TITLE: **COMPLAINTS--DISCRIMINATION** (Chapter 132U-300 WAC)
NUMBER: 4020
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WAC

132U-300-010 **Statement of Policy: Complaints--Discrimination And/Or Harassment/Intimidation.**
132U-300-020 **Complaint Procedure — Discrimination and/or harassment/intimidation.**

132U-300-010 Statement of Policy: Complaints--Discrimination And/Or Harassment/Intimidation.

(1) Whatcom Community College is covered by Title IX of the Education Amendments of 1972 prohibiting gender discrimination in education and Section 504 of the Rehabilitation Act of 1973 prohibiting discrimination on the basis of disability. It is the policy of Whatcom Community College to ensure equal opportunity without regard to gender or disability status in all areas of admission, education, application for employment, and employment. Whatcom Community College's Policy 4010, Affirmative Action/Fair Employment Practices, expands the College's obligation to include no discrimination on the basis of race, color, national origin, gender, disability, sexual orientation, religion, age (except when gender or age is a bona fide occupational qualification) or veteran status which includes Vietnam Era and/or disabled veterans in its programs, recruitments, hiring, training, retention, promotion and all other personnel actions of qualified persons. The Washington Law Against Discrimination (WLAD) RCW 49.60; Chapter 2.60.00 in the SBCTC's (State Board for Community and Technical College) Policy Manual, ADA, Title VI and VII of the Civil Rights Act of 1964, ESHB 2661 and all law and regulations affecting state employees, shall apply to employees at Whatcom Community College.

(a) It is the policy of Whatcom Community College to provide an environment in which members of the college community can work or study free from harassment or intimidation. Harassment/Intimidation is a form of discrimination. As such harassment/intimidation is a violation of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments.

(b) Discrimination and/or harassment/intimidation directed to any individual or group on the basis of race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability and veteran status, or any behavior or action, either physical or verbal, which is sexual in nature and unwelcome, unwanted or uninvited, is a violation of the mission and purpose of Whatcom Community College as an institution of higher education and shall not be tolerated, and, pursuant to board policy and this procedure, shall be prohibited.

A complaint procedure is required by Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973.

(2) Definitions

(a) Prohibited Discrimination: Prohibited discrimination is an action taken on the basis of an individual's membership in, association with or presumption of membership or association with the following: race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability and veteran status, such action resulting in a tangible loss in any area of admission, education, programs, hiring, training, retention, promotion and all other personnel actions of qualified persons.

(b) Prohibited Harassment and/or Intimidation: Prohibited harassment and/or intimidation shall include, but will not be limited to verbal and written comments, slurs, jokes, innuendoes, cartoons, pranks and any and all other physical or non-physical conduct or activity that can be construed as derogatory, intimidating, hostile or offensive and which is directed at the victim because of his/her membership in, association with or presumption of membership or association with the following: race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability, political affiliation and veteran status; or any behavior or action, either physical or verbal, which is sexual in nature and unwelcome, unwanted or uninvited. Discrimination and/or harassment/intimidation actions are herein defined as unwelcome sexual advances, requests for sexual favors, or other related verbal or physical conduct when:

(i) Submission to the conduct is either explicitly or implicitly made a term or condition of an individual's academic or career advancement; and/or

(ii) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting that individual; and/or

(iii) Such conduct has the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive environment.

(c) Board Policy: Board policy is based on the principle that all forms of discrimination and/or harassment/intimidation are unacceptable and will be dealt with promptly and effectively. The purpose of the development of a procedure is to establish the methods by which Whatcom Community College will show reasonable care in the prevention of harassment and discrimination. This may include, but will not be limited to the following:

(i) Have in place an effective discrimination and harassment prevention procedure that supports Board policy;

(ii) Offer and communicate existence of flexible, accessible, and non-intimidating complaint procedures;

(iii) Protect confidentiality to the extent possible under the law;

(iv) Develop an investigative protocol aimed at prompt fact gathering without bias or subjectivity;

(v) Provide a disciplinary mechanism that is reasonably calculated to end harassing or discriminatory behavior and correct inappropriate behavior;

(vi) Provide mandatory training programs on harassment for supervisors and separate training for non-supervisory employees.

