

EVCC3091P: DISCRIMINATION AND HARASSMENT PROCEDURE

Original Date: August 14, 2020

Contact: Director of Equal Opportunity and Title IX Programs/ Title IX and EEO Coordinator

PROCEDURE

Everett 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 and harassment based on an individual's association or perceived association with protected classes as required by law. This responsibility extends to activity on campus, including student housing, at all college-sponsored events, and off campus when the behavior impacts the campus such that an individual's employment, education, or access to college programs, activities, and opportunities are limited because of the behavior.

The following procedures are established to meet the requirements for implementing EvCC3091: Policy on Discrimination and Harassment. This procedure applies to any member of the college community (faculty, student, staff, and administration) who engages in discrimination or misconduct. Any person can report alleged misconduct or discrimination, including faculty, students, staff, administration, guests, and visitors. All allegations of misconduct not involving harassment or discrimination will be addressed through the procedures elaborated in the respective student, faculty and employee handbooks or collective bargaining agreements.

All employees of the college, excluding campus counselors, are designated as responsible employees and, as such, are required to report alleged or suspected discrimination or misconduct, whether received formally or informally, to the Director of Equal Opportunity and Title IX Programs (hereinafter "Title IX/EEO Coordinator"). The employee may contact the Title IX/EEO Coordinator directly (TitleIXcoordinator@everettcc.edu or 425-388-9271) to file a report.

Any individual found to be in violation of the College's Policy on Discrimination and Harassment may be subject to disciplinary action up to and including expulsion or dismissal from employment. Any employee, student, or visitor who is the subject of discrimination or misconduct should report the incident(s) to the Title IX/EEO Coordinator identified below. If the complaint is against that officer, the complainant should report the matter to the Vice President of Human Resources.

This process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination and sexual misconduct policy has been violated. If so, the college will initiate an investigation that is thorough, reliable, impartial, prompt and fair. This investigation determines whether the College's nondiscrimination and sexual misconduct policy has been violated. If so, the College will promptly implement an effective remedy designed to end the discrimination, prevent its recurrence, and address its effects.

TITLE IX/EEO COORDINATOR

The College encourages the timely reporting of any incidents of discrimination or harassment to the Director of Equal Opportunity and Title IX Programs, who serves as the designated Title IX/EEO Coordinator and oversees compliance with all aspects of the College's Policy Discrimination and Harassment. If the complaint is against the Title IX/EEO Coordinator, the reporting party should report the matter to the Vice President of Human Resources.

Title:	Director of Equal Opportunity and Title IX Programs/Title IX and EEO Coordinator
Office:	Olympus 114
Contact Info:	titleixcoordinator@everettcc.edu; 425-388-9271

The Title IX / EEO Coordinator or designee:

- Will accept all complaints and referrals from College employees, applicants, students, and visitors.
- Will make determinations regarding how to handle requests by complainants for confidentiality.

- Will keep accurate records of all complaints and referrals for the required time period.
- May conduct investigations or delegate and oversee investigations conducted by a designee.
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment.
- Will issue written findings and recommendations upon completion of an investigation.
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

REPORTING MISCONDUCT AND DISCRIMINATION

Filing a complaint: 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 may be submitted in writing or verbally directly to the Title IX/EEO Coordinator. If the complaint is against that official, the complainant should report the matter directly to the Vice President of Human Resources.

Right to an advisor: All parties have a right to have an advisor of their choice to accompany them at any time during the course of the proceedings. Any advisor who accompanies the complainant, respondent, or witness may provide support or guidance but may not speak, represent, or advocate on their behalf. An advisor may not delay, disrupt, or otherwise interfere with proceedings. Anyone who plans to have an attorney present during a conduct proceeding must advise the Title IX/EEO Coordinator of their intent four business days in advance of the scheduled proceeding.

CONFIDENTIALITY AND THE RIGHT TO PRIVACY

Everett Community College will seek to protect the privacy of the complainant to the full extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Everett College policies and procedures. Although Everett Community College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO Coordinator.

The Title IX/EEO Coordinator will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that their name not be revealed to the respondent or that the College not investigate the allegation, the Title IX/EEO 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/EEO Coordinator will determine whether the College can honor the request and at the same time maintain a safe and non-discriminatory 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:

- The seriousness of the alleged sexual violence;
- The age of the complainant;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the College is unable to honor a complainant's request for confidentiality, the Title IX/EEO Coordinator will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the College decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX/EEO Coordinator will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

DEFINITION OF TERMS AND PROHIBITED CONDUCT

1. **Complainant:** employee(s), applicant(s), student(s), or visitors(s) of Everett Community College who alleges that she or he has been subjected to discrimination or harassment due to their membership in a protected class.
2. **Complaint:** a description of facts that allege violation of the College's policy against discrimination or harassment.
3. **Consent:** knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

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

4. **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.
5. **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, persistent, or pervasive 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 and/or student housing. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include but are not limited to the following:

Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

6. **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.
7. **Resolution:** the means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline sanction.

