

WAC 132V-305-030 Definitions. The following definitions are specific to the terms of this procedure and do not modify or revise similar terms as used in related procedures or collective bargaining agreements.

Advisor: A person of the complainant or respondent's choosing who can accompany the complainant or respondent to any related meeting or proceeding.

College: Tacoma Community College main campus and any other campus or college facility which may be created by the board of trustees.

College employee: any person employed by the college performing assigned administrative or professional responsibilities.

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

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

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.

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.

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.

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.

Hazing: Any method of initiation into a student group or any pastime or amusement engaged in with respect to such a group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or postsecondary education. Excluded from this definition are "customary athletic events or other similar contests or competitions."

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 offends by mere discourtesy or rudeness;
- (g) Whether the speech or conduct deserves protections of academic freedom or the first amendment.

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.

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 disciplinary sanction.

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

Sexual exploitation: Occurs when one person takes nonconsensual or abusive sexual advantage of another for his/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 the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: Invasion of sexual privacy, engaging in voyeurism, nonconsensual video or audio taping of sexual activity; sexually based stalking and/or bullying may also be forms of sexual exploitation.

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) A professor who promises a student a better grade in exchange for sexual favors;

(iv) Sexually explicit statements, questions, jokes, photos, 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.

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 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.

(d) **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.

(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.

Working day: Any day on which the college is open and can conduct legal business; typically excludes Saturdays, Sundays, and legal holidays.

[Statutory Authority: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-030, filed 1/15/16, effective 2/15/16.]