[Statutory Authority: 28B.50.140 and 28B.49.60; ESHB 2661, 1/31/06; RCW 41.06 and RCW 43.01, 7/22/07); WSR § 132U-300-010 filed 9/12/07, effective 10/11/07 amends WSR 88-15-005 (Order 88-03), § 132U-300-010, filed 7/8/88, effective 8/8/88].

132U-300-020 Complaint Procedure – Discrimination and/or Harassment/Intimidation.

(1) Purpose

(a) Those employees of Whatcom Community College who believe that they have been harassed/intimidated and/or discriminated against in employment or the employment application process, or any applicants for admission or students/members of the public who believe that they have been harassed/intimidated by or discriminated against by an employee or a student of the Whatcom Community College, are encouraged to report that belief to Whatcom Community College under this procedure's Complaint Process which follows.

(2) Definitions

(a) **Designated Officer**. Designated officer means an individual who is primarily responsible for conducting an initial inquiry, determining whether to proceed with an investigation under this procedure, and investigating or coordinating the investigation of reports and complaints of discrimination/harassment in accordance with this procedure.

(i) The human resources director is the designated officer for all issues except as follows: a) student-to-student complaints, for which the vice president for educational services is the designated officer; b) complaints against the human resources director for which the president is the designated officer.

(ii) A report/complaint against the president of the college shall be filed with the chair of the board of trustees. However, complaints against a president shall be processed by the college if the president's role in the alleged incident was limited to a decision on a recommendation made by another administrator, such as tenure, promotion or non-renewal, and the president had no other substantial involvement in the matter.

(b) **Decision Maker**. Decision maker means a high level administrator who reviews the investigative reports, to make findings whether board policy (132U-300-10.2.3.) has been violated based upon the investigation, and to determine the appropriate action for the institution to take based upon the findings.

(i) The appropriate vice president with whom the complainant jurisdiction is the decision maker.

(ii) The president is the decision maker when the accused is an administrator.

(iii) The chair of board of trustees is the decision maker if the accused is the president.

(3) Complaint process

(a) **Incident Notification Form**: Whatcom Community College has developed an *Incident Notification Form* on which any person may report complaints of discrimination and or harassment/intimidation, regardless of the complaint's basis. The form which includes directions on how to complete and route it properly is widely available and can be readily obtained from the human resources director. The form also identifies the limits of confidentiality and the Whatcom Community College's non-retaliation policy. Any supervisor or administrator is authorized to accept and forward the form, or it may be submitted directly to the human resources director for all issues except student-to-student complaints, which shall be forwarded to the vice president for educational services.

(b) **Filing a Complaint/Officers Designated to Receive Complaints**: Any employee/student or member of the public who believes he/she has been subject to harassment/intimidation and/or discrimination has the right to file a complaint. This complaint should be filed in a timely manner, but no later than one hundred eighty (180) calendar days from the most recent incident of the alleged behavior or action. Any supervisor or administrator is authorized to accept or take a complaint. If the complainant does not feel comfortable with filing a written complaint, the complaint may be verbally made, and the supervisor/administrator the supervisor/administrator will then document the verbal complaint on the *Incident Notification Form* which the complainant shall sign. If the employee or student believes he/she is being harassed or discriminated against by a supervisor, administrator or employee, he/she should notify the human resources director directly. All complaints, regardless of the perceived merit or basis, are to be forwarded for review and processing, without exception, directly to the human resources director for all issues except student-to-student complaints, which shall be forwarded to the vice president for educational services. In the event that the human resources director's conduct is the subject of the complaint, the president or his/her designee shall be the designated officer to receive such complaint.

(c) **Complaint Consideration**: Although isolated incidents of harassment/intimidation and/or discrimination may not violate federal or state law, such incidents may nevertheless create a knowing and willful course of conduct which seriously alarms, annoys, harasses or is detrimental to that person or the work environment, serves no legitimate or lawful purpose, or is in direct violation of board values or the college's *Affirmation of Inclusion* (WCC Policy 1023) regarding mutual respect. Such complaints will be taken seriously and considered under this procedure.

