

# Chapter 132A-350 WAC

## GRIEVANCES—DISCRIMINATION

### WAC

132A-350-015	Nondiscrimination and antiharassment policy.
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132A-350-050	Reasonable accommodations/academic adjustment disputes.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

132A-350-030	Disciplinary action. [Statutory Authority: RCW 28B.50.140 and chapter 28B.50 RCW. WSR 99-15-072, § 132A-350-030, filed 7/20/99, effective 8/20/99.] Repealed by WSR 16-08-109, filed 4/5/16, effective 5/6/16. Statutory Authority: RCW 28B.50.140(13).
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**WAC 132A-350-015 Nondiscrimination and antiharassment policy.** Peninsula College provides equal opportunity in education and employment and does not discriminate 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 law against discrimination, chapter 49.60 RCW and their implementing regulations. Employees are also protected from discrimination for filing a whistleblower complaint with the Washington state auditor.

#### (1) Definitions.

(a) **Harassment:** A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward individuals 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 substantially interferes with the individual's employment, education, or access to college programs, activities and opportunities.

(b) **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:

(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.

(c) **Sexual violence.** "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.

(vi) 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.

(2) **Designees.** The following college officials are designated to handle inquiries regarding this policy:

**Title:** Director of Human Resources, Title IX/EEO Coordinator

**Contact:** titleixcrd@pencol.edu

**Address:** 1502 E. Lauridsen Blvd.  
Port Angeles, WA 98362

**Phone:** 360-417-6212

**Title:** Director of Financial Aid and Enrollment Services, Title IX/EEO Deputy Coordinator

**Contact:** titleixdcrd@pencol.edu

**Address:** 1502 E. Lauridsen Blvd.  
Port Angeles, WA 98362

**Phone:** 360-417-6393

[Statutory Authority: RCW 28B.50.140(13). WSR 16-08-109, § 132A-350-015, filed 4/5/16, effective 5/6/16. Statutory Authority: RCW 28B.50.140 and chapter 28B.50 RCW. WSR 05-14-142, § 132A-350-015, filed 7/5/05, effective 8/5/05; WSR 99-15-072, § 132A-350-015, filed 7/20/99, effective 8/20/99.]

**WAC 132A-350-020 Discrimination and harassment complaint procedure.** Peninsula 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, or honorably discharged veteran or military status, or use of 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 law against discrimination, chapter 49.60 RCW and their implementing regulations. Employees are also protected from discrimination for filing a whistleblower complaint with the Washington state auditor. To this end, Peninsula College has enacted policies prohibiting discrimination against any 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/EEO coordinator/deputy identified below. If the complaint is against that coordinator/deputy, the complainant should report the matter to the president's office for referral to an alternate designee.

The college encourages the timely reporting of any incidents of discrimination or harassment. 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 <http://www.pencol.edu/student-rights-and-policies/informational-stop-discrimination>. Hardcopies

of the complaint form are available in the human resource office, C34.

**Role of the Title IX/EE Coordinator and/or Deputy Coordinator:**

**Title:** Title IX/EEO Coordinator

**Contact:** titleixdcrd@pencol.edu

**Address:** 1502 E. Lauridsen Blvd.  
Port Angeles, WA 98362

**Phone:** 360-417-6393

**Title:** Title IX/EEO Deputy Coordinator

**Contact:** titleixdcrd@pencol.edu

**Address:** 1502 E. Lauridsen Blvd.  
Port Angeles, WA 98362

**Phone:** 360-417-6393

**The Title IX/EEO Coordinator/Deputy Coordinator 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; and
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

(1) **Definitions.**

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

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

(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:** Conduct that harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability, use of a service animal; gender, including preg-

nancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. Harassment is a form of discrimination.

(e) **Harassment:** A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward individuals 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:

- 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:** 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 sanction.

(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 offensive 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:** Incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as com-

mitting a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of violence in a dating and/or domestic relationship. A person may be incapable of giving consent by reason of age, threat, or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other causes.

