



Ohio Administrative Code

Rule 3358:16-101-07 Sexual Discrimination, Sexual Harassment, and Sexual Misconduct Policy.

Effective: May 3, 2015

(A) Notice of non-discrimination

Terra state community college does not discriminate on the basis of race, color, religion, national origin, ethnicity, age, sex, gender identity, genetic information, gender expression, sexual orientation, marital status, disability, pregnancy, military status, or special disabled or Vietnam-era veteran status in provision of educational programs and services or employment opportunities and benefits pursuant to the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the American with Disabilities Act of 1990, the Age Discrimination Act of 1976, the Vietnam Era Veterans Readjustment Assistance Act of 1974, and Chapter 4112. of the Revised Code.

(B) Notice of non-sex discrimination

Sex discrimination violates an individuals fundamental rights and personal dignity. Terra state considers sex discrimination, to include, but not be limited to: sexual harassment, sexual assault, gender-based harassment, intimate partner violence, and stalking by employees, students, or third parties. To ensure compliance with Title IX and other federal and state civil rights laws, the college has developed policies and procedures that prohibit sex discrimination.

(C) Notice against sexual misconduct

Sexual misconduct in any form will not be tolerated within the Terra state community college community. All members of the faculty, staff, administration, student body, volunteers, and visitors to campus have the right to be free from discrimination on the basis of sex. All members of the above mentioned groups are expected to conduct themselves in a manner that does not infringe upon the rights of others. Terra state community colleges sexual misconduct policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy has dual purposes. It serves as a measure for the college to determine, after the



fact, if behaviors have violated policy. It also provides general guidelines for the expectations the college has for sexual communication, sexual responsibility, and sexual respect.

(D) Filing a complaint:

Individuals who have experienced sex discrimination are encouraged to report these offenses to campus safety, to the Title IX coordinator or deputy coordinators, or to their direct supervisor.

Individuals who wish to make a complaint do not have to provide a statement to campus safety. Any person who receives a complaint of sexual discrimination, harassment or retaliation, is expected to report the incident promptly.

(E) Non-retaliation

Terra state community college strictly adheres to and enforces a non-retaliation policy. Retaliation against an individual who has complained about sexual discrimination, harassment and/or misconduct and retaliation against individuals for cooperating with an investigation of a sexual discrimination and/or harassment complaint is unlawful and will not be tolerated by the college. Any person who violates this policy will be subject to discipline, up to and including termination if they are an employee, and/or dismissal if they are a student.

(F) Process:

(1) Title IX coordinator and deputy coordinator(s)

The following individual(s) have been appointed by the president to handle inquiries regarding this policy:

Mr. Heath Martin, associate dean of students and Title IX coordinator Terra state community college
2830 Napoleon road Fremont, OH 43420 office location: SAC phone: (419) 559-2350 email:
hmartin01@terra.edu

Ms. Nanci Kosanka, director of human resources and deputy Title IX coordinator Terra state
community college 2830 Napoleon road Fremont, OH 43420 office location: B205 phone: (419)



559-2465 email: nkosanka@terra.edu

Mr. Jack Fatica, vice president for academic affairs and deputy Title IX coordinator Terra state community college 2830 Napoleon road Fremont, OH 43420 office location: B209 phone: (419) 559-2381 email: jfatica@terra.edu.

Campus safety Terra state community college 2830 Napoleon road Fremont, OH 43420 office location: B107 phone: (419) 559-2253

(2) Definitions

(a) "Complainant" is the individual making an allegation of a violation of college policy.

(b) "Respondent" is the individual charged with an alleged violation of college policy.

(c) "Sexual discrimination" is behaviors or actions that deny or limit a persons ability to benefit from, and/or fully participate in the educational programs, activities or employment opportunities because of a persons sex. Examples of sex discrimination under Title IX include but are not limited to:

(i) Sexual harassment;

(ii) Failure to provide equal opportunity in education, programs, and co-curricular programs including athletics;

(iii) Discrimination based on pregnancy; or

(iv) Employment decisions.

(d) "Sexual harassment" includes unwelcome sexual advances, requests for sexual favors or other physical or verbal conduct of a sexual nature that is unwelcome and which, because of the severity and/or persistence of the conduct, interferes significantly with an individuals or a groups work or education, or adversely affect an individual or groups living conditions. All sexual misconduct is a



form of sexual harassment.

Sexual harassment may include quid pro quo and/or an abusive or hostile environment which interferes with the ability to function as a full participant in the Terra state community college community.

