

Chapter 132Y-300 WAC

NONDISCRIMINATION AND HARASSMENT POLICY

Last Update: 11/20/20

WAC

132Y-300-005 Statement of policy.

132Y-300-010 Procedures.

132Y-300-015 Other remedies.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

132Y-300-001 Preamble. [Statutory Authority: Chapter 28B.19 RCW. WSR 89-04-008 (Resolution No. 88-12-2), § 132Y-300-001, filed 1/20/89.] Repealed by WSR 20-24-034, filed 11/20/20, effective 12/21/20. Statutory Authority: Chapter 34.05 RCW, RCW 28B.50.140(13), 20 U.S.C. § 1092(f) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

132Y-300-002 Informal procedure. [Statutory Authority: Chapter 28B.19 RCW. WSR 89-04-008 (Resolution No. 88-12-2), § 132Y-300-002, filed 1/20/89.] Repealed by WSR 15-12-069, filed 5/29/15, effective 6/29/15. Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC _____

_____ Board _____ of Trustees Resolution _____ No. 15-5-3.

Commented [KS1]: New resolution # 24-7-1

132Y-300-003 Formal procedure. [Statutory Authority: Chapter 28B.19 RCW. WSR 89-04-008 (Resolution No. 88-12-2), § 132Y-300-003, filed 1/20/89.] Repealed by WSR 15-12-069, filed 5/29/15, effective 6/29/15. Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC _____

_____ Board _____ of Trustees Resolution _____ No. 15-5-3.

132Y-300-004 Other remedies. [Statutory Authority: Chapter 28B.19 RCW. WSR 89-04-008 (Resolution No. 88-12-2), § 132Y-300-004, filed 1/20/89.] Repealed by WSR 15-12-069, filed 5/29/15, effective 6/29/15. Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC _____ Board _____ of Trustees Resolution _____ No. 15-5-3.

132Y-300-020 Complaint content. [Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC Board of Trustees _____ Resolution _____ No. 15-5-3. WSR 15-_____ 12-069, § 132Y-300-020, filed _____ 5/29/15, effective 6/29/15.] Repealed by WSR 20-24-034, filed 11/20/20, effective 12/21/20. Statutory Authority: Chapter 34.05 RCW, RCW

28B.50.140(13), 20 U.S.C. § 1092(f) and Title IX
of the Education Amendments of 1972, 20 U.S.C. §
1681 et seq.

WAC 132Y-300-005 **Statement of policy.** Edmonds ~~Community~~ College
provides equal opportunity in education and employment and does
not discriminate on the basis of protected classes as required
by state and federal law. Prohibited discrimination and/or
harassment of protected classes includes sex discrimination and
sex-based ~~sexual~~ harassment.

[Statutory Authority: Chapter 34.05 RCW, RCW 28B.50.140(13), 20
U.S.C. § 1092(f) and Title IX of the Education Amendments of
1972, 20 U.S.C. § 1681 et seq. WSR 20-24-034, § 132Y-300-005,
filed 11/20/20, effective 12/21/20. Statutory Authority: RCW
28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681
et seq.; VAWA, 42 U.S.C. § 13925; Edmonds College ~~e~~ Board of
Trustees Resolution No. 15-5-3. WSR 15-12-069, § 132Y-300-005,
filed 5/29/15, effective 6/29/15.]

WAC 132Y-300-010 Procedures. (1) Introduction. Edmonds College, hereinafter referred to as "the college," recognizes its responsibility for investigating and resolving incidents; implementing corrective measures; monitoring the educational environment and workplace; and implementing regulations to stop, remediate, and prevent discrimination and harassment based on an individual's association with protected classes as required by law. To this end, the college has enacted a policy prohibiting discrimination against and harassment of members of these protected classes and procedures that deal with complaints and violations of the policy. Any individual found to be in violation of the policy will be subject to disciplinary action up to and including expulsion from the college's educational programs and activities and/or termination of ~~dismissal from~~ employment.

Any employee, student, or visitor who is the alleged subject of discrimination or harassment should report the incident or incidents to the ~~EO/AA office,~~ Title IX Coordinator.

~~identified below~~. If the complaint is against the Title IX Coordinator, at officer, the complainant should report the matter to the president's office for referral to an alternate designee.

Civil Rights: Equal Opportunity/Affirmative Action (EO/AA).

