

AP 3435 Discrimination and Harassment Complaints and Investigations

References:

Title VII of the Civil Rights Act of 1964; 42 U.S. Code Sections 2000e et seq.;
Equal Employment Opportunity Commission (EEOC) Notice 915.002 (dated June 18, 1999);
ORS 659A;
ORS 659.850 to 659.860, OAR Chapter 715, Div 11 (Student complaints);
ORS 350.330 (Sexual harassment policies);
ORS 243.319

For sexual harassment under Title IX, Complainants must proceed under BP 3433 Prohibition of Sexual Harassment under Title IX, AP 3433 Prohibition of Sexual Harassment under Title IX, and AP 3434 Responding to Sexual Harassment under Title IX. For other forms of discrimination and harassment, Complainants should use this procedure.

Complaints: Any person who has suffered harassment, discrimination, or retaliation may file a complaint of harassment, discrimination, or retaliation. Complainants are encouraged to report harassment before it becomes severe or pervasive. Tillamook Bay Community College (TBCC) strives to stop harassment before it rises to the level of a violation of state or federal law.

Jurisdiction: TBCC is required under Oregon law to respond to any complaint received by the college, regardless of whether the incident occurred on the campus or elsewhere, that relates to: (A) Sexual harassment; (B) Sexual assault; (C) Domestic violence; (D) Dating violence; or (E) Stalking.

Retaliation: Persons who make complaints of harassment or provide information related to such complaints will be protected against retaliation. The TBCC will take all reasonable steps to protect the Complainant from further harassment or discrimination.

Employment-Related Complaints: The Senior Manager of Human Resources is the person charged with receiving complaints of discrimination or harassment and coordinating their investigation. The actual investigation of complaints may be assigned to other TBCC staff or to outside persons or organizations under contract with the TBCC. At a minimum, the investigation will be assigned to other TBCC staff or outside investigators whenever the Senior Manager of Human Resources is named in the complaint or implicated by the allegations in the complaint.

Who May File a Complaint: Any student, employee, or third party who believes he/she/they has been discriminated against or harassed by a student, employee, or third party in violation of this procedure and the related policy.

Where to File a Complaint: An employee who believes he/she/they has been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing.

A Complainant may file a complaint against the TBCC with any of the following:

- Senior Manager of Human Resources
- Chief Student Services Officer
- President/CEO

Complainants filing employment-related complaints shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or through the Oregon Bureau of Labor and Industries (BOLI) complaint resolution process.

An employee or claimant must provide advance notice of a claim against the employer as required by the Oregon Tort Claims Act (ORS 30.275).

Any TBCC employee who receives a harassment or discrimination complaint shall notify the Senior Manager of Human Resources immediately.

Filing a Timely Complaint: Since failure to report harassment and discrimination impedes the TBCC's ability to stop the behavior, TBCC strongly encourages anyone who believes they are being harassed or discriminated against, to file a complaint. TBCC also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes TBCC's ability to investigate and remediate.

All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination; the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.

TBCC will investigate complaints involving acts that occur off campus if they are related to an academic or work activity or if the harassing conduct interferes with or limits a student's or employee's ability to participate in or benefit from the school's programs or activities.

Communicating that the Conduct is Unwelcome: TBCC further encourages, but does not require, students and employees to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste or inappropriate.

Intake and Processing of the Complaint: Upon receiving notification of a harassment or discrimination complaint, the Senior Manager of Human Resources shall:

- Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work or academic schedules, obtaining apologies, providing informal counseling, training, etc.
- Advise all parties that he/she/they need not participate in an informal resolution of the complaint, as described above, and they have the right to end the informal resolution process at any time.

- Advise student Complainants that they may file a complaint with the Office for Civil Rights of the U.S. Department of Education and employee Complainants may file a complaint with the Oregon Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC). All Complainants should be advised that they have a right to file a complaint with local law enforcement, if the act complained of is also a criminal act. TBCC must investigate even if the complainant files a complaint with local law enforcement. In addition, TBCC should ensure that Complainants are aware of any available resources, such as counseling, health, and mental health services.
- Take interim steps to protect a Complainant from coming into contact with the alleged perpetrator, especially if the Complainant is a victim of sexual violence. The Senior Manager of Human Resources should notify the complainant of their options to avoid contact with the alleged perpetrator. For instance, TBCC may prohibit the alleged perpetrator from having any contact with the Complainant pending the results of the investigation. When taking steps to separate the Complainant and the alleged perpetrator, TBCC shall minimize the burden on the Complainant.

Investigation of the Complaint: TBCC shall conduct a prompt, thorough, and impartial investigation into every complaint and claim of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of TBCC, whether those programs take place in the TBCC's facilities, in a TBCC vehicle, or at a class or training program sponsored by TBCC at another location. TBCC shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.

TBCC will keep the investigation confidential to the extent possible but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, TBCC may weigh the request for confidentiality against the seriousness of the alleged harassment, the Complainant's age, whether there have been other harassment complaints about the same individual, and the alleged perpetrator's rights to receive information about the allegations if the information is maintained by TBCC as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. TBCC will inform the Complainant if it cannot maintain confidentiality.