(d) **Addressing Complaints**: The administration of the college has an affirmative duty to take timely and appropriate action to stop behavior, conduct investigations and take appropriate action to prevent recurring misconduct. The human resources director, as the designated officer, is authorized to consider complaints of harassment and discrimination and to assess and/or investigate them for all of Whatcom Community College, with the exception of student-to-student complaints, which are under the jurisdiction of the vice president for educational services, or his/her designee. All complaints, regardless of the perceived merit or basis, are to be forwarded to the appropriate office for review and processing, without exception. The designated officer shall determine whether the report/complaint is one which should be mediated or processed through another designated officer; if appropriate, the designated officer shall direct the complainant to that area as soon as possible.

(e) **Assessment**: The designated officer will, within thirty (30) working days of receipt of the *Incident Notification Form*, (a) assess the written complaint; (b) determine the appropriate process necessary to ensure all relevant evidence is obtained and all critical elements are addressed; and (c) notify the appropriate vice president with whom the complainant jurisdiction resides when the accused is a faculty or classified staff; the president when the accused is an administrator; and the chair of board of trustees if the accused is the president.

(i) This normally begins with an initial interview with the complainant. The goal is to obtain sufficient information to determine the next steps, which may include, but is not limited to obtaining clarification, providing mediation and/or consultation services, making referrals for mediation and/or consultation services, and/or initiating a formal fact-finding investigation.

(ii) If a formal investigation is undertaken, the complainant and the accused will be alerted to the existence of a formal complaint and that an investigation of the complaint is underway.

(iii) This formal investigation may take up to sixty (60) calendar days after the receipt of the *Incident Notification Form*, unless extended by mutual agreement in writing between the complainant and the designated officer.

(iv) Under appropriate circumstances, the administration may, in consultation with system legal counsel and labor relations committee, reassign or place an employee on administrative leave at any point in time during the report/complaint/investigation process. In determining whether to place an employee on administrative leave or reassignment, consideration shall be given to the nature of the alleged behavior, the relationships between the parties, the context in which the alleged incidents occurred and other relevant factors. Any action taken must be consistent with the applicable collective bargaining agreements.

(v) Employees, as a condition of employment, are required to be truthful and to fully cooperate in the investigation process.

(f) **Other Complaints**: Conduct covered by this policy and procedure are those discriminatory and/or harassment/intimation actions that occur as delineated in WAC 132U-300-010, 2.3. Complaints alleging conduct not covered by this policy and procedure will be remanded to the appropriate vice president/administrative officer for consideration and investigation as a performance-based issue.

(i) Harassment/intimidation and/or discrimination allegations based upon union activities are not included in this procedure, but covered by the various collective bargaining agreements between the Board of Trustees and its recognized faculty and employee representatives.

(g) **Records**: Copies of all complaints of harassment/intimidation and/or discrimination, and records related to a subsequent formal investigation conducted pursuant to that complaint, if any, shall be maintained confidentially to the extent allowed by law for an indeterminate period of time in the Human Resources Office.

(h) **Confidentiality and Non-retaliation**:

(i) Confidentiality: To the extent possible, proceedings will be conducted in a discreet and sensitive manner. Anonymity and complete confidentiality cannot be guaranteed once a complaint is made or unlawful behavior is alleged. Files pertaining to the complaints will be maintained in confidence to the fullest extent of the law. Whatcom Community College cannot guarantee complete confidentiality.

(ii) Non-Retaliation: Retaliation by, for or against any participant (accused, accuser or witness) 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 dealing with harassment/intimidation and/or discrimination is prohibited. Any person who thinks he/she has been the victim of retaliation should contact the Human Resources Director immediately.

(i) **Rights of Accused -- Notice of Complaint**: If a formal investigation is undertaken, the accused will be alerted to the existence of a formal complaint and that an investigation of the complaint is underway. During the investigative process, the accused will be informed of his/her right to representation during any investigatory meeting.

(j) **Findings Report**: Within sixty (60) calendar days of the commencement of a formal investigation, to the extend appropriate, a Findings Report will be submitted to the appropriate vice president with whom the complainant jurisdiction resides and the president. This Findings Report will include the complaint and a synopsis of the investigation. The reporter is not precluded from providing specific recommendations in the Findings Report as to disciplinary actions or other actions to be done (i.e. training for everyone in a department where sexual jokes have gotten out of hand, etc.). The complainant and the accused will be informed of the results of the investigation in summary form.