(i) Sexual harassment by quid pro quo

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of a persons employment or academic status; or

(b) Submission to or rejection of such conduct by a person is used as the basis for employment or academic decisions affecting such person.

(ii) Sexual harassment by hostile environment

(a) Such conduct has the purpose or effect of unreasonably interfering with a persons work or academic performance or creating an intimidating, hostile, or offensive environment for working, learning, or living on campus.

(b) The determination of whether an environment is hostile is often contextual and must be based on the circumstances. These circumstances could include:

(i) The frequency of the conduct;

(ii) The nature and severity of the conduct;

(iii) Relationship between alleged harasser and subject of the alleged harassment;

(iv) Location and context in which the alleged conduct occurs;

(v) Whether the conduct was physically threatening;



- (vi) Whether the conduct was humiliating; or
- (vii) Whether the conduct arose in the context of other discriminatory conduct.
- (iii) Examples of sexual harassment include, but are not limited to:
 - (a) Requesting sexual favors that may be subtle or overt but particularly when the requests are suspected to be linked to career advancement or academic rewards.
 - (b) Committing physical assault of a sexual nature, for instance, inappropriate touching or rape.
 - (c) Sending unwelcome letters, notes, or materials or making phone calls of a sexual nature.
 - (d) Name calling, teasing, or making other derogatory or dehumanizing remarks involving sex, gender, or sexual orientation.
 - (e) "Sexual misconduct" is a broad term and refers to physical sexual acts perpetrated against a persons will or where a person is incapable of giving consent. A number of different acts fall into the category of sexual misconduct including sexual violence and sexual exploitation. All such acts of sexual misconduct are forms of sexual harassment covered under Title IX.
 - (f) "Sexual violence" is any unwanted or non-consensual sexual act. Sexual violence can be committed by acquaintances, casual or long-term partners, spouses, or strangers. The use of alcohol, by either party, in conjunction with an incident of sexual violence, does not mitigate responsibility or diminish the seriousness of the offense. Sexual violence can take the following forms: non-consensual sexual contact, non-consensual sexual intercourse and/or non-consensual intimate touching.
 - (g) "Non-consensual sexual contact" includes the intentional touching, manipulation or fondling of the victim by the perpetrator, or when the victim is forced to touch directly or through clothing another persons groin, genitals, breasts, thighs or buttocks, or when a person is compelled to touch the above named parts of their own bodies for the sexual gratification of another, against another persons consent or after such other person has withdrawn their consent.



(h) "Non-consensual sexual intercourse" involves any form of sexual intercourse with a person, without his or her consent or after consent is withdrawn. This includes non-consensual anal, oral or vaginal penetration, whether by a finger, tongue, penis, or an inanimate object, as well as compelling an unwilling person to perform any of the above named acts.

(i) "Non-consensual intimate touching" involves one person engaging in the intimate touching or another person, against such other persons consent, or after such other person has withdrawn their consent, except that such intimate touching does not include oral, anal or vaginal penetration or the fondling or manipulation thereof. This includes non-consensual kissing, or stroking, or fondling of a non-sexual body part, in an intimate way.

(j) "Sexual exploitation" involves activity of a sexual nature which results in the nonconsensual exploitation of one person by another for his or her own benefit or advantage or to benefit or advantage anyone other than the one being exploited.

Examples of sexual harassment include but are not limited to:

(i) Prostituting another person;

(ii) Video- or audio-recording (by any electronic means) of sexual activity without permission;

(iii) Voyeurism;

(iv) Public indecency (such as exposing your genitals to others without consent);

(v) Knowingly exposing another person to a sexually transmitted infection (STI) or Human Immunodeficiency Virus (HIV) without prior knowledge and consent of the person to be exposed to STI or HIV; or

(vi) Contact-free coercion causing a person to completely or partially disrobe.

(k) "Effective consent" is informed, knowing, and voluntary. Effective consent is mutually



understandable words or actions which indicate willingness to participate in mutually agreed-upon sexual activity. Effective consent may never be given by minors, mentally disabled persons, those who are incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary) or those who are unconscious, unaware or otherwise physically helpless. Consent obtained as a result of physical force, threats, intimidating behavior, duress or coercion is not effective consent. A person who knows or should reasonably have known that another person is incapacitated may not engage in sexual activity with that person. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why or how of their sexual interaction.