Investigation Steps: TBCC will fairly and objectively investigate harassment and discrimination complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how TBCC's grievance procedures operate. The investigator cannot have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps: interviewing the Complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses and evidence identified by each Party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of TBCC's no-retaliation policy; considering whether any involved person should be removed from the campus

pending completion of the investigation; reviewing personnel/academic files of all involved Parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When TBCC evaluates the complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, TBCC will decide whether it is more likely than not that discrimination or harassment has occurred.

If there are conflicting versions of relevant events, the TBCC's investigator will weigh each Party's credibility. Factors that will be considered in determining credibility include: inherent plausibility; demeanor; motive to falsify; corroboration; and past record.

Timeline for Completion: TBCC will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within 120 calendar days of TBCC receiving the complaint.

Cooperation Encouraged: All employees will cooperate with a TBCC investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of TBCC to investigate thoroughly and respond effectively. However, lack of cooperation by a Complainant or witnesses does not relieve TBCC of its obligation to investigate. TBCC will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed.

Written Report: The results of the investigation of a complaint shall be set forth in a written report that will include at least all of the following information:

- A description of the circumstances giving rise to the complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony provided by each witness the investigator interviewed;
- An analysis of relevant evidence collected during the course of the investigation including a list of relevant documents;
- A specific finding as to whether there is probable cause to believe that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint;
- A table of contents if the report exceeds ten pages; and
- Any other information deemed appropriate by TBCC.

Reaching a Determination: Once the decision-maker receives the investigative report, he/she/they, will make a determination as to whether harassment or discrimination occurred.

Discipline and Corrective Action

If harassment, discrimination or retaliation occurred in violation of the policy or procedure, TBCC shall take disciplinary action against the alleged perpetrator and any other remedial action it determines to be appropriate consistent with State and federal law. The action will be prompt, effective, and commensurate with the severity of the conduct. Remedies for the Complainant might include, but are not limited to:

- providing an escort for the Complainant between the parking lot and his/her/their workplace or classroom office;
- ensuring that the Complainant and alleged perpetrator do not attend the same classes or work in the same work area;
- preventing offending third parties from entering campus;
- providing counseling services or a referral to counseling services;
- providing medical services or a referral to medical services;
- providing academic support services, such as tutoring;
- arranging for a student-Complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant being disciplined.

If TBCC imposes discipline, the nature of the discipline will not be communicated to the Complainant. However, TBCC may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the Complainant; for example, TBCC may inform the Complainant that the harasser must stay away from the Complainant.

In the case of a crime of violence or a non-forcible sex offense, and the alleged perpetrator is a student, the final results of any disciplinary proceeding conducted by TBCC against the alleged perpetrator may be disclosed to the complainant, if TBCC determines as a result of the disciplinary proceedings, the student violated TBCC's rules or policies. The final results of any disciplinary proceeding include only the name of the student, the violation committed, and any sanction imposed by the institution on that student.

Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, personnel policies and procedures.

TBCC will ensure that Complainants and witnesses know how to report any subsequent problems, and Senior Manager of Human Resources follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

If TBCC cannot take disciplinary action against the accused individual because the Complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

Appeals

If TBCC imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the procedure for appealing a disciplinary decision.

If the Complainant is not satisfied with the results of the administrative determination, they may, within 15 days, submit a written appeal to the TBCC Board of Education. TBCC Board of Education shall review the original complaint, the investigative report, the administrative decision, and the appeal. The TBCC Board of Education shall issue a final decision in the matter within 60 days after receiving the appeal. A copy of the decision rendered by the TBCC Board of Education shall be forwarded to the Complainant. The complainant shall also be notified of their right to appeal this decision.

File Retention

TBCC will retain on file for a period of at least 7 years after closing the case copies of:

- the original complaint;
- the investigatory report;
- the summary of the report if one is prepared;
- the notice provided to the Parties, of TBCC's administrative determination and the right to appeal;
- any appeal; and
- TBCC's final decision.

Dissemination of Policy and Procedures

TBCC's board policy and administrative procedures related to harassment will include information that specifically addresses sexual violence. TBCC board policy and administrative procedures will be provided to all students, faculty members, members of the administrative staff, and members of the support staff, and will be posted around campus and on TBCC's website.

When hired, employees are required to sign that they have received the policy and procedures, and the signed acknowledgment of receipt is placed in each employee's personnel file. In addition, these policies and procedures are incorporated into the TBCC's course catalogs and orientation materials for new students.

Training

TBCC will provide training to all employees. This includes counselors, faculty, health personnel, law enforcement officers, coaches, and all staff who regularly interact with students. Training for academic staff should emphasize environmental harassment in the classroom. TBCC will also provide training to students who lead student organizations.

In years in which a substantive policy or procedural change has occurred, all TBCC employees will attend a training update or receive a copy of the revised policies and procedures.

Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and violence toward students, TBCC will provide preventive education programs and make victim resources, including comprehensive victim services, available. TBCC will include such programs in their orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, TBCC's policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate TBCC and law enforcement authorities. Since victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of TBCC or campus rules were involved, TBCC] will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the victim at fault for sexual violence. If other rules are violated, the TBCC will address such violations separately from an allegation of sexual violence.

Approved: 11/24, Revised 9/25

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