(k) **Corrective Action**: The decision maker (the appropriate vice president with whom the complainant jurisdiction resides when the accused is a faculty or classified staff, the president when the accused is an administrator, or the chair of board of trustees if the accused is the president), will take appropriate corrective and/or disciplinary action in situations where it is proven or is reasonable to believe that harassment/intimidation and/or discrimination took place. Any action taken will follow the due process provisions of applicable contracts or state law and regulations and will be reasonably calculated to end harassing/intimidation and/or discriminatory behavior and correct inappropriate behavior.

(4) Appeal process

(a) Any corrective and/or disciplinary action in situations where it is proven or is reasonable to believe that harassment/intimidation and/or discrimination took place on any level, except decisions by the board of trustees, may be appealed in writing to the president within fifteen (15) working days of the corrective and/or disciplinary action by either the complainant or the accused. The appeal must state specific reasons why the complainant or accused believes the decision was improper. Within fifteen (15) working days of the appeal, the president shall:

(i) Take actions recommended by the decision maker (vice president);

(ii) Reject the recommendations;

(iii) Modify the recommendations; or

(iv) Remand the recommendations to the decision maker (vice president) for further consideration; and

(v) Report in writing to the complainant, accused and vice president

(b) The decision of the chair of the board of trustees as to any complaint against the president may be reviewed by filing a complaint with the appropriate tribunal listed in section (5) Non-College Options, provided all time periods applicable to the tribunal are met.

(c) The actions of the president or, if applicable, the chair of the board of trustees, shall constitute final Whatcom Community College disposition of the matter. Upon action of the president, the complainant and accused shall have exhausted their administrative remedies within the College.

(d) However, in the event disciplinary action is undertaken against faculty member, the appeal process will be conducted in accordance with the standing faculty negotiated agreement.

(5) Non-College Options

(a) At any point during these proceedings, the complainant may choose to file with the Washington State Human Rights Commission, the Equal Opportunity Commission, and/or the U.S. Department of Education, Title IX.

(i) For anyone (employees, students, public): The Washington State Human Rights Commission, 711 S. Capitol Way, Suite 402, P O Box 42490, Olympia, WA 98504-2409; (360) 753-6770 or 1-800-233-3247; TTY 1-800-300-7525; website: www.hum.wa.gov

(ii) For employees: The United States Equal Opportunity Commission, Federal Office Building, 909 First Avenue, Suite 400, Seattle, WA 98104-1061; (206) 220-6883 or 1-800-669-4000; TTY 1-800-669-6820; website: www.eeoc.gov/seattle

(iii) For students: Office for Civil Rights, U. S. Department of Education, 915 2nd Avenue, Room 3310, Seattle, Washington 98174-1000; (206) 220-7900; TTY (206) 220-7907; website: www.edu.gov

[Statutory Authority: RCW 28B.50.130 and 28B.50.140. WSR § 132U-300-020 filed 9/12/07, effective 10/11/07

amending WSR 88-15-005 (Order 88-03), § 132U-300-020, filed 7/8/88, effective 8/8/88.]

DISCRIMINATION and/or HARASSMENT/INTIMIDATION COMPLAINT PROCEDURE

Addendum

DISCRIMINATION AND/OR HARASSMENT/ INTIMIDATION POLICY

(summary of Board of Trustees Policy 4020—please see full text of Policy 4020)

Discrimination and/or Harassment/Intimidation directed to any individual or group on the basis or race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability and veteran status, or any behavior or action, either physical or verbal, which is sexual in nature and unwelcome, unwanted or uninvited is a violation of the mission and purpose of Whatcom Community College as an institution of higher education and shall not be tolerated, and, pursuant to this policy, shall be prohibited. Prohibited harassment/intimidation shall include, but will not be limited to verbal and written comments, slurs, jokes, innuendoes, cartoons, pranks and any and all other physical or nonphysical conduct or activity that can be construed as derogatory, intimidating, hostile or offensive and which is directed at the victim because of his/her membership in, association with or presumption of membership or association with the following: race, color, sex, religion, creed, age, marital status, national origin, sexual orientation, disability, political affiliation and veteran status; or any behavior or action, either physical or verbal, which is sexual in nature and unwelcome, unwanted or uninvited.

The above policy is based on the principle that all forms of harassment/intimidation and/or discrimination are wrong and will be dealt with promptly and effectively. Our purpose is to:

- Prevent any form of harassment/intimidation and discrimination in the workplace/campus;
- Protect the working and educational environment; and
- Assure that our institution responds to harassment when it occurs in a timely manner that effectively deters future incidents and affirms respect for all individuals.

