

## **EvCC3093P: PROTECTED CLASS NONDISCRIMINATION GRIEVANCE PROCEDURES**

Original Date: August 1, 2024

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

### **Purpose**

Everett Community College has adopted the Protected Class Nondiscrimination Policy and Grievance Procedures to provide for the prompt and equitable resolution of protected class discrimination complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Director of Equal Opportunity and Title IX Programs, alleging any action that would be prohibited by state and federal laws and regulations. Complaints of sex-based harassment that involve a student as either the Complainant or Respondent are required to have additional procedures applied, which are outlined under Formal Resolution Processes in the section titled "Live Hearing for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents".

These Grievance Procedures set forth the applicable definitions and resolution processes for complaints that fall under the Policy prohibiting 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, the Policy and these 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.

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**Definitions**

The following are relevant definitions for the Protected Class Nondiscrimination Grievance Procedures.

- **Administrative Leave** means temporary release from job duties of an employee pending investigation and resolution of disciplinary proceedings.
- **Advisor** means a person selected by a Complainant or a Respondent to provide support and guidance in meetings, interviews, or hearings.

- **Complaint** means an oral or written request that objectively can be understood as a request for the College to investigate and make a determination about alleged discrimination.
- **Complainant** means:
  - A student or employee who is alleged to have been subjected to conduct that could constitute protected class discrimination; or
  - A person other than a student or employee who is alleged to have been subjected to conduct that could constitute protected class discrimination and who was participating or attempting to participate in the College's education program or activity at the time of the alleged discrimination.
- **Confidential Employee** means a College counselor whose communications are privileged and confidential under Federal or State law. An employee's status as a Confidential Employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.
- **Consent** means 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 they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when they know, or reasonably should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual conduct.
  - Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.
- **Day(s)** means business day(s) when the college is under regular operations, excluding weekends, holidays, and campus closures.
- **Decisionmaker(s)** means one or more College selected individual(s), who may or may not be an employee, that are appropriately trained and qualified to make determinations about violations of EvCC Policies. The Hearing Presiding Officer in an adjudicative proceeding, referred to as a live hearing, would also be a Decisionmaker.
- **Director of Equal Opportunity and Title IX Programs**, also referred to as "the Director", means the Title IX Coordinator who is responsible for processing Title IX and protected class complaints and who oversees the resolution processes under this Grievance Procedure.
- **Disciplinary Sanction** means consequences imposed on a Respondent following a determination that the Respondent violated the College's prohibition on protected class discrimination.
- **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 the Nondiscrimination Policy and Procedures, 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.
- **False Statements** means making a materially false statement in the course of the resolution of a report or a complaint under the Nondiscrimination Policy which is prohibited and does not constitute Retaliation. A determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement. Materially false statements or intentional misrepresentation will be resolved through the Student Rights and Responsibilities Code of Conduct process or through Human Resources.
- **Grievance Procedure** means the process the College uses to initiate, informally resolve, and/or investigate allegations that an individual has violated College Policies prohibiting protected class discrimination, including sex-based harassment.
- **Hearing Officer** means the college appointed individual who will be the lead Hearing Presiding Officer in a Live Hearing proceeding.
- **Informal Resolution** means an alternative resolution process that does not include an investigation or hearing.
- **Mandatory Reporters** means all college employees, excluding Confidential Employees. Mandatory Reporters are required to report conduct that could reasonably constitute Protected Class Discrimination to the Director of Equal Opportunity and Title IX Programs. Student employees are required to make a report only when performing employment related work.
- **Party** means a Complainant or Respondent.
- **Peer retaliation** means retaliation by a student against another student.
- **Pregnancy or related conditions** means:
  - Pregnancy, childbirth, termination of pregnancy, or lactation;
  - Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
  - Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- **Preponderance of the Evidence** means on a more probable than not basis.
- **Program or Program and Activity** means all operations of the College, including employment.
- **Protected Class or Characteristic** means individuals who are actual or perceived members of the groups against whom discrimination is prohibited by the Nondiscrimination Policy: 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.
- **Relevant** means related to the allegations of discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged discrimination occurred, and evidence is relevant when it may aid a Decisionmaker in determining whether the alleged discrimination occurred.
- **Remedies** means measures provided, as appropriate, to a Complainant or any other person identified as having had their equal access to the College's education program or activity limited or denied by discrimination. These measures are intended to restore or preserve that person's access to the College's education program or activity after a determination that discrimination occurred.
- **Respondent** means a person who is alleged to have violated the College's Policy prohibiting discrimination.
- **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.
- **Service** means the process by which a document is officially delivered to a Party by electronic transmission to a student or employee college issued email account. If a Party does not have a college issued email account, the College will use the last known personal email account or physical mailing address on record with or provided to the College. Service is deemed complete upon the date that the document is emailed.

