

Orangeburg-Calhoun Technical College Statement of Procedure

Title: **NON- DISCRIMINATION, ANTI-HARASSMENT and SEXUAL MISCONDUCT**

Number: 8.004.01

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Department of
Responsibility: Human Resources

Authorization:

President

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DISCLAIMER

THE LANGUAGE IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE COLLEGE. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

I. INTRODUCTION

Consistent with Orangeburg-Calhoun Technical College (“OCTech” or “College”) Policy 8.004, OCTech is committed to maintaining a campus environment that is free from all forms of discrimination, harassment and sexual misconduct. To this end, OCTech prohibits all forms of discrimination and harassment, including sexual harassment, misconduct and abuse, with respect to employment or access to any educational benefit.

The following procedures are established to assist faculty, staff and students address concerns of discrimination or harassment.

II. DISCRIMINATORY CONDUCT

Discrimination is conduct that includes unjust or prejudicial treatment based upon an individual's sex, race, color, religion, national origin, age, disability, service in the uniformed services (as defined in state and federal law), veteran status, political ideas, marital or family status, pregnancy, childbirth, or related medical conditions, including, but not limited to, lactation, genetic information, genetic identity, gender expression, or

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sexual orientation that excludes an individual from participation in, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of a person's working or learning environment. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

Harassment is conduct based upon an individual's sex, race, color, religion, national origin, age, disability, service in the uniformed services (as defined in state and federal law), veteran status, political ideas, marital or family status, pregnancy, childbirth, or related medical conditions, including, but not limited to, lactation genetic information, genetic identity, gender expression, or sexual orientation that excludes an individual from participation in, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of a person's working or learning environment. Harassing conduct may take various forms, including name-calling, graphic or written statements (including the use of cell phone or the Internet), or other conduct that may be physically threatening, harmful, or humiliation. Harassment does not have to include intent to harm, be directed as a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine v. male/masculine or a failure to conform to those gender stereotypes.

The following are three (3) types of harassment:

- **Stalking** means a pattern of words, whether verbal, written, or electronic, or a course of conduct consisting of two or more acts directed at a specific person that serves no legitimate purpose and would cause a reasonable person to fear for her, his, or others' safety, to fear damage to his or her property or property belonging to a member of his or her family, or to suffer substantial emotional distress.
- **Bullying and cyber-bullying** are repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally [and are not protected by freedom of expression].
- **Sexual harassment** is unwelcome gender-based verbal or physical conduct that is sufficiently severe, persistent or pervasive, unreasonably interferes with, denies or limits an individual's ability to participate in or benefit from the System Office/college working or learning environment, educational program and/or

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activities, and is based on the creation of a hostile environment, power differentials (quid pro quo), or retaliation, including:

- **Hostile Environment** includes any situation in which there is harassing conduct that is sufficiently severe, pervasive, and objectively offensive that it alters the conditions of employment or limits, interferes with, or denies employment or educational benefits or opportunities, from both subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.
- **Quid pro quo** exists when there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and submission to or rejection of such conduct is an implicit or explicit term/condition of employment or educational program, or is used as a basis for a decision affecting an individual's participation in a complaint or investigation of discrimination, harassment, or sexual misconduct.
- **Retaliation** is any adverse employment or educational action taken against an individual because of the individual's participation in a complaint or investigation of discrimination, harassment, or sexual misconduct.

Examples of sexual harassment include:

- Submission to prohibited conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or access to an employment or educational benefit; or
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting that individual's employment, academic standing, or other decisions regarding educational benefits.

Sexual Misconduct encompasses a range of behavior used to obtain sexual gratification against another's will or at the expense of another. Sexual misconduct includes sexual harassment, sexual assault, and any conduct of a sexual nature that is without consent, or has the effect of threatening or intimidating the individual against whom such conduct is directed. Acts of sexual

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misconduct may be committed by any individual upon any individual, regardless of the sex, gender, sexual orientation, and/or gender identity of those involved. Sexual misconduct includes, but is not limited to, the following prohibited forms:

- ***Non-consensual Sexual Contact*** includes any intentional sexual touching, however slight, with any object, by one individual upon another individual that is without consent. Sexual contact includes: intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any intentional bodily contact in a sexual manner, though not involving contact with breasts, buttocks, groin, genitals, mouth or other orifice.
- ***Non-consensual Sexual Intercourse*** includes any sexual intercourse, however slight, or with any object, by one individual upon another individual that is without consent. Intercourse includes: vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.
- ***Sexual Exploitation*** occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: invasion of sexual privacy, prostituting another student or employee, non-consensual video or audio-taping of sexual activity, going beyond the boundaries of consent, engaging in voyeurism, knowingly transmitting an STD or HIV to another student or employee, exposing one's genitals in non-consensual circumstances, inducing another to expose their genitals, or sexually-based stalking and/or bullying.
- ***Sexual Assault*** means an actual or attempted sexual contact with another individual without the individual's consent. Sexual assault includes, but is not limited to: involvement in any sexual contact when the victim is unable to consent; intentional and unwelcome touching of, coercing, forcing, or attempting to coerce or force another to touch an individual's intimate parts, or disrobing or exposure of another without consent; or sexual intercourse without consent, including acts commonly

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referred to as “rape.” Intimate parts may include genitalia, groin, breast, or buttocks, or any other body part that is touched in a sexual manner.

- **Relationship Violence** encompasses a broad range of behaviors including sexual assault, physical abuse and other acts, threats, or a pattern of abusive behavior of a physical or sexual nature by one individual intended to control, intimidate, manipulate, humiliate, frighten, coerce or injure the other. These acts may be directed toward a spouse, an ex-spouse (also referred to as “domestic violence”), or by a current or former intimate partner (also referred to as “dating violence”).
- **Domestic violence** includes asserted violent misdemeanor and felony offenses committed by the victim’s current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, persons who have a child in common, or anyone else protected under domestic or family violence law.
- **Dating violence** means violence committed by an individual (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of the relationship.
 - The frequency of interaction between the persons involved in the relationship.
- **Stalking** means a pattern of words, whether verbal, written, or electronic, or a course of conduct consisting of two or more acts directed at a specific person that serves no legitimate purpose and would cause a reasonable person to fear for her, his, or others’ safety, to fear damage to his or her property or property belonging to a member of his or her family, or to suffer substantial emotional distress.
- **Bullying and cyber-bullying** are repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally [and are not protected by freedom of expression].

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Additional applicable definitions:

- **Consent** is clear, knowing, and voluntary agreement. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts.
- **Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent (i.e. "Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.").

III. RETALIATION

The College strictly prohibits retaliation against any victim or witness who has reported discrimination and/or harassment in good faith or otherwise participated in an investigation of discrimination and/or harassment.

No individual involved in the complaint process shall suffer retaliation because of their filing of or participation in the complaint process. The OCtech Code of Student Conduct and the College's employee disciplinary procedures will be used to address any case of alleged retaliation

IV. OFF-CAMPUS INCIDENTS OR CONDUCT

Conduct that occurs off-campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy/procedure (i.e. if off-campus harassment has continuing effects that create a hostile environment on campus).

Allegations of off-campus sexual misconduct are of particular concern and should be brought to the College's attention.

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V. MANDATORY EMPLOYEE REPORTING OF DISCRIMINATION, HARASSMENT, AND SEXUAL MISCONDUCT

All employees are responsible for helping to eliminate discrimination, harassment, and sexual misconduct. If any employee believes that he/she received information, experienced or possibly witnessed discrimination, harassment, and/or sexual misconduct, the employee should immediately notify his/her supervisor, a human resource representative, Title IX Coordinator, or any other appropriate official. Any student or employee who believes that he/she is or has been a victim of discrimination or harassment or that the College's policy has been violated may seek information and assistance from the College's Title IX Coordinator.¹ Contact information for the Title IX Coordinator is provided in this procedure under the Roles and Responsibilities section.

Employees who are statutorily prohibited from reporting such information, such as licensed-health care professionals or pastoral staff who provide health or counseling services to students and/or staff as a part of their job duties, are exempt from these reporting requirements unless they receive the report in a context outside of direct patient care, such as while acting in a teaching capacity. A responsible employee includes any employee who: has authority to take action to redress discrimination, harassment, and sexual misconduct; who has the duty to report discrimination, harassment, and sexual misconduct or other types of misconduct to the Title IX coordinator or any other appropriate official; or whom an employee or student could reasonably believe has this authority or responsibility.

