



EQUALITY FOR LGBTQ FACULTY AT OAKLAND UNIVERSITY?

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Equality and diversity are two terms that set the foundation for the creation of Oakland University's lesbian, gay, bisexual, transgender, queer, and ally (LGBTQA) employee resource group (ERG). With the passage of the constitutional amendment banning recognition of LGBTQ relationships, Michigan rededicated itself to inequality for LGBTQ people and their families who already were excluded from civil rights protections based on their sexual orientation, gender identity, or gender expression. This essay will take the reader through a nearly six year history from the time Michigan amended the state constitution banning the state from recognizing same-sex couples as families up to the adoption of Oakland University's first university-wide policies inclusive of sexual orientation, gender identity, and gender expression.

In *Rise of the Creative Class*, Richard Florida (2002) sets out strong arguments for Oakland University and all institutions of higher education to foster diversity in its faculty, staff, and student body. Florida points out that diversity increases the odds an institution will attract different types of creative people with different ideas and skill sets. He notes that homosexuality represents the last frontier of diversity in our society, and thus a place that welcomes LGBTQ people welcomes all kinds of people, especially the creative and talented—the very types of people who power innovation and growth. Oakland University also

recognizes the benefits of creativity and innovation brought about by having a diverse faculty, as each of these terms is referenced three times in *OU in 2020* and our mission statement. It is clear that fostering diversity by bringing equality to all faculty and staff is in the best interests of the University, its employees, their families, and our students.

Landmark Decisions

On November 2, 2004, the residents of the state of Michigan passed Proposal 2, amending the state constitution’s Declarations of Rights (Article 1, Section 25) to read,

To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage *or similar union for any purpose*. (Michigan Legislature, 2009, p. 5, emphasis added)

It is believed that the phrase *or similar union for any purpose* contributed to the Supreme Court filing its majority (5–2) opinion on May 7, 2009, stating that the constitutional amendment “prohibits public employers from providing health-insurance benefits to their employees’ qualified same-sex domestic partners. Because we agree with the Court of Appeals that providing such benefits does violate the marriage amendment, we affirm its judgment” (State of Michigan, 2008, p. 3).

Lesbian, Gay, Bisexual, Transgender, Queer, and Ally Employee Resource Group

At nearly the same time as the passage of Proposal 2, Oakland University’s Office of Diversity and Compliance (recently renamed the Office of Inclusion and Intercultural Initiatives) initiated the formation of Employee Resource Groups with the stated goal “to align diverse groups with upper-level employees

to create a bridge between the university and its employees by promoting awareness and enthusiasm for diversity inclusion” (Oakland University, 2010).

Invitations sent out to encourage employees to form an ERG defined diversity inclusion in terms of color, women, and other members of protected classes as defined by Michigan’s Elliott-Larsen Civil Rights Act,

An Act to define civil rights...The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and *educational facilities* with discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right (Legislative Council, State of Michigan, 2010, p. 1, emphasis added)

Because the terms *sexual orientation*, *gender identity* and *gender expression* are not included in this civil rights act, there were no pro-active measures taken by the University to encourage sexual and gender minorities to establish an ERG. The LGBTQA ERG was authorized to form only after a write-in campaign demonstrated the need and interest for such an association. Today it is arguably the most active ERG on campus.

Through the 2005–2006 academic year, the nascent ERG focused on finding avenues for bringing together isolated members of our community working in silence, shouting out loud, or toiling in benign neglect all across campus. Our first public event was hosting the *Love Makes a Family: Portraits of Lesbian, Gay, Bisexual, and Transgender People and Their Families* photo/text exhibit (<http://www.lovemakesafamily.org/lovemakesafamily.php>) in the lobby of Kresge Library. While this event was successful in bringing visibility to the LGBTQ community, and professors brought classes to view the exhibit, it was also met with opposition. Library staff were reported to have demanded time off so as not to be forced to view images of happy LGBTQ-headed families. Clearly, there is

more work to do before some members of OU's community come to terms with the equality of all loving, supportive families, regardless of their shapes, shades, sizes, or compositions.