Title IX: Sex discrimination, Sex-based Harassment~~Gender Discrimination, Sexual Harassment, and Sexual Violence.~~

Title: Human Resources, EO/AA Office, Title IX Coordinator

Office: Edmonds ~~Community~~ College

20000 68th Ave. W.

Clearview Building, Room 122

Lynnwood, WA 98036

(2) Definitions. For purposes of this procedure, the following definitions apply:

a. "Complainant" means individuals who are alleged to have been subjected to prohibited conduct, including a

student or employee, or a person other than a student or employee who was participating or attempting to participate in a college education program or activity at the time of the alleged discrimination.

b. "Complaint" means a written or oral request that can be objectively understood as a request for the college to investigate and make a determination about prohibited conduct.

c. "Confidential employee" means a college employee whose communications are privileged and confidential under federal or state law. An employee's status as a confidential employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.

d. "Consent" means 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 they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when they know, or reasonably should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

e. "Disciplinary action" is the process by which discipline is imposed for a violation of college policy or procedure.

f. "Disciplinary appeal" is the process by which an aggrieved party can appeal the discipline imposed as outlined in the college's student code of conduct or applicable labor agreements.

g. "Disciplinary sanction" means consequences imposed on a respondent following a determination that the respondent violated the college's policies prohibiting discrimination and harassment.

h. "Discriminatory harassment" means:

i. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to create an intimidating, hostile, or offensive environment for other campus community members. Discriminatory harassment may include written, social media, and

electronic communications not otherwise protected
by law.

i. "Employee" includes any individual employed by Edmonds
College.

j. "Harassment or bullying" means the conduct unrelated
to a protected class that is unwelcome and
sufficiently severe, persistent, or pervasive such
that it could reasonably be expected to create an
intimidating, hostile, or offensive environment, or
has the purpose or effect of unreasonably interfering
with a person's academic or work performance, or a
person's ability to participate in or benefit from the
college's programs, services, opportunities, or
activities.

a. Harassing conduct may include, but is not
limited to, physical, verbal, or nonverbal
conduct, including written, social media,

and electronic communications not otherwise
protected by law.

b. For purposes of this procedure, "bullying"
is defined as repeated or aggressive
unwanted behavior not otherwise protected by
law when a reasonable person would feel
humiliated, harmed, or intimidated.

c. For purposes of this code, "intimidation" is
an implied threat. Intimidation exists when
a reasonable person would feel threatened or
coerced even though an explicit threat or
display of physical force has not been made.
Intimidation is evaluated based on the
intensity, frequency, context, and or
duration of the comments or actions.

k. "Investigation procedure" is the process the college
uses to initiate, informally resolve, and/or
investigate allegations that an individual has

violated college policies prohibiting discrimination
or harassment.

l. "Mandatory reporters" are all college employees,
excluding confidential employees. Mandatory reporters
are required to report conduct that could reasonably
constitute discrimination or harassment.

m. "Pregnancy or related conditions" means:

i. pregnancy, childbirth, termination of pregnancy,
or lactation;

ii. medical conditions related to pregnancy,
childbirth, termination of pregnancy, or lactation;

or

iii. recovery from pregnancy, childbirth,
termination of pregnancy, lactation, or related
medical conditions.

n. "President" is the president of Edmonds College. The
president is authorized to delegate any of their

responsibilities as set forth in this procedure, and as may be reasonably necessary; and reassign any and all duties and responsibilities as set forth in this procedure as may be reasonably necessary.

o. "Program" or "programs and activities" means all operations of the college.

p. "Protected status" includes a person's race; color; creed/religion; national origin; presence of any sensory, mental, or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

q. "Relevant" means related to the allegations of discrimination and harassment under investigation. Questions are relevant when they seek evidence that

may aid in showing whether the alleged discrimination or harassment occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination or harassment occurred.

r. "Remedies" means measures provided to a complainant or other person whose equal access to the college's programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to programs and activities after a determination that discrimination or harassment has occurred.

s. "Respondent" is an individual who has been alleged to have violated college policies or procedures prohibiting discrimination and harassment.

t. "Retaliation" means intimidation, threats, coercion, or discrimination against any person by the college, a student, or an employee or other person authorized by the college to provide aid, benefit, or service under

the college's education program or activity, for the purpose of interfering with any right or privilege secured by college policies and procedures prohibiting discrimination or harassment, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for discrimination or harassment. Nothing in this definition precludes the college from requiring an employee to provide aid, benefit, or service under the college's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

u. "Sex discrimination" which includes sex-based harassment, occurs when a respondent causes more than

de minimis (insignificant) harm to an individual by treating them differently from an otherwise similarly-situated individual based on:

- i. sex stereotypes;
- ii. pregnancy or related conditions;
- iii. sexual orientation; and
- iv. gender identity.

