

Sexual Misconduct Administrative Guideline

Sexual Misconduct Prohibition

Sexual misconduct will not be tolerated by Oakland Community College. The term “sexual misconduct” as used in this policy applies to any of the following acts: sexual assault as defined by Michigan law (including rape and acquaintance rape), stalking, dating violence, and domestic violence. The term also applies to retaliation taken in response to allegations made by a complainant or a reporter under this policy. Sexual misconduct violates OCC policy and federal and state law; it may also be subject to criminal prosecution. OCC is committed to fostering a community that promotes prompt reporting of all types of sexual misconduct and timely and fair resolution of sexual misconduct complaints. Creating a safe environment is the responsibility of all members of the College community; accordingly, the Title IX coordinator shall publish guidance to the College community consistent with this policy and as required by law.

A. Coordination with Non-Discrimination and Harassment Policies

OCC recognizes that harassment, discrimination and sexual misconduct may occur in conjunction with one another. When misconduct relates to several of these categories the College will coordinate investigation and resolution efforts.

B. Reporting Sexual Misconduct

1. Immediate Reporting

If you feel you have been victimized by an incident of sexual misconduct, immediately notify the Department of Public Safety (“DPS”) at extension 5555 from any college phone, (248) 858-4951 from any other phone, or dial 911. DPS will assist the complainant in notifying the proper authorities. If the offense occurs when the campus is closed, notify the local police department who will notify college officials. An incident of sexual misconduct should also be simultaneously reported to the College Title IX coordinator:

Title IX Coordinator
Oakland Community College
2480 Opdyke Road
Bloomfield Hills, MI 48304-2266
Phone: (248) 341-2200
Email: titleixcoordinator@oaklandcc.edu

The Title IX coordinator will investigate the report and take necessary measures to ensure community and complainant’s safety.

A person who believes they have experienced sexual misconduct has the right to refuse to report it. Nevertheless, the College strongly encourages

the prompt reporting of instances of sexual misconduct. If any member of the community learns that another member of the community has been victimized by, or engaged in, sexual misconduct they should report that information immediately to the Title IX coordinator so that the College can take appropriate steps to support that individual's well-being and enhance the safety and security of the community.

2. Confidentiality

If the complainant requests that his or her name not be disclosed to the respondent, or asks that the report of sexual misconduct not be pursued, the Title IX coordinator shall inform the complainant that honoring the request may limit the College's ability to respond fully to the incident, including pursuing disciplinary action against the respondent. If the complainant insists that his or her name not be disclosed to the respondent or that the College not investigate or seek action against the respondent, the Title IX coordinator shall determine whether the College can honor the complainant's request while still providing a safe environment for all students and employees, including the complainant. In considering a complainant's request for confidentiality that could preclude a meaningful investigation or potential discipline of the respondent, the Title IX coordinator should consider all relevant factors. If consideration of such factors results in a determination that the report must be investigated in order to provide a safe environment for all students and employees, the College may conduct an investigation and pursue disciplinary action, if appropriate, in a manner that discloses the student's identity to the respondent.

In accordance with federal law, OCC has designated certain employees who are responsible for student welfare as campus security authorities ("CSAs"). CSAs are required to share any report of rape, sexual assault, or sexual misconduct of which they become aware that involves any member of the college community—regardless of whether the person who committed the sexual misconduct was also a member of the OCC community—with the Title IX coordinator and with DPS. Therefore, a report to a CSA cannot, as a matter of law, be kept confidential.

3. Seeking Medical Attention and Preserving Evidence

The College encourages individuals who have experienced an incident of sexual misconduct to seek assistance from a medical provider as soon as possible after the incident. If an incident of sexual misconduct occurs, it is important to preserve evidence so that successful criminal prosecution remains an option. The victim of a sexual assault should not wash, shower or bathe, douche, brush teeth, comb hair, or change clothes prior to a medical exam or treatment. If a victim has removed the clothing he or she

was wearing during the incident prior to seeking medical treatment, that clothing should be placed in a brown paper, not plastic, bag and brought to the hospital when treatment is sought. If the victim is still wearing the clothes that he or she was wearing during an incident of sexual misconduct, he or she should bring a change of clothes with him or her to the hospital so that the clothes containing possible evidence can be preserved and examined for evidence of the crime. Evidence of violence following an incident of sexual misconduct should be documented by taking a photograph. Evidence of stalking, including any communications such as written notes, email, voice mail, or other electronic communications sent by the perpetrator, should be saved and not altered in any way.