In the spring of 2007, three years after the passage of Proposal 2, members of the ERG had growing concerns that the University had not yet issued a public statement in support of finding ways to continue providing LGBTQ staff and faculty and their families with equal access to employee benefits. We had already heard reports that top candidates had declined employment offers due to the uncertain future of support for their families on campus and/or in the state of Michigan. In response to our letter to the President expressing our concerns, he wrote,

Fostering an inclusive community, which requires bringing to campus faculty, students and staff with diverse backgrounds, experiences, and viewpoints, is critical to the University's mission . . . The Appellate Court decision prohibiting benefits to same-sex domestic partners has not lessened the University's commitment to diversity. The University continues to explore lawful means to achieve inclusiveness and equality for all . . . rest assured that inclusion and equality will continue to be factors that guide the University's work.

This was the first time the President had expressed his support for equality for LGBTQ staff and faculty. Yet it was a private communication, and to the wider campus community and the public sphere, the University remained silent on these issues.

During the 2007–2008 academic year, with still no actions taken by the University, the ERG circulated a resolution across campus in an effort to document the breadth and depth of support for the development and adoption of inclusive policies that would assure equality for LGBTQ students, staff, faculty, and administration. The resolution concluded,

Be it resolved, we endorse Oakland University's adoption of policies and practices that abide by the restrictions of the constitutional amendment, and allow for employee

benefits to be extended to un-married partners; and be it further resolved, we urge Oakland University to maintain and further develop a campus climate of inclusion in order to attract and retain the highest qualified faculty and staff by establishing policies and practices that recognize and honor diverse peoples.

Students (Gay-Straight Alliance), staff (Administrative-Professional Association), and faculty (College of Arts and Sciences, Dean's Council, Honors College, Kresge Library, Schools of Business Administration, Engineering and Computer Science, Health Sciences, and Nursing) signed the petition. On March 20, 2008, the OU Senate passed the resolution on its first reading. During that same year, the AAUP conducted a survey of faculty to determine which issues were priorities for consideration in the pending contract negotiations. Retention of benefits for LGBTQ faculty was identified as the highest priority. The depth of staff and faculty support for equality had never been expressed so clearly prior to these actions. It was encouraging and heartening to find ourselves surrounded by so many allies.

That widespread support was never more appreciated than when efforts to work with General Council were rebuffed. Stymied by the administration's wall of silence, the ERG reached out to initiate dialogue and offer its expertise and resources to assist General Council in developing inclusive university policies as had already been done by UM¹, MSU, WSU, and other state universities. In answer to our overture, General Council responded:

I am well versed in the topic and legal issues and have also consulted with my Legal Officer colleagues at every other

¹ University acronyms:

CMU: Central Michigan

EMU: Eastern Michigan

FSU: Ferris State

GVSU: Grand Valley State

LSSU: Lake Superior State

MSU: Michigan State

MTU: Michigan Technological

NMU: Northern Michigan

OU: Oakland

SVSU: Saginaw Valley State

UM: University of Michigan

WMU: Western Michigan

WSU: Wayne State

Michigan public university regarding their universities' proposed and implemented models, and the real and potential legal ramifications of each. Thus, this is a legal matter and not one that can be influenced by institutional support or a task force recommendation. Any legal opinion I may render will be in compliance with State law to support Oakland University and its employees.

What is not clear is how, after consulting "Legal Officer colleagues at every other Michigan public university," Oakland University remained one of only three state universities without inclusive policies granting benefits to LGBTQ faculty and staff. At least 10² of General Counsel's colleagues had found what they considered legal avenues for ensuring faculty on their campuses were treated equally and with respect. Oakland University was keeping company with only Saginaw Valley and Lake Superior state universities.

