

Chapter 495B-305 WAC

GRIEVANCE RULES—DISCRIMINATION AND HARASSMENT

WAC

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WAC 495B-305-010 Preamble. Bellingham Technical 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 Title VI of the Civil Rights Act of 1964, Title 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 1975, 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, Bellingham Technical College has enacted policies prohibiting discrimination against 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.

Any employee, student, applicant 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 coordinator or EEO/AA officer, identified below. If the complaint is against that coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

Title: Vice President of Student Services, Title IX Coordinator

Contact Information: titleIX@btc.edu; 360-752-8440

Title: Executive Director of Human Resources, Equal Employment Opportunity/Affirmative Action (EEO/AA) Officer

Contact Information: hr@btc.edu; 360-752-8549

The Title IX coordinator or EEO/AA officer or designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors.

- Will make determinations regarding how to handle requests by complainants for confidentiality.
- Will keep accurate records of all complaints and referrals for the required time period.
- May conduct investigations or delegate and oversee investigations conducted by a designee.
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment.
- Will issue written findings and recommendations upon completion of an investigation.
- 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 (INSERT LINK). Hard copies of the complaint form are available at the following locations on campus: Human resources office and office of the vice president of student services. For complaints involving student on student acts of sexual violence under Title IX, refer to chapter 495B-121 WAC.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-305-010, filed 3/30/16, effective 4/30/16.]

WAC 495B-305-020 Definitions. (1) **Complainant:** Employee(s), student(s), applicant(s), or visitor(s) of Bellingham Technical College who alleges that he or she has been subjected to discrimination or harassment due to his or her membership in a protected class.

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

(3) **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.

(4) **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.

(5) **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 or an employee 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 toward 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.

(6) **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.

(7) **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 sanctions.

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

(9) **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 or an employee 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:

- 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.

(10) **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.

(a) **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.

(b) **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.

(c) **Domestic violence** includes assorted 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.

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

(e) **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.50.130. WSR 16-08-029, § 495B-305-020, filed 3/30/16, effective 4/30/16.]

WAC 495B-305-030 Who may file a complaint. Any employee, student, applicant or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online. Hard copies of the complaint form are available at the following locations on campus: Human resources office and vice president of student services office. Any person submitting a discrimination complaint shall be

provided with a written copy of the college's antidiscrimination policies and procedures.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-305-030, filed 3/30/16, effective 4/30/16.]

WAC 495B-305-040 Confidentiality and right to privacy. Bellingham Technical College will seek to protect the privacy of the complainant to the fullest 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 Bellingham Technical College policies and procedures. Although Bellingham Technical College will attempt to honor complainants' request 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 coordinator or EEO/AA officer 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 coordinator or EEO/AA officer 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 coordinator or EEO/AA officer 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 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 respondent has a history of committing acts of sexual violence or 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 confidentiality, the Title IX coordinator or EEO/AA officer will notify the complainant of the decision and ensure that the 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 coordinator or EEO/AA 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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-305-040, filed 3/30/16, effective 4/30/16.]

(3/30/16)

WAC 495B-305-050 Investigation procedure. Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The Title IX coordinator or EEO/AA officer shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX coordinator or EEO/AA officer or his or her designee. If the investigation is assigned to someone other than the Title IX coordinator or EEO/AA officer, the Title IX coordinator or EEO/AA officer shall inform the complainant and respondent(s) of the appointment of an investigator.

Interim measures. The Title IX coordinator or EEO/AA officer 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 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.

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 coordinator or EEO/AA officer.

The Title IX coordinator or EEO/AA officer 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.

Written notice of decision. The Title IX coordinator or EEO/AA officer will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings, and of acts taken or recommended to resolve the complaint, as well as the basis for the findings and any resulting sanctions, subject to the following limitations. 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 complaint and shall be notified of referrals for disciplinary action. Both the

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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 coordinator or EEO/AA officer. Requests for reconsideration shall be submitted in writing to the Title IX coordinator or EEO/AA 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. If a request for reconsideration is received, the Title IX coordinator or EEO/AA officer shall respond within fifteen days. The Title IX coordinator or EEO/AA officer shall either deny the request or, if the Title IX coordinator or EEO/AA officer determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-305-050, filed 3/30/16, effective 4/30/16.]

WAC 495B-305-060 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.50.130. WSR 16-08-029, § 495B-305-060, filed 3/30/16, effective 4/30/16.]

WAC 495B-305-070 Limits to authority. Nothing in this chapter shall prevent the college president or designee from taking immediate disciplinary action in accordance with Bellingham Technical College policies and procedures and federal, state, and municipal rules and regulations.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-305-070, filed 3/30/16, effective 4/30/16.]

WAC 495B-305-080 Nonretaliation, intimidation, and coercion. Retaliation by, for or against any participant (including complainant, respondent, witness, Title IX coordinator, EEO/AA 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 coordinator or EEO/AA officer immediately.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-305-080, filed 3/30/16, effective 4/30/16.]

WAC 495B-305-090 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:

Bellingham Police Department: 360-778-8600
 Whatcom County Sheriff's Office: 360-676-6650
 Washington State Patrol: 360-738-6215

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.50.130. WSR 16-08-029, § 495B-305-090, filed 3/30/16, effective 4/30/16.]

WAC 495B-305-100 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. Dept. 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.50.130. WSR 16-08-029, § 495B-305-100, filed 3/30/16, effective 4/30/16.]