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Anti-Violence, Harassment and Discrimination Policy and Procedure

Category: Administrative (AD)
Number: AD-009
Responsibility: Vice-President of Finance and Operations, Manager of HR & Faculty Relations
Approval: Executive Team - 2024
Amendments:

1. Purpose

To confirm Ontario College of Business and Technology's (hereafter referred to as "OCBT" or "the College") commitment to providing a safe, healthy, inclusive, and respectful learning and working environment, as well as outline the process in which to receive, respond to and resolve harassment and discrimination complaints within the authority and control of the College.

2. Scope

This policy applies to all College students, employees (regardless of position and location of work), delivery partners, affiliates, volunteers, and contractors. This policy also applies to members of the public, and any other individuals that College members may encounter within the workplace, on-campus, or off-campus.

This policy has been developed in accordance with the respective provincial health & safety legislation and other applicable regulations and human rights legislation.

3. Definitions

Complainant: Refers to the individual(s) initiating a complaint under this policy and procedure.

Complaint: A request by a complainant to formally investigate an alleged incident of harassment and/or violence and to produce findings to be used in determining a resolution.

Contractor: means an individual who is in business for themselves and is contracted by the College to provide work or a service.

Disclosure: A College community member has been informed about an incident of harassment and/or violence on or off campus.

Discrimination: The Ontario Human Rights Code does not provide a definition for the term discrimination. However, the intent and meaning of the Code along with interpretations of the term contained in judicial decisions suggest that discrimination is differential treatment based on a protected ground, which has an adverse impact on an individual or group.

The Ontario Human Rights Commission indicates that discrimination usually includes the following elements: not individually assessing the unique merits, capacities, and circumstances of a person; instead, making stereotypical assumptions based on a person's presumed traits; and having the impact of excluding persons, denying benefits, or imposing burdens.

Discrimination may be intentional or unintentional. It may involve direct words or actions that are discriminatory, or it may involve rules, practices, or procedures that appear neutral, but disadvantage certain groups of people.

Employment: Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, or disability.

Employee: A person who is on the College's payroll and works for or provides services to the College on a contract, full-time, or part-time basis.

Harassment: Engaging in a course of vexatious comment or conduct that is known, or ought reasonably to be known, to be unwelcome, offensive, intimidating, hostile, or inappropriate. Whereas harassment tied to a prohibited ground under the Ontario Human Rights Code falls under the College's Human Rights Policy, non-code based "general" harassment falls under this policy and procedure.

a. Harassment typically involves more than one incident; however, depending on the severity, one incident may be sufficient to constitute harassment. Harassing conduct may occur in a variety of ways, including, but not limited to, verbal, written, in-person, or online conduct or via third parties.

b. Forms of harassment include, but are not limited to, criminal harassment or a negative or poisoned environment.

c. Examples of harassment include, but are not limited to, bullying behaviours, gestures, demeaning behaviours, inappropriate remarks, jokes, taunting, innuendo, verbal assault, images, or photos that depict inappropriate content, as well as hazing, shunning, or exclusion. A learning, working, or living environment may become “poisoned” or “toxic” by a failure to respond or under-responding to harassment.

d. A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment. A reasonable action taken by a person responsible for the management of a student learning environment is not harassment.

e. The College upholds freedom of expression and association. All College community members are required to exercise those rights in a way that does not contribute to harassment and/or violence.

Community members: Persons with a relationship to the College who are not affiliated with the College as either a student or an employee. This includes contractors, visitors, and guests.

Reprisal: Any adverse treatment with the intent to compel a College community member to abstain from claiming or enforcing their rights under this policy and procedure or retaliation against a College community member for enforcing their rights under this policy and procedure or for fulfilling their obligations under this policy and procedure.

Respondent: The individual(s) alleged to have breached this policy and procedure.

Student: An individual who is enrolled, formerly enrolled, or registered in either a full-time or part-time course, either credit or non-credit, at the College, including when on a work placement that is part of their academic program or when active in a program but not currently enrolled in classes. This also includes an individual who was enrolled in a course or program when an alleged incident occurred. In this case, the individual is deemed a student for the purpose of the investigation until the complaint and appeal processes have been completed.

Vexatious: Frivolous or “bad faith complaint” means a complaint in which a complainant makes allegations to purposely annoy, embarrass, or harm the respondent.

Violence means:

a. the exercise of physical force by a person against a member of the College community that causes or could cause physical injury to the person;

b. an attempt to exercise physical force against a member of the College community that could cause physical injury to the person; or,
c. a statement or behaviour that it is reasonable for a member of the College community to interpret as a threat to exercise physical force against the person that could cause physical injury to the person.