(2) **Who may file a complaint.** Any employee, applicant, student, or visitor of Peninsula 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. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.pencol.edu/student-rights-and-policies/informational-stop-discrimination>. Hardcopies of the complaint form are available at the human resource office, C34. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures.

(3) **Confidentiality and right to privacy.** Peninsula College will seek to protect the privacy of the complainant to 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 Peninsula College policies and procedures. Although Peninsula 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/designee.

(a) **Confidentiality requests and sexual violence complaints:** The Title IX/EEO coordinator/designee 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/designee will inform the complainant that maintaining confidentiality may limit the college's ability to respond fully 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/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.

(b) **Factors to be weighed during this determination may include, but are not limited to:**

- (i) The seriousness of the alleged sexual violence;
- (ii) The age of the complainant;
- (iii) Whether the sexual violence was perpetrated with a weapon;
- (iv) Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;
- (v) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and

(vi) 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/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 confidentiality, the Title IX/EEO coordinator/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.

(4) **Investigation procedure.** Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The Title IX/EEO coordinator/designee 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/designee shall inform the complainant and respondent(s) of the appointment of an investigator.

(a) **Interim measures:** The Title IX/EEO coordinator/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 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.

(b) **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/designee. The Title IX/EEO coordinator/designee 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.

(c) **Written notice of decision:** The Title IX/EEO coordinator/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 to resolve the complaint, 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 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, 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.

(e) **Final decision and/or reconsideration:** Either the complainant or the respondent may seek reconsideration of the decision by the Title IX/EEO coordinator/designee. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator/designee within seven calendar 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 calendar days, the decision becomes final. If a request for reconsideration is received, the college president or designee shall respond within fourteen calendar days. The president or designee shall either deny the request or, if the president or designee determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

(5) **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.

(6) **Limits to authority.** Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Peninsula 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/EEO coordinator/designee, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individual(s) 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/designee immediately.

(8) **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 Port Angeles Police Department**

321 East 5th Street  
Port Angeles, WA 98362  
Phone: 360-452-4545

<http://wa-portangeles.civicplus.com/288/Police-Department>

**City of Forks Police Department**

500 East Division Street  
Forks, WA 98331  
Phone: 360-374-2223

<http://forkswashington.org/police-and-corrections>

**City of Port Townsend Police Department**

1925 Blain Suite 100  
Port Townsend, WA 98368  
Phone: 360-385-2322

<http://cityofpt.us/police.htm>

**Clallam County Sheriff Department**

223 East 4th Street  
Port Angeles, WA 98362  
Phone: 360-417-2459

<http://www.clallam.net/sheriff/>

**Jefferson County Sheriff Department**

79 Elkins Road  
Port Hadlock, WA 98339  
Phone: 360-385-3831

<http://www.jeffersonsheriff.org/>

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

(9) **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.50.140(13). WSR 16-08-109, § 132A-350-020, filed 4/5/16, effective 5/6/16. Statutory Authority: RCW 28B.50.140 and chapter 28B.50 RCW. WSR 99-15-072, § 132A-350-020, filed 7/20/99, effective 8/20/99.]

**WAC 132A-350-040 Reasonable accommodations/academic adjustment for persons with disabilities.** Peninsula College shall provide to individuals qualifying with a disability an equal opportunity to access the benefits, rights, and privileges of college services, programs, activities, and employment in the most integrated setting appropriate to the

individual's needs, in compliance with the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act Amendment Act (ADAAA) of 2008, the state of Washington laws against discrimination, and appropriate collective bargaining agreements. No individual shall, based on disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any program or activity.

In accordance with the ADAAA of 2008, persons with disabilities have the right to request and receive reasonable accommodations that:

(1) Are necessary to ensure that employment/academic requirements do not discriminate or have the effect of discriminating against a qualified individual with a disability based on that disability; and

(2) Do not impose an undue hardship on the college or require alteration of academic requirements demonstrated as essential to the program of instruction being pursued.

It shall be the obligation of the individual with a disability to request reasonable accommodation.

