

EvCC 3093: PROTECTED CLASS NONDISCRIMINATION POLICY

Original Date: August 1, 2024

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

Policy

Everett Community College is committed to providing a safe and inclusive environment, and recognizes its responsibility to stop, prevent, and remedy discrimination and harassment in the educational programs, activities and workplace. Everett Community College does not discriminate based on, but not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information in its programs, activities, or employment.

The Protected Class Nondiscrimination Policy and associated Grievance Procedures are intended to meet Everett Community College's obligations under Title II of the Americans with Disabilities Act, Title VI of the Civil Rights Act, Title VII of the Civil Rights Act, Title IX of the Education Amendments, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act ("VAWA"), Section 504 of the Rehabilitation Act, the Age Discrimination Act, and other applicable state and federal laws and regulations. Nothing in this Policy limits or otherwise restricts the College's ability to investigate and pursue discipline based on alleged violations of other federal, state, and local laws, their implementing regulations, and other College Policies through procedures outlined in the Everett Community College's Student Rights and Responsibilities Code of Conduct, Employment Contracts, Employee Handbooks, and Collective Bargaining Agreements.

The Nondiscrimination Grievance Procedures have been developed to ensure a prompt, fair, and impartial resolution for complaints of Prohibited Conduct based on a protected class or characteristic. The Policy and Procedures set forth the applicable definitions and resolution processes for complaints of protected class discrimination, harassment (including sex-based harassment), sexual misconduct, domestic and dating violence, stalking, and retaliation. Any individual found responsible for engaging in protected class discrimination in violation of College Policy may be subject to disciplinary action up to and including dismissal from the College's educational programs and activities and/or termination of employment.

Regarding complaints of sex-based harassment only, this Policy and the associated Grievance Procedures apply to all reported incidents that occur after August 1, 2024. For alleged incidents of sexual misconduct occurring prior to August 1, 2024, the Title IX Policy and Title IX Procedure in place at the time of the alleged incident apply. Please contact the Director of Equal Opportunity and Title IX Programs for more information.

Definitions of Prohibited Conduct

- **Discrimination** means conduct that is based on an individual's actual or perceived membership in a protected class (race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, and genetic information) which excludes an individual from participation in, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of an individual's employment, education, or participation in a College program or activity. Policy and procedures that intentionally or unintentionally create a disparate impact on a protected group or person are also considered a form of discrimination. This includes failure and refusal to provide reasonable accommodations, consistent with state and federal law, to persons with disabilities or who are pregnant.
- **Discriminatory Harassment**, as it applies to this Policy and Procedure, is a form of discrimination based on an individual's actual or perceived membership in a protected class. Harassment means conduct 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.
 - 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.

- For purposes of this definition, "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 duration of the comments or actions.
- **Disparate Impact** means administrative policies or practices which have the unintentional effect of subjecting individuals to discrimination because of their protected class status.
- **Disparate Treatment** means treating an individual less favorably because of their actual or perceived membership in a protected class.
- **Peer Retaliation** means retaliation by a student against another student.
- **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 Grievance Procedures prohibiting 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, disciplinary proceeding, or hearing, including in an informal resolution process. Nothing in this definition prevents the College from requiring an employee or other person authorized 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.
- **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:
 - sex stereotypes;
 - sex characteristics;
 - pregnancy or related conditions;
 - sexual orientation; and
 - gender identity.

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

- **Sex-Based Harassment** means a type of Sex Discrimination that occurs when a Respondent engages in the following discriminatory conduct on the basis of sex:
 - **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;
 - **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 College'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:
 - The degree to which the conduct affected the Complainant's ability to access the College's education program or activity;
 - The type, frequency, and duration of the conduct;
 - The Parties' ages, roles within the College's education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;
 - The location of the conduct and the context in which the conduct occurred; and
 - Other sex-based harassment in the College's education program or activity.
 - **Sexual Violence.** Sexual violence includes the following conduct:
 - **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 (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.

- **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 (Rape of a child).** Non forcible sexual intercourse with a person who is under the statutory age of consent.
- **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.
- **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:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.
- **Stalking.** 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
 - Suffer substantial emotional distress.
- **Sexual Exploitation** means an act or a failure to act that involves a member of the College community taking nonconsensual, unjust, humiliating, or abusive sexual advantage of another, either for the individual's own advantage or to benefit anyone other than the person being exploited. Sexual advantage may include, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third Parties to observe private sexual acts; disclosing, causing to be disclosed or threatening to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed; engaging in voyeurism, and intentionally exposing another to a sexually transmitted infection.

Jurisdiction

The Protected Class Nondiscrimination Policy applies to all Everett Community College students, faculty, staff, volunteers, visitors, contractors, consultants, vendors providing services to the College, and individuals who are participating or attempting to participate in a College education program or activity. This Policy applies to Prohibited Conduct occurring within the College's education programs and activities, defined as all operations of the college, including locations, events, or circumstances where the college has substantial control. The College retains the discretion to determine that Prohibited Conduct, as defined in this Policy, occurring outside of the United States or outside of a College education program or activity, including online conduct, may fall within the scope of this Policy if it effectively deprives a person of access to the College's education programs or activities.

