

Chapter 132L-300 WAC

DISCRIMINATION COMPLAINT PROCESS

WAC

132L-300-010 Discrimination and harassment policy.
132L-300-015 Discrimination and harassment procedure.

8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

132L-300-020 Applicability. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-020, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

132L-300-030 Right to complain. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-030, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

132L-300-040 Protection from retaliation. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-040, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

132L-300-050 Informal complaint procedure. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-050, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

132L-300-060 Outcomes of the informal complaint process. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-060, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

132L-300-070 Time limit for formal complaint procedures. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-070, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

132L-300-080 Formal complaint procedures against students. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-080, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

132L-300-085 Formal complaint procedures against employees and/or agents of the college. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-085, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

132L-300-090 Outcomes of the formal complaint process. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-090, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

132L-300-100 Complainant appeal process. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-100, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

132L-300-110 Responsibilities of the equal opportunity officer. [Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-300-110, filed 9/15/04, effective 10/16/04.] Repealed by WSR 15-18-054, filed 8/27/15, effective 9/27/15. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW.

(8/27/15)

WAC 132L-300-010 Discrimination and harassment policy. Centralia College (college) provides equal opportunity and access in education and employment and does not discriminate on the basis of race, color, national origin, age, disability, sex, sexual orientation, marital status, creed, religion, or status as a veteran of war 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.

The college has enacted policies prohibiting discrimination and harassment of members of these protected classes. Any individual found to be in violation of these policies will be subject to disciplinary action up to and including dismissal from the college or from employment.

[Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 15-18-054, § 132L-300-010, filed 8/27/15, effective 9/27/15; WSR 04-19-062, § 132L-300-010, filed 9/15/04, effective 10/16/04.]

WAC 132L-300-015 Discrimination and harassment procedure. Any employee, student, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX/Equal Opportunity (EO) officer identified below. The college encourages the timely reporting of any incidents of discrimination or harassment. If the complaint is against that officer, the complainant should report the matter to the president's office for referral to an alternate designee.

Name: Vice-president of human resources & legal affairs, Title IX/EO officer or designee.

Office: Hanson administration building, human resources office room 101.

Contact Info: 600 Centralia College Blvd, Centralia, WA 98531; phone 360-736-9391, ext. 285.

The Title IX/EO officer, or designee:

- Will accept all complaints and referrals from college employees, students, and visitors.
- Will keep accurate records of all complaints and referrals for the required time period.
- May conduct investigations or assign and oversee investigations conducted by others.
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment.
- Will make findings of fact on investigations completed.
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate action.

The college encourages the timely reporting of any incident of discrimination or harassment.

[Ch. 132L-300 WAC p. 1]

(1) Definitions.

(a) **Complainant:** Employee(s), applicant(s), student(s), or visitor(s) of the college who allege that she or he has been subjected to discrimination or harassment due to membership in a protected class.

(b) **Complaint:** A description of facts that allege violation of the college's policy against discrimination or harassment. (The college has an official form as part of this procedure.)

(c) **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.

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.

(d) **Discrimination:** Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class.

(e) **Harassment:** The unwelcome and unauthorized patterns of conduct, based on a person(s) race, color, religious belief, sex, marital status, sexual orientation, gender identity or expression, national origin, disability, veteran status, or age, and which:

(i) The harasser either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the victim; and

(ii) In fact, is sufficiently, severe, persistent, or pervasive to substantially deny or limit that person's ability to benefit from or fully participate in educational programs or activities or employment opportunities.

(f) **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.

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

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

(i) **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 offen-

sive remarks about a person's gender. There are two types of sexual harassment:

(i) **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.

(ii) **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.

(j) **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.

(i) **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.

(ii) **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.

(iii) **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.

(iv) **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.

(v) **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.

(2) **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. The college encourages the timely reporting of any incidents of discrimination or harassment.

(3) **Confidentiality and right to privacy.** The 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 the college policies and procedures. The college cannot guarantee complete confidentiality.

(4) **Confidentiality requests and sexual violence complaints.** The Title IX/EO coordinator will 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/EO coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX/EO 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.

If the college is unable to honor a complainant's request for confidentiality, the Title IX/EO officer 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/EO officer 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.

(5) Investigation procedure. Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The Title IX/EO officer shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EO officer, or designee. If the investigation is assigned to someone other than the Title IX/EO officer, the Title IX/EO officer shall inform the complainant and respondent(s) of the appointment of an investigator.

Interim measures. The Title IX/EO officer may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation.

Investigation. Complaints shall be thoroughly and impartially investigated. 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/EO officer.

Investigation findings and recommendations involving students may also result in student conduct violations and result in discipline under the student conduct code. Investigation findings and recommendations involving employees may result in discipline. The findings and recommendations shall be considered based on the preponderance of the evidence standard, in determining 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 the victim(s), and prevent its recurrence.

Written notice of decision. The Title IX/EO officer will provide each party and the appropriate administrator or appointing authority with written notice of the investigative findings and of actions taken. 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. 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. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

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.

Final decision/reconsideration. Either the complainant or the respondent may seek reconsideration of the decision by the Title IX/EO officer. Requests for reconsideration shall be submitted in writing to the Title IX/EO officer within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven days, the decision becomes final. The Title IX/EO coordinator shall either deny the request or, if the Title IX/EO coordinator determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

(6) Limits to authority. Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with the college policies and procedures, and federal, state, and municipal rules and regulations.

(7) Nonretaliation, intimidation and coercion. Retaliation by, for, or against any participant (including complainant, respondent, witness, Title IX/EO officer, 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/EO coordinator immediately.

(8) 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 and chapter 34.05 RCW. WSR 15-18-054, § 132L-300-015, filed 8/27/15, effective 9/27/15.]