- **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 non-consensual, 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.
  - **Summary Suspension** means an emergency suspension of a student Respondent pending investigation and resolution of disciplinary proceedings.
  - **Supportive measures** means reasonably available, individualized, and appropriate non-disciplinary and non-punitive measures, which do not unreasonably burden a Complainant or Respondent, that are provided without fee or charge to:
    - Restore or preserve that Party's access to the College's education program or activity, including measures that are designed to protect the safety of the Parties or the College's educational environment; or
    - Provide support during grievance procedures, including the informal resolution process.
  - **Title IX Coordinator** means the Director of Equal Opportunity and Title IX Programs who is responsible for processing Title IX and protected class complaints and who oversees the resolution processes under this Grievance Procedure.
  - **Title IX Personnel** means the Director of Equal Opportunity and Title IX Programs, Title IX Coordinator and designees; Investigator(s); Student Conduct Officers; Employee Disciplinary Officers; and Decisionmaker(s) during the resolution process (including the hearing and appeal stages), responsible for administering the College's Nondiscrimination Grievance Procedures; facilitators of the Informal Resolution Process; and any other employees who are responsible for implementing the College's Nondiscrimination Grievance Procedures for students or employees, or those who have the authority to provide, deny, modify, or terminate supportive measures.
  - **Unauthorized Disclosure** means distributing or otherwise making public materials created or produced during the grievance procedures except as required by law or as expressly permitted by the College, or publicly disclosing a Party's identifiable information without consent. Unauthorized Disclosures may also be considered Retaliation.

## Jurisdiction

This Grievance Procedure applies to Prohibited Conduct based on a protected class occurring within Everett Community College's education programs and activities, defined as all operations of the college, including locations, events, or circumstances where the college has substantial control. It also applies to all College students, faculty, staff, volunteers, visitors, contractors, consultants, vendors providing services to the College, and individuals who are participating in a College education program or activity.

Everett Community College retains the discretion to determine that Prohibited Conduct, as defined in the Nondiscrimination 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 the Policy. The Nondiscrimination Policy may also apply to the

effects of off-campus Prohibited Conduct that effectively deprives a person of access to the College's education programs or activities. The College may also extend jurisdiction when the Director of Equal Opportunity and Title IX Programs determines that the conduct affects substantial College interests. A substantial College interest may include:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, stated, or federal law.
- Any situation in which it is determined that the Respondent poses an immediate threat to the health or safety of any student, employee, or guest at the College.
- Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- Any situation that substantially interferes with the educational interests or mission of the College.

For disciplinary action to be issued under the Protected Class Nondiscrimination Policy and Grievance Procedures, the Respondent must be a College employee or student at the time of the alleged incident. If the Respondent is unknown or is not a member of the College community, the Director will offer to assist the Complainant 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 the associated 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

Even if after a Formal Resolution Process, alleged misconduct may not be found to violate the Nondiscrimination Policy, the alleged misconduct may still be prohibited by the College under a different rule, policy, or standard of behavior. Accordingly, Everett Community College reserves the right to take additional action.