4. Third Party Reporting

Individuals are encouraged to report sexual misconduct as soon as possible in order to maximize the College's and/or law enforcement's ability to respond promptly and equitably. The College does not limit the timeframe for reporting an incident, and upon receipt of any report, regardless of when incident occurred, the College will conduct a Title IX assessment to determine if an investigation and/or any safety measures are necessary to maintain the complainant and community's safety.

C. College's Responsibilities

If you feel you are the victim sexual misconduct, OCC will:

1. Not release your name to the public or press.
2. Not pre-judge you and not blame you for what occurred, nor will it be suggested that you were contributively negligent or assumed the risk of being sexually assaulted.
3. Treat you and your particular case with courtesy, sensitivity, dignity, understanding and professionalism.
4. Make appropriate accommodations and protective measures to protect your safety, if possible.
5. Assist you in arranging for any hospital treatment or other medical needs.
6. Assist you in privately contacting counseling, public safety, advising and other available resources, including any options provided to you under state and federal law regarding mandatory testing of sexual assault suspects for communicable diseases and notification of the victim of the results of the testing.
7. Fully investigate your case, and help you achieve the best possible outcome. This may involve the arrest and full prosecution of the respondent. You will be kept up-to-date on the progress of the investigation and/or prosecution.
8. Continue to be available for you to answer questions, to explain the systems and processes involved (prosecutor, courts, etc.) and to be a listening ear if you wish.
9. Consider your case seriously regardless of your gender or the gender of the suspect.

10. Upon request, and regardless of whether a student or employee reports an incident of sexual misconduct, OCC will make any reasonably necessary change to a complainant's academic, living, transportation and working situation, as applicable.

11. Maintain as confidential any accommodations or protective measures we provide you with.

12. Provide you with written notice about existing health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for complainants.

13. Provide you with a written explanation of your rights and options

D. Interim Measures

Upon receipt of a report, the College will provide interim support and reasonable protective measures to prevent further acts of misconduct, and to provide a safe educational and work environment to the best of its ability. The College will determine the necessity and scope of any interim measures. Interim measures may include:

1. No Contact Order.

Any party involved in a Title IX investigation (complainant, respondent or witness) may request, or the College may impose, communication and contact restrictions to prevent further potentially harmful interaction. These communication and contact restrictions generally preclude in person, telephone, electronic or third party communications. In some cases, an individual may also wish to consider a Personal Protection Order from the local courts. This is a civil proceeding independent of the College. If a court order is issued the College will, to the extent possible, assist the protected person in benefiting from the restrictions imposed by the court and will also facilitate on campus compliance with the order. The College may also limit an individual or organization's access to certain College facilities or activities as part of the no contact order.

2. Academic, Employment or Residence Modifications.

Any party involved in a Title IX investigation (complainant or respondent or witness) may request an academic or employment accommodation after a report of sexual misconduct. An individual who requests assistance in changing their academic or living situation after an incident of sexual misconduct will receive appropriate and reasonably available accommodations. These may include:

i. Academic accommodations, including a change in class schedule, dropping a course without penalty, attending a class via Skype or other alternative means, providing an academic tutor, or extending deadlines for assignments;

ii. Change in work assignment or schedule;

iii. Providing an escort to ensure safe movement between classes and activities.

3. Emotional Support.

The College will assist any member of the community by providing a referral to off campus mental health providers.

E. Community Resources

Community resources for victims of sexual misconduct include:

Common Ground - (800) 231-1127
www.commongroundhelps.org

H.A.V.E.N.
P.O. Box 431045
Pontiac, MI 48343
(877) 922-1274
www.haven-oakland.org

Victim Assistance Services
Oakland County Prosecutor's Office – (248) 858-0707
www.oakgov.com/prosatty/division_committee/victims_services/index.html

F. Primary Prevention and Awareness Programs

1. For all incoming students and new employees

All incoming students and new employees are provided with an orientation/training program opportunity on sexual misconduct. The training and orientation is designed to acclimate new students and employees to OCC's policy on sexual misconduct, and to provide awareness of sexual misconduct and bystander intervention techniques.

