

3354:1-60-03.1 Free Speech Violations Procedure

The College hereby establishes this process by which a student, student group, employee, or faculty member may submit a complaint about an alleged violation of the Free Speech Policy. The grievance process shall be a fair, prompt, and equitable resolution of reports and formal complaints, as well as, the investigation and disciplinary action to address the violation and prevent and further violations under the Free Speech Policy, the First Amendment of the Constitution of the United States and the Ohio Constitution. The College's procedures shall comply with Ohio Revised Code Section 3345.0215 and the standards adopted by the Ohio Department of Higher Education.

A. Definitions

- a. **Prohibited conduct:** types of speech that are prohibited under the Free Speech Policy.
- b. **Complainant(s):** the person or group that makes a complaint against another person, group, or the College, alleging Free Speech violations under this procedure.
- c. **Respondent(s):** the person, group, or the College, alleged to have violated the Free Speech Policy, under this procedure.
- d. **Organizational sanctions:** limitations and restrictions on access to events, benefits, and spaces, offered by the College but not required by law, placed on a person or group for violating College policy.
- e. **Threatening speech:** a statement that is meant to frighten or intimidate one or more specified persons into believing that they will be seriously harmed by the speaker or by someone acting at the speaker's behest.
- f. **Hate speech:** abusive or threatening speech or writing that expresses or encourages violence, anger, oppression or disenfranchisement against a particular group on the basis of race, religion, national origin, disability, or sex/gender orientation and/or expression.
- g. **Class of individuals:** one or more persons that belong to a particular group based on their race, religion, national origin, disability, or sex/gender orientation and/or expression.
- h. **Defamation** (defamatory speech): written or spoken communication about a person, group, or the College that is false and results in damage to the person, group, or the College's reputation.
- i. **Speech that incites violence:** written or spoken communication that is directed to inciting or producing imminent action that is a violation of any applicable federal, state or local law and is likely to incite or produce such action.
- j. **Retaliation:** an adverse action being taken against a complainant or witness, that resulted from engaging in protected conduct, such exercising their right to Free Speech.
- k. **Legitimate pedagogical concerns:** include but are not limited to a Professor or College's right to limit materials that are ungrammatical, poorly written,

inadequately researched, biased or prejudiced, vulgar, profane, or unsuitable for immature audiences when considering a student's written work product.

1. **Free Speech:** means speech, expression, or assemblies protected by the First Amendment to the United States Constitution or Article I, Sections 3 and 11 of the Ohio Constitution, verbal or written, including, but not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, carrying signs, displays, or circulating petitions. "Free speech" does not include the promotion, sale, or distribution of any product or service.

B. Prohibited Conduct

Conduct that is prohibited by the College in violation of the College's Free Speech Policy, 3354:4-60-03, includes any action in violation of the First Amendment to the United States Constitution or Article I, Sections 3 and 11 of the Ohio Constitution, retaliation, or other actions in violation of the Ohio Revised Code. Specifically, the following conduct is considered a violation of the Free Speech Policy:

- a. Retaliation for protected speech;
- b. Threatening speech;
- c. Hate speech directed towards a particular class of individuals;
- d. Defamation;
- e. Speech that incites violence;
- f. Penalties based on the content of a student's coursework that is protected as "free speech."
- g. Defamatory statements against the College.

C. How to File a Complaint

If a student, student group, employee, or faculty member feels that their right to Free Speech have been violated or restricted, they may file a complaint with the Office of Institutional Equity ("OIE") through Maxient or by email to the Director of OIE.

1. The complaint must be filed timely within one (1) calendar year in order for the College to effectively investigate the alleged incident and prevent the loss of evidence.
2. Complaints will be decided within six (6) months of receipt of the complaint.
3. Monthly status updates will be provided to the complainant and respondent by the Director of Institutional Equity.
4. The calculation of days, will not include days that are federal holidays or days the College is closed.

D. Investigation

Once a complaint has been received by OIE, the Director will contact the Complainant to confirm receipt and offer any supportive measures, as needed. The investigation phase will then proceed as follows:

1. Notice of allegations to all parties containing;
 1. A summary of the allegations in the complaint;
 2. The policy/procedure directly involved;
 3. Statement that the parties are entitled to a hearing on the matter;
 4. Statement that the parties may present evidence and examine witnesses appearing on behalf of the involved parties.
 5. Statement that the parties may submit their position, argument, and contentions in writing to be used as evidence in the investigation and/or hearing;
 6. Outline of the procedure up to the Hearing.
2. Interviews of both parties;
3. Interviews of witnesses;
4. Review of relevant documents, sites, and other relevant information;
 1. College departments will cooperate with the Office of Institutional Equity to provide prompt and thorough responses to requests for information;
 2. Information collected through the investigation process shall be kept confidential during the investigation to non-parties,
5. Review of where the speech occurred, under what circumstances, and the reactions to the speech;
6. Notice of close of investigation;
7. Investigatory Summary
 1. The Investigatory Summary will be produced by the Office of Institutional Equity fifteen (15) business days after close of the investigation and be provided to both the Complainant and the Respondent.
 2. The Investigatory Summary shall contain the following:
 - i. A statement of the allegations from the complaint;
 - ii. A statement of the policy/procedure directly involved;
 - iii. A timeline of important events;
 - iv. A list of individuals interviewed and a summary of their statements;
 - v. A statement regarding the credibility of individuals interviewed;
 - vi. A list of documentary evidence obtained during the investigation;
 - vii. A statement of the evidence that supports and opposes a finding of a policy violation;
 - viii. A statement regarding the next steps in the process.
 3. The Respondent and Complainant will have an opportunity to review the Investigation Summary and submit questions for the Independent Hearing Officer to ask at the Hearing ten (10) business days prior to the Hearing.
8. Hearing.