Preventing a person from participating in a program or activity consistent with their gender identity constitutes more than de minimis harm and is prohibited.

v. "Sex-based harassment." For purposes of this procedure, sex-based harassment is a type of discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

- i. Quid pro quo harassment. An employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's

education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

ii. Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

a. the degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

b. the type, frequency, and duration of the conduct;

c. the parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

d. the location of the conduct and the context in which the conduct occurred; and

e. other sex-based harassment in the recipient's education program or activity.

iii. Sexual violence. Sexual violence includes the following conduct:

a. Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, 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 (Fondling). Any actual or attempted sexual touching, however slight, with any body part or 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. Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister

either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen (18).

d. Statutory rape (rape of a child). Non

forcible sexual intercourse with a person who is under the statutory age of consent.

e. Domestic violence. Physical violence, bodily

injury, assault, the infliction of fear of

imminent physical harm, sexual assault,

coercive control, damage or destruction of

personal property, or stalking, or any other

conduct prohibited under RCW 10.99.020,

committed by a person with whom the victim

shares a child in common, by a person who is

cohabitating with or has cohabitated with

the victim as a spouse, by a person

similarly situated to a spouse of the victim

under the domestic or family violence laws

of the State of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Washington, RCW 26.50.010.

f. Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the following factors:

1. the length of the relationship;
2. the type of relationship; and

3. the frequency of interaction between
the persons involved in the
relationship.

w. "Stalking" means engaging in a course of conduct
directed at a specific person that would cause a
reasonable person to fear for the person's safety or
the safety of others or to suffer substantial
emotional distress.

x. "Student employee" means an individual who is both a
student and an employee of the college. When a
complainant or respondent is a student employee, the
college must make a fact-specific inquiry to determine
whether the individual's primary relationship with the
college is to receive an education; and whether any
alleged student conduct code violation, including but
not limited to sex-based harassment, occurred while
the individual was performing employment-related work.

y. "Supportive measures" means the reasonably available, individualized and appropriate, non-punitive and non-disciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

- i. restoring or preserving a party's access to college programs or activities, including measures that are designed to protect the safety of the parties or the college's educational environment; or
- ii. providing support during the college's investigation and disciplinary procedures, or during any informal resolution process.
- iii. Supportive measures may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus security escort services; increased security and

monitoring of certain areas of campus;
restriction on contact applied to one or more
parties; a leave of absence; changes in class,
college work, college housing, or extracurricular
or any other activity, regardless of whether
there is or is not a comparable alternative; and
training and education programs related to sex-
based harassment.

z. "Title IX Coordinator" is the administrator
responsible for processing complaints of
discrimination and harassment, including sex
discrimination and sex-based harassment, overseeing
investigations and informal resolution processes, and
coordinating supportive measures, in accordance with
college policy.

aa. "Title IX personnel" includes the Title IX
Coordinator and designees, investigators, and decision
makers responsible for administering the college's sex

discrimination investigation and disciplinary procedures; facilitators of the informal sex discrimination resolution process; and any other employees who are responsible for implementing the college's sex discrimination investigation or sex discrimination disciplinary procedures for employees or have the authority to modify or terminate supportive measures.

bb. "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by the college, a student, or an employee or other person authorized by the college to provide aid, benefit, or service under the college's education program or activity, for the purpose of interfering with any right or privilege secured by college policies and procedures prohibiting sex discrimination, or because the person has reported information, made a complaint, testified, assisted, or

participated or refused to participate in any manner
in an investigation, proceeding, or hearing under this
part, including in an informal resolution process, in
these investigation procedures, and any disciplinary
proceeding for sex discrimination. Nothing in this
definition precludes the college from requiring an
employee to provide aid, benefit, or service under the
college's education program or activity to participate
as a witness in, or otherwise assist with, an
investigation, proceeding, or hearing

(3) Training Requirements

- a. All employees shall undergo training on the following
topics:
- i. the definition and scope of sex discrimination and
sex-based harassment under this procedure;
 - ii. the college's obligation to address sex
discrimination in its education programs and
activities;

iii. employee responsibility, upon learning of a student's pregnancy or related condition, to provide the student with the Title IX Coordinator's contact information and information about available assistance; and

iv. employee obligations to notify the Title IX Coordinator about conduct that may reasonably be sex discrimination.

