

# Chapter 132V-305 WAC

## NONDISCRIMINATION AND HARASSMENT POLICY AND GRIEVANCE PROCEDURE

### WAC

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#### POLICY

**WAC 132V-305-010 Statement of policy.** Tacoma Community 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 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. To this end, Tacoma Community 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.

[Statutory Authority: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-010, filed 1/15/16, effective 2/15/16.]

**WAC 132V-305-020 Objective and responsibilities.** 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 designee. The college's Title IX coordinator is posted on the college's web site. If the complaint is against the Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

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The Title IX coordinator or designee:

- (1) Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- (2) Will make determinations regarding how to handle requests by complainants for confidentiality;
- (3) Will keep accurate records of all complaints and referrals for the required time period;
- (4) May conduct investigations or delegate and oversee investigations conducted by a designee;
- (5) May impose interim remedial measures to protect parties during investigations of discrimination or harassment;
- (6) Will issue written findings and recommendations upon completion of an investigation;
- (7) 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 on the college web site. Hard copies of the complaint form are available at the following locations on campus: Student services administration office, advising and counseling center, and human resources office.

[Statutory Authority: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-020, filed 1/15/16, effective 2/15/16.]

**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

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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.]

**WAC 132V-305-040 Who may file a complaint.** Any employee, applicant, student or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available on the college web site. Hard copies of the

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complaint form are available at the following locations on campus: Student services administration office, advising and counseling center and human resources office. Any person submitting a discrimination complaint shall be provided with a written copy of the college's nondiscrimination policies and procedures.

[Statutory Authority: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-040, filed 1/15/16, effective 2/15/16.]

**WAC 132V-305-050 Confidentiality and right to privacy.** Although Tacoma Community College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality.

(1) **Confidentiality requests and sexual violence complaints.** The Title IX coordinator or designee will inform and obtain consent from the complainant before commencing an investigation of 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 designee will inform the complainant that (a) the college will attempt to honor complainants' requests for confidentiality but cannot guarantee complete confidentiality, and (b) that maintaining confidentiality may limit the college's ability to fully respond to the allegations and, that (c) 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 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.

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

(a) The seriousness of the alleged sexual violence;

(b) The age of the complainant;

(c) Whether the sexual violence was perpetrated with a weapon;

(d) Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;

(e) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and

(f) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

(3) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator or designee 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.

(4) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator or designee will evaluate whether other measures are available to limit the effects of the alleged harassment and prevent similar incidents and implement such measures if reasonably feasible.

[Statutory Authority: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-050, filed 1/15/16, effective 2/15/16.]

**WAC 132V-305-060 Responsible employees and reporting responsibilities.** (1) The college is obligated to address acts of sex-based misconduct (including sexual harassment and/or retaliation) of which a responsible employee knew or should have known occurred. A "responsible employee" is any employee who:

(a) Has the authority to take action to redress sex-based misconduct;

(b) Has been given the duty of reporting incidents of sex-based misconduct or any other misconduct by students; or

(c) Is a student employed by the college who could reasonably believe that they have this responsibility.

(2) A responsible employee must report to the Title IX coordinator or designee all relevant details about alleged sex-based misconduct (including sexual harassment and/or retaliation) that the complainant or other person has shared. This includes the name of the alleged respondent, if known, the complainant or other person who experienced or witnessed the alleged sex-based misconduct, others involved in the alleged sex-based misconduct, as well as relevant facts, including the date, time, and location. If the complaint is against the Title IX coordinator, or his or her relative attending or working for the college, the complainant should report the matter directly to the president's office for referral to an alternate designee.

(3) A responsible employee should provide the following information to a complainant:

(a) The reporting obligations (discussed in subsection (2) of this section) of the responsible employee;

(b) Complainant's option to request confidentiality and available confidential resources;

(c) Complainant's right to file a Title IX complaint with the college;

(d) Complainant's right to report a crime to local law enforcement.

(4) For convenience of student complaint reporting, there are college-designated responsible employees and contact information on the college's web site.

(5) For a staff complaint of sex-based misconduct (including sexual harassment and/or retaliation) by a student or another staff member, the staff complaint may be reported to the immediate supervisor, with the supervisor report/referral to the Title IX coordinator or designee. A direct report to the Title IX coordinator or designee will be more expeditious in terms of processing the complaint. If the complaint is against the Title IX coordinator, or his or her relative attending or working for the college, the complainant should report the matter directly to the president's office for referral to an alternate designee.

[Statutory Authority: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-060, filed 1/15/16, effective 2/15/16.]

## PROCEDURE

**WAC 132V-305-070 Investigation procedure, notice and appeal.** Upon receiving a discrimination complaint, the Title IX coordinator or designee will assess the complaint and determine the appropriate steps to take, if any. The Title IX coordinator or designee shall be responsible for commencing and overseeing all investigations. Investigations may be conducted by the Title IX coordinator or designee. If

the investigation is assigned to someone other than the Title IX coordinator or designee, the Title IX coordinator or designee shall inform the complainant and respondent of the appointment of an investigator.