### **Privacy and Confidentiality**

The College will seek to protect the privacy of the Complainant to the fullest extent possible, consistent with the legal obligation to investigate, offer appropriate supportive measures and/or take disciplinary action, and comply with the federal and state law (including CLERY reporting responsibilities), as well as College policies and procedures. Although the College will attempt to honor Complainant requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Director of Equal Opportunity and Title IX Programs.

The College has designated the following as Confidential Resources:

- For students: Everett Community College Counseling & Student Success (CSS) counselors. CSS counselors are a Washington State Licensed Mental Health Counselor, Licensed Mental Health Counselor Associate or Licensed Psychologist. Contact Information:
  - [Counseling & Student Success \(CSS\)](#)<sup>1</sup>  
Parks Student Union, 3rd Floor  
Phone: 425-388-9263  
Email: [counseling@everettcc.edu](mailto:counseling@everettcc.edu)
- For eligible employees: Employee Assistance Program (EAP) counseling services. Contact Information:
  - [Employee Assistance Program \(EAP\)](#)<sup>2</sup>  
Phone: 877-313-4455

Confidential College counselors, when acting in their confidential capacity, will maintain confidentiality of information shared by a Complainant and are not required to report conduct that may reasonably constitute Protected Class Discrimination to the Director of Equal Opportunity and Title IX Programs. Confidential counselors, like all employees, are

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<sup>1</sup> <https://www.everettcc.edu/programs/arts/css/>

<sup>2</sup> <https://des.wa.gov/services/employee-assistance-program>

still 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.

When a Confidential Employee learns of conduct that reasonably may constitute Protected Class Discrimination, the Confidential Employee must explain:

- Their status as a confidential employee, including the circumstances under which they are not required to notify the Director about the possible discrimination, including sex-based harassment;
- How the Complainant can contact the Director of Equal Opportunity and Title IX Programs to make a complaint about the possible Protected Class Discrimination; and
- That the Title IX Coordinator may offer and coordinate supportive measures, as well as initiate an Informal Resolution Process or Investigation pursuant to these Grievance Procedures.

The Director of Equal Opportunity and Title IX Programs will inform the Complainant about the College's Protected Class Nondiscrimination Policy and Grievance Procedures and attempt to obtain consent from the Complainant before commencing any resolution process. If a Complainant asks that their name not be revealed to the Respondent or that the College not investigate the allegation, the Director 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 Director will determine whether the College can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the College community, including the Complainant.

If the College is unable to honor a Complainant's request for confidentiality, the Director will notify the Complainant of the decision and disclose the Complainant's identity only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this Grievance Procedure.

If the College decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Director will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible.

### **Supportive Measures**

Supportive Measures are non-disciplinary, non-punitive individualized services, modifications, and other assistance that the College offers to Parties and may be put in place, without fee or charge, after receiving notice of Prohibited Conduct through a report to the Director of Equal Opportunity and Title IX Programs.

Everett Community College will offer and coordinate supportive measures as appropriate for the Complainant and/or Respondent to restore or preserve that person's access to the College's education program or activity or provide support during the College's Grievance Procedures or during the informal resolution process. Supportive measures will not unreasonably burden either Party involved in a complaint.

For complaints of sex-based harassment specifically, these supportive measures may include:

- Counseling;
- Extensions of deadlines and other course-related adjustments;
- Campus escort services;
- Increased security and monitoring of certain areas of the campus;
- Restrictions on contact (no contact directive) applied to one or more Parties;
- Leaves of absence;
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and
- Training and education programs related to sex-based harassment.

Requests for, or revisions to existing, supportive measures can be made in writing to the Director and will be referred to the appropriate College Administrator for a decision to be made within five (5) days. Supportive measures may be modified or terminated by a College Administrator during or after formal or informal resolution procedures are completed, or as the Parties' and/or the College's circumstances change.