b. Title IX personnel - In addition to the required training for all employees, Title IX personnel shall undergo training on the following topics:

i. the college's procedures for sex discrimination and sex-based harassment involving a student;

ii. how to conduct an investigation;

iii. how to serve impartially without prejudice of facts, conflicts of interest, or bias;

iv. use of technology during an investigation or hearing;

v. the definition of relevance as used for purposes of evaluating evidence and questions for purposes of this investigation procedure;

vi. effective report writing; and

vii. informal resolution facilitators: procedures for the college's informal resolution process

c. Title IX Coordinator and Designees

In addition to the required training for all employees and for Title IX personnel, the Title IX Coordinator and any designees shall undergo training on the following topics:

i. how to ensure the college's compliance with its Title IX obligations;

ii. how to offer and coordinate supportive measures;

iii. specific actions to prevent discrimination and ensure equal access upon learning of a student's pregnancy or related conditions;

iv. the college's recordkeeping system and requirements.

All sex discrimination training materials will be made available for review upon request.

(4) Title IX Coordinator Investigation Duties. During an investigation, the Title IX Coordinator or a delegate is responsible for the following:

- a. accepting, evaluating, and processing all discrimination and harassment complaints, reports or referrals;
- b. conducting an intake meeting with the complainant and, at that time, notifying the complainant, or the individual who reported the conduct if the complainant is unknown, of the college's sex discrimination investigation and disciplinary procedures, as well as the informal resolution process, if appropriate and available. After providing this information, the Title IX Coordinator will ascertain whether the complainant would like the college to proceed with an investigation of the discrimination or harassment complaint.

- c. initiating a complaint subject to factors set forth in this procedure;
- d. when a party is a student employee and the allegations involve sex-based harassment, making a fact-specific inquiry into whether the party's primary relationship with the college is to receive an education and whether alleged sex-based harassment occurred while the party was performing employment-related work and, based on this inquiry, determine whether the party should be treated as a student or an employee under this investigation procedure and related disciplinary procedures;
- e. addressing and resolving, if possible, questions regarding confidentiality raised by parties and witnesses;
- f. determining whether a complaint should be dismissed during the investigation phase, and if so, notifying the complainant or the parties (if respondent has been notified of the complaint) of the reasons for the

dismissal, and providing the complainant or parties with information about the procedure for filing an appeal of the dismissal;

g. maintaining accurate records of all complaints, reports, and referrals;

h. retaining investigation files, complaints, reports, and referrals in compliance with applicable records retention periods or federal or state law, whichever is longer;

i. either conducting an impartial investigation of a complaint or assigning the investigation to an impartial investigator and overseeing the investigation;

j. engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation and making revisions to supportive measures as circumstances may require;

- k. upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and to the appropriate disciplinary authority in compliance with this procedure; and
- l. recommending non-disciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to college disciplinary authorities and administrators.

(5) Filing a complaint. Any employee, student, applicant, or visitor who believes that they have been the subject of discrimination or harassment in violation of the college policies, should report the incident or incidents to the college's Title IX Coordinator. The complaint can be in writing or oral. If the complaint is against the Title IX Coordinator, the complainant should report the matter to the Vice President for Human Resources for referral to an alternate designee. The college encourages the timely reporting of any incidents of alleged discrimination or harassment. Any employee of, student

~~of, or visitor to the college may file a complaint. Complaints must be submitted in writing.~~

For complainants who wish to submit a written complaint, a formal complaint form is available online at

~~https://cm.maxient.com/reportingform.php?EdmondsCC&layout_id=6www.edce.edu/titleix/~~.

Hardcopies of the complaint form are available at the ~~following locations on campus: H~~ human resources and student services departments.

a. Title IX Coordinator initiated complaint

i. In the absence or withdrawal of any or all

allegations in a complaint, the Title IX

Coordinator may file a complaint based on their

evaluation of the following factors:

a. a complainant's request not to proceed with

initiation of a complaint;

b. a complainant's reasonable safety concerns

regarding initiation of a complaint;

c. the risk additional acts of discrimination or harassment would occur if the complaint is not initiated;

d. the severity of the alleged sex discrimination or harassment, including whether the discrimination if established, would require the removal of the respondent from campus or imposition of other disciplinary sanction(s) to end the discrimination or harassment and prevent its recurrence;

e. the age and relationship of the parties, including whether the respondent is a college employee;

f. the scope of the alleged discrimination or harassment, including information suggesting a pattern, on-going discrimination or harassment, or discrimination or harassment

alleged to have impacted multiple individuals;

g. the availability of evidence to assist a decision maker with determining whether discrimination occurred; and

h. whether the college could end the alleged discrimination or harassment and prevent its recurrence without initiating an investigation and disciplinary procedure.