VI. Filing a Complaint

If an employee believes he/she has been subject to discrimination or harassment, the employee is encouraged to file a complaint with Human Resources.

VII ROLES AND RESPONSIBILITIES

A. College Community Members

² This list is not intended to be an exhaustive list of policies and procedures. College policies and procedures may be found at <http://www.octech.edu> and State Board for Technical and Comprehensive Education policies and procedures may be located at <http://www.sctechsystem.com>.

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Any member of the College community who believes that OCTech's Non-Discrimination, Anti-Harassment and Sexual Misconduct policy has been violated may make a complaint. The well-being of the College depends on every member

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being knowledgeable about the policy, being conscious of his or her own behavior, avoiding intentionally dishonest or malicious complaints, and refusing to retaliate against another member of the College who has filed a complaint or participated in the complaint process.

B. Title IX Coordinator

The Human Resource Director shall be designated as the contact person/policy coordinator for employees to advise individuals with regard to behaviors that may violate Policy 8.004 and to help individuals better understand the processes related to formal and informal complaints. The Human Resources Director may be contacted at Building A, howellms@octech.edu, and (803)-535-1207.

The Chief Student Services Officer shall be designated as the contact person/policy coordinator for students with complaints of sexual violence and sexual harassment. The Chief Student Services Officer may be contacted at Building S, daviss@octech.edu and (803)-535-1218.

The names of the contact persons are posted on-line, in College publications and around campus and made known to all employees and students.

As policy coordinator, the Human Resource Director and Chief Student Services Officer or designee are responsible for maintaining records on all complaints, ensuring appropriate disciplinary actions and for coordinating the institution's responses to formal complaints. These individuals shall prepare annual reports on the nature and outcome of complaints at the institution which will be the basis of OCTech reports to be used for information, planning and assessment of progress toward elimination of harassment.

C. Chief Student Services Officer

For students, the Chief Student Services Officer or designee will notify the President and Vice President for Academic Affairs. The Chief Student Services Officer will also be consulted when there is a case of an employee harassing a student.

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VIII. TIMELINESS

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Students or employees should file complaints in a timely manner to help ensure investigations will be accurate and thorough. A complaint should be filed no later than sixty (60) calendar days after the action(s) giving rise to the complaint.

IX. CONFIDENTIALITY

The College wishes to create a safe environment in which individuals are unafraid to discuss concerns. Therefore, the College will always maintain confidentiality to the fullest extent possible. However, confidentiality of the allegation and identity of the complainant cannot be guaranteed because the College must also consider fairness to the individual accused, as well as, the safety and welfare of all members of the College community. These considerations may require the College to disclose the allegation and identity of the complainant to the accused and to other College officials.

When a formal complaint is filed, the alleged offender, the President, and the appropriate Vice President will be informed by the Human Resources Director/Chief Student Services Officer. Others who may have a legitimate need to know (such as a supervisor) will be informed on a case-by-case basis.

X. INFORMAL COMPLAINT

The goal of the Informal Complaint Process is to resolve concerns at the earliest stage possible with the cooperation of the parties involved. This process includes but is not limited to discussions with the parties, mediating an agreement between the parties, referring the parties to counseling programs, conducting targeted educational and training programs, and making other recommendations for resolution. The complainant will be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. The informal complaint process is not appropriate for cases involving complaints of sexual violence. Upon notification of an informal complaint, the Human Resources Director or Chief Student Services Officer or designee will conduct an investigation into the allegations using the following process:

- Discussions will be conducted separately with the complainant and the accused to

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review the allegation(s) and develop a mutually satisfactory resolution. If deemed appropriate, the contact person may bring the parties together for a joint discussion.

- The resolution process will be confidential to the extent permitted by law. The Human

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Resources Director/Chief Student Services Officer shall advise all parties of the confidentiality of the investigation and the strict prohibition against retaliation.