2. Ongoing Prevention and Awareness Programs

OCC provides programs addressing sexual misconduct and other related information to students, staff and the community at various times throughout the year. Notice of such programs will be provided in advance, and all members of the OCC community are welcome to attend.

G. Bystander Intervention

OCC expects all community members to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention (if it is

safe to do so), calling law enforcement, or seeking assistance from a person in authority. Community members who choose to exercise this obligation will be supported by the College and protected from retaliation.

H. Protection from Retaliation and Assurance of Fair Treatment

The College will take appropriate steps to ensure that a person who in good faith reports, complains about, or participates in a sexual misconduct investigation will not be subjected to retaliation by the respondent or by others with knowledge of the underlying report. Anyone who believes they are experiencing retaliation is strongly encouraged to report that concern using the same procedure for reporting possible sexual misconduct under this Policy. A retaliation concern will be reviewed as a separate offense under this Policy; that is, a person can be found responsible for retaliation even if not found to be responsible for the underlying reported sexual misconduct. The College also will take appropriate steps to ensure that respondents accused of sexual misconduct or retaliation are treated fairly throughout the College's review.

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Procedures for Investigating Instances of Sexual Misconduct

In the event of a report of sexual misconduct made by a person regarding an OCC student or employee, the College will investigate whether a student, employee or third party is responsible for sexual misconduct and what, if any, safety measures and/or disciplinary actions are appropriate in accordance with the procedures described below. This procedure covers sexual misconduct and retaliation in connection with reports of possible sexual misconduct.

A. Application

This procedure applies to sexual misconduct or retaliation committed by a College student, employee, or a third party if that sexual misconduct or retaliation occurs:

1. On campus, or
2. Off campus, if: a) in connection with a College or College-recognized program or activity; b) in a manner that poses an obvious and serious threat of harm to any member of the College community; or c) that may have the effect of creating a hostile educational environment for any member of the College community.

B. Timelines

The College will strive to complete its investigation and the sanction/remedy process, if applicable, and simultaneously share the results of those with complainant and respondent within sixty (60) calendar days after the Title IX coordinator receives a report of sexual misconduct. There are, however, factors beyond the control of the College that may affect the time needed to conduct a fair, reliable, impartial and prompt investigation of a report of sexual misconduct or retaliation including, but not limited to: (a) availability and cooperation of the complainant (if participating), respondent (if participating) and/or witnesses; (b) illness or injury of College employees conducting or participating in the investigation of the report or proceedings resulting from the report; and (c) weather or other acts of God that result in the College being closed.

The Title IX coordinator may extend the time for completing the investigation or the sanctions/remedy process for good cause.

C. The Investigation

The Title IX coordinator will receive all reports of sexual misconduct. The Title IX coordinator is not required to assign an investigator or otherwise investigate any report alleging facts that, if true, would not constitute a violation of the sexual misconduct policy. In all cases, the decision on whether, how, and the extent to which the College will conduct an investigation, and whether other measures will be taken in connection with any allegation of sexual misconduct or retaliation, rests with the Title IX

coordinator.¹ If the Title IX coordinator decides upon review to investigate a report of sexual misconduct or retaliation, a report will be forwarded to an appropriate person of his or her choosing to conduct an investigation. Upon assignment of a complaint to an investigator, the Title IX coordinator and the investigator shall confer with respect to the investigation.

The investigator will conduct an adequate, reliable, impartial and prompt investigation. In most cases, the investigator will meet separately with the complainant, respondent, and reporter (if applicable), and interview any witnesses identified by them. An audio and/or video recording may be made of an interview if appropriate under the circumstances. The investigator will also review other relevant information gathered during the investigation, including any police investigatory documents and student or personnel records that may be available. A different or less formal response to the report may be warranted depending upon the nature of the report and the circumstances involved.

At any time during the course of an investigation, the complainant, respondent, or a witness may provide a written or verbal statement or other supporting materials, or identify other potential witnesses. Either the complainant or the respondent may have an advisor accompany him or her at any meeting he or she attends relating to the investigation of the reported misconduct.