Decisions to provide, deny, modify or terminate supportive measures may be challenged by a Party within five (5) days by contacting the Director of Equal Opportunity and Title IX Programs for review by an appropriate College Administrator, which would be someone other than the College designee that made the initial determination about the supportive measure request. Challenged Supportive Measures will be reviewed to determine whether they meet the following limitations and purposes:

- Must not unreasonably burden either Party;
- Must be designed to protect the safety of the Parties and/or the College's educational environment; and
- Are provided to support the Parties during the formal or informal resolution processes.

In cases involving allegations of Protected Class Discrimination other than sex-based harassment and retaliation, the College is not required to alter the alleged discriminatory conduct for the purpose of providing a supportive measure.

### **Emergency Removal and Administrative Leave**

Where there is an immediate threat to the health or safety of any students or other individuals arising from reported Prohibited Conduct, Everett Community College can remove a student Respondent, partially or entirely, on an emergency basis from the College's education program or activity. The College will make the decision to initiate a summary suspension on a student Respondent based on an individualized assessment and risk analysis completed by the appropriate members from the Behavioral Intervention Team (BIT), Student Conduct Officer, or trained designee, in consultation with the Director of Equal Opportunity and Title IX Programs. If the College makes such a decision, the student Respondent will be provided with written notice and an opportunity to appeal the decision immediately following the removal as specified in the Student Rights and Responsibilities Code of Conduct. The Summary Suspension shall remain in place pending completion of the investigation and final resolution of any resulting disciplinary proceedings.

Everett Community College may place an employee on administrative leave pending completion of an investigation and final resolution of any resulting disciplinary proceeding. Student employees may also be placed on administrative leave from their employment during the investigation of a complaint in circumstances in which the Prohibited Conduct was alleged to have occurred in the scope of their employment.

### **Advisors**

Throughout the grievance procedures for Prohibited Conduct, the Complainant and a Respondent may each have an Advisor of their choice present, who may or may not be an attorney, to provide support and guidance. An advisor may accompany the Complainant and Respondent to any meeting with the Director, Investigator(s), Decisionmaker, or during a Live Hearing.

Advisors will not represent or otherwise advocate on behalf of the Parties during any resolution process. An attorney advising a Party must enter a notice of appearance with the Director of Equal Opportunity and Title IX Programs and the Investigator at least five (5) days before the initial interview, meeting, or live hearing they plan to attend, so the College can secure its own legal representation, if necessary.

A Party's advisor has an exclusively non-speaking role, and may not otherwise present evidence, argue, or assert any right on behalf of the Party. If a Party does not have an advisor when a Live Hearing is requested or required, the College will, upon request, appoint an Advisor who will be selected from a group of trained employees. Advisors appointed by the institution cannot be Confidential Employees. Advisors should not disclose details of their interactions with their advisees to institutional officials or Decisionmakers, unless there is an emergency or a health and safety concern.

Everett Community College, which includes any official acting on behalf of the College, has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. Advisors who are disruptive, disrespectful, or refuse to follow the College Policy or Procedures will be removed. The College has the right to take appropriate steps to ensure compliance with the College Policy and Procedures, including by placing limitations on the advisor's ability to participate in future meetings and proceedings.

Advisors, whether College appointed or not, are expected to maintain the privacy of the records shared with them. These records may not be shared with third Parties, disclosed publicly, or used for purposes not explicitly authorized by Everett

Community College. Unauthorized Disclosures may also be considered Retaliation. The College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by privacy expectations.

### **Making a Formal Complaint**

When the Director of Equal Opportunity and Title IX Programs receives a report of potential Prohibited Conduct, as defined in the Protected Class Nondiscrimination Policy, they will attempt to make contact with the Complainant identified in the report. The potential Complainant will be provided with the Protected Class Nondiscrimination Policy and Grievance Procedures, any college or community resources available, and offered an initial intake meeting with the Director to review the Policy and Procedures and discuss appropriate supportive measures available.