[Statutory Authority: RCW 28B.50.140(13). WSR 16-08-109, § 132A-350-040, filed 4/5/16, effective 5/6/16. Statutory Authority: RCW 28B.50.140 and chapter 28B.50 RCW. WSR 99-15-072, § 132A-350-040, filed 7/20/99, effective 8/20/99.]

**WAC 132A-350-045 Definitions. Essential functions:**

The fundamental job duties of the position that the individual with a disability holds or desires.

**Essential requirements:** The fundamental student learning outcomes and course curriculum requirements or activities.

**Qualified student:** A student with a disability who, with or without reasonable accommodations, meets the academic and technical standards required for admission to, participation in, and/or fulfills the essential requirements of college programs or activities.

**Qualified employee:** An employee with a disability who meets the skill, experience, education, and other job related requirements for the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the job.

[Statutory Authority: RCW 28B.50.140(13). WSR 16-08-109, § 132A-350-045, filed 4/5/16, effective 5/6/16. Statutory Authority: RCW 28B.50.140 and chapter 28B.50 RCW. WSR 99-15-072, § 132A-350-045, filed 7/20/99, effective 8/20/99.]

**WAC 132A-350-050 Reasonable accommodations/academic adjustment disputes.** Reasonable accommodation shall be provided to any qualified individual with a disability for accessing the benefits, rights and privileges of college services, programs, activities, and employment in the most integrated setting appropriate to the individual's needs. Employees and campus visitors should go to the human resources office to request reasonable accommodation. Enrolled students should go to the services for students with disabilities office to request reasonable accommodation.

**(1) Reasonable accommodation**

Any individual who requests reasonable accommodation shall:

(a) Provide timely notice and documentation of the nature and extent of the disability and the accommodation requested to the college's disability support staff. Since some accommodation may require considerable time to arrange, requests should be made well in advance of need. Lack of advance notice may delay the availability of an accommodation.

(b) Provide any additional documentation on the nature and extent of the disability that the college may require in order to determine appropriate accommodation. This may include a second opinion from a health care professional of the college's choosing and at the college's expense.

(c) Cooperate with the college's disability support staff to develop an appropriate plan for reasonable accommodation. The individual must:

(i) Accept the plan as developed. Any problems encountered in receiving the agreed-upon accommodation must be promptly reported to the college's disability support staff (human resources office for employees and campus visitors/services for students with disabilities office for students); or

(ii) Decline the proposed accommodation. If the individual refuses an accommodation and cannot perform the essential function of the job/program without the accommodation, the individual may not be considered a qualified individual with a disability.

## (2) Process of accommodation

(a) For employees or applicants for employment:

(i) Essential job functions shall be determined when a position is established, when it becomes vacant, or when duties are changed. The process of selecting reasonable accommodation for each qualified individual with a disability shall be made on a case-by-case basis, appropriate to the essential job functions of the position and the nature and extent of the individual's disability.

(ii) Possible accommodation shall be developed jointly with the individual requesting accommodation and the disability support staff. If there are two or more effective accommodations that would allow the individual with a disability to perform the essential job functions, the college shall consider the preference of the individual with a disability before selecting the accommodation(s) to be provided.

(iii) When an accommodation in an employee's present position is not reasonable or would cause an undue hardship, the college shall attempt to accommodate the employee through reassignment to another vacant position, at the same pay range or lower, for which the employee is qualified. The employee is responsible for identifying types of jobs he/she is interested and qualified for and shall work on the accommodation with human resources.

(b) For students: Possible accommodation shall be developed jointly with the person requesting accommodation and the services for students with disabilities office. The request for accommodation must be made to the services for students with disabilities office. The process of selecting accommodation(s) for each qualified student with a disability shall be made on a case-by-case basis, appropriate to the nature and extent of the student's qualified disability.

## (3) Course equivalency

The college recognizes that certain disabilities may preclude a student from successfully completing a specific

course requirement for a degree even when reasonable accommodation(s) are in place. The college recognizes its obligation to accommodate students with disabilities without compromising the integrity of the academic program. Therefore, every student enrolled in a degree program is required to meet the academic requirements demonstrated as essential to the program of instruction being pursued.