8. **Respondent:** person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.
9. **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.
- Hostile Environment Sexual Harassment** occurs when the conduct is sufficiently severe, persistent, or pervasive 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 and/or student housing.
 - 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:
 - Persistent comments or questions of a sexual nature.
 - A supervisor who gives an employee a raise in exchange for submitting to sexual advances.
 - An instructor who promises a student a better grade in exchange for sexual favors.
 - Sexually explicit statements, questions, jokes, or anecdotes.
 - Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.
 - Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.
 - Persistent, unwanted attempts to change a professional relationship to an amorous relationship.
 - Direct or indirect propositions for sexual activity.
 - Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.
10. **Sexual Violence:** is a type of sexual discrimination and harassment that includes:
- 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.
 - Nonconsensual sexual contact.** 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.
 - 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 of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen (18).
 - Statutory Rape.** Consensual intercourse between a person who is eighteen (18) years of age or older, and a person who is under the age of sixteen (16).
 - Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking 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 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:
 - (i) The length of the relationship;
 - (ii) The type of relationship; and
 - (iii) The frequency of interaction between the persons involved in the relationship
- g. **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others; or (ii) suffer substantial emotional distress.

INVESTIGATION PROCEDURE

Upon receiving a discrimination complaint, the College shall commence an impartial investigation. The Title IX/EEO Coordinator shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/ EEO Coordinator or their designee. If the investigation is assigned to someone other than the Title IX/EEO Coordinator, the Title IX/EEO Coordinator shall inform the complainant and respondent(s) of the appointment of an investigator.

Interim Measures. The Title IX/EEO Coordinator may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of a summary suspension in compliance with the College's student conduct code or an administrative leave of absence in compliance with the College's employment policies and collective bargaining agreements.

Informal Dispute Resolution. Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

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 ninety days unless there is good cause shown. Good cause includes, but is not limited to College closures due to weather conditions, a natural disaster, holidays, or recess. If it appears completion of the investigation will take longer than ninety days, the Title IX/EEO Coordinator will notify the parties, describe the reasons for the delay, and provide an estimated time for completing the investigation.

At the conclusion of the investigation, the investigator shall set forth their findings in writing. If the investigator is someone other than the Title IX/EEO Coordinator, the investigator shall send a copy of the findings to the Title IX/EEO Coordinator.

The Title IX/EEO Coordinator will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings, subject to the following limitations. The complainant shall be informed in writing of the findings only to the extent that such findings directly related to the complainant's allegations. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review the investigative findings subject to any FERPA confidentiality requirements.

Final Decision/Reconsideration. Either the complainant or the respondent may seek reconsideration of the investigation findings. Requests for reconsideration shall be submitted in writing to the Title IX/EEO Coordinator within seven days of receiving the investigation report. Requests must specify which portion of the findings should be reconsidered and the basis for reconsideration. The grounds for appeal are as follows:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If no request for reconsideration is received within seven (7) days, the findings become final.

If a request for reconsideration is received, the Title IX/EEO Coordinator shall respond within seven (7) business days. The Title IX/EEO Coordinator shall either deny the request or, if the Title IX/EEO Coordinator determines that the request for reconsideration has merit, issue amended findings.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the other party(ies) and their Advisors, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be notified of the decision.

The other party(ies) and their Advisors, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and be provided seven (7) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Decision-maker(s) to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Decision-maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in seven (7) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-maker(s) will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than seven (7) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the Recipient is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the Recipient is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' Recipient-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

Appeals are not intended to provide for a full re-hearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

An appeal is not an opportunity for Appeal Decision-maker(s) to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).

Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand except in the case of a new hearing.

Any amended findings are final and no further reconsideration is available.

RETALIATION PROHIBITED

Retaliation by, for or against any participant (including complainant, respondent, witness, Title IX/EEO Coordinator, 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/EEO Coordinator immediately.

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:

Everett Police Department
3002 Wetmore Ave
Everett, WA 98201
(425) 257-8400

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.

PUBLICATION OF ANTI-DISCRIMINATION 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.

AUTHORITY TO TAKE IMMEDIATE ACTION

Nothing in this procedure shall prevent the College President or designee from taking immediate disciplinary action or provide interim remedies in accordance with Everett Community College policies and procedures, and federal, state, and municipal rules and regulations.

OTHER COMPLAINT OPTIONS

An employee or student may always file a complaint with the following and federal and state agencies: Washington State Human Rights Commission at 800-233-3247 or TDD 800-300-7525, or U.S. Department of Education Office for Civil Rights at 800-421-3481 or TDD 877-521-2172, or Equal Employment Opportunity Commission at 800-669-4000 or TDD 800-669-6820.

RELEVANT LAWS AND OTHER RELATED INFORMATION

[WAC 132E-120-385](#)

[Everett Community College Student Rights and Responsibilities](#)

[EvCC3100: Staff Relationships Policy](#)

[EvCC3100P: Staff Relationships Procedure](#)

[EvCC6160: Prohibited Student Conduct Policy](#)

[EvCC6020: Statement of Jurisdiction Policy](#)

[EvCC1050: Mandatory Reporting of Child Abuse](#)

[EvCC6550P: Sex Offender Procedure](#)

[EvCC3090P: Everett Community College Title IX Policy and Grievance Procedure](#)

[EvCC3090: Title IX Policy](#)

[EvCC3090P: Title IX Procedure](#)

[EvCC3091: Discrimination and Harassment Policy](#)

[EvCC3092P: Supplemental Title IX Employee Disciplinary Hearing Procedure](#)

REVISION HISTORY

Original Date: August 14, 2020

APPROVED BY

President

Board of Trustees

VP Staff