

## **BOARD OF TRUSTEES POLICY and PROCEDURE**

### DIVISION II

#### **2.6.4 POLICY – 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.

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#### **2.6.4 PROCEDURE – 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. 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 cases involving a student as either complainant or respondent, the appropriate administrator is the Vice Chancellor for 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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