

Chapter 132S-09 WAC

NONDISCRIMINATION AND HARASSMENT POLICY AND GRIEVANCE PROCEDURE

WAC

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WAC 132S-09-010 Introduction. Columbia Basin College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal, as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. To this end, Columbia Basin College has enacted this policy prohibiting discrimination against and harassment of members of these protected classes. Any individual found to be in violation of this policy will be subject to disciplinary action up to and including dismissal from the college or from employment.

Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment based on protected class status or gender should report the incident or incidents to the college's Title IX/EEO coordinator identified below. If the complaint is against that coordinator, or his or her relative attending or working for the college, the complainant should report the matter to the president's office for referral to an alternate designee.

Name: Camilla Glatt, Vice President for Human Resources & Legal Affairs

Title: Title IX/EEO Coordinator

Office: Human Resources Contact Information: 509-542-5548

The Title IX/EEO coordinator or designee:

(1) Will accept all complaints and referrals from college employees, applicants, students, and visitors;

(2) Will make determinations regarding how to handle requests by complainants for confidentiality;

(3) Will keep accurate records of all complaints and referrals for the required time period;

(4) May conduct investigations or delegate and oversee investigations conducted by a designee;

(5) May impose interim remedial measures to protect parties during investigations of discrimination or harassment;

(6) Will issue written findings and recommendations upon completion of an investigation; and

(7) May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or orally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <https://www.columbiabasin.edu/index.aspx?page=907>. Hard copies of the policy and complaint form are available at the following locations on campus: Hawk central, counseling and advising center, human resources-student employment, president's office-administrative wing of A building and vice president for instruction's office.

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-010, filed 5/25/16, effective 6/25/16.]

WAC 132S-09-020 Definitions. (1) **Advisor:** A person of the complainant or respondent's choosing who can accompany the complainant or respondent to any related meeting or proceeding.

(2) **Complainant:** Employee(s), applicant(s), student(s), or visitor(s) of Columbia Basin College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

(3) **Complaint:** A description of facts that allege violation of the college's policy against discrimination or harassment.

(4) **Consent:** Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. In order to give effective consent one must be of legal age.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is

physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(5) **Discrimination:** Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

(6) **Force:** Use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and coercion that overcome resistance or produce consent. Sexual activity that is forced is by definition nonconsensual, but nonconsensual sexual activity is not by definition forced.

(7) **Harassment:** A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward an individual because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

(a) Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

(b) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

(c) Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

(8) **Hazing:** Acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to admission, initiation, joining, or any other group - Affiliation activity.

(9) **Hostile environment:** Any situation in which there is harassing conduct that is based on protected class status and is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational or social programs.

The determination of whether an environment is "hostile" must be based on all of the circumstances. These circumstances could include:

(a) The frequency of the conduct;

(b) The nature and severity of the conduct;

(c) Whether the conduct was physically threatening;

(d) Whether the conduct was directed at more than one person;

(e) Whether the conduct arose in the context of other discriminatory conduct;

(f) Whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offenses by mere discourtesy or rudeness;

(g) Whether the speech or conduct deserves the protections of academic freedom or the first amendment.

(10) **Protected class:** Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

(11) **Resolution:** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation (when appropriate), or the formal imposition of discipline sanction.

(12) **Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

(13) **Sexual exploitation:** Occurs when one person takes nonconsensual or abusive sexual advantage of another for his or 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 other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

(a) Invasion of sexual privacy;

(b) Engaging in voyeurism;

(c) Nonconsensual video or audio taping of sexual activity;

(d) Sexually based stalking; and/or

(e) Bullying may also be forms of sexual exploitation.

(14) **Sexual harassment:** A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment.

(a) **Hostile environment sexual harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(b) **Quid pro quo sexual harassment** occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors. Examples of conduct that may qualify as sexual harassment include:

(i) Persistent comments or questions of a sexual nature.

(ii) A supervisor who gives an employee a raise in exchange for submitting to sexual advances.

(iii) An instructor who promises a student a better grade in exchange for sexual favors.

(iv) Sexually explicit statements, questions, jokes, or anecdotes.

(v) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.

(vi) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.

(vii) Persistent, unwanted attempts to change a professional relationship to an amorous relationship.

(viii) Direct or indirect propositions for sexual activity.

(ix) Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(15) **Sexual violence:** Is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(16) **Nonconsensual sexual intercourse:** Is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(17) **Nonconsensual sexual contact:** Is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(18) **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, or anyone else protected under domestic or family violence law.

