



**OAKLAND  
COMMUNITY  
COLLEGE™**

### **Administrative Policy**

Policy Type:	Administrative
Policy Title:	Non-Discrimination and Anti-Harassment
Office Responsible:	Human Resources
Related Policies and Procedures:	Title IX; Sexual Misconduct and Harassment Not Covered by Title IX
Related Laws:	See Section XII of this Policy

#### **I. Policy Statement**

The College is committed to a policy of equal opportunity for all persons regardless of age, race, color, national origin, religion, marital status, sex/gender, pregnancy, sexual orientation, gender identity, gender expression, gender transitioning, height, weight, national origin, citizenship, disability, perceived disability, political affiliation, familial status, veteran status, genetics or other characteristic protected by law. As such, the College is committed to a learning and work environment free from all forms of discrimination and harassment related to an individual's protected characteristics.

Discrimination and harassment of any kind under the terms of this policy is strictly prohibited in accordance with applicable state and federal laws. Retaliation is also prohibited under this policy.

When the College becomes aware that a member of the OCC community may have been subjected to or affected by discriminatory and harassing behavior based on protected characteristics, the College will take prompt action, including a review of the matter and, if necessary, an investigation and appropriate measures to stop the discrimination and/or harassment. Disciplinary penalties, if warranted, will depend on the facts and circumstances involved.

This policy applies to all educational opportunities, including without limitation educational programs, services and related activities offered by the College. It also applies to all employment opportunities, including the areas of recruitment, selection, advancement, compensation, benefits and other terms, conditions and privileges of employment.

This policy further applies to employees, volunteers, contractors, vendors, students and visitors. Violations of this policy will not be tolerated and individuals who engage in discriminatory conduct may be subject to discipline up to and including without limitation suspension from the College, termination of employment, contract cancellation, and removal from College premises and College activities.

OCC is committed to a continuous review of all educational programs, services, and activities to identify and prevent potential discrimination and/or harassment on the basis of legally protected characteristics.

#### **II. Definitions**

**a) Disability:** A disability protected by both federal ( Americans with Disabilities Act or "ADA") and state laws ( Michigan's Person's with Disabilities Civil Rights Act or "PWCRA") which includes a perceived,

determinable, or recorded physical or mental impairment/characteristic of an individual that substantially limits one or more major life activities unrelated to that individual's:

- Ability to perform the duties of a job or position;
- Qualifications for employment or promotion;
- Ability to utilize and benefit from educational opportunities, programs and facilities.

This definition also includes perceived disabilities when individuals who do not have a disability are regarded as having a disability. Discrimination based upon the association with individuals who have disabilities is also prohibited.

**b) Discrimination:** Prohibited discrimination includes, but is not limited to:

1. Inequitable, unfair treatment or adverse treatment because of a protected characteristic.
2. Harassment by faculty, staff, administrators, co-workers or outside contractors, co-students or visitors in the College's programs, activities, services or workplace, because of a protected characteristic.
3. Harassment is repeated, malicious mistreatment, verbal abuse, or conduct that is threatening, intimidating, humiliating, insulting, isolates people at work, or undermines their reputation or job performance through verbal or non-verbal communications.
4. Sexual Harassment: Sexual harassment is a form of sexual discrimination. Federal and State authorities provide that sexual harassment consists of unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature. Such conduct is unlawful where:
  - a. Submission to the conduct is either an explicit or implicit term or condition of employment; or
  - b. Submission to or rejection of the conduct is used as the basis for employment decisions affecting the person who did the submitting or rejecting; or
  - c. The conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive environment.
5. Workplace Bullying: This form of harassment, while not always constituting actionable discrimination, generally results from the use of inappropriately aggressive or insulting conduct or comments, which when viewed objectively, may cause an employee against whom such conduct or comments is/are directed to be humiliated or intimidated.
6. Denial of a reasonable accommodation to an individual would otherwise be entitled to under state or federal laws.
7. Retaliation against an individual because they reported discrimination, or assisted with a discrimination investigation or lawsuit.

