

Chapter 132Y-300 WAC

NONDISCRIMINATION AND HARASSMENT POLICY

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

132Y-300-002	Informal procedure. [Statutory Authority: Chapter 28B.19 RCW. WSR 89-04-008 (Resolution No. 88-12-2), § 132Y-300-002, filed 1/20/89.] Repealed by WSR 15-12-069, filed 5/29/15, effective 6/29/15. Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC Board of Trustees Resolution No. 15-5-3.
132Y-300-003	Formal procedure. [Statutory Authority: Chapter 28B.19 RCW. WSR 89-04-008 (Resolution No. 88-12-2), § 132Y-300-003, filed 1/20/89.] Repealed by WSR 15-12-069, filed 5/29/15, effective 6/29/15. Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC Board of Trustees Resolution No. 15-5-3.
132Y-300-004	Other remedies. [Statutory Authority: Chapter 28B.19 RCW. WSR 89-04-008 (Resolution No. 88-12-2), § 132Y-300-004, filed 1/20/89.] Repealed by WSR 15-12-069, filed 5/29/15, effective 6/29/15. Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC Board of Trustees Resolution No. 15-5-3.

WAC 132Y-300-001 Preamble. Community College District XXIII is covered by Title IX of the Civil Rights Act of 1964 prohibiting sex discrimination in education. Any applicant for admission, enrolled student, applicant for employment or employee of Edmonds Community College who believes she/he has been discriminated against on the basis of sex may lodge an institutional grievance by following the procedures below.

[Statutory Authority: Chapter 28B.19 RCW. WSR 89-04-008 (Resolution No. 88-12-2), § 132Y-300-001, filed 1/20/89.]

WAC 132Y-300-005 Statement of policy. Edmonds Community College provides equal opportunity in education and employment and does not discriminate on the basis of protected classes as required by state and federal law. Prohibited discrimination and/or harassment of protected classes includes sexual harassment.

(1) Harassment is defined, for the purpose of this policy, as unwelcome and unauthorized incidents and/or patterns of conduct or speech that are:

(a) Persistent, pervasive, or severe; and

(b) Based on an association or perceived association with a protected class and which:

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

(5/29/15)

(ii) Renders the college environment (including the environment for employees, students, and visitors) hostile, intimidating, or demeaning for the complainant.

(2) Sexual harassment is a form of sex discrimination. Sexual harassment is defined, for the purpose of this policy, as unwelcome sexual advances, requests, and other unwelcome conduct of a sexual nature where:

(a) Submission to such conduct is made, either expressly or implicitly, a term or condition of an individual's employment or education; or

(b) Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or

(c) Such unwelcome conduct is sufficiently persistent, pervasive, or severe to have the effect of substantially interfering with any individual's academic or professional performance.

(3) Sexual harassment conduct includes, but is not limited to, engaging in unwelcome sexual advances; requesting sexual favors; engaging in other sexual behaviors including verbal, nonverbal, electronic or social media communication; or physically touching that would create an intimidating, hostile, or offensive educational environment or substantially interfere with a reasonable person's work or educational performance.

[Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC Board of Trustees Resolution No. 15-5-3. WSR 15-12-069, § 132Y-300-005, filed 5/29/15, effective 6/29/15.]

WAC 132Y-300-010 Procedures. (1) Introduction. Edmonds Community College, hereinafter referred to as "the college," recognizes its responsibility for investigating and resolving incidents; implementing corrective measures; monitoring the educational environment and workplace; and implementing regulations to stop, remediate, and prevent discrimination and harassment based on an individual's association or perceived association with protected classes as required by law. To this end, the college has enacted a policy prohibiting discrimination against and harassment of members of these protected classes and procedures that deal with complaints and violations of the policy. Any individual found to be in violation of the policy will be subject to disciplinary action up to and including expulsion from the college or dismissal from employment.

Any employee, student, or visitor who is the alleged subject of discrimination or harassment should report the incident or incidents to the EO/AA office, Title IX coordinator identified below. If the complaint is against that officer, the complainant should report the matter to the president's office for referral to an alternate designee.