b. If, upon evaluating these and any other relevant factors, the Title IX Coordinator determines that the alleged conduct poses an imminent threat to the health or safety of the complainant or to other members of the college community, or that the alleged conduct prevents the college from ensuring equal access on the basis of sex to its programs and activities, then the Title IX Coordinator may initiate a complaint.

c. When initiating a complaint, the Title IX Coordinator will provide the complainant with advance notice of this decision and an opportunity to appropriately address reasonable concerns about the complainant's safety or the safety of others, including the provision of supportive measures.

d. Regardless of whether a complaint is initiated under this section, the Title IX Coordinator must take other prompt and effective steps, in addition to those steps necessary to implement remedies for the individual complainant, to ensure that discrimination or harassment does not continue or recur within the college's programs and activities.

e. The analysis set forth above need not be performed if the Title IX Coordinator reasonably determines that the alleged conduct could not constitute discrimination or harassment.

~~office and vice president for student services office.~~

~~Any person submitting a discrimination or harassment complaint shall be provided with a written copy of the college's nondiscrimination and harassment policy and procedures.~~

~~The proposed content is designed to assist you with filing a discrimination and/or harassment complaint. Please write clearly and focus on the alleged discriminatory and/or harassing conduct. The complaint should include as much information regarding the incident(s) giving rise to the complaint as possible, including the location, date, and time of the alleged incident(s); the name of the individual or group whom the complaint is against, if known; a description of the incident(s); and the remedy sought.~~

~~You may attach additional documents if needed. Please include your contact information (phone, email, mailing address), sign, and return your complaint to the EO/AA office, Title IX coordinator or designee. A link to an online reporting form is located at <http://www.edcc.edu/titleix/>.~~

(63) ~~Confidential~~Confidentiality. ~~and right to privacy.~~

a. The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, offer appropriate supportive measures and/or take disciplinary action, and comply with the federal and state law, as well as college policies and procedures. Although the college will attempt to honor complainant requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX Coordinator.

b. confidential employees, when acting in their confidential capacity, will maintain confidentiality of information shared by a complainant and are not required to report conduct that may reasonably constitute discrimination or harassment. When a confidential employee learns of conduct that reasonably may constitute

discrimination or harassment, the confidential employee

must explain:

i. their status as a confidential employee,
including the circumstances under which they are
not required to notify the Title IX Coordinator
about the possible sex discrimination;

ii. how the complainant can contact the Title IX
Coordinator to make a complaint about the
possible discrimination; and

iii. that the Title IX Coordinator may offer and
coordinate supportive measures, as well as
initiate an informal resolution process or
investigation pursuant to this procedure.

c. The Title IX Coordinator will inform the complainant

about the college's discrimination and harassment

investigation and disciplinary processes and attempt to

obtain consent from the complainant before commencing an

investigation. If a complainant asks that their name not be

revealed to the respondent or that the college not
investigate the allegation, the Title IX Coordinator will
inform the complainant that maintaining confidentiality may
limit the college's ability to fully respond to the
allegations and that retaliation by the respondent and/or
others is prohibited. If the complainant still insists that
their name not be disclosed or that the college not
investigate, the Title IX Coordinator 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.

d. If the college is unable to honor a complainant's
request for confidentiality, the Title IX Coordinator will
notify the complainant of the decision and disclose the
complainant's identity only to the extent reasonably
necessary to effectively conduct and complete the
investigation in compliance with this procedure.

e. If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX Coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible.

~~The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, comply with the state and federal laws, as well as the college's policy and procedures.~~

~~Although the college will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Decisions regarding how to handle requests for confidentiality will be made by the Title IX coordinator.~~

~~(a) The Title IX coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged discrimination or sexual harassment. If a complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed~~

~~during this determination may include, but are not limited to:~~

- ~~— (i) The seriousness of the alleged sexual harassment;~~
 - ~~— (ii) The age of the complainant;~~
 - ~~— (iii) Whether the sexual harassment was perpetrated with a weapon;~~
 - ~~— (iv) Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;~~
 - ~~— (v) Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and~~
 - ~~— (vi) Whether relevant evidence about the alleged incident can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).~~
- ~~— (b) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator~~

~~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 in compliance with this grievance procedure.~~

~~(c) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible.~~

(74) Notice of Investigation and other notice requirements

Notice of Investigation. Upon receiving a complaint of discrimination or harassment, the Title IX Coordinator will initiate the investigation by serving the respondent and the complainant with a Notice of Investigation in advance of their initial interviews. This Notice will be served sufficiently in

advance to allow the parties adequate time to prepare for their initial interviews.