Additional clarifying notes for effective consent:

- (i) Consent is mutually understandable when a person would consider the words and/or actions of the parties to have expressed a mutually understandable agreement between them to do the same things, in the same way, at the same time, with one another.
- (ii) Consent is active, not passive.
- (iii) In the absence of mutually understandable words or actions, it is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity, to make sure that he/she has the consent from his/her partner.
- (iv) Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- (v) The person who is the object of sexual advances is not required to physically or otherwise resist.
- (vi) Silence, previous sexual relationships or experiences, and/or a current relationship may not, in themselves, be taken to imply consent.
- (vii) Intentional use of alcohol or other drugs does not excuse a violation of the sexual misconduct policy.
- (l) "Retaliation" is any action by any person that is perceived as: intimidating, hostile, harassing,



retributive or violent that occurred in connection to the making and investigation of the report.

(3) General grievance procedure

(a) Terra state community college encourages those who have experienced any form of sex discrimination to report the incident promptly, to seek all available assistance, and to pursue college conduct charges and criminal prosecution of the offender. The college takes complaints very seriously and will work with complainants to ensure their safety and to remedy the situation.

(b) All incidents of sexual discrimination and harassment, including sexual misconduct retaliation, should be reported and this should occur as soon as possible after the incident(s) in order to be most effectively investigated. All reports and complaints of discrimination and harassment will be promptly investigated and appropriate action will be taken as expeditiously as possible.

(c) The college will make reasonable efforts to protect the rights of both the complainant and the respondent. The college will respect the privacy of the complainant, the individual(s) against whom the complaint is filed, and the witness(es) in a manner consistent with the colleges legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations by required law.

(d) The college reserves the right to investigate and resolve a complaint or report of discrimination and/or harassment regardless of whether the complainant ultimately desires the college to pursue the complaint. In such cases, parties shall be informed of the status of the investigation at reasonable times until the colleges final disposition of the investigation.

(e) Anonymous complaints will be accepted; however, Terra state community colleges ability to obtain additional information may be compromised and the ability to investigate or resolve anonymous complaints may be limited.

(f) When a complaint is received, the college will take appropriate corrective action in an expeditious manner. Any investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. When meeting with the Title IX coordinator or deputy coordinator information will be provided about the policy on sexual discrimination, harassment



and/or misconduct and the complaint process.

(g) When the investigation is completed, the college will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of the investigation. If it determined that inappropriate conduct has occurred, the college will act promptly to eliminate the offending conduct and where it is appropriate, to impose disciplinary action through appropriate due process procedures.

(h) Intentionally making a false complaint or report of harassment or discrimination is a violation of this policy and constitutes misconduct subject to disciplinary action, and may also be a crime.

(i) In addition to the above options, if you believe you have been subjected to sexual harassment, you may file a formal complaint with any or all of the government agencies set forth below. Using the colleges complaint process does not prohibit you from filing a complaint with these agencies.

(i) The United States equal employment opportunity commission Detroit field office Patrick V. McNamara building, 477 Michigan avenue, room 865, Detroit, MI 48226 1-800-669-4000

(ii) Ohio civil right commission Toledo office 1 Government center, room 936, Toledo, OH 43604 (419)-245-2900

(iii) Department of education, office for civil rights Cleveland office 600 Superior avenue east, suite 750, Cleveland, OH 44114 (316)-522-4970

(4) Investigative procedure

(a) A complainant may initiate the investigative procedure by filing a complainant with the Title IX coordinator or a deputy coordinator describing the details of the alleged harassment or discrimination. Upon receipt of such a complaint, the Title IX coordinator or a deputy coordinator will promptly conduct an investigation to determine whether the complaint can be substantiated, and, if so, whether it can be effectively remediated or resolved by the coordinator or deputy coordinator. If necessary the coordinator or deputy coordinator will take appropriate temporary measures to address the complaint pending further investigation.



(b) An investigation may include any of the following: interviews of the parties involved, including witnesses, and the gathering of other relevant information. Both the respondent and complainant may present witnesses and other evidence.

(c) At any time during the investigation, the investigator may recommend that interim protections or remedies for the parties involved or witnesses be provided by appropriate college officials. These protections or remedies may include separating the parties, placing limitations on contact between parties, suspension, or making alternative workplace or student housing arrangements. Failure to comply with the terms of interim protections may be considered a separate violation.

(d) If the investigation determines the claim is likely to be substantiated, and if the respondent is a student, the formal process will utilize the student discipline committee, the hearing process outlined in article G of the student code of conduct.

(e) If evidence shows the complaint is likely to be substantiated, and the respondent is an employee, the corrective progressive action policy will apply.

(f) In most circumstances, the investigative process shall be completed within sixty days of the initial complaint.