- A written record of the allegation(s) and the resolution will be provided to the parties and retained in the Office of Human Resources (employees) or Office of Student Services (students).
- If the investigator, after hearing the complainant's statement determines an investigation is necessary, the complaint will be handled under the Formal Investigation Process below (for employees).
- Resolution of complaints handled under the Informal Complaint Process shall either be completed within thirty (30) days of receipt of the complaint by the Human Resource Director/Chief Student Services Officer or referred to the Formal Complaint process within the time period. The Human Resources Director/Chief Student Services Officer shall notify all parties in writing if a matter originally submitted under the Informal Complaint Process is going to be handled under the Formal Complaint Process.
- The Informal Complaint process is an optional step. The complaining party or the Human Resources Director/Chief Student Services Officer may decide to skip the Informal Complaint Process and proceed under the Formal Complaint Process.

XI. FORMAL COMPLAINT AND INVESTIGATION PROCESS AGAINST STUDENTS

If the alleged harasser or violator is a student, the case will be adjudicated through the Student Code Procedures for Addressing Alleged Acts of Sexual Violence and Sexual Harassment of Orangeburg-Calhoun Technical College Procedure 4.049.02

XII. FORMAL COMPLAINT AND INVESTIGATION PROCESS AGAINST EMPLOYEES

The formal complaint process against employees will be followed by the Human Resources Office if the informal complaint process is not successful or appropriate for addressing the allegations of the complaining party (such as when the facts are in dispute in reports or serious misconduct). The wishes of the individual making the report shall be considered but are not determinative in the decision to initiate the Formal Complaint Process. Upon notification of a formal complaint, the Human Resources Director or designee will conduct an investigation into the allegations.

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- The process will be confidential to the extent permitted by law. The Human Resources Director shall advise all parties of the confidentiality of the investigation

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and the strict prohibition against retaliation.

- The complainant must provide a signed and dated statement including a description of the alleged offensive behavior and the requested action. The complainant will be advised that the alleged offender will receive a copy of the complaint.
- The investigation shall include interviews with the parties, interviews with other witnesses as needed, and a review of relevant documents if appropriate. If all witnesses identified by the parties are not interviewed, the Human Resources Director will document the reason the interviews were not conducted.
- The Human Resources Director or designee will send a copy of the written complaint to the alleged offender with a letter informing the alleged offender that an investigation has begun and directing the alleged offender not to engage in retaliatory behavior against the complainant. A copy of the Policy 8.004 and Procedure 8.004.01 will also be included. The alleged offender will be advised that he or she will have an opportunity to provide a response.. Copies of the letter and complaint will be sent to the complainant, the President, and supervisors as appropriate.
- The individual(s) accused of violating Policy 8.004 shall be given a written statement of the allegations made by the complainant.
- The investigation shall be completed as promptly as possible and in most cases within forty-five (45) days of the date the Formal Investigation Process was initiated. If the investigation cannot be completed within 45 calendar days because of valid extenuating circumstances, the complainant will be notified of reason and given a projected time of completion.
- The investigation should result in a written report that includes a statement of the allegations, the positions of the parties, a summary of the findings of fact, and a determination by the Human Resources Director or designee as to whether the College policy has been violated, and recommendations for actions to resolve the complaint if appropriate. If all witnesses identified by the parties were not interviewed, the report shall include a statement explaining why. The report shall be submitted to the President.
- If, in the course of the investigation, other allegations surface against the individual being investigated which may themselves constitute violations of Policy 8.004 or this Procedure, the Human Resources Director shall inform the alleged offender of the allegations, in writing, and the individual will be given the opportunity to respond to these allegations before the investigators submit their report and statement of findings. The Human Resources Director shall take notes on meetings they have with principals and witnesses. If principals and/or witnesses elect to have counsel

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present at the meetings, the College reserves the right to have counsel present.

- At the conclusion of the investigation, the Human Resources Director will submit the final report, including a statement of findings to the President. If the President

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determines that the final report is thorough and complete, he/she will disband the investigation. However, if the President finds the report to be incomplete or does not concur with the findings, he/she may send the report back for further investigation.

- If there is no finding of violation of Policy 8.004, the President will send letters to the alleged offender and the complainant informing them of the results of the investigation. No materials pertaining to the complaint will be placed in the personnel or student file in such an instance. Accordingly, the Human Resource Director will retain the only record of the formal complaint.
- If there is a finding of a violation of Policy 8.004, the supervisor, in consultation with the Human Resource Director and appropriate Vice President, will discuss appropriate disciplinary action. Once a course of action has been decided, and approved by the President, the Human Resource Director will send the offender a letter outlining the disciplinary action being taken.
- The complainant will be informed in writing at the conclusion of case when an investigation reveals that discriminatory harassment has occurred, the college will communicate the steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. The documentation of the case and a record of the disciplinary action taken will be placed in the offender's file.
- In instances when an individual may choose not to make either a formal or informal complaint, the College expressly reserves the right to follow-up on all allegations of violations of Policy 8.004 through either an informal or formal complaint.

A. APPEALS OF THE FORMAL COMPLAINT PROCESS FOR EMPLOYEES

The complainant or the accused has a right to appeal the decision of the formal complaint process. Appeals must be submitted in writing to the President within (10) ten working days (excluding weekends and College holidays) after receipt of the final report of the formal complaint process. The President or designee will review and decide the appeal. Decisions not appealed within such time are deemed final.

XIII. VIOLATIONS OF THE COLLEGE'S NON-DISCRIMINATION, ANTI-HARASSMENT AND SEXUAL MISCONDUCT POLICY

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Persons found to be in violation of the College's Non-Discrimination, Anti-Harassment and Sexual Misconduct Policy will be subject to immediate and

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appropriate disciplinary action, proportionate to the seriousness of the offense, which may include, but is not limited to: suspension or expulsion from the College, oral or written reprimand, reassignment, demotion, suspension, or termination of employment.

In the case of possible criminal violations, information may be turned over to local law enforcement. These actions also apply if any employee or student is found to have intentionally brought false charges against another member of the College community. Complainants may also file a criminal complaint with the appropriate law enforcement authority for criminal violations such as sexual violence.

XIV. DISSEMINATION OF THE POLICY/PROCEDURE, EDUCATIONAL PROGRAMS, AND TRAINING

The College has the responsibility to conduct periodic training for employees and supervisors on all aspects of the non-discrimination, anti-harassment, and sexual misconduct policy/ procedure.

The College shall:

1. Offer non-discrimination, anti-harassment, and sexual misconduct prevention, training, and education to college community; provide non-discrimination, anti-harassment and sexual misconduct prevention training and education to each supervisory employee;
2. Offer prevention educational programs to incoming students and new employees to promote awareness of rape and acquaintance rape, domestic violence, dating violence, sexual assault, and stalking, including the definition of consent, option for bystander intervention, and risk reduction awareness information;
3. Offer annual training on issues related to sexual violence, as defined in the policy/procedure, for individuals conducting formal investigations of reports and conducting hearings;
4. Provide all members of the College with a process for reporting sexual harassment

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or sexual violence in accordance with the policy;

5. Identify on-and-off campus resources for reporting sexual harassment or sexual
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violence, including law enforcement, medical and victim support services;

6. Provide prompt and effective responses to reports of sexual harassment, sexual violence, or reports of retaliation related to reports of sexual harassment or sexual violence in accordance with the policy;
7. Provide written notification for reports of sexual violence to campus law enforcement for publication in the annual Campus Security Report;
8. Designate trained individuals to serve as resources for members of the System Office/college community who have questions or concerns regarding behavior that may be sexual harassment or sexual violence.

ADDITIONAL RELATED POLICY AND PROCEDURES LIST²

SBTCE Policy 3-2-106	Student Code and Grievance Procedure
SBTCE Procedure 3-2-106.1	The Student Code for the SC Technical College System
SBTCE Procedure 3-2-106.2	The Student Grievance Procedure for the SC Technical College System
SBTCE Policy 8-5-101 and Procedure 8-5-101.1	Non-Discrimination, Anti-Harassment and Sexual Misconduct
SBTCE Policy 8-6-100 and Procedure 8-6-100.1	Grievances and Appeals
SBTCE Policy 8-5-100 and Procedure 8-5-100.1	Disciplinary Action
OCtech Policy 8.004	Non-Discrimination, Anti-Harassment and Sexual Misconduct

² This list is not intended to be an exhaustive list of policies and procedures. College policies and procedures may be found at <http://www.octech.edu> and State Board for Technical and Comprehensive Education policies and procedures may be located at <http://www.sctechsystem.com>.