For disciplinary action to be issued under this Policy and associated Grievance Procedure, the Respondent (person alleged to have done the Prohibited Conduct) must be a College employee or student at the time of the alleged incident. In situations involving a student employee, the College will consider whether the Party's primary relationship with the institution is to receive an education and whether the alleged Prohibited Conduct occurred while the Party was performing employment-related work. If the Respondent is unknown or is not a member of the College community, the Director of Equal Opportunity and Title IX Programs will offer to assist the Complainant (person who experienced harm) in identifying

appropriate institutional and local resources and support options, and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The College can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

Alleged incidents of misconduct not covered by this Policy may be governed by other College Policies, including but not limited to:

- Student Rights and Responsibilities Code of Conduct
- Employee Handbook
- Collective Bargaining Agreements

Employee Obligations

All College employees, excluding confidential college counselors, are required to report conduct that could reasonably constitute protected class discrimination, including sex-based harassment, to the Director of Equal Opportunity and Title IX Programs, also known as the Title IX Coordinator. Confidential college counselors are only required to provide a student with the Director's contact information when they are informed of conduct that could reasonably constitute protected class discrimination. Student employees are considered responsible employees required to make a report only when performing employment related work. An employee's failure to report will be made known to the Vice President of Human Resources and Compliance and the supervisor responsible for the functional area in which the employee works.

All College employees, including confidential counselors, are Mandatory Reporters under WA State Law ([RCW 28B.10.846](#) and [RCW 74.34.020](#)) and required to report child or vulnerable adult abuse and/or neglect to the appropriate government authority.

Training Requirements

All Employees - All employees shall undergo yearly training on the following topics:

- The definition and scope of Protected Class Discrimination and Sex-based Harassment under this Policy;
- The College's obligation to address Protected Class Discrimination in its education programs and activities;
- 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;
- Employee obligations to notify the Title IX Coordinator of conduct that may reasonably be Protected Class Discrimination.

Title IX Personnel and Grievance Committee Members - In addition to the required training for all employees, Title IX personnel and grievance committee members (when applicable) shall undergo training on the following topics:

- The College's Grievance Procedures for Protected Class Discrimination and Sex-based Harassment involving a student;
- How to serve impartially without prejudice of facts, conflicts of interest, or bias;
- Use of technology during an investigation or hearing;
- The definition of Relevance as used for purposes of evaluating evidence and questions for purposes of grievance procedures;
- Effective report and/or determination writing;
- Investigators: how to conduct an investigation; and
- Informal resolution facilitators: Procedures for the College's informal resolution process.

Title IX Coordinator and Designees - In addition to the required training for all employees, Title IX Personnel, and grievance committee members, the Title IX Coordinator and any designees shall undergo training on the following topics:

- How to ensure the College's compliance with its legal obligations;
- How to offer and coordinate supportive measures;
- Specific actions to prevent discrimination and ensure equal access upon learning of a student's pregnancy or related conditions;
- The College's recordkeeping system and requirements.

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

Misconduct Verifications

As required by law for employment verifications and college admission requirements (for student athletes or otherwise), determinations of responsibility against a Respondent regarding allegations of misconduct and their associated sanctions

will be disclosed to an authorized requestor. When a Respondent withdraws or resigns from the College before the completion of a resolution process, all responses to inquiries regarding employment references and sexual misconduct verifications, or information requests related to student athletes under the NWAC or NCAA attestation process will include that the Respondent left Everett Community College pending a disciplinary matter and may include disclosure of the status of the matter, including any disciplinary sanctions as part of the NWAC or NCAA attestation process.

Complaint Reporting and Policy Contact Information

Everett Community College's Nondiscrimination Policy and Grievance Procedures can be located on the [Equal Opportunity and Title IX Policies and Procedures webpage](#)¹. To report information or make a report regarding conduct that may constitute discrimination or harassment, please refer to the [Report Now link](#)² on that webpage. In the event that an incident involves alleged misconduct by the Director of Equal Opportunity and Title IX Programs, reports should be made directly to the Vice President of Human Resources and Compliance.

Inquiries about the Protected Class Nondiscrimination Policy and Grievance Procedures may be referred to the College's Director of Equal Opportunity and Title IX Programs, the [U.S. Department of Education's Office for Civil Rights](#)³, or both.

Inquiries and complaints regarding Protected Class Discrimination, Americans with Disabilities Act, or Title IX compliance can be addressed to the following contacts:

- Equal Opportunity Director: EqualOpportunity@everettcc.edu
- ADA Coordinator: ADACoordinator@everettcc.edu
- Title IX Coordinator: TitleIXCoordinator@everettcc.edu
- By Phone: 425-388-9271
- In-Person Location: Olympus Hall 111, 2000 Tower St. Everett, WA 98201

Individuals experiencing harassment or discrimination also have the right to file a formal grievance with the appropriate government authority:

U.S. Department of Education

Office for Civil Rights - Seattle Office
915 Second Avenue Room 3310
Seattle, WA 98174-1099
Email: OCR.Seattle@ed.gov
Telephone: 206-607-1600

U.S. Department of Justice

Civil Rights Division
950 Pennsylvania Avenue, NW
Educational Opportunities Section, PHB
Washington, D.C. 20530-0001
Email: USAWAW.Civil-Rights@usdoj.gov
Telephone: (202) 514-3847 or 1-855-856-1247

U.S. Equal Employment Opportunity Commission

Federal Office Building - Seattle Field Office
909 First Avenue, Suite 400
Seattle, WA 98104-1061
Email: seattleonlineinquiry@eeoc.gov
Phone: 1-800-669-4000

¹ <https://www.everettcc.edu/EqualOpportunity>

² <https://cm.maxient.com/reporting.php?EverettCC>

³ <https://ocrcas.ed.gov/contact-ocr>

Relevant Laws and Other Related Information

[Title II of the Americans with Disabilities Act](#)

[Title VI of the Civil Rights Act of 1964](#)

[Title VII of the Civil Rights Act of 1964](#)

[Title IX of the Education Amendments of 1972](#)

[Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act \("Clery Act"\), as amended by the Violence Against Women Reauthorization Act of 2013 \("VAWA"\)](#)

[Section 504 of the Rehabilitation Act of 1973](#)

[The Age Discrimination Act of 1975](#)

Revision History

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Approved By

Board of Trustees