(5) Law enforcement

(a) Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy, criminal investigations or reports are not determinative of whether sexual misconduct, for the purposes of this policy, has occurred. In other words, conduct may constitute sexual misconduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute.

(b) The filing of a complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding, and the college will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation, to take interim measures to protect the complainant and the college community, if necessary, and to implement disciplinary proceedings



without regard to the pending of any criminal proceedings.

(6) Confidentiality

(a) All college employees, excluding licensed professionals from the college counseling center, must report discrimination, harassment or sexual misconduct. Therefore, individuals who wish to discuss a situation in confidence should work with an individual from the counseling center. Because the content of discussions with confidential resources is not reported to an office of record, such discussions do not serve as notice to the college to address the alleged discrimination, harassment, or sexual misconduct.

(b) All inquiries, complaints, and investigations are treated with discretion. Information is kept as confidential as law and college policy permit. However, the identity of the complainant is usually revealed to the person(s) accused of such conduct. Participants in the investigative process are asked to keep any information they have or may have confidential as practicable.

(c) The college shall protect the privacy of individuals involved in a report of discrimination of sexual misconduct to the extent allowed by state and federal law and college policy. Confidentiality is an aspiration but is not always possible or appropriate. Confidentiality needs to be balanced with the legal obligation of the college to ensure a working and learning environment that is free from discrimination and the due process rights of the respondent to be informed of allegations and their source. Therefore, some level of disclosure may be necessary to ensure a complete and fair investigation.

(7) Special provisions

(a) Attempted violations - The college may treat attempts to commit any of the violations listed in this policy as if those attempts had been completed.

(b) The college as complainant As necessary, the college reserves the right to initiate a conduct complaint, to serve as the complainant, and to initiate conduct proceedings without a formal complaint by the alleged victim or complainant.



(c) Third party violations Sexually harassing conduct by third parties, who are not themselves employees or students at the college (e.g., a visiting speaker or members of a visiting athletic team), may also be of a sufficiently serious nature to deny or limit a students ability to participate in or benefit from the education program. As such, if the college knows or should know of the harassment, the college is responsible for taking prompt and effective action to eliminate the hostile environment and prevent its recurrence.

(i) The type of appropriate steps taken by the college will differ depending on the level of control the college has over the third party. For example, if athletes from a visiting team harass the home colleges students, the home college may not be able to discipline the athletes. However, it could encourage the other school to take appropriate action to prevent further incidents or choose not to invite the other school back.

(ii) Third party visitors to campus may also be the subject of sexual harassment and are entitled to utilize the processes and procedures outlined in this policy.

(8) Federal reporting obligations

(a) The office of the Title IX compliance coordinator is responsible for maintaining records relating to discrimination, harassment, or sexual misconduct reports, investigations and resolutions. Records shall be maintained in accordance with college records policies. All records pertaining to pending litigation or a request for records shall be maintained in accordance with instructions from legal counsel.

(b) Federal statistical reporting obligations Campus security officials have a duty to report violations of this policy for federal statistical reporting purposes. All personally identifiable information is kept private, but statistical information must be passed along to campus law enforcement, regarding the type of incident and its general location, for publication in the annual campus security report. This report helps to provide the community with a clear picture of the extent and nature of campus crime and to ensure greater community safety.

(c) Federal timely warning reporting obligations Victims of sex discrimination should also be aware that college administrators must issue timely warnings for certain types of incidents reported to them



that pose a substantial threat of bodily harm or danger to members of the campus community under federal Clery law. The college will make every effort to ensure that a victims name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

(9) Support services

(a) Seek medical attention A physical exam is recommended in all cases of sexual assault, regardless of the length of time that has elapsed since the violence. Medically related concerns may include pregnancy, sexually transmitted infections (including HIV) and physical injuries. If the violence occurred within the past one hundred twenty hours, a survivor has the option of having an evidence collection exam. Consider seeking medical attention for any physical abuse experienced.

Fremont memorial hospital 715 south Taft avenue Fremont, OH 43420 330-334-6621

(b) YWCA H.O.P.E. center, 1018 Jefferson ave, Toledo, OH 43624 If you, a family member or friend are a survivor of sexual assault, free, confidential help is available by calling the twenty-four hours/seven days a week at 419-241-3235 or toll free at 866-557-7272. Services offered:

(i) Information and referrals

(ii) Sexual assault examination (rape kit)

(iii) Support groups

(iv) Self-defense classes

(v) Crisis intervention hotline

(vi) Prevention education

(c) Legal aid society of Western Ohio, 121 north Arch street, Fremont, OH 43420; 419-334-8899