Violence may occur in a variety of ways including, but not limited to, verbal, written, in-person, or online conduct or via third parties. Examples of violence include, but are not limited to, hitting, shoving, or striking another person or object; verbal or written threats; intimidating and/or threatening gestures; and throwing objects.

Weapon: An implement, object, or tool designed and/or used to inflict bodily harm or physical damage.

Workplace: A workplace includes all locations where business, social, or College activities, programs, and services are conducted (including business or College-related events and activities on campuses, campus facilities/services, and off-campus). It would also include all correspondence on any College-owned communication systems and devices and on any social media site. Further, a workplace may also include incidents when employees are travelling during working hours or incidents that happen away from work if the individuals involved are employees of the College. This may include any incidents on any personal social media sites.

4. Policy

I. OCBT has zero tolerance for violence, harassment, and/or discrimination in all its forms.

II. The College values practices that foster equitable treatment among all members of the College community. Members are responsible for their actions and communications in-person, by telephone, or through electronic communications, during all College-related activities, both on and off campus.

III. Nothing in this policy and procedure should be construed to limit freedom of expression as provided by law, provided such activities are orderly, do not disrupt College operations, and do not unreasonably interfere with the right of other members of the College to use and enjoy the College's learning and working environment and facilities (both on- and off-campus).

IV. Weapons are strictly prohibited from the College's premises and violators will be subject to disciplinary action and the incident will be reported to the police.

V. OCBT recognizes the integrity of the faculty-student, and employee student, relationship as foundational to its educational mission. Acts of sexual misconduct by a faculty or employee towards a student are prohibited and will be addressed through the appropriate disciplinary processes.

VI. Information contained in a complaint or obtained during an investigation will be confidential to those individuals who are directly involved in reviewing, and where necessary addressing, the concern unless OCBT is compelled to release information to comply with policy, legislative, or safety requirements, including safety requirements for students and staff. Information disclosure will be reasonable to the circumstances.

VII. Although the procedure is written in the language of an individual complainant, group complaints may be brought under this policy.

VIII. This policy does not preclude the right of every person to seek assistance from the Human Rights Tribunal of Ontario or the Ministry of Labour, Immigration, Training and Skills Development.

5. Procedure

I. Filing a complaint

a. Members of the College community are encouraged, whenever possible and safe, to resolve issues directly with the person who is the subject of their concern. Students experiencing harassment or discrimination should contact their Dean or the Dean's designate or the Office of the Manager of HR & Faculty Relations (OHRFR). Employees experiencing harassment or discrimination should contact their manager or the OHRFR.

b. Nothing in these procedures limits the responsibility of persons in a position of authority, including people directing or overseeing the activities of others, from acting to prevent or respond to general harassment unrelated to the Code. People in positions of authority and the OHRFR have concurrent responsibility for general harassment.

c. Any member of the OCBT community who believes that they have been the subject of, or may have witnessed, discrimination, harassment, or workplace sexual misconduct/harassment can consult with their supervisor or their designated human rights advisor to determine whether the incident may be defined as a policy violation and what steps may be taken to resolve the concern.

d. The Office of the Director of Student Support Services (ODSSS) is the designated human rights advisor for complaints made by students. The director will apprise the Manager of HR & Faculty Relations when complaints made by students involve administrators, employees, contractors, or any other community member to whom this policy applies. The Manager of HR & Faculty Relations, or their designate, is the assigned human rights advisor for employees.

e. The Manager of HR & Faculty Relations will consider whether the circumstances warrant permitting the complaint resolution process to be initiated, or to extend beyond the timeframes described in this policy. If an extension is permitted, the affected parties will be notified and provided with a rationale.

f. The College may put interim measures in place to ensure safety and support during the complaint resolution process.

II. Informal Resolution of a Complaint

a. A complainant may make a request that the violation cease, directly to the source. If an individual feels that they are experiencing unwanted behaviour which falls under this policy, the individual should make an effort, if possible, to advise the person who is the source of the behaviour, either verbally or in writing, that the conduct is unwelcome.

b. The complainant should allow the respondent an opportunity to respond to the concern expressed and should suggest how the concern might be resolved.

c. If the concern is resolved, the parties should agree in writing to the nature of the resolution and the date on which it occurred.

d. A facilitated discussion between the parties, which may include a supervisor and human resources representative, may also be part of an informal resolution process.

