

Chapter 132D-310 WAC

ANTIDISCRIMINATION POLICY

WAC

132D-310-005 Skagit Valley College antidiscrimination policy.

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As an academically centered community, Skagit Valley College highly values and respects diversity as a necessary foundation for a healthy learning and working community. A stable, positive and collegial environment is prerequisite to the success of its members.

Adverse treatment on the basis of group or categorical membership has no value or place in the mission of Skagit Valley College. Fostering and developing values which promote open-mindedness, awareness, sensitivity and respect for differences are encouraged and will be supported.

Employees, students, visitors, vendors, and agents of the college must adhere to the following policy. Responsibility for achieving a nondiscriminatory academic and working environment lies with each member of the college community.

(2) **Policy.** It is the policy of Skagit Valley College to prohibit discrimination on the basis of race, ethnicity, national origin, ancestry, creed, color, gender*, marital/parental status, sexual orientation, age, religion, and sensory, mental or physical disability. In recognition of the fact that discrimination in any form is in violation of the mission and purpose of Skagit Valley College, the following federal guidelines will be applied to issues of discrimination: Title IX of the 1972 Education Amendments and chapter 49.60 RCW (which prohibits discrimination on the basis of race, color, religion, national origin, or sex); Title VII of the Civil Rights Act of 1964; the Rehabilitation Act of 1973; Title VI of the Civil Rights Act of 1964; the Vocational Education Act of 1963-1976; and the Americans with Disabilities Act. For the purposes of this policy, discrimination is defined as:

- (a) Exclusionary forms of conduct;
- (b) Creation of an intolerant environment; and
- (c) Malicious harassment.

* Sex discrimination in the form of sexual harassment is covered under Skagit Valley College's sexual harassment policy.

(3) **An exclusionary form of conduct** is any disparate treatment of, or adverse impact on, an individual(s) by a person(s) or a structure(s) which excludes and denies access to participation in services, programs, and activities of the col-

lege. Some types of differential treatment, such as separate toilets and locker room facilities for men and women, are considered socially acceptable.

(4) **Creation of an intolerant environment** is the result of the willful or intentional conduct of an individual or group of individuals who engage in threats, expressions (either verbal or nonverbal), physical abuse or harassment that threatens or endangers the health, safety or welfare of a member of the college community. An intolerant environment is also likely to provoke or cause an immediate breach of the peace and interfere with an individual's ability to effectively pursue his or her education or otherwise participate fully in college programs and activities.

(5) **Malicious harassment** is conduct or behavior which is maliciously and intentionally committed because of the claimant's race, ethnicity, national origin, ancestry, creed, color, gender, marital/parental status, sexual orientation, age, religion, or sensory, mental or physical disability. This conduct may include injury to the claimant or another person, damage or destruction of the property of the claimant or another person, or threats to a specific person or group of persons which places that person, or members of the specific group of persons, in reasonable fear of harm to themselves or their property.

In this policy, claimant is defined as the individual bringing forth the complaint; respondent is defined as the individual to whom the claim is directed.

If any provision of this policy is adjudged by a court to be unconstitutional or otherwise illegal, the remaining provisions shall continue in effect.

Skagit Valley College will investigate allegations of discrimination which may include, but is not limited to the following:

(a) The conduct of a faculty member in a faculty-student relationship.

(b) The conduct of an individual in the paid employment of the district who may grant or withhold benefits to students and employees.

(c) The conduct of any college employee in a supervisory position.

(d) The conduct between fellow employees of the college.

(e) The conduct of college agents.

(f) The conduct of employees when it occurs related to college sanctioned activities on or off campus and/or hampers the educational or college work environment.

(g) The conduct of nonemployees when it occurs related to college sanctioned activities on or off campus and/or hampers the educational or college work environment.

(h) The conduct of students in daily classes and college sanctioned activities on or off campus.

(6) **Procedures.** When a person believes that she/he has been discriminated against, the claimant may contact one of

the district's ombudspersons. Faculty and staff, if requested, shall assist the claimant in contacting an ombudsperson. The ombudsperson will provide the claimant with procedures and suggestions to enable him/her to resolve the problem or to initiate the appropriate informal or formal complaint process. All complaints shall be initiated no later than one hundred eighty days from the most recent incident. However, if a claimant can demonstrate exceptional circumstances to the appropriate designated college officer, the one hundred eighty-day reporting period limit may be waived.

The district shall have a total of two ombudspersons who shall be chosen from the protected classifications related in this policy and shall be appointed for both the Mount Vernon and Whidbey campuses. Appointment will be by the president, on the advice of the vice-president of educational services, the dean responsible for student grievances, the dean of Whidbey campus (for Whidbey personnel), the president of the Skagit Valley College education association, the president of the classified staff association, and the president of the associated students of Skagit Valley College. Appointment shall be for staggered three-year terms.