Civil Rights: Equal Opportunity/Affirmative Action (EO/AA).

Title IX: Gender Discrimination, Sexual Harassment, and Sexual Violence.

Title: EO/AA Office, Title IX Coordinator

Office: Edmonds Community College

20000 - 68th Ave. W.

Clearview Building, Room 122

Lynnwood, WA 98036

The EO/AA office, Title IX coordinator or designee:

- Will accept all complaints and referrals from college employees, students, and visitors.
- Will make determinations regarding how to handle requests by complainants for privacy.
- 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 issue written findings of fact on completed investigations.
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate action.

(2) Definitions.

(a) **Complainant.** Any employee, student, or visitor of the college who is the alleged subject of discrimination or harassment due to an association or perceived association with a protected class.

(b) **Complaint.** A description of facts that allege violation of the college's nondiscrimination and harassment policy.

(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.

Individuals cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when that person knows, or should know, that the other individual 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.** The unfavorable treatment of a person based on an individual's association or perceived association with a protected class. Harassment is a form of discrimination.

(e) **Harassment.** Unwelcome and unauthorized incidents and/or patterns of conduct or speech that are persistent, pervasive, or severe and based on an association or perceived association with a protected class; and which the respondent either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the complainant, and renders the college environment (including the environment for employees, students, and visitors) hostile, intimidating, or demeaning for the complainant. Examples of conduct that could rise to the level of

discriminatory harassment include, but are not limited to, the following:

- Epithets, "jokes," ridicule, mockery, or other offensive or derogatory conduct focused upon an individual's membership in a protected class.
- Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.
- 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.

(f) **Protected class.** A group of individuals who are protected under state or federal laws, including laws that prohibit discrimination on the basis of age, citizenship, color, creed, disability, gender identity or expression, genetic information, marital status, national origin, pregnancy, race, religion, sex, sexual orientation, use of service animal, or veteran/military status.

(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.** An individual who is a member of the campus community who allegedly discriminates against or harasses another person.

(i) **Sexual harassment.** Unwelcome sexual advances, requests, and other unwelcome conduct of a sexual nature where submission to such conduct is made, either expressly or implicitly, a term or condition of an individual's employment or education; or submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or such unwelcome conduct is sufficiently persistent, pervasive, or severe to have the effect of substantially interfering with any individual's academic or professional performance. Two types of sexual harassment include:

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

(ii) **Quid pro quo sexual harassment.** A form of harassment that occurs when an individual in a position of real or perceived authority makes receiving a benefit conditional upon granting of sexual favors.

Examples of conduct that may qualify as sexual harassment include:

- Persistent comments or questions of a sexual nature.
- A supervisor who gives an employee a raise in exchange for submitting to sexual advances.
- An instructor who promises a student a better grade in exchange for sexual favors.
- Sexually explicit statements, questions, jokes, or anecdotes.
- Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.
- Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.

- Persistent, unwanted attempts to change a professional relationship to an amorous relationship.
- Direct or indirect propositions for sexual activity.
- Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(j) Sexual violence. 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 is violence by a person who has been in a romantic or intimate relationship with the complainant. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

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

(3) **Filing a complaint.** The college encourages the timely reporting of any incidents of alleged discrimination or harassment. Any employee of, student of, or visitor to the college may file a complaint. Complaints may be submitted in writing or verbally.

For complainants who wish to submit a written complaint, a formal complaint form is available online at www.edcc.edu/titleix/. Hardcopies of the complaint form are available at the following locations on campus: Human resources office, and vice president for student services office. Any person submitting a discrimination or harassment complaint shall be provided with a written copy of the college's nondiscrimination and harassment policy and procedures.

(4) **Confidentiality and right to privacy.** The college will seek to protect the privacy of the individuals involved to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, comply with the state and federal laws, and follow the college's policy and procedures. The college cannot guarantee complete confidentiality. The EO/AA office, Title IX coordinator or designee will determine how to handle requests for privacy.

