

POLICY

Ocean County College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. The policy, procedures, and associated manual are designed to ensure compliance with federal and state civil rights laws and regulations and to affirm Ocean County College's commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity. The policy, procedures, and associated manual provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Ocean County College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Ocean County College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include relevant but controversial or sensitive subject matters protected by academic freedom.

Nondiscrimination

Ocean County College adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education. Ocean County College does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of: race, religion, hearing status, personal appearance, color, sex, pregnancy, political affiliation, source of income, place of business, residence, ethnicity, national origin (including ancestry), citizenship status, physical or mental disability (including perceived disability), age, marital status, family responsibilities, sexual orientation, gender identity, gender expression, veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran), predisposing genetic characteristics, domestic violence victim status, height, weight or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the Ocean County College community whose acts deny, deprive, or limit the educational or employment or social access, benefits, and/or opportunities of any member of the Ocean County College community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the Ocean County College policy on nondiscrimination.

When brought to the attention of the College, any such discrimination will be promptly and fairly addressed and remedied by the College according to the appropriate grievance process described in the Nondiscrimination, Equal Opportunity, and Harassment Grievance Procedural Manual.

Disability Discrimination and Accommodation

Ocean County College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws

and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the College, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Associate Vice President of Human Resources has been designated as Ocean County College's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures identified in the Nondiscrimination, Equal Opportunity, and Harassment Grievance Procedural Manual.

For details relating to disability accommodations in the College's resolution process, please see manual.

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PROCEDURE

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under Ocean County College policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of Ocean County College policy, though supportive measures will be offered to those impacted.

Discriminatory Harassment

Discriminatory harassment constitutes a form of discrimination that is prohibited by Ocean County College policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

Ocean County College does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Ocean County College will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.”

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive **and** objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, Ocean County College may also impose sanctions on the Respondent through application of the appropriate grievance process found in the Nondiscrimination, Equal Opportunity, and Harassment Grievance Procedural Manual.

Ocean County College reserves the right to address offensive conduct and/or harassment that does not rise to the level of creating a hostile environment, or that is of a generic nature and not based on a protected status. Addressing such conduct may not result in the imposition of discipline under Ocean County College policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms.

For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Associate Vice President of Human Resources, and students should contact the Director of Program Compliance.

Sexual Harassment

The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of NJ regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Ocean County College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex that satisfies one or more of the following definitions:

- 1) Quid Pro Quo:
 - a. "Quid pro quo" literally means "this for that" in Latin. Quid pro quo is a type of sexual harassment in which a supervisor, professor, instructor or someone who has more power requests sexual favors from a person with less power in exchange for employment or academic benefits.
- 2) Sexual Harassment:
 - a. Sexual harassment is defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity.
- 3) Sexual assault, defined as:
 - a) Sex Offenses, Forcible:
 - i) Any sexual act directed against another person without consent, including instances in which the Complainant is incapable of giving consent.
 - b) Forcible Rape:
 - i) Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without consent.
 - c) Forcible Sodomy:
 - i) Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - d) Sexual Assault with an Object:
 - i) The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - e) Forcible Fondling:
 - i) The touching of the private body parts of another person (buttocks, groin, breasts), this would include compelling the Complainant touch someone sexually, forcibly, and/or without their consent for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - f) Sex Offenses, Non-forcible:
 - i) Incest:
 - 1) Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by New Jersey law.
 - ii) Statutory Rape:

- 1) Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 16.

- 4) Dating Violence, defined as:
 - a. violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.

- 5) Domestic Violence, defined as:
 - a. violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Jersey, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of New Jersey.

*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 6) Stalking, defined as:
 - a. engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Ocean County College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent

Consent is knowing, and voluntary, and clear permission by word or action to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Ocean County College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to Bondage,

discipline/dominance, submission/sadism, and masochism (BDSM) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Ocean County College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Incapacitation

An incapacitated person is a person who cannot consent because they are unable to understand what is happening. Conditions of an incapacitated person may include a person who is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

Other Civil Rights Offenses

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, Ocean County College additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.

Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy.

Examples of Sexual Exploitation include, but are not limited to:

1. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
2. Invasion of sexual privacy.
3. Taking pictures, video, or audio recording of another in a sexual act, or in any other
4. Sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating

- sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
5. Prostituting another person
 6. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
 7. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
 8. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
 9. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
 10. Knowingly soliciting a minor for sexual activity
 11. Engaging in sex trafficking
 12. Creation, possession, or dissemination of child pornography

Threatening or causing physical harm

Threatening or causing physical harm is defined as extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;

Discrimination

Discrimination is defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;

Intimidation

Intimidation is defined as implied threats or acts that cause an unreasonable fear of harm in another;

Hazing

Hazing is defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Ocean County College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);

Bullying

Bullying is defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally that is not speech or conduct otherwise protected by the First Amendment.

Violation of any other Ocean County College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion in the case of students or termination in the case of employees.

Retaliation

It is prohibited for Ocean County College or any member of Ocean County College's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Ocean County College students and employees bear responsibility to comply with Title IX and related laws and College Policy; as such, they should familiarize themselves with this policy and procedure and the Title IX Process Manual which is also available on OCC's website at www.ocean.edu.

Responsible Administrator and Manual

The Title IX Coordinator is responsible for the oversight of Title IX at Ocean County College and has the authority to implement the procedures contained in the Ocean County College Title IX Process Manual, which is designed to address all Title IX allegations at the College.

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