If a complaint includes allegations of sex-based harassment and the college has reasonable concerns for the safety of any person as a result of providing a notice of investigation, service of the Notice may be reasonably delayed in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

The Notice of Investigation must include:

a. a description of the college's discrimination and harassment investigation and disciplinary procedures, including descriptions of procedures applicable to sex-based harassment and informal resolution processes, if applicable;

b. sufficient information for the parties to respond to the allegations, including the identities of the parties, a description of the alleged discriminatory conduct, and the time

and location of the alleged incident, to the extent this information is available to the college;

c. a statement that retaliation is prohibited;

d. information that the parties are entitled to have a representative of their choice and at their own expense, available during the investigation and any disciplinary proceedings and that the representative may be, but is not required to be an attorney, and that during the investigation, the representative's role will be limited to attending meetings or interviews with the party and providing advice to the party; and

e. a statement that the parties are entitled to an equal opportunity to access a description of the relevant, not otherwise impermissible evidence and that both parties shall have an equal opportunity to review such evidence upon request.

In cases involving allegations of sex-based harassment, the Notice of Investigation shall also inform the parties that:

i. the respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the applicable disciplinary procedure and prior to such a determination, the parties will have the opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;

ii. a statement that the parties are entitled to an equal opportunity to access the investigative report describing the relevant, not otherwise impermissible evidence, and that both parties shall have an equal opportunity to review this evidence upon request; and

iii. notice that the college's employment policies prohibit employees from knowingly making false statements or knowingly submitting false information during an investigation or disciplinary proceeding.

Amended Notice of Investigation. If during the course of the investigation, the college decides to investigate discrimination

or harassment allegations against a party that are not included in the original investigation notice, the college will issue an Amended Notice of Investigation to both parties that includes this additional information and complies with the applicable notice requirements set forth above.

Notice of Meetings and Interview. In cases involving allegations of sex-based harassment, the college shall provide written notice to parties whose participation is invited or expected of the date, time, location, participants, and purposes of all meetings or proceedings with sufficient time for the parties to prepare to participate.

(8) **Investigation process.** During the investigation, the investigator:

a. will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence;

b. will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact specific determination that a party poses a threat to the health, safety, or welfare of another party and/or witnesses or when contact with a party and/or witness is prohibited by court order. A college-imposed no contact order shall be no broader than is necessary to protect the threatened party or witness and must provide the party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness or party;

c. will allow each party to be accompanied by a representative of their choosing, who may be an attorney, to any investigation related meeting or interview. Representatives' roles during the investigation meetings or interviews will be limited to providing support and advice to the party. Representatives will not represent or otherwise advocate on

behalf of the parties during the investigation process. An attorney advising a party must enter a notice of appearance with the Title IX Coordinator and/or the investigator at least five (5) business days before the initial interview or meeting they plan to attend, so the college can secure its own legal representation, if necessary; and

d. will, in cases involving allegations of sex-based harassment, provide both parties and their respective representatives with an equal opportunity to review the draft investigation report and to inspect and review relevant and not otherwise impermissible evidence upon request. After disclosure of the report, each party will have ten (10) calendar days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a written response is not received by a party within ten (10) calendar days, the party will be deemed to have waived their right to respond and the investigator will finalize the report without this information.

e. During sex discrimination and sex-based harassment investigations under this procedure, the investigator may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:

i. spousal/domestic partner privilege;

ii. attorney-client and attorney work product privileges;

iii. privileges applicable to members of the clergy and priests;

iv. privileges applicable to medical providers, mental health therapists, and counselors;

v. privileges applicable to sexual assault and domestic violence advocates; or

vi. other legal privileges identified in RCW

5.60.060;

f. Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

i. is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

ii. concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent;

g. Upon completion of the investigation, the Title IX Coordinator will distribute the final investigation report to the parties. The Title IX Coordinator will also provide the investigation report and the evidence gathered during the investigation to the Vice President for Human Resources, who is responsible for determining whether pursuing disciplinary action is warranted.