D. Standard of Proof

The investigator's findings will be made using the preponderance of the evidence standard. This standard requires that the information supporting a finding of responsibility be more convincing than the information in opposition to it. Under this standard, individuals are presumed not to have engaged in sexual misconduct or retaliation unless a preponderance of the evidence supports a finding that sexual misconduct or retaliation occurred.

E. Investigation Findings and Outcome Notification

The investigator will report his/her findings in writing to the Title IX coordinator or his or her designee at the conclusion of an investigation. The investigator's written findings will generally include:

1. A summary of the investigation;
2. The investigator's findings; and
3. A summary of the investigator's rationale in support of the findings.

If the findings conclude that the respondent engaged in sexual misconduct as defined in the policy, the report will be submitted to the appropriate administrator who shall decide what, if any, formal action is to be taken by the College in response to the misconduct. In

¹ In cases where the Jeanne Clery Act, 20 U.S.C. §1092(f), is implicated, and as required by law, DPS will conduct its own investigation.

cases involving a student as either complainant or respondent, the appropriate administrator is the vice chancellor of student services. In all other cases, the appropriate administrator is the cabinet officer of the unit in which the respondent is employed or otherwise associated. The complainant and respondent shall be notified of the appropriate administrator's decision in writing.

Formal disciplinary action against a respondent shall be taken in accordance with the applicable collective bargaining agreement or College policy. The administrator responsible for taking formal disciplinary action pursuant to the applicable collective bargaining agreement or College policy shall report the formal disciplinary action to the Title IX coordinator.

Upon receipt, the Title IX coordinator shall, in writing, simultaneously notify complainant and respondent of the investigator's findings, the sanctions imposed on respondent that directly relate to the complainant, the notice of appeal rights, and steps the College will take to remedy the effects and prevent recurrence of the misconduct, if any. The complainant will also be notified of any individual remedies offered or provided to the complainant but the respondent will not be notified of such individual remedies offered or provided to complainant.

F. Sanctions

If the findings conclude that the respondent engaged in sexual misconduct or retaliation as defined in this policy, the College may initiate a process designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting the College's educational mission and Title IX obligations. Sanctions or interventions may also serve to promote safety or deter students from similar future behavior. Some behavior is so harmful to the complainant and/or the College community, or so deleterious to the educational process, that it may require more serious sanctions or interventions including, but not limited to, removal from specific courses or activities, suspension or expulsion from the College, or a prohibition from being present on College property.

G. Appeal

The complainant or respondent may appeal the appropriate administrator's decision. Written notice of appeal shall be filed with the Title IX coordinator within ten (10) calendar days of receipt of the appropriate administrator's decision. The notice of appeal shall specify why the appropriate administrator's decision should not stand.

The complainant or the respondent may seek review only on one or more of the following specified grounds:

1. A material deviation from the procedures affected the outcome of the case;
2. There is new and relevant information that was unavailable at the time of the investigation that could affect the investigation findings;

3. The disciplinary action, sanctions, interventions and/or other remedies are inappropriate or disproportionate to the determined violation(s); or
4. A review of all available and relevant information indicates that a preponderance of the evidence does not support the findings and provides firm and definite support for modifying the original findings.

Upon receipt of a timely filed and properly specified notice of appeal, the Title IX coordinator shall confirm receipt and refer the notice of appeal to the appeal panel. The Title IX coordinator shall also notify the appellant regarding whether the appeal was timely and properly specified.

The appeal panel shall be composed of three persons designated by the chancellor. The appeal panel's decision should be made within twenty (20) calendar days of the date the notice of appeal is filed with the Title IX coordinator. These timelines are intended as guidelines and may be extended by the appeal panel for reasonable cause. The appeal panel will review the matter based on the issues identified in the request for appeal. The appeal panel may affirm, modify or reverse the decision of the appropriate administrator, or remand the appeal to the Title IX coordinator for additional investigation. The appeal panel will issue its decision and make it available to the complainant (if participating), respondent (if participating) and Title IX coordinator in writing, simultaneously.

H. Student Rights and Expectations

Certain student protections and expectations pertain to the process for resolving student sexual misconduct and retaliation allegations. Complainants and respondents participating in this process may expect the following:

1. Respect for Privacy

Information regarding sexual misconduct and retaliation reports, and any investigation or review of those reports, including any sanction determinations, may be shared with College employees with a legitimate educational interest or with external individuals or entities on a need-to-know basis and only as permitted under College policy and applicable law.