(19) **Dating violence:** Means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(20) **Stalking:** Means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-020, filed 5/25/16, effective 6/25/16.]

WAC 132S-09-030 Who may file a complaint. Any employee, applicant, student or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally, which will be captured in written form for processing. The college encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online at <https://www.columbiabasin.edu/index.aspx?page=907>. Hard copies of the complaint form are available at the following locations on campus: Hawk central, counseling and advising center, human resources/student employment, president's office/administrative wing of A building and vice president for instruction's office. Any person submitting a discrimination complaint shall be provided with a written copy of the college's nondiscrimination and harassment policies and grievance procedures.

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-030, filed 5/25/16, effective 6/25/16.]

(5/25/16)

WAC 132S-09-040 Confidentiality and right to privacy. Columbia Basin College will seek to protect the privacy of the complainant to the full extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Columbia Basin College policies and procedures. Although Columbia Basin College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO coordinator.

Confidentiality requests and sexual violence complaints. The Title IX/EEO coordinator will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX/EEO coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX/EEO coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- (1) The seriousness of the alleged sexual violence;
- (2) The age of the complainant;
- (3) Whether the sexual violence was perpetrated with a weapon;
- (4) Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;
- (5) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- (6) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for confidentiality, the Title IX/EEO coordinator will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX/EEO coordinator will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-040, filed 5/25/16, effective 6/25/16.]

WAC 132S-09-050 Responsible employees and reporting responsibilities. (1) The college is obligated to address acts of sex-based misconduct (including sexual harassment and/or retaliation) of which a responsible employee knew or should have known occurred. A "responsible employee" is any employee who:

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(a) Has the authority to take action to redress sex-based misconduct;

(b) Has been given the duty of reporting incidents of sex-based misconduct or any other misconduct by students; or

(c) A student could reasonably believe has this authority or duty.

For student complainants where the alleged offender is another student, "responsible employees" includes administrators (directors, deans, vice presidents, etc.), athletic director/assistant athletic director, ASCBC director/assistant director, resource center staff, completion coaches, hawk central staff members, security officers, and executive assistants and secretarial staff reporting to positions designated above.

(2) A responsible employee must report to the Title IX/EEO coordinator all relevant details about alleged sex-based misconduct (including sexual harassment and/or retaliation) that the student or other person has shared and that the college will need to determine what occurred and resolve the situation. This includes the names of the alleged respondent, if known, the student complainant or other person who experienced the alleged sex-based misconduct, others involved in the alleged sex-based misconduct, as well as relevant facts, including the date, time and location. If the complaint is against the Title IX/EEO coordinator, or his or her relative attending or working for the college, the complainant should report the matter directly to the president's office for referral to an alternate designee.

(3) A responsible employee should provide the following information to a complainant:

(a) The reporting obligations (discussed above) of the responsible employee;

(b) Complainant's option to request confidentiality and available confidential resources;

(c) Complainant's right to file a Title IX complaint with the college; and

(d) Complainant's right to report a crime to local law enforcement.

For convenience of student complaint reporting, there are college-designated responsible employees and contact information noted on the college's web page, with all reports referred by the designated responsible employees to the Title IX/EEO coordinator.

For a staff complaint of sex-based misconduct (including sexual harassment and/or retaliation) by a student or another staff member, the staff complaint may be reported to the immediate supervisor, with the supervisor report/referral to the Title IX/EEO coordinator or the human resources director. A direct report to the Title IX/EEO coordinator or human resources director will be more expeditious in terms of processing the complaint. If the complaint is against the Title IX/EEO coordinator, or his or her relative attending or working for the college, the complainant should report the matter directly to the president's office for referral to an alternate designee.

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-050, filed 5/25/16, effective 6/25/16.]

WAC 132S-09-060 Investigation procedure. Upon receiving a discrimination complaint, the Title IX/EEO coordinator will assess the written complaint and determine the

appropriate steps necessary to ensure all relevant evidence is obtained and all critical elements are addressed. The Title IX/EEO coordinator shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO coordinator or his or her designee. If the investigation is assigned to someone other than the Title IX/EEO coordinator, the Title IX/EEO coordinator shall inform the complainant and respondent(s) of the appointment of an investigator.

(1) **Interim measures.** The Title IX/EEO coordinator may impose interim measures to protect the complainant and/or respondent and/or others pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

(2) **Investigation.** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EEO coordinator. The Title IX/EEO coordinator shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s), and prevent its recurrence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student conduct code or college employment policies and collective bargaining agreements.