Ombudspersons shall report directly to the vice-president of educational services who shall be directly responsible for the implementation of this policy. The ombudspersons shall be responsible for receiving complaints and advising the cultural pluralism committee regarding educational efforts needed on critical discrimination issues. The ombudspersons will make every effort to ensure that neutrality is maintained throughout the process. For the purpose of this policy, the ombudsperson will act solely as a resource person and mediator and specifically will not act as an advocate for either party.

The college will carry out any investigation in such a way as to protect the rights of both the claimant and the respondent. The college recognizes that in some circumstances a change of environment may be appropriate during the investigation. If the respondent is the affirmative action officer, an ombudsperson will perform the affirmative action officer's responsibilities throughout the process. Confidentiality shall be maintained to the extent allowed by law.

(7) Advising process. In the event that an individual feels he or she has been the victim of discrimination, the individual may discuss the matter with an ombudsperson. The responsibility of the ombudsperson is to inform the individual of the policy and procedures regarding antidiscrimination. The advising process itself is designed to promote free and open discussion between the individual seeking information and the ombudsperson.

If an individual feels that he or she has a warranted complaint, that person may choose to proceed to the mediation process or directly to the formal process, step one.

At the conclusion of the advising process, the ombudsperson will generate an incident report. If the ombudsperson finds the complaint without merit, he/she will not generate a report nor notify the respondent. The identity of individuals involved will not be designated on the report and no record of the advising conversation will be kept. The incident reports will be forwarded to the affirmative action officer to be used to record the number and types of incidents. The college will ensure the privacy of all individuals in the generation and maintenance of incident reports.

(8) Mediation. When an ombudsperson receives an informal complaint of discrimination, either verbally or in writing, he/she shall discuss the informal complaint with the respondent within three working days. The purpose of the mediation process is to encourage both parties to communicate in an attempt to resolve the conflict. If a meeting occurs during this phase, both the claimant and the respondent may bring a support person. If the informal complaint appears valid, the ombudsperson shall complete a written report together with the informal complaint and any action taken including the nature of the resolution if one is reached. This report shall be forwarded to the claimant, respondent, and the affirmative action officer. The affirmative action officer will keep the report confidential for five years from the date of final decision on the complaint, after which time it is destroyed.

The mediation process shall be completed within thirty working days of receipt of the informal complaint by the ombudsperson. If a satisfactory resolution is reached, the claimant and respondent will acknowledge resolution in writing to the ombudsperson who will forward a copy of the acknowledgement to the affirmative action officer.

(9) Formal complaint; step one. In the event that the mediation process does not occur or does not resolve the conflict to the satisfaction of both parties, the following process will be used:

(a) If the claimant decides to pursue the complaint, he/she shall file a formal complaint in writing with the ombudsperson within ten working days of the conclusion of the mediation process or within one hundred eighty days of the event itself for those claimants who have elected to bypass the mediation process. This formal complaint must state the times, dates, places, and circumstances surrounding the allegations. The ombudsperson will forward a copy of the formal complaint to the respondent within five working days. In turn, the respondent shall forward a written response concerning the formal complaint to the ombudsperson within five working days of receiving the written formal complaint. The ombudsperson shall forward all information to the affirmative action officer in a timely manner. Materials shall be forwarded without a response if a timely response is not received.

The affirmative action officer may also begin the formal complaint; step one process, against any alleged offender who has had repeated claims filed against him or her after the person has had an opportunity to respond in an informal manner. This will be done in collaboration with the ombudsperson.

If the affirmative action officer finds that the factual allegations of the formal complaint do not present a prima facie case of discrimination, as defined under this policy, he/she shall dismiss the complaint. In making this decision, the affirmative action officer should assume that the facts alleged in the complaint are true.

If the affirmative action officer finds the complaint to be false and malicious, he/she shall dismiss the complaint. The affirmative action officer will notify the ombudsperson why the complaint has been dismissed and the ombudsperson shall file that information with the incident report. In addition to dismissing the complaint, the affirmative action officer

will refer the claimant to the designated college officer for possible disciplinary action.

(b) Within five working days of receiving materials from the ombudsperson, the affirmative action officer will review all information received and check for completeness and detail. Any concerns about procedure and documentation will be discussed with the ombudsperson, with a possible request for clarification from claimant and/or respondent.

Within the same five working day period, the affirmative action officer will forward documentation to the appropriate authority (as listed below) who will speak informally with the respondent:

| Respondent | Appropriate Authority |
|------------------------|---|
| Faculty | Associate dean or dean depending upon reporting relationships |
| Classified | Director/associate dean/dean depending on reporting relationships |
| Administrator | Immediate supervisor |
| Student | Dean of guidance & special populations |
| President | Chair of board of trustees |
| Visitor, Vendor, Agent | Vice-president, administrative & business services |

The affirmative action officer shall also provide a copy of the written formal complaint and the respondent's response to:

| Respondent | Receives Copy |
|------------------------|--|
| Faculty | Vice-president, educational services |
| Classified | Appropriate dean |
| Administrator | President |
| Student | Dean responsible for student grievances |
| President | Chair of board of trustees |
| Visitor, Vendor, Agent | Vice-president, administrative & business services |

The ombudsperson shall keep a written record of all actions taken in an effort to resolve the formal complaint. If resolution is reached, the ombudsperson shall complete a written report of this resolution and submit copies to all parties involved.