The EO/AA office, Title IX coordinator or designee will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks for their name to not be revealed to the respondent or that the college not investigate the allegation, the EO/AA office, Title IX coordinator or designee 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 their name not be disclosed or that the college not investigate, the EO/AA office, Title IX coordinator or designee 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:

- The seriousness of the alleged sexual violence;
- The age of the complainant;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the respondent has a history of committing acts of sexual violence or has been the subject of other sexual violence complaints;
- Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- 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 privacy, the EO/AA office, Title IX coordinator or designee 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 privacy, the EO/AA office, Title IX coordinator or designee 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 complaint, the college shall commence an impartial investigation. The EO/AA office, Title IX coordinator or designee shall be responsible for overseeing all investigations. The EO/AA office, Title IX coordinator or designee may conduct investigations. If the investigation is assigned to someone other than the EO/AA office, Title IX coordinator or designee then the complainant and respondent shall be notified of the appointment of an investigator.

(a) Interim measures. The EO/AA office, Title IX coordinator or designee may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of noncontact 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 code of conduct or the college's employment policies and collective bargaining agreements.

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

(c) Written notice of decision. The EO/AA office, Title IX coordinator or designee 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 in an effort to resolve the complaint, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommendations in an effort to resolve the complaint, such as a finding that the complaint is or is not meritorious or a recommendation that the respondent 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.

(d) Informal dispute resolution. Informal dispute resolution processes, such as 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.

(e) Final decision/reconsideration. Either the complainant or the respondent may seek reconsideration of the decision by the EO/AA office, Title IX coordinator or designee. Requests for reconsideration must be submitted in writing to the EO/AA office, Title IX coordinator or designee 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. If a request for reconsideration is received, the EO/AA office, Title IX coordinator or designee shall respond within 14 days. The EO/AA office, Title IX coordinator or designee shall either deny the request or will issue an amended decision. Any amended decision is final and no further reconsideration is available.

(6) **Publication of nondiscrimination and harassment policy and procedures.** The policy and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or designee. Individuals who believe they have been subjected to discrimination or harassment will be provided a copy of the policy and procedures.

(7) **Limits to authority.** Nothing in these procedures shall prevent the president or designee from taking immediate disciplinary action in accordance with the college's policies and procedures, and federal, state, and/or municipal rules and regulations.

(8) **Retaliation, intimidation, and coercion.** Retaliation by, for, or against any participant (including complainant, respondent, witness, investigator, or EO/AA office, Title IX coordinator or designee) is expressly prohibited. Retaliatory action of any kind taken against a participant who is seeking redress under the nondiscrimination and harassment policy and using these procedures is prohibited and is subject to discipline. Individuals who think they have been retaliated against, intimidated, or coerced should contact the EO/AA office, Title IX coordinator or designee immediately.

[Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC Board of Trustees Resolution No. 15-5-3. WSR 15-12-069, § 132Y-300-010, filed 5/29/15, effective 6/29/15.]

WAC 132Y-300-015 Other remedies. (1) 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:

City of Edmonds Police Department
<http://www.edmondswa.gov/government/departments/police.html>

City of Lynnwood Police Department
<http://www.ci.lynnwood.wa.us/Public-Safety/Police-Department>

Snohomish County Sheriff's Department
<http://snohomishcountywa.gov/210/Sheriff>

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.

(2) **Other discrimination complaint options.** Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission
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
www.eeoc.gov

[Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC Board of Trustees Resolution No. 15-5-3. WSR 15-12-069, § 132Y-300-015, filed 5/29/15, effective 6/29/15.]

WAC 132Y-300-020 Complaint content. The proposed content is designed to assist you with filing a discrimination and/or harassment complaint. Please write clearly and focus on the alleged discriminatory and/or harassing conduct. The complaint should include as much information regarding the incident(s) giving rise to the complaint as possible, including the location, date, and time of the alleged incident(s); the name of the individual or group whom the complaint is against, if known; a description of the incident(s); and the remedy sought.

You may attach additional documents if needed. Please include your contact information (phone, email, mailing address), sign, and return your complaint to the EO/AA office, Title IX coordinator or designee. A link to an online reporting form is located at <http://www.edcc.edu/titleix/>.

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