We were again rebuffed by General Council after extending an invitation for him to meet with the ERG to discuss what progress, if any, the University was making on finding avenues for maintaining or improving inclusive university policies. In reply to our invitation, we were cautioned that bringing these issues to the attention of the Board of Trustees (BOT) at their February 2009 meeting, "may very well result in a request from the Board for the legal opinion I referred to in my email to the Dean [Voelck]." This vague statement was interpreted as a threat to the existing Domestic Partnership (DP) benefits and successfully forestalled the ERG from going before the BOT for more than a year.

During this interim period, after the constitutional amendment was passed and before the expiration of the faculty contract, the legality of the DP benefits was thought to be in question; we were unaware of the Michigan Attorney Gen-

² Although the University of Michigan maintains three distinct campuses, all faculty benefits are coordinated through the Ann Arbor Human Resources Department. As such, for the purposes of this paper, UM is counted as one institution, resulting in a total of 13 state universities.

eral's, October 4, 2007, ruling in *National Pride at Work, Inc. vs. Jennifer Granholm and Michael Cox*. In that argument to the Supreme Court, the plaintiffs noted, "The Attorney General further determined that the Amendment did not affect existing contracts but applied to future contracts." Had we been armed with this information, we very likely would have had inclusive policies in place a year ago, potentially removing at least one item from the bargaining table in the then-upcoming contract negotiations.

Faculty Contract Negotiations

Armed with a clear directive from faculty to maintain equality for same-sex families, AAUP entered into very contentious contract negotiations with the University that were not resolved without picketing, suspension of services by faculty, and threat of a court order to force faculty to return to work. At the conclusion of negotiations, union leadership held informational meetings to debrief faculty on the resultant changes to our contract. Despite being the highest priority for faculty, details of the changes in benefits for LGBTQ families were not included in initial meetings. Faculty were only informed that the bargaining team had successfully retained health-insurance benefits for LGBTQ families; the sentiments expressed by meeting facilitators left attendees with the impression that equality had been preserved.

It was left to members of the ERG to point out that the negotiated benefits were more restrictive than those in the expired contract. We had in fact taken a significant step backwards. Specifically, OU no longer defined "family" as it had done under policies for Domestic Partners. Article XVI, Section 120 of the 2006–2009 faculty contract stated,

To include a same-sex partner and his or her dependents under one's benefits, the faculty member must file an "Affidavit for Same-Sex Partner Benefits" with the Benefit Services Office. This affidavit will stipulate a six-month

financial arrangement requirement, unless carrier requirements change. (OU Chapter AAUP, & OU BOT, 2006)

Under the 2009–2012 contract, the definition of who is an *Other Qualified Adult* (OQA) is decided by health care providers (Blue Cross Network, Health Alliance Plan, and Priority Health). This makes sense in regard to health benefits. As a non-self-insured institution, the University cannot dictate policies set by contracted insurance carriers. However, the University has full authority to define *Other Qualified Adult* for other contracted benefits, including bereavement leave, sick leave, and tuition waivers, and they purposefully opted not to. The newly negotiated contract stipulates that LGBTQ faculty may only take advantage of these university-controlled benefits for members of their family for whom they maintain OU insurance coverage. As such, LGBTQ faculty may not take University-authorized leave to attend to their family members' illness or death unless they pay fees associated with enrolling each family member in one or more of their health insurance policies, regardless of their need for such coverage.

Most disconcerting about the results of these contract negotiations was the stated belief by both bargaining teams that securing any benefits for LGBTQ faculty was considered equality. For the ERG, retaining equal benefits symbolically represented the University's commitment to equality for LGBTQ faculty. What was lost in translation was the understanding that the term equality means all faculty are treated equally, with sameness of quality, power, and status. Restrictions and responsibilities placed upon LGBTQ faculty and staff, not also placed upon their heterosexual counterparts, are antithetical to equality and hinder the expansion of diversity.

