

## AR 3430 Prohibition of Harassment

### References:

Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e-2;  
Age Discrimination in Employment Act of 1967 (ADEA); 29 U.S. Code Sections 621 et seq.;  
Americans with Disabilities Act of 1990 (ADA) 42 U.S. Code Sections 12101 et seq.;  
ORS 659A;  
OAR 839-005-0030 (Sexual harassment);  
ORS 350.330;  
ORS 243.219  
BP 3430

Tillamook Bay Community College is committed to providing an academic and work environment free of unlawful harassment. This procedure defines harassment. AR 3435 Discrimination and Harassment Complaints and Investigations sets forth a procedure for the investigation and resolution of complaints of harassment by or against students, employees, unpaid interns, or volunteers within Tillamook Bay Community College. Procedures related to Workplace Harassment are found in AR 3432.

This procedure and the related policy and procedures protects students, employees, unpaid interns, and volunteers in connection with all the academic, educational, extracurricular, athletic, and other programs of Tillamook Bay Community College, whether those programs take place in Tillamook Bay Community College facilities, a Tillamook Bay Community College vehicle, or at a class or training program sponsored by Tillamook Bay Community College at another location.

For information on Tillamook Bay Community College's prohibition of sex-based harassment under Title IX, see BP 3433 Prohibition of Sex Discrimination under Title IX, AR 3433 Prohibition of Sex Discrimination under Title IX, and AR 3434 Responding to Sex Discrimination under Title IX. For other forms of harassment, Complainants should use this procedure.

### Definitions

**General Harassment:** Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), gender identity, national origin, age, disability, or genetic information. Harassment becomes unlawful where enduring the offensive conduct becomes a condition of continued employment or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Harassment shall be found where, in aggregate, the incidents are sufficiently pervasive, persistent, or severe that a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes with their ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.

Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment if it meets the definition above. For example, repeated derisive comments about a person's competency to do the job,

when based on that person's gender, could constitute gender-based harassment. Harassment comes in many forms, including but not limited to the following conduct that could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

**Verbal:** Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race gender, sexual orientation, or other protected status. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation; or sexist, patronizing or ridiculing statements that convey derogatory attitudes based on gender, race nationality, sexual orientation or other protected status.

**Physical:** Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, national origin, sexual orientation, or other protected status. Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.

**Visual or Written:** The display or circulation of visual or written material that degrades an individual or group based on gender, race, nationality, sexual orientation, or other protected status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.

**Environmental:** A hostile academic or work environment may exist where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race, nationality, sexual orientation or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders, or other protected statuses. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in their immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

**Sexual Harassment:** Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, or other verbal,

nonverbal or physical conduct of a sexual nature where such conduct is sufficiently severe or pervasive that it has the effect, intended or unintended, of unreasonably interfering with an individual's work or academic performance or it has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person.

This definition encompasses two kinds of sexual harassment:

**"Quid pro quo"** sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.

**"Hostile environment"** sexual harassment occurs when unwelcome conduct based on a person's gender is sufficiently severe or pervasive so as to alter the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it is severe, i.e. a sexual assault.

Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

**Sexual Assault:** Sexual assault means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

**Workplace Harassment:** Workplace harassment means conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that constitutes conduct prohibited by ORS 659A.082 or 659A.112.

## **Consensual Relationships**

Romantic or sexual relationships between supervisors and employees, or between administrators, faculty members, or staff members and students are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty members, or staff member must evaluate the student's or employee's work or make decisions affecting the employee or student. The relationship may create an appearance of impropriety and lead to charges of favoritism by other students or employees. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing. In the event that such relationships do occur, Tillamook Bay Community College has the authority to transfer any involved employee to eliminate or attenuate the supervisory authority of one over the other, or of a teacher over a student. Such action by Tillamook Bay Community College is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

## **Academic Freedom**

No provision of this Administrative Procedure shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. Freedom of speech and academic freedom are, however, not limitless and this procedure will not protect speech or expressive conduct that violates federal or State anti-discrimination laws.

**Approved: 11/24**