(1) **Interim measures.** The Title IX coordinator or designee may impose interim measures to protect the complainant and/or respondent pending the outcome 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.

(2) **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 working 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 designee who shall consider the findings and recommendations and determine, based on a preponderance of the 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 on any victim(s), and prevent its recurrence. The Title IX coordinator or designee will issue a decision in writing to each party and to the appropriate student services administrator or appointing authority. 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.

(3) **Written notice of decision to the parties and request for reconsideration.** The complainant shall be informed in writing of the decision and of actions taken or recommended to resolve the complaint, if any, that are directly related to the complainant, such as 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 decision 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.

(4) **Informal dispute resolution.** Informal dispute resolution processes, including mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve complaints without the complainant's and the respondent's written agreement. If the parties agree to engage in formal dispute resolution, all timelines and limitations herein shall be tolled until a party or the Title

IX coordinator or designee provides written notice that they have discontinued mediation which they are free to do at any time. In no event shall informal dispute resolution processes be used to resolve complaints involving allegations of sexual violence.

(5) **Final decision/reconsideration.** Either the complainant or the respondent may seek reconsideration of the decision by the Title IX coordinator or designee. Requests for reconsideration shall be submitted in writing to the Title IX coordinator or designee within seven working 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 working days, the decision becomes final. If a request for reconsideration is received, the Title IX coordinator or designee shall respond within ten working days that the request is denied or granted. If the request for reconsideration is granted, the Title IX coordinator or designee shall issue an amended decision within ten additional working days from the date that the request for reconsideration was granted. Any amended decision is final and no further reconsideration is available unless provided herein.

(6) **Appeal for disciplinary action.** If formal sanctions or disciplinary action is imposed as a result of a finding of violation of this policy, a respondent may file an appeal. Appeals should succinctly state the basis of the appeal, such as findings not supported by the evidence, sanction is substantially disproportionate to the severity of the violation, due process was violated.

(7) **Student appeal.** A student respondent may appeal sanctions or disciplinary action imposed under this policy in accordance with WAC 132V-121-070. The complainant will receive notice of the appeal and may submit either his/her own appeal or a written response to the student respondent's appeal within ten working days, which will be considered by the student conduct appeal board.

(8) **Represented employee grievance.** A professor or represented staff member may file a grievance under the applicable collective bargaining agreement.

(9) **Nonrepresented classified staff employee appeal.** Nonrepresented classified staff may file an appeal with the personnel resources board under WAC 357-52-020.

(10) **Nonrepresented employee review.** Nonrepresented employees may request review of disciplinary action through the supervisory chain of command to the college president within twenty working days of the imposition of discipline. This includes student workers if the discipline imposed resulted from conduct that occurred during the performance of student employment and includes a loss in pay as a sanction (nothing prohibits the Title IX coordinator or designee and/or investigator from referring findings against a student employee to the chief student conduct officer or designee for additional review under the code of student conduct). The request for review must be a signed, written document articulating the grounds for review. The responsible supervisor will respond to the request for review within twenty working days of receipt. If the findings and/or discipline is upheld, the college president's decision will constitute final action and there is no further appeal within the college.

(11) **Volunteer or visitor review.** A volunteer or visitor respondent may request review by the college president of sanctions imposed in response to findings under this policy.

[Statutory Authority: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-070, filed 1/15/16, effective 2/15/16.]

**WAC 132V-305-080 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: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-080, filed 1/15/16, effective 2/15/16.]

**WAC 132V-305-090 Limits to authority.** Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Tacoma Community College policies and procedures, collective bargaining agreements, and federal, state, and municipal rules and regulations.

Nothing in this policy or procedure limits the college from considering applicable policies of the college when investigating complaints. For complaints involving students, nothing in this policy or procedure limits the college from evaluating the conduct of any student under the code of student conduct.

[Statutory Authority: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-090, filed 1/15/16, effective 2/15/16.]

**WAC 132V-305-100 Nonretaliation, intimidation and coercion.** Retaliation by, for or against any participant (including complainant, respondent, witness, Title IX coordinator or designee 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 designee immediately.

[Statutory Authority: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-100, filed 1/15/16, effective 2/15/16.]

**WAC 132V-305-110 Criminal complaints.** Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with appropriate law enforcement authorities.

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: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-110, filed 1/15/16, effective 2/15/16.]

**WAC 132V-305-120 Other discrimination complaint options.** Discrimination complaints may also be filed with the following federal and state agencies:

- (1) Washington State Human Rights Commission;

(2) U.S. Department of Education Office for Civil Rights;

(3) Equal Employment Opportunity Commission.

[Statutory Authority: Chapter 49.60 RCW. WSR 16-03-053, § 132V-305-120, filed 1/15/16, effective 2/15/16.]