Post Negotiation Advances

Since the conclusion of contract negotiations, there has been a marked shift in the University President's public stance

on LGBTQ issues. His notes on the November 19, 2009, Faculty Open Forum state,

I also know that university recognition of the LBGTA [*sic*] community is an important goal. I assure you, it is one I fully support. As such, I have instructed our Director of University Diversity and Compliance to work in cooperation with the LBGTA [*sic*] ERG to develop an appropriate policy that makes the university's position clear.

The President also changed the title and hierarchical structure of the Office of Diversity and Compliance. The office is now the Office of Inclusion and Intercultural Initiatives, and though still housed with the General Council's suite, the director of the Office of Inclusion and Intercultural Initiatives now reports directly to the President on issues of diversity and inclusion. What remains unclear is the rationale for the timing of these public statements of support. It is not known outside the President's inner circle why five years had to pass before he made public statements of support for the OU LGBTQ community. It is unfathomable how 10 other state universities were able to develop and adopt inclusive university policies before the President made public his support for equality. While we are appreciative of his public statements, he is beyond fashionably late in joining his presidential colleagues who have taken leadership roles in bringing equality to their faculty and staff.

With contract negotiations concluded and the benefits package agreed to, there was no longer any threat to loss of benefits as a consequence of demanding the BOT insist on the development and adoption of inclusive university policies. In anticipation of the ERG's presentation to the Board, the ERG distributed nearly 1000 postcards across campus urging the President "to adopt inclusive university policies that bring equality to all who work and study here." The President agreed to receive any postcards sent to his office, and to present them to the BOT when the ERG addressed them on March 2, 2010. At that meeting, the auditorium in Elliott Hall was filled to capacity; another

dozen supporters were directed to an overflow room to watch the proceedings on television. As Chair of the ERG, I outlined to the Board the history I have detailed here. At the conclusion of my address, President Russi submitted an estimated 800 signed postcards to the BOT, and reiterated his full and complete support for the development and implementation of inclusive university policies. Ensuing discussion included support from the Director of Inclusion and Intercultural Initiatives, three board members, and Student Congress leadership. In fact, when the timeline for adoption of new policies was offered for the fall, the Board directed that the new policy be brought to them for consideration sooner, before the end of the current academic year. At the time of this writing, it appears this deadline will not be met. The Director of Inclusion and Intercultural Initiatives has undertaken a very thorough review of all benefits, services and contracts. She is in the process of developing a single comprehensive package of changes for the Board of Trustees and will present it to the Board in the fall.

State Universities Come to Terms with Equality

With the anticipated adoption of inclusive policies in the fall of 2010 meeting of the BOT, OU will become the 11th of 13 state universities to develop and adopt inclusive policies through contract negotiations and/or administrative actions. Saginaw Valley and Lake Superior universities are the lone two state universities that do not have any process for acknowledging the families of their LGBTQ staff and faculty. Among the other institutions, the terms of inclusion and equality are many and diverse.

Non-Married Partners

Eleven state universities have come to terms with identifying non-married partners eligible for benefits by creating no

fewer than eight different designations. These include *Additional Eligible Adult* (EMU), *Designated Eligible Individual* (MTU, WMU), *Designated Individual* (NMU), *Household Member* (GVSU), *Other Eligible Adult* (FSU), *Other Eligible Individual* (CMU, MSU), *Other Eligible Person* (WSU), and *Other Qualified Adult* (OU, UM). This proliferation of terminology stems from trying to fill the void left by the elimination of Domestic Partnerships, which was commonly used and well-understood. As non-married partners can no longer be defined by gender, and without inter-institutional coordination, each university is left to establish terminology, criteria, and benefits on its own.