E. **Hearing**

Following the close of the investigation, an impartial hearing will be conducted by an external, third-party on the claims made in the complaint.

1. Nature of the Hearing

- a. The hearing shall be closed and only involve the complainant, respondent, witnesses, and OIE staff;
- b. It may be held in person, virtually, or upon written statements, upon the agreement of the Complainant and Respondent. If either requests an in-person or virtual hearing, the matter will proceed to an in-person or virtual hearing.
- c. It shall be held before an independent hearing officer;
- d. The hearing may be recorded for the purposes of appeal;
- e. Either party may choose to hire an attorney and may be accompanied or represented by their attorney during the presentation of evidence or questioning of witnesses;
- f. Both the Complainant and the Respondent must submit to questioning by the hearing officer;
- g. A determination of whether a violation of the Free Speech Policy has occurred will be issued using the preponderance of the evidence standard.
- h. The hearing will consist of questions posed to the Respondent and Complainant by the hearing officer and presentation of the evidence from the Office of Institutional Equity Investigator.
- i. Both the Respondent and Complainant will have an opportunity to present additional evidence and witnesses to the hearing officer.
- j. The Independent Hearing Officer will issue the hearing decision in writing ten (10) business days after the hearing. The outcome of the hearing will be the Independent Hearing Officer's decision on whether there is a preponderance of evidence that a violation occurred or whether the claim was unsubstantiated.

F. **Disciplinary Phase**

1. Sanctions Meeting:

- a. If the Independent Hearing Officer determines a violation of the Policy has occurred, a Sanctions Meeting will be held within fifteen (15) business days of the written decision with the Offices of Institutional Equity and either Student Affairs (for matters involving a student respondent(s)) or Employee and Labor Relations (for matters involving employee respondent(s)) (collectively, "the Offices").
- b. At the Sanctions Meeting, the hearing decision and recommendations will be reviewed.
- c. The Offices may choose to follow the progressive discipline structures set forth in the Employee Corrective Action Procedure and Student Judicial Procedure, or based on a totality of the circumstance, choose to institute separate sanctions.
- d. In determining the appropriate sanctions, the Offices may consider the following, non-exhaustive factors:
 - i. Prior conduct issues showing a pattern of behavior;

- ii. Prior sanctions issued along;
- iii. The amount of time that has passed since the last misconduct or sanction was issued;
- iv. Whether the individual respondent receives accommodations.
- e. Together, the Offices will determine appropriate sanctions, if different than those recommended, and provide Notice of Sanctions to the Board of Trustees for approval.

G. Potential Sanctions

The Board of Trustees has approved the following sanctions for violation of the Free Speech Policy:

- a. Warning (verbal or written);
- b. Discretionary sanctions as defined in the Student Code of Conduct and/or Employee Code of Conduct;
- c. Performance improvement/management process for an employee;
- d. Required counseling, training, education or mediation;
- e. Required additional coursework or assignments for a student;
- f. Probation (interim or permanent);
- g. Loss of annual pay increase or supervisory responsibility for an employee;
- h. Demotion for an employee;
- i. Suspension with or without pay;
- j. Academic suspension;
- k. Termination or Expulsion;
- l. Organizational sanctions that include loss of privileges conferred upon students or employees.

The Board of Trustees shall vote to approve or deny the suggested sanctions from the Sanctions Meeting. After the Board has approved the sanctions, the OIE shall provide the Respondent and Complainant with a Notice of Sanctions.

H. Appeal Process

An appeal of the Hearing Officer’s decision, must be made in writing to either the VP of Human Resources (for Employees) or a panel of 2 Academic Affairs Deans and 1 Dean of Student Affairs (for Students) (together or individually, “the reviewing party”), ten (10) business days after the Hearing Officer’s decision, prior to the Sanctions Meeting. If an appeal is received, the Sanctions Meeting will be put on pause until a decision is reached by the reviewing party. The reviewing party may reverse the Hearing Officer’s decision only if the reviewing party finds that the order was not supported by reliable and substantial evidence that showed proof of the acts alleged.

I. Prohibition of Retaliation

Retaliation for filing a complaint under the Free Speech Policy is strictly prohibited. If a person or student group feels they have been retaliated against for filing a complaint alleging a violation

of their right to free speech, they may file a claim under the College's policy on Discrimination, Harassment, Sexual Misconduct, and Retaliation, 3354:1-60-02.

J. **Annual Training**

Annual training on the College's Free Speech Policy and the grievance process will be provided by the College.

K. **Reporting Requirements**

All complaints filed will be tracked by the Office of Institutional Equity for report to the Chancellor. The report should disclose the total number of complaints submitted in the academic year and a description of each complaint, including information on the investigation of the complaint, the outcome of the hearing conducted regarding the complaint, and if it was determined that a violation occurred, the resolution to address the violation.

Effective Date: June 15, 2023

Procedure Amplifies: 3354:1-60-03