**c) Familial Status:** Protection regarding familial status is designed to prevent intentional discrimination solely because they are parents. It is not designed to place other employees at a disadvantage or to give parents preference.

**d) Gender Expression:** Gender expression refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social and cultural norms can vary widely and some characteristics that

may be accepted as masculine, feminine or neutral in one culture may not be assessed similarly in another.

**e) Gender Identity:** The term “gender identity”, distinct from the term “sexual orientation”, refers to a person’s questioning and/or innate, deeply felt psychological identification as a man, woman or some other gender, which may or may not correspond to the sex assigned to them at birth (e.g., the sex listed on their birth certificate).

**f) Gender Transitioning:** The process of changing one’s gender presentation permanently to accord with one’s internal sense of one’s gender - the idea of what it means to be a man or a woman.

**g) Parental Status:** Status as a “parent” refers to the status of an individual who, with respect to an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: a biological parent; an adoptive parent; a foster parent; a stepparent; a custodian of a legal ward; in loco parentis to such an individual; or actively seeking legal custody or adoption of such an individual. A person stands “in loco parentis” when he or she has day-to-day responsibility to care for and financially support a child. A biological or legal relationship is not necessary.

**h) Protected Characteristics:** Protected characteristics includes age, race, color, national origin, religion, marital status, sex/gender, pregnancy, sexual orientation, gender identity, gender expression, gender transitioning, height, weight, national origin, citizenship, disability, perceived disability, political affiliation, familial status, veteran status, genetics or other characteristic protected by law.

**i) Retaliation:** An adverse action against a person who reports, complains about or who otherwise participates in good faith in any manner related to this policy.

**j) Sexual Orientation:** “Sexual Orientation” is the preferred term used when referring to an individual’s physical and/or emotional attraction to the same and/or other genders. “Gay”, “lesbian”, “bisexual”, “heterosexual (straight)”, “Trans”, “queer” and/or “questioning” are all examples of sexual orientations. A person’s sexual orientation is distinct from a person’s gender identity and expression.

### **III. Discrimination and Harassment Complaint Reporting**

Employees shall report all incidents of discrimination and/or harassment and any other violations of this policy that come to their attention. Failure to report discrimination and/or harassment or any violation of this policy will not be tolerated and may result in discipline up to and including without limitation suspension or termination of employment. Students are also strongly encouraged to report any discrimination and any other violations of this policy.

The College prohibits and will not tolerate retaliation against any person who reports discrimination and/or harassment or an alleged violation of this policy or participates in an investigation of an alleged violation of this policy. It is the obligation of OCC employees and students to similarly report retaliation so the College may effectively address it.

Employees, students, contractors, vendors and visitors shall cooperate in any College investigation involving an alleged violation of this policy.

Student, employee, and third party complaints concerning violations of this policy may be made to the Title IX Coordinator by U.S. Mail, email or in person:

**Director of Human Resources/Title IX Coordinator:** Donna Tuchowski

**Address:** 2480 Opdyke Road Bloomfield Hills, MI 48304-2266

**Phone:** (248) 341-2200

**Email:** [titleixcoordinator@oaklandcc.edu](mailto:titleixcoordinator@oaklandcc.edu); or [djtuchow@oaklandcc.edu](mailto:djtuchow@oaklandcc.edu)

Written complaints should identify the parties involved; describe the harassing or discriminatory behavior, including when and where it occurred; and identify by name or description any witness and/or evidence.

#### **IV. Interim Steps**

When appropriate, prior to or during an investigation, the College may take the reasonable steps and appropriate interim steps to protect the safety and well-being of members of the OCC community, to maintain the integrity of the investigative process and deter retaliation.

#### **V. Procedure**

Any complaint alleging [Title IX policy](#) violations and/or [Sexual Misconduct and Harassment Not Covered by Title IX](#) policy violations will be handled pursuant to those stated policies and procedures.