III. Formal Resolution of a Complaint

a. Complainants proceeding with a formal complaint must submit that complaint in writing to the OHRFR. Statements of complaint must include the alleged grounds of the Code that have been violated and/or particulars of prohibited conduct subject to the complaint process. Where requested, support will be provided to assist a complainant in documenting a complaint. Formal complaints will be submitted within six (6) months of the occurrence of the event(s).

b. Where two or more complaints are filed, bringing into question an alleged practice or violation engaged in by the same person, or having facts in common, the complaints may be dealt with in the same proceeding.

c. A person who is the subject of a complaint made under this procedure, who has reason to believe that the complaint is vexatious, in bad faith, or itself a form of harassment, will have the right to file a complaint. The Manager of HR & Faculty Relations or their designate will provide advice in such cases.

d. In the event a respondent named in a complaint holds the position of Dean/Director, or a higher position in the organization (with the exception noted in "f" below), the OHRFR may hire an external investigator to conduct an independent review and investigation.

e. In the event the Manager of HR & Faculty Relations or the Manager's designate, or any other persons in positions described in this policy and procedure is the respondent of a complaint, or has a conflict/perceived conflict of interest, the President & CEO or designate will appoint other person(s) as appropriate to conduct an independent review and investigation.

f. If the President & CEO is the respondent to a complaint, OCBT's Executive Team will appoint another person(s) as appropriate to conduct an independent review and investigation.

IV. Formal Resolution Process Procedure

a. The Manager of HR & Faculty Relations or their designate will investigate and attempt to make a resolution to a complaint specific to College policy, practice, and/or procedure.

b. Where the formal complaint is specific to a College policy, practice and/or procedure, the Manager of HR & Faculty Relations or their designate shall inform the related Vice-President, in writing, within five (5) business days, that a complaint has been received and shall forward a copy of any written documentation outlining the complaint.

c. The Vice-President will advise the next steps to be taken. The Vice-President will have ten (10) business days to respond in writing to the Manager of HR & Faculty Relations or their designate, and the Manager of HR & Faculty Relations or their

designate will have a further five (5) business days to respond to the complainant.

V. Formal Resolution Process Involving Complainant and Respondents

a. When the formal complaint involving a person(s) is proceeding, the complainant will submit a written statement outlining the specific details of the complaint. The complainant shall be informed that they will be identified to the respondent, if this has not already happened, and that their statements will be shared with the respondent.

b. The Manager of HR & Faculty Relations or their designate shall inform the respondent(s), in writing, within five (5) business days, that a complaint has been received and shall forward a copy of any written documentation outlining the complaint to the respondent(s), including the name of the complainant.

c. The respondent(s) will have five (5) business days to respond, in writing, to the Manager of HR & Faculty Relations or their designate. A copy of the written response will be shared with the complainant.

d. The Manager of HR & Faculty Relations or their designate will investigate any formal complaint that involves a person(s).

VI. Decision Not to Proceed with a Complaint

A complaint would not move forward under this Policy in the following circumstances:

a. Complainants may, at their discretion, decide to withdraw a complaint at any point in the process.

b. The Manager of HR & Faculty Relations or their designate shall advise a complainant that the complaint will not be pursued where:

i. the complaint is one that should more appropriately be dealt with through other College procedures or mechanisms, such as academic policies and procedures; *Occupational Health and Safety Act;* the College's Sexual Violence policy; or the Student Code of Conduct policy;

ii. the subject matter of the complaint is trivial, frivolous, vexatious, or made in bad faith; or

iii. the complaint appears not to be within the authority of the College. When a complainant withdraws a complaint, the College maintains the right to continue to proceed with the complaint where there are safety concerns, reputational implications, repeated offences, a pattern of behaviour, or at the College's discretion to meet any legal obligations it may have.

VII. Decision to Proceed with Complaint

a. If, after the respondent's reply, the complainant is not satisfied, the complainant will have ten (10) business days to request, in writing, that the review of the complaint continues. The Manager of HR & Faculty Relations or their designate will discuss the next steps appropriate to the complaint.

VIII. Methods of Resolution of Complaints

a. Formal Mediation

The Manager of HR & Faculty Relations or their designate may coordinate a mediation meeting. Participation in mediation shall be voluntary for all parties involved. The College will appoint a mediator in a timely manner, normally within ten (10) business days, and the mediator will attempt to affect a settlement of the complaint through mediation.

During mediation, the Manager of HR & Faculty Relations or their designate shall function as follows:

i. will counsel the respondent[s] to do anything that, in the opinion of the College, the respondent[s] ought to do to achieve compliance with the policy, both in respect of the complaint and in respect of future practices;
ii. may consult with external agencies such as the Ontario Human Rights Commission for advice and assistance; and;
iii. may take other such action as deemed appropriate.