The following people have a right to make a formal complaint of protected class discrimination, including complaints of sex-based harassment, requesting that Everett Community College investigate and make a determination about alleged discrimination:

- A “Complainant,” which includes:
  - A student or employee of the College who is alleged to have been subjected to conduct that could constitute protected class discrimination; or
  - A person other than a student or employee of the College who is alleged to have been subjected to conduct that could constitute protected class discrimination at a time when that individual was participating or attempting to participate in the College’s education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- Everett Community College’s Director of Equal Opportunity and Title IX Programs, also known as the Title IX Coordinator.

A person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such a person, or if the Director initiates a complaint.

With respect to complaints of Protected Class Discrimination, not including sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- Any student or employee of Everett Community College; or
- Any person other than a student or employee who was participating or attempting to participate in Everett Community College’s education program or activity at the time of the alleged discrimination.

When a Party is both a student and an 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.

Everett Community College may consolidate complaints of Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations arise out of the same facts or circumstances.<sup>3</sup> When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

Any student, employee, or person who was participating or attempting to participate in the College’s education program or activity who believes that they have been the subject of Protected Class Discrimination in violation of College Policies, should report the incident or incidents to the College’s Director of Equal Opportunity and Title IX Programs identified below. The complaint can be in writing or oral. 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.

Director of Equal Opportunity and Title IX Programs Contact Information:

- Equal Opportunity Director: [EqualOpportunity@everettcc.edu](mailto:EqualOpportunity@everettcc.edu)

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<sup>3</sup> Consolidation of complaints will not violate the Family Educational Rights and Privacy Act (FERPA).

- 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  
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 Seattle, WA 98104-1061  
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 Phone: 1-800-669-4000

**Complaint Evaluation**

When the Everett Community College Director of Equal Opportunity and Title IX Programs receives a formal complaint of Protected Class Discrimination requesting an investigation, they will conduct an initial evaluation of the provided information to determine the following:

- Verify the complaint came from an eligible Complainant and that the college has jurisdiction over the Respondent and incident;
- Review the information and documentation provided by the Complainant to ensure the allegations potentially meet one or more Prohibited Conduct definitions in the Protected Class Nondiscrimination Policy;
- When a Party is a student employee and the allegations involve sex-based harassment, making a fact specific inquiry into whether the Party’s primary relationship with the College is to receive an education and whether alleged sex-based harassment occurred while the Party was performing employment related work, and based on this inquiry, determine whether the Party should be treated as a student or an employee under this Grievance Procedure and related disciplinary procedures;
- If a Complainant makes a request for an informal resolution, review the incidents and determine if the complaint is eligible for the informal resolution process;
- Determine if the complaint should be dismissed;
- In the absence of, or withdrawal of, a formal complaint by the Complainant, determine if the Director needs to initiate a formal complaint on the behalf of the Complainant or College.

*Director of Equal Opportunity and Title IX Programs Initiated Complaint*

- In the absence or withdrawal of any or all allegations in a complaint, the Director of Equal Opportunity and Title IX Programs may file a complaint based on their evaluation of the following factors:
  - A Complainant’s request not to proceed with initiation of a complaint;
  - A Complainant’s reasonable safety concerns regarding initiation of a complaint;

- The risk that additional acts of Protected Class Discrimination would occur if the complaint is not initiated;
  - The severity of the alleged Protected Class Discrimination, including whether the discrimination if established, would require the removal of the Respondent from campus or imposition of other disciplinary sanction(s) to end the discrimination and prevent its recurrence;
  - The age and relationship of the Parties, including whether the Respondent is a College employee;
  - The scope of the alleged Protected Class Discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
  - The availability of evidence to assist a Decisionmaker with determining whether Protected Class Discrimination occurred; and
  - Whether the College could end the alleged Protected Class