(3) **Written notice of decision.** The Title IX/EEO coordinator will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to the following limitations.

(a) **Complainant notice.** The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the accused not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action.

(b) **Respondent notice.** The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action.

(c) **Request for reconsideration.** Either the complainant or the respondent may seek reconsideration of the finding and/or referral for disciplinary action to the Title IX/EEO coordinator. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If a request for reconsideration is received, the Title IX/EEO coordinator shall respond within ten days. If the Title IX/EEO coordinator determines the request for reconsideration has merit, he or she may issue an amended finding or referral. Any amended decision is final and no further reconsideration is available, with the exception of subsection (5) of this section for appeal/review/grievance of disciplinary action as appropriate.

(4) **Informal dispute resolution.** Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(5) **Appeal for disciplinary action.** If formal disciplinary action is imposed as a result of a finding of violation of this policy, then a respondent may file an appeal. The right to appeal on particular grounds (i.e., the finding is not supported by the evidence, the sanction is substantially disproportionate to the severity of the violation, due process was violated, new evidence is available), if offered to either party, must be equally accessible to the complainant.

(a) **Student conduct appeal.** A student respondent may appeal a disciplinary action taken by the chief student conduct officer or the student conduct board in accordance with chapter 132S-100 WAC. The complainant will receive notice of the appeal and may submit either his or her own appeal or a written response to the student respondent's appeal within ten calendar days, which will be considered.

(b) **Represented employee grievance.** A faculty member or represented classified staff member may file a grievance under the applicable collective bargaining agreement.

(c) **Nonrepresented classified employee appeal.** Nonrepresented classified staff may file an appeal with the personnel resources board under WAC 357-52-020.

(d) **All other employee reviews.** All other employees may request review of the disciplinary action through the supervisory chain of command to the college president within twenty days of the imposition of the discipline. This includes student workers if the discipline imposed resulted from conduct that occurred during the performance of student employment and includes a loss in pay as a sanction (nothing prohibits the Title IX/EEO coordinator and/or investigator from referring findings against a student employee to the chief student conduct officer for additional review under the student conduct code). The request for review must be a signed, written document articulating the grounds for review. The responsible supervisor will respond to the request for review within twenty working days of receipt. If the finding(s) and/or discipline is upheld, then review of the supervisor's decision can be filed with the college president using the

same process. If the finding(s) and/or discipline is upheld, the college president's decision will constitute final action and there is no further appeal within the college.

(e) **Volunteer or visitor review.** A volunteer or visitor respondent may request review of sanction(s) imposed in response to any findings under this policy, including temporary or permanent trespass through the president's office.

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-060, filed 5/25/16, effective 6/25/16.]

WAC 132S-09-070 Publication of antidiscrimination policies and procedures. The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to discrimination in violation of college policy will be provided a copy of these policies and procedures.

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-070, filed 5/25/16, effective 6/25/16.]

WAC 132S-09-080 Limits to authority. Nothing in this policy or procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Columbia Basin College policies and procedures, collective bargaining agreement(s), and federal, state, and municipal rules and regulations.

Nothing in this policy or procedure limits the college from considering applicable policies of the college when investigating complaints including, but not limited to, the college's standards of conduct policy, appropriate use of IT resources policy, code of ethics policy, consensual relations leading to conflicts of interest policy or any other policy or procedure. For complaints involving students, nothing in this policy or procedure limits the college from evaluating the conduct of any student under the student code of conduct.

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-080, filed 5/25/16, effective 6/25/16.]

WAC 132S-09-090 Nonretaliation, intimidation or coercion. Retaliation by, for or against any participant (including complainant, respondent, witness, Title IX/EEO coordinator, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation, or any resulting disciplinary proceedings is prohibited, and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX/EEO coordinator immediately.

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-090, filed 5/25/16, effective 6/25/16.]

WAC 132S-09-100 Criminal complaints. Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

Pasco CBC Campus:
Pasco Police Department
509-545-3481 or emergency 911

Richland CBC Campus:
Richland Police Department
509-628-0333 or emergency 911

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-100, filed 5/25/16, effective 6/25/16.]

WAC 132S-09-110 Other discrimination complaint options. Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission:
<http://www.hum.wa.gov/index.html>

U.S. Department of Education Office for Civil Rights:
<http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission:
<http://www.eeoc.gov/>

[Statutory Authority: RCW 28B.50.140. WSR 16-12-039, § 132S-09-110, filed 5/25/16, effective 6/25/16.]