**A. Investigation Scope:** The purpose of the investigation is to gather facts relating to the incident(s) described in the written complaint and to determine, using a preponderance of the evidence standard, whether it is more likely than not that the alleged behavior occurred and, if so, whether it constitutes discrimination and/or harassment. The investigator will conduct a fact-finding inquiry that may include written statements, interviews, and any other sources of evidence the investigator deems appropriate.

**B. Length of Investigation:** Although the length of the investigation will depend on many factors, including the nature and scope of the allegations, the number of parties and witnesses involved and the availability of parties and witnesses, the investigator will seek to conclude the investigation within a reasonable amount of time from receipt of the complaint.

**C. Cooperation with Investigation:** OCC expects that students, faculty, employees, and other members of the OCC community will fully cooperate in the investigation process. Any faculty member or employee who is the subject of, or a potential witness regarding a complaint of discrimination or harassment, who refuses to cooperate in an investigation, will be subject to discipline, up to and including termination of employment in accordance with OCC policies and applicable collective bargaining agreements (CBA).

Likewise, a student who is the subject of, or a potential witness regarding a complaint of discrimination or harassment, who refuses to cooperate in an investigation, may be subject to a referral for investigation under the BART process for failure to abide by the Student Code of Conduct.

#### **VI. Resolution for Complaints Against Faculty or Employees**

**A. Findings and Complaint Resolution:** At the conclusion of the investigation, the investigator will prepare a written report. The report will explain the scope of the investigation, the applicable policy provisions, the summation of all witness interviews, and whether any allegations in the complaint were substantiated. The written report will be submitted to the Director of Human Resources.

**B. Complaint of Discrimination and/or Harassment Unsubstantiated:** If there is a determination that the complaint investigated was not substantiated, all parties will be notified. The findings of this determination may be appealed by the parties pursuant to Section IX.

**C. Finding of Inappropriate Behavior Not Rising to a Level of Violation of this Policy:** A determination may be made that the behavior was inappropriate and unprofessional but did not rise to a violation of this policy. The behavior, nevertheless, may merit coaching, educational and remedial training, or other appropriate action. Neither party may appeal such a determination unless provided by a collective bargaining agreement.

**D. Complaint of Discrimination and/or Harassment Substantiated:** If there is a determination that the alleged behavior did violate this policy, the Director of Human Resources will implement measures to ensure that the person who filed the complaint is not subjected to further discrimination or harassment in the effort to remedy the effects of any discrimination or harassment that may have occurred. Remedial steps, at the discretion of the College and in accordance with OCC policy and the applicable CBA, may include but are not limited to: counseling and/or training; separation of the parties; discipline – including a written reprimand; suspension; demotion; or termination.

OCC's ability to discipline an individual who is not an employee or student (e.g., vendor or contractor) is limited by the degree of control, if any, the College has over the individual. Nonetheless, OCC will seek the appropriate action in response to violations of this policy.

## **VII. Resolution for Complaint Against Students**

**A. Findings and Complaint Resolution:** At the conclusion of the investigation, the investigator will prepare a written report. The report will explain the scope of the investigation, the applicable policy provisions, the summation of all witness interviews, and whether any allegations in the complaint were substantiated. The written report will be submitted to the appropriate Dean of Student Services.

**B. Complaint of Discrimination and/or Harassment Unsubstantiated:** If there is a determination that the complaint investigated was not substantiated, all parties will be notified. The findings of this determination may be appealed by the parties pursuant to Section IX.

**C. Findings of Inappropriate Behavior Not Rising to a Level of Violation of this Policy:** A determination may be made that the behavior was inappropriate but did not rise to a violation of this policy. The behavior, nevertheless, may merit coaching, educational and remedial training or other appropriate action. Neither party may appeal such a determination.