(9) Dismissal of complaint during investigation - right to

appeal. During an investigation, a discrimination or harassment complaint may be dismissed, in whole or in part, for the following reasons:

a. the respondent cannot be identified, after the college has taken reasonable steps to do so;

b. the respondent is not participating in the college's programs or activities and is not employed by the college. The college's discretion to dismiss a sex-based harassment complaint lodged against a former employee may be limited by RCW 28B.112.070, which requires the college to complete investigations into allegations of sexual misconduct by employees directed at student complainants unless the complainant requests otherwise.

c. the complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX Coordinator has declined to initiate their own complaint, and

any remaining allegations would not constitute discrimination or harassment, even if proven. In cases involving allegations of sex-based harassment, the college must obtain the complainant's withdrawal in writing before dismissal.

d. the conduct alleged by the complainant, even if proven, would not constitute discrimination or harassment; or

e. the conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

f. The complainant and the respondent (if the respondent has been notified of the complaint) may appeal the dismissal of a complaint.

g. If the dismissal occurs during the investigation, the Title IX Coordinator will provide the complainant or the complainant and the respondent (if the respondent has been notified of the complaint) written notice explaining:

i. why dismissal was necessary or desirable;

ii. the right to appeal the dismissal and a description of the procedure for appealing the dismissal; and

iii. if applicable, notice that the complaint is being referred to an appropriate disciplinary authority.

h. If the dismissal involves an allegation of sex-based harassment and the parties have both been notified of the investigation, the Notice of Dismissal will be served on the parties simultaneously.

i. When a complaint is dismissed, the Title IX Coordinator will, at a minimum:

i. offer supportive measures to the complainant as appropriate;

ii. offer supportive measures to the respondent, if notified and as appropriate; and

iii. take other prompt and effective steps, as appropriate, to ensure that sex discrimination does not continue or recur within the college's programs or activities.

j. Dismissal of a discrimination or harassment complaint does not preclude the college from investigating and pursuing discipline based on allegations that a respondent violated other federal or state laws and regulations, college conduct policies, and/or other codes and contractual provisions governing employee conduct.

(10) **Supportive measures.** In cases involving allegations of sex-based harassment, the Title IX Coordinator must offer and coordinate supportive measures to both the complainant and the respondent. Supportive measures may vary depending on the circumstances and what the college may determine to be reasonably available. Supportive measures may include, but are not limited to: counseling; extensions of deadlines and other work-related adjustments; campus security escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in work-related activity, regardless

of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

a. Supportive measures may not be imposed for punitive or disciplinary purposes.

b. Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties and/or the college's educational environment, or to provide support to the parties during the formal or informal resolution processes.

c. The Title IX Coordinator may modify or terminate supportive measures during or after formal or informal resolution procedures are completed, as the parties' and/or the college's circumstances change.

d. If, at any point during the sex discrimination investigation or disciplinary proceeding, a party becomes dissatisfied with their supportive measures or undergoes a change of circumstances that warrants revisions to their

supportive measures, the party may submit a request to revise their supportive measures to the Title IX Coordinator. The Title IX Coordinator will respond to such a request within ten (10) calendar days. If the party disagrees with the Title IX Coordinator's decision, they may submit a written appeal to the Vice President of Human Resources or their designee within five (5) calendar days of receiving the Title IX Coordinator's decision. Review of the appeal shall be performed by an impartial employee with authority to modify or reverse the Title IX Coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to the party seeking review. Challenged supportive measures will be reviewed to determine whether they are meeting the purposes set forth above.

e. In cases involving allegations of sex discrimination other than sex-based harassment and retaliation, the college is not required to alter the alleged discriminatory practice(s) for the purpose of providing a supportive measure.

(11) **Emergency removal.** If an employee respondent poses an immediate threat to the health and safety of the college community or an immediate threat of significant disruption to college operations, the president or designee, after consulting with the Title IX Coordinator, may place an employee on administrative leave. The administrative leave shall remain in place pending completion of the investigation and final resolution of any resulting disciplinary proceedings.

(12) **Complaint resolution and consolidation.** Complaints submitted to the Title IX Coordinator may be resolved through either informal or formal resolution processes.

a. **Informal Resolution.** Under appropriate circumstances, and only if the complainant and the respondent voluntarily agree, the parties may pursue informal resolution during the investigation of a concern. Informal Resolution is not appropriate when the allegation involves:

i. a complainant who is a minor or a vulnerable adult;

ii. a respondent poses an immediate threat to the health, safety or welfare of a member of the college community;

iii. an employee, who is alleged to have engaged in sex-based harassment of a student complainant.