Our procedure strives to provide ways to encourage employees(faculty and staff) and supervisors to report and/or deal with any behavior that feels inappropriate or unwelcome. Although isolated incidents of harassment /intimidation may not violate federal law, the message of "reasonable care" dictates immediate and serious consideration of any complaint. The message should always be that a work and learning environment of mutual respect is the only acceptable environment.

INCIDENT NOTIFICATION FORM

Any employee or student who believes he/she has been subject to harassment/discrimination has the right to file a complaint. Any supervisor or administrator is authorized to accept or take a complaint. If the complainant does not feel comfortable with filing a written complaint, the complaint may be verbally made, and the supervisor/administrator the supervisor/administrator will then document the verbal complaint on the Incident Notification Form which the complainant shall sign. The form will then be sent to the Human Resources Director for all allegations except those allegations of student-to-student harassment/discrimination which will be referred to Vice President for Educational Services.

The Human Resources Director, or his/her designee, will assess the written complaint and determine the appropriate process necessary to ensure all relevant evidence is obtained and all critical elements are addressed, and will be responsible for forwarding the complaint to the appropriate entity as outline in Policy 4020 and/or proceed with the investigation process.

To the extent possible, proceedings will be conducted in a discreet and sensitive manner. Anonymity and complete confidentiality cannot be guaranteed once a complaint is made or unlawful behavior is alleged. Files pertaining to the complaints will be maintained in confidence to the fullest extent of the law. Whatcom Community College cannot guarantee complete confidentiality.

When the investigation is complete, to the extent appropriate, the person(s) filing the complaint and the person(s) alleged to have committed the conduct will be informed of the results of the investigation in summary form.

RETALIATION IS EXPRESSLY PROHIBITED

Retaliation by, for or against any participant (accused, accuser or witness) 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 dealing with harassment/discrimination is prohibited. Any person who thinks he/she has been the victim of retaliation should contact the Human Resources Director immediately.

Discrimination and/or Harassment/Intimidation
INCIDENT NOTIFICATION FORM *CONFIDENTIAL**

Whatcom COMMUNITY COLLEGE

All complaints of discrimination and/or harassment/intimidation are to be entered on this form and sent to the Human Resources Director, except for allegations of student-to-student harassment/discrimination which are to be entered on this form and sent to Vice President for Educational Services. Conduct prohibited by Whatcom Community College policy are those actions which occur on the basis of race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability and veteran status, or any behavior or action, either physical or verbal, which is sexual in nature and unwelcome, unwanted or uninvited. Other complaints will be remanded to the appropriate vice president for consideration and investigation.

Name of person making complaint _____ Date _____

Work Unit/Department _____

Work phone number _____ Home phone number *(optional)* _____

Name, title or other description of individual(s) against whom the complaint is directed:

_____

_____

Type of complaint (On what basis do you believe you are being discriminated and/or harassed/intimidated against?)

☐ Race ☐ Color ☐ Gender ☐ Religion
☐ Creed ☐ Age ☐ Marital status ☐ National origin
☐ Sexual orientation ☐ Disability ☐ Veteran Status ☐ Retaliation
☐ Other (describe)

State the events and/or actions that serve as the basis of your complaint. Include information about what happened, where, when, who was involved, etc. (Attach additional sheets if necessary)

_____
_____
_____
_____
_____
_____
_____
_____
_____

(If appropriate, attach any notes/evidence.)

Signature of person making complaint: _____

RETALIATION IS EXPRESSLY PROHIBITED

Whatcom Community College is committed to protecting students, staff and faculty from retaliation. You have the legal right at any time to raise the issue of harassment/discrimination without fear of reprisal.

* *To the* extent *possible, proceedings will be conducted in a manner protecting the confidentiality of all involved. Anonymity and complete confidentiality cannot be guaranteed* once a *complaint is made or unlawful behavior is made known; however, files pertaining* to the *complaints will be maintained in confidence* to the *fullest extent of the law.* ***Whatcom Community College cannot guarantee complete confidentiality.***

TO BE COMPLETED BY THE HUMAN RESOURCES OFFICE OR THE OFFICE OF VICE PRESIDENT FOR EDUCATIONAL SERVICES

Received by_____ Date _____