**D. Complaint of Discrimination and/or Harassment Substantiated:** If there is an initial determination, upon investigation, that the alleged behavior did violate this policy, the appropriate Dean of Student Services may refer this matter to BART (Behavioral Assessment Review Team) to conduct a hearing, in accordance with OCC policies and practices, where a preponderance of the evidence standard will be utilized to determine whether it is more likely than not that the alleged behavior occurred and specifically which provisions of this policy have been violated. This final determination of a substantiated policy violation, following a due process hearing, will be issued in written findings and will also set forth the appropriate penalty and appeal procedures.

## **VIII. Confidentiality**

Any allegation of discrimination or harassment brought to the attention of the College will be discretely addressed. Investigations will be conducted in a confidential manner to the greatest extent possible. However, the investigation of complaints may also require disclosure to the accused individual and to other witnesses for the purpose of gathering important information. Disclosures will be limited to those who need to know and efforts will be made to maintain the privacy of the individuals involved in the investigation to the extent permitted by law.

Individuals involved in investigations or disciplinary proceedings under this policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process. Complainants and respondents are not restricted from sharing information with others who may assist them in presenting their case. Medical and counseling records are privileged documents that the parties will not be required to disclose unless express written consent is provided.

#### **IX. Appeals**

- A. Employee Appeals. Determinations by the Director of Human Resources may be appealed to the Vice Chancellor of Human Resources within five (5) business days. This does not negate grievance rights under the applicable collective bargaining agreements following the exhaustion of appeals under this policy.
- B. Student Appeals. Students found to have violated this policy by the Dean of Student Services under the BART process, may appeal to the Vice Chancellor for Student Services in accordance with the procedures set forth in the [Student Handbook](#) under the BART process.

#### **X. Protection from Retaliation**

Retaliatory conduct for good faith complaints regarding violations of this policy is strictly prohibited and may result in disciplinary sanctions and should be reported.

#### **XI. Filing an External Discrimination and/or Harassment Complaint**

In addition to the internal complaint process described herein, members of the OCC community may elect to file a discrimination or harassment complaint with an external body, including a federal or state agency authorized to investigate such claims.

Michigan Department of Civil Rights

Phone: (313) 456-3700; 1-800-482-3604

Fax: (313) 456-3791

TTY: 877-878-8464

Email: [MDCRServiceCenter@michigan.gov](mailto:MDCRServiceCenter@michigan.gov)

[https://www.michigan.gov/mdcr/0,4613,7-138-42240\\_43561-153171--,00.html](https://www.michigan.gov/mdcr/0,4613,7-138-42240_43561-153171--,00.html)

Equal Employment Opportunity Commission

Phone: 1-800-669-4000

Fax: (313) 226-4610

TTY: 1-800-669-6820

<https://www.eeoc.gov/field-office/detroit/location>

US. Department of Education, Office for Civil Rights

Michigan-Ohio Regional Office

Phone: (216) 522-4970

Fax: (216) 522-2573

TDD: 1-800-877-8339

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

[https://ocrcas.ed.gov/contact-ocr?field\\_state\\_value=661](https://ocrcas.ed.gov/contact-ocr?field_state_value=661)

## **XII. Related Laws**

The College complies with all state and federal laws that prohibit discrimination in employment and/or public education including, but may not be limited to, the following:

- Age Discrimination Act of 1975
- Age Discrimination in Employment Act of 1967
- Equal Pay Act of 1963
- Genetic Information Act of 2008
- Michigan Elliott-Larsen Civil Rights Act of 1976
- Michigan Equal Pay Act of 1963
- Michigan Persons with Disabilities Civil Rights Act of 1976
- Michigan Workforce Opportunity Wage Act of 2014
- Pregnancy Discrimination Act of 1978
- Sections 503 and 504 of the Rehabilitation Act of 1975
- The Americans with Disabilities Act of 1990 and ADA Amendments of 2008
- Title IV of the Education Amendments of 1972
- Title IX of the Education Amendments of 1972
- Title VI and VII of the Civil Rights Act of 1964
- Title VIII of the Public Health Service Act of 1944
- Uniform Service Employment and Readjustment Act of 1994
- Vietnam Era Veteran's Readjustment Act of 1974

## **Change Log**

08-23-2021      Effective date