If informal resolution is appropriate, the parties may explore resolution through:

i. guided conversations or communications conducted by the Title IX Coordinator, a Human Resource representative, or some other mutually agreed upon third party;

ii. a structured resolution process conducted by a trained mediator; or

iii. voluntary agreement between the parties to alter either or both parties' college work.

iv. A proposal to engage in informal resolution should be provided to the parties in the Notice of Investigation or after the Notice of Investigation has been served on both parties.

Before engaging in informal resolution, the college must provide written notification to the parties of their rights and responsibilities. This notice shall explain:

i. the allegations;

ii. the requirements of the informal resolution process;

iii. that, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and initiate or resume the formal resolution process;

iv. that the parties' agreement to a resolution at the conclusion of the informal resolution process will prevent the parties from initiating or resuming the formal resolution process;

v. that the potential terms of any informal resolution agreement will only be binding on the parties to the agreement; and

vi. what information the college will retain from the informal resolution process and how that information will be used, if the process is not successful and the formal resolution process is initiated or resumed.

Because the informal resolution process is voluntary, either party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the parties voluntarily resolve a complaint, the college will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the complaint has been closed.

If the parties agree to an informal resolution process, the college will commence informal resolution within ten (10)

calendar days after the parties agree to this option and conclude within twenty-one (21) calendar days of beginning that process; subject to reasonable delays and extensions for good cause shown.

b. Formal Resolution. Formal resolution means that the complainant's allegations of discrimination or harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigation may be conducted by the Title IX Coordinator. The results of the investigator's report will be shared with the parties, the Title IX Coordinator, as well as the appropriate disciplinary authority who is responsible for determining whether disciplinary proceedings are warranted.

c. Consolidation of complaints. Complaints of discrimination and harassment may be consolidated when the complaints are against more than one respondent, or by more than one complainant against one or more respondents, or by one party

against another party, when the allegations of discrimination or harassment arise out of the same facts or circumstances.

(13) Publication of nondiscrimination and harassment policy and procedures. The policy and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or designee. Individuals who believe they have been subjected to discrimination or harassment will be provided a copy of the policy and procedures.

(14) ~~(5)~~ Limits to authority. Nothing in these procedures shall prevent the president or designee from taking immediate disciplinary action in accordance with the college's policies and procedures, and federal, state, and/or municipal rules and regulations.

(15) ~~(6)~~ Retaliation, intimidation, and coercion. Retaliation by, for, or against any participant (including complainant, respondent, witness, investigator, or EO/AA office, Title IX coordinator or designee) is expressly prohibited. Retaliatory

action of any kind taken against a participant who is seeking redress under the nondiscrimination and harassment policy and using these procedures is prohibited and is subject to discipline. Individuals who think they have been retaliated against, intimidated, or coerced should contact the EO/AA office, Title IX coordinator or designee immediately.

[Statutory Authority: Chapter 34.05 RCW, RCW 28B.50.140(13), 20 U.S.C. § 1092(f) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 20-24-034, § 132Y-300-010, filed 11/20/20, effective 12/21/20. Statutory Authority: RCW 28B.50.140(13) and Federal Statutes - Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925; Edmonds CC Board of Trustees Resolution No. 15-5-3. WSR 15-12-069, § 132Y-300-010, filed 5/29/15, effective 6/29/15.]

WAC 132Y-300-015 Other remedies. (1) 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 Edmonds Police Department~~

~~<http://www.edmondswa.gov/government/departments/police.html>~~

City of Lynnwood Police Department

<http://www.ci.lynnwood.wa.us/Public-Safety/Police-Department>

Snohomish County Sheriff's Department

<http://snohomishcountywa.gov/210/Sheriff>

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.

(2) Other discrimination complaint options. Discrimination and harassment complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission

~~<https://www.hum.wa.gov/www.hum.wa.gov/index.html>~~

U.S. Department of Education Office for Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission

www.eeoc.gov

[Statutory Authority: RCW 28B.50.140(13) and Federal Statutes -
Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925;
Edmonds CC Board of Trustees Resolution No. 15-5-3. WSR 15-12-
069, § 132Y-300-015, filed 5/29/15, effective 6/29/15.]

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