Where the complainant[s] and respondent[s] to the complaint agree to a mediated resolution, it shall be affected by the College and the complaint will be considered resolved.

b. Investigation/Fact-Finding

i. If the complaint is not resolved through mediation, the complaint may proceed to resolution through investigation/fact-finding. The complainant or the respondent will submit to the College, in writing, within five (5) business days, a notice that the complaint has not been resolved by mediation, and a request that the process of reviewing the complaint proceeds.

ii. The College shall appoint an investigator/factfinder at the request of the complainant(s) or respondent(s) within ten (10) business days, or a time reasonable to the circumstance.

iii. In most circumstances, the investigator/factfinder will be identified by the Vice-President of Finance and Operations or their designate where the complaint is filed by an employee, or the Manager of HR & Faculty Relations where the complaint is filed by a student. The complainants(s) and respondent(s) will be notified, in writing, of the appointment of the investigator/fact finder.

iv. The investigator/factfinder will be appointed by the College to:
   a) determine whether a violation of the College policy on anti-violence, harassment, and discrimination has occurred; and
   b) determine who, if anyone, has violated the policy.

v. The investigator/factfinder will have, for the purposes of the inquiry, all documents, statements, access to person(s) and other information or materials that the complainant[s] and respondent[s] to the complaint wish to present. In addition, the investigator/factfinder may request further documents or materials that are needed during their investigation, with respect to the complaint.

vi. The investigator/factfinder's report shall be provided to the relevant human rights advisor(s) within thirty (30) business days after the date the fact-finding process has concluded, or within a timeframe reasonable to the circumstance.

vii. A written response to the report will be given to the complainant[s] and respondent(s) from the Manager of HR & Faculty Relations or their designate within ten (10) business days of receiving the report. The written response will include a brief description of any corrective action that the College has taken or will take resulting from the investigation. Any witnesses interviewed as part of the investigation process will be advised when the investigation has concluded.

IX. Investigation Findings and College Action Options

a. Where it is found in the fact-finding report that a violation of the policy has occurred, the College may take disciplinary action including, but not restricted to, the following:

i. *Warning* - A written notification that continuation or repetition of conduct found to be in violation of this Policy will be the cause for further disciplinary action up to and including dismissal.

ii. *Additional Training* - A directive from the College that specifies certain corrective behaviour with which the party(s) must comply, which may include education and/or sensitivity training. If the directive is disregarded, further action will be taken.

iii. *Suspension* - A written notification of exclusion from attending work or College activities, virtually and in-person, for a specific period of time. Suspension may include exclusion from a campus and property belonging to the College.

iv. Termination of student, faculty, staff, administrator, contractor status, subject to Employee Code of Conduct or Student Code of Conduct policy and procedure.

X. Reprisals

a. Individuals have the right to file a complaint of harassment, and/or discrimination and participate in an investigation by the College. Anyone who subjects an individual to reprisals will be subject to investigation by the Vice-President of Finance and Operations, or their designate, and may be subject to disciplinary action.

XI. Confidentiality and Record Keeping

a. Information obtained about an incident or complaint of workplace harassment, including identifying information about any individual(s) involved, will not be disclosed unless the disclosure is necessary for the purpose of appropriately investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law.

b. All parties involved in a complaint process will fully respect the need for confidentiality possible. Proper investigation of a complaint may require the

disclosure of the identity of the complainant and respondent to third parties, including witnesses.

c. Records of complaints such as content of meetings, interviews, investigations, reports and recommendations and any other material related to the complaint will be collected and stored in a sealed and numbered file, to ensure confidentiality and will be retained in Human Resources.

d. All records associated with the complaint that do not form part of the Human Resource file, will be destroyed. The files will be cross-referenced to a list of names of complainants/respondents, date, and file number. The file may be opened if a subsequent complaint is filed, or at the request of the Ontario Human Rights Commission, the Ministry of Labour, Immigration, Training & Skills Development, or as otherwise required by law.

XII. Rights to Seek Resolution Outside of the College

a. This procedure is to ensure that the College, its staff, students, contractors, and visitors comply with the College policy on anti-violence, harassment and discrimination. However, it does not preclude any individual from seeking other options available, such as the Ontario Human Rights Commission, the Ministry of Labour, Immigration, Training & Skills Development, the Ontario or federal courts and/or any other public agency. If a complainant decides to pursue their complaint in another forum, the College may decide to terminate or suspend the processing of the complaint made under this policy.

6. Related Policy and Procedure

AC-002 Academic Integrity Policy and Procedure
AD-017 Employee Code of Conduct Policy and Procedure
AD-028 Sexual Violence Prevention Policy and Procedure
SA-032 Student Code of Conduct Policy and Procedure
SA-034 Student Rights and Responsibilities Statement
SA-038 Graduation Policy and Procedure
SA-041 Student Contract

7. References

Accessibility for Ontarians with Disabilities Act
Occupational Health and Safety Act
Ontario Human Rights Code
Personal Information Protection and Electronic Documents Act (PIPEDA), 2000.
Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A

The development of this policy and procedure was informed by the review of similar policies and procedures developed by Ontario Colleges of Applied Arts and Technology and Ontario registered career colleges.