(c) If resolution is not reached and the parties have not engaged in mediation, joint mediation will now take place. The mediation session will include both parties involved in the formal complaint and a support person or representative for each of them. The ombudsperson and the affirmative action officer will also be present (except when the affirmative action officer is the initiator of the complaint in which case the dean responsible for student grievances will serve). An ombudsperson will facilitate this session where both parties will hear each other describe the events they believe have taken place. If resolution is not reached, the case will now proceed to formal complaint; step two.

If a resolution is achieved, the ombudsperson shall complete a written report and submit copies to all parties involved. The claimant and respondent will acknowledge the resolution in writing. Documents involved in the case will be kept confidential by the affirmative action officer for five years after which time this information will be destroyed.

(d) The entire formal complaint; step one, procedure will be completed within thirty working days.

(10) **Formal complaint; step two.** If the complaint has not been dismissed and a satisfactory resolution is not achieved through formal complaint; step one, a team will be formed to conduct a fact-finding investigation as follows:

(a) The affirmative action officer (except when the affirmative action officer is the initiator, claimant, or respondent of the complaint in which case the dean responsible for student grievances will serve).

(b) A member of the standing grievance committee selected by the claimant.

(c) A member of the standing grievance committee selected by the respondent.

(d) In the case of presidential involvement, a member of the board of trustees.

The team will hear evidence and argument from all parties. In conducting a fact-finding hearing, it is important to recognize that many times potential witnesses will not be available to testify at the time of the hearing. This is particularly true for former students of this institution. Alleged acts of discrimination will often arise in settings where there may be no other direct witnesses besides the claimant and the respondent. Evidence which may be available from former complainants, or others, who are no longer available to testify is likely to be helpful to the fact-finding team in weighing the credibility of the witnesses and in evaluating alleged acts of discrimination. Liberal admissibility of evidence at the fact-finding hearing is, therefore, anticipated and encouraged with the exception of information offered during the mediation process for the purpose of resolving the complaint. Evidence admitted should be accorded whatever weight is deemed appropriate under the circumstances by the fact-finding team.

Within fifteen days of the completion of formal complaint; step two, the team will be charged with submitting a report outlining their findings to the designated college officer.

The appropriate designated college officer shall be:

(i) The vice-president, educational services, when the claimant is an employee of the college or when a student is complaining against an employee. When a student is involved, the dean responsible for student grievances will join the vice-president in determining appropriate action. However, the vice-president, educational services, will assume the ultimate responsibility in seeing the process to conclusion.

(ii) The dean responsible for student grievances when the claimant is a student complaining against another student.

(iii) In the event the respondent is the vice-president, educational services, or the dean responsible for student grievances, the designated college officer shall be the president. In the event the respondent is the president, the designated college officer shall be the chair of the board of trustees.

(11) **Disciplinary/further action.** Where discrimination has been determined to have occurred based on the results of the fact-finding team's report, the designated college officer will determine appropriate action, which may include:

- (a) Findings placed in personnel or student file;
- (b) Reprimand;
- (c) Suspension;
- (d) Dismissal.

In cases of suspension or employment termination, existing procedures for students, faculty, administrative or classified staff shall be followed. Administrators, paraprofessionals, and other college employees and agents shall be subject to discipline as deemed appropriate by the designated college officer. The affirmative action officer shall be responsible for ensuring that disciplinary actions are complied with and will report back to the designated college officer.

If the fact-finding team determines that discrimination has not occurred and that the claim is false and malicious, the claimant shall be referred to the designated college officer for possible disciplinary action.

(12) **Repeat offenses.** When an informal or formal complaint is made against someone who has been found in the past five years to have been in violation of the antidiscrimination policy, the initial procedures of this policy will commence. However, disciplinary measures chosen for repeat offenders will take into account the repeated lack of compliance by the offender and should be moved to the next level of disciplinary action.

(13) **External options.** At any point during these proceedings, the claimant may file concurrently with an outside agency. Claimants are encouraged to use the internal complaint procedures first. Students may file complaints with the Office of Civil Rights, U.S. Department of Education, 2901 Third Ave., M/S 106, Seattle, WA 98121. Employees may file complaints with the Equal Employment Opportunity Commission (EEOC), 1321 Second Avenue, 7th Floor, Arcade Plaza, Seattle, WA 98101, or the Human Rights Commission, 1515 Second Avenue, Columbia Bldg., Suite 400, Seattle, WA 98101.

[Statutory Authority: RCW 28B.50.140. 96-01-077, § 132D-310-005, filed 12/18/95, effective 1/18/96.]