The college recognizes that altered methods of course delivery and/or providing reasonable accommodations will enable most students with disabilities to successfully complete course requirements except in unusual circumstances. Once given reasonable accommodation(s), the student must attempt to complete the required course. If the student attempted and was unable to complete the course, the student may request a course equivalency under this procedure.

Course equivalency shall only be approved when such equivalency is consistent with the academic requirements demonstrated as essential to the program of instruction being pursued. Requests for equivalency for a required course shall only be considered when a qualified student with a disability has demonstrated that, even with accommodations provided by the college, the student is unable to complete the course solely because of a disability.

All requests for course equivalency shall be submitted to the services for students with disabilities office within a year from the academic quarter that the course was attempted and shall include the following information:

(a) A description of the accommodations previously provided to the student for the course;

(b) An explanation of the relationship of the student's disability to the lack of success in completing the course;

(c) A proposed substitute course, if known;

(d) A statement by the student that a good faith effort has been made to complete the required course with accommodations; and

(e) A release signed by the student, authorizing the special needs academic advisory committee to review the documentation on the student's disability and to contact the evaluating doctor or psychologist.

The dean of student services shall forward the request, with documentation, for review by the special needs academic advisory committee.

## (4) Special needs academic advisory committee

All requests for course equivalency shall be submitted to the special needs academic advisory committee. The student or designated advocate requesting equivalency shall have an opportunity to address the committee.

The special needs academic advisory committee is comprised of the following:

- An instructional services administrator;

- A faculty member from the department in which the course is offered;

- A faculty member from a department other than the department in which the course is offered;

- A student services administrator; and

- A representative of the services for students with disabilities office.

Requests for course equivalency shall be approved if the committee agrees that the student has made a good faith effort to complete the required course with accommodations

and if the proposed equivalency meets the learning objectives of the degree requirement.

The committee shall respond in writing to all requests for course equivalency within ten instructional days after receiving the request. The decision of the special needs academic advisory committee may be appealed to a senior level administrator within fifteen instructional days after receiving the decision to review it was not arbitrary or capricious. The decision of the senior level administrator's review is the final decision of the college.

**(5) Reasonable assurance disputes**

It is recommended but not required, that student and/or employee complainants who disagree with an accommodation request a review of the accommodation given or not given by first attempting, via an informal meeting to resolve the issue in the following manner, before seeking the formal grievance procedure in the following manner:

(a) **Informal meeting.** In an attempt to informally resolve the dispute, the complainant may request a meeting with the employee believed to have not been provided the reasonable accommodation or to request a meeting with the employee's supervisor or in his/her absence, a person designated by the president.

(b) **Formal grievance procedure.** If a complainant believes the human resources officer (for employees), the coordinator for students with disabilities, or an employee of the college, has not identified and/or has not provided reasonable accommodations, the complainant may seek review of the action by contacting the employee's supervisor. In this case, the following formal grievance procedure will be followed:

(i) The complainant will submit a written appeal to the supervisor within ninety calendar days of the incident(s);

(ii) The supervisor will review the complainant's position, and respond within five working days;

(iii) The response will be the decision of the college, or a notification that the college will need additional time to come to a decision and the amount of time needed to respond;

(iv) If resolution is not reached by the complainant and the supervisor, the supervisor will refer the appeal to his/her appropriate administrator;

(v) The senior level administrator will review the dispute and make recommendations in writing for appropriate resolution.

The decision of the senior level administrator is the final decision of the college. If desired, inquiries or appeals beyond the institutional level may be directed to:

**Equal Employment Opportunity Commission** at 800-669-4000

**Washington State Human Rights Commission** at 800-233-3247

**Office of Civil Rights, Department of Education** at 206-220-7900

[Statutory Authority: RCW 28B.50.140(13). WSR 16-08-109, § 132A-350-050, filed 4/5/16, effective 5/6/16. Statutory Authority: RCW 28B.50.140 and chapter 28B.50 RCW. WSR 99-15-072, § 132A-350-050, filed 7/20/99, effective 8/20/99.]