2. Participation in Process

If a person declines to participate, the College may continue to investigate and/or proceed in the matter and issue findings/decisions based on available information. The complainant and the respondent shall be afforded equal opportunity to have others present.

3. Coordination with Legal Proceedings

Students may simultaneously engage criminal prosecution procedures and/or civil litigation in connection with the same behavior that forms the basis of a sexual

misconduct report under this procedure. In such cases, the College is committed to appropriate coordination with the Public Safety Department and local law enforcement and may, if requested and appropriate, share information with those agencies. The College will fulfill its obligation to take immediate and appropriate action to investigate possible sexual misconduct even if there are other external processes or procedures pending in connection with that same sexual misconduct report. Similarly, if the College finds sexual misconduct has occurred, the College will take effective steps to end it, prevent its recurrence, and address its effect, as well as sanction the respondent regardless of what external proceedings may also be pending.

Standards for criminal investigations are different than the standards for a violation of this procedure, and therefore the College will not base its decisions under this procedure solely on law enforcement reports and/or actions. Accordingly, the College will not normally wait for the conclusion of a criminal investigation or other proceedings before implementing its review of reported sexual misconduct under this procedure.

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DEFINITIONS

The following definitions apply to the following terms used in OCC's Sexual Misconduct Administrative Guideline:

Advisor – Any individual who provides the accuser or accused support, guidance or advice.

Community – OCC students and employees.

Complainant: A student or employee who reportedly experienced sexual misconduct, regardless of whether that individual participates in the disclosure or review of that report by the College at any point.

Consent – A free and willing agreement to engage in a sexual act, provided without force or coercion, between individuals who are of sufficient age and are not mentally incapable, mentally disabled, mentally incapacitated or physically helpless.²

Dating Violence– Violence committed against a person with whom the perpetrator is involved in a dating relationship with. Dating violence is frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.³

Domestic Violence – The occurrence of any of the following acts by a person that is not an act of self-defense: (i) causing or attempting to cause physical harm to a family or household member; (ii) placing a family or household member in fear of physical or mental harm; (iii) causing or attempting to cause a family member or household member to engage in involuntary sexual activity by force, threat of force, or duress; (iv) engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested. “Family or household member” includes any of the following: (i) a spouse or former spouse; (ii) an individual with whom the person resides or has resided; (iii) an individual with whom the person has or had a dating relationship; (iv) an individual with whom the person is or has engaged in a sexual relationship; (v) an individual to whom the person is related or was formerly related by marriage; (vi) an individual with whom the person has a child in common; (vii) the minor child of an individual described in subparagraphs (i) to (vi).⁴

Investigator: An appropriately trained individual, who may be a College employee, who reviews and investigates reports of sexual misconduct.

² In regard to criminal sexual conduct crimes, consent is not defined within statutory law. However, see *People v. Hale*, 142 Mich. App. 451, 452 (1985) (upholding a trial court's definition of consent as a “willing act of sexual intimacy or intercourse between persons of sufficient age who are neither mentally defective, mentally incapacitated nor physically helpless [.]”).

³ MCL §750.81(6).

⁴ MCL §400.1501.

Proceeding – All activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings. Proceeding does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.

Reporter: A person who reports an incident allegedly involving sexual misconduct.

Respondent: A student, employee or third party who is reported to have engaged in sexual misconduct.

Result – Any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within OCC.

Sexual Assault – any form of unwanted sexual contact obtained without consent and/or obtained through the use of force, threat of force, intimidation, or coercion. In Michigan, there are four degrees of criminal sexual conduct (“CSC”).⁵

Sexual Harassment: Sexual Harassment is defined in Board Policy 2.6.2.

Stalking – A willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed or molested.⁶

Title IX: Title IX of the Education Amendments of 1972 (Title IX) (20 U.S.C. § 1681 *et seq.*; 34 C.F.R. Part 106) (as amended) is a federal law that prohibits sex-based discrimination, including sexual harassment, sexual assault, and retaliation in education programs that receive federal financial assistance.

Title IX Coordinator: The College official charged with ensuring the College’s overall compliance with Title IX and related College policy and procedures.
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⁵ MCL §750.520(a)-(e).

⁶ MCL 750.411h(1)(d)