with the third party contract and all applicable College policies and procedures to determine whether conduct is actionable and/or appropriate sanction is warranted.

(F) Sanctions/Remedial Measures

Sanctions that could be imposed for violation of this policy include but are not limited to probation, loss of privileges, written warning, suspension (employment or academic), and expulsion (academic) or termination (employment or contract). In addition to specific disciplinary sanctions, the College will take any additional steps necessary to prevent future discrimination and/or harassment and to remedy the effects of such behavior.

(1) Remedies/accommodations for the grievant may include, but are not limited to:

- (a) Ensuring the grievant and accused do not attend the same classes.
- (b) Moving the grievant or accused to another section/course.
- (c) Providing an escort for moving between classes/activities.
- (d) Counseling and/or medical services.
- (e) Academic support services.

(2) Additional actions for the campus community to remedy the effects of discrimination or harassment may include, but are not limited to:

- (a) Counseling or other victim services to all students affected by discrimination or harassment.
- (b) Enhanced diversity/inclusiveness programming.
- (c) Focused training sessions.
- (d) Developing and distributing materials on discrimination and harassment.
- (e) Conducting campus climate assessment to assess effectiveness of efforts.

(G) Due Process

Before imposition of discipline, the accused will be given notice of the charges against him or her as well as an opportunity to respond to the allegations and to provide an appropriate defense in accordance with the Student Code of Conduct, Standards of Conduct/Disciplinary Process Policy and/or disciplinary provisions of the applicable collective bargaining agreement.

(H) Appeal Procedures**(1) For the Accused Employee or Employee Grievant:**

- (a) Non-bargaining unit employees: An accused employee or employee grievant who has reasonable basis as outlined in the Employee Grievance Policy to appeal the determination may exercise rights under the aforementioned policy.
- (b) Bargaining unit member employees: An accused employee or employee grievant who has reasonable basis as outlined in the applicable collective bargaining agreement to file a grievance concerning the determination may exercise rights in accordance with the applicable collective bargaining agreement.

(2) For the **Accused Student** or **Student Grievant**: A student who has reasonable basis as outlined in the Student Code of Conduct to appeal the determination may exercise rights under the aforementioned policy.

(I) Confidentiality

A grievant may request confidentiality. The College takes such requests seriously and will endeavor to protect the privacy of the parties involved; however, such requests may limit the College's ability to investigate and take reasonable action in response to a report. In such cases, the Human Resources Representative in consultation with College legal counsel will evaluate the request for confidentiality in the context of the College's commitment to provide a reasonably safe and non-discriminatory environment. If a grievant requests that his or her name or other identifiable information not be disclosed to the accused, or that no action be taken against the accused, he or she will be advised that this may result in limiting the College's ability to respond to the report.

(J) Supervisor's Responsibilities

Supervisors are responsible for preventing incidents of harassment by affirmatively discussing the subject, expressing strong disapproval, and developing methods for sensitizing employees. Supervisors who become aware of incidents of possible harassment should report the incident to the Human Resources Representative or the Office of Human Resources.

(K) Student and Employee Responsibilities

All students and employees are responsible for reporting any incidents of possible discrimination or harassment. A complaint will be kept as confidential as possible and a student or employee will not be penalized in any way for reporting such conduct. Students and employees have the duty to answer all questions honestly and completely during any harassment investigation. An individual(s) alleged to have committed discrimination or harassment has the right of being presented with allegations and has a responsibility and a right to respond to the allegations. Both the person(s) claiming discrimination or harassment and the accused have the right to a prompt and complete investigation of the claim, as well as to learning the result of the investigation.

(L) Consent/Consensual Relationships

Permissible sexual conduct requires consent. It is an employee's and/or student's responsibility to be attentive to the possibility that previously consensual or welcome conduct may at some point become *unwelcome*. Persons wishing to terminate consensual conduct or a consensual relationship should advise the other participant verbally or in writing that the conduct is no longer welcome. Upon notice that the conduct is no longer welcome, the other participant must cease the conduct immediately. Consent may be withdrawn at any time. Prior sexual activity or relationship does not, in and of itself, constitute consent.

An individual cannot consent who is substantially impaired by any drug or intoxicant; or who has been compelled by force, threat of force, or deception; or if the accused substantially impairs the victim/survivor's judgment or control by administering any drug, intoxicant or controlled substance to the other person surreptitiously or by force, threat of force or deception; or who is unaware that the act is being committed; or whose ability to

consent is impaired because of a mental or physical condition; or who is coerced by supervisory or disciplinary authority.

In the event of an allegation of harassment, the College will carefully scrutinize any defense based on the claim that the relationship was consensual, particularly when the facts establish that an academic or employment power differential existed within the relationship. The College prohibits soliciting, encouraging, engaging in, or consummating an inappropriate relationship with a minor or a student over which the employee has either real or perceived control or influence.

(M) Retaliation

Retaliation for making a formal or informal complaint of discrimination or sexual harassment is strictly prohibited. The College will take prompt disciplinary or other appropriate action to halt any retaliatory conduct. Examples include academic or employment reprisal against an individual who files a complaint or third-party report, or otherwise participates in the investigative and/or disciplinary process. The prohibition against retaliation extends to any person who opposes acts of harassment or discrimination or who testifies, assists, or participates in any manner in an investigation, proceeding, or hearing relative to harassment or discrimination.

(N) Impeding and Investigation/False Statements

It is a violation of this policy to impede an investigation of a complaint. It is a violation of this policy to knowingly make a false allegation of discrimination or harassment. Such a violation will be addressed through disciplinary action up to termination. However, failure to prove a claim of discrimination or harassment is not equivalent to making a false allegation. It is also a violation of this policy for a person alleged to have violated this policy or other person interviewed in connection with a discrimination or harassment complaint to knowingly make a false statement.

(O) First Amendment Rights.

This policy is intended to protect students and employees from discrimination or harassment, not to infringe upon academic freedom or censor speech protected by the First Amendment of the United States Constitution. However, threatening, offensive and intimidating conduct targeted at a particular student or employee (even if the conduct contains elements of speech), if sufficiently severe and pervasive so as to deprive an individual of rights, is not protected by the First Amendment.

9-29-14

Updated for contacts/titles 9-29-15; 2-8-17

Updated for titles and clarification of reports to HR 4-13-17