Not only do our state universities not agree on what to call non-married partners, they also disagree on what grounds a non-married partner should be recognized by the institution. All universities offering some form of benefits program for non-married partners agree that these people cannot already be an employee's family member, spouse, or dependent. Furthermore there is consensus that the partner must be an adult, though some use the State of Michigan's definition, and others stipulate 18 years of age; Wayne State requires *Other Eligible Persons* to be at least 26 years old. Nine of 11 institutions require faculty to be in established relationships for 6 months (CMU, FSU, UM), 12 months (EMU), or 18 months (GVSU, MSU, MTU, WSU, WMU).

Seven institutions (EMU, GVSU, MSU, MTU, UM, WSU, WMU) require non-married spouses to have shared the employee's primary residence, other than as tenant or employee. Three universities (CMU, EMU, FSU) require partners to demonstrate some form of financial interdependence, whether as co-owners of their home, co-owners of joint banking accounts, beneficiaries on insurance policies, or by some other means. Northern Michigan does not set parameters on who may be named a *Designated Individual* in lieu of a spouse for sick and bereavement leaves and recreation center memberships.

Benefits

Table 1 summarizes the most common benefits offered by each institution, including medical, dental and vision coverage, bereavement and sick leaves, tuition reduction, and the ability for children of non-married partners to have access to benefits. Other benefits available to LGBTQ faculty include adoption assistance (GVSU), campus bookstore discounts (WSU), COBRA (GVSU, WSU), employee assistance program (CMU, GVSU), legal assistance (UM), life insurance (CMU, GVSU, MSU, UM), long-term care discounts (CMU, GVSU, UM), recreation/wellness center (GVSU, NMU), and retiree medical program (GVSU).

At the time of this writing, inclusive policies for OU have not yet been adopted; they may well have been adopted by the time this article is published. The benefits that are available to faculty, state-recognized spouses, and their children, and which must be addressed in any inclusive policy, include medical, dental, and vision insurance coverage, bereavement and family medical leaves, tuition reduction, and inclusion of children of OQA's. (As stated earlier, OU is not self-insured, so the availability of medical coverage is limited by the health care provider policies.) Currently, third party carriers make available to all faculty and their families group legal assistance and long-term care assistance. The policy in effect for supplemental life insurance is restricted to employees and their state-recognized spouses; at this time it does not appear the insurance provider offers a rider that includes non-married partners. University Human Resources is researching other insurance carriers to see if they offer coverage to non-married partners.

In a state that does not grant even the most basic of civil rights such as housing and employment to LGBTQ people and in one which has amended its constitution to discriminate against LGBTQ families, it can be very difficult for state-run institutions to bring equality to LGBTQ employees and their families. But each institution can take steps to bring recogni-

MICHIGAN STATE UNIVERSITY BENEFITS FOR NON-MARRIED FACULTY/STAFF

Institution	Designation	Health	Dental	Vision	Bereavement Leave	Family Medical Leave	Tuition Reduction	Dependent Children
Central Michigan	OQA	•	•	•	•	•	•	•
Eastern Michigan	AEA	•	•	•	•	•	•	•
Ferris	OEA	•	•	•	•	•	•	•
Grand Valley	HM	•	•	•	•	•	•	•
Lake Superior	N/A	•	•	•	•	•	•	•
Michigan	OEI	•	•	•	•	•	•	•
Michigan Tech	DEI	•	•	•	•	•	•	•
Northern Michigan	DI	•	•	•	•	•	•	•
Oakland University	To be Determined	•	•	•	•	•	•	•
Saginaw Valley	N/A	•	•	•	•	•	•	•
U of M	OQA	•	•	•	•	•	•	•
Wayne State	OEPA	•	•	•	•	•	•	•
Western Michigan	OQA	•	•	•	•	•	•	•

AEA: Additional Eligible Adult HM: Household Member OEP: Other Eligible Person
 DEI: Designated Eligible Individual OEA: Other Eligible Adult OQA: Other Qualified Adult
 DI: Designated Individual OEI: Other Eligible Individual

tion and respect to the diversity of its employees and their families to ensure equality within the parameters of its jurisdiction. Oakland University is now taking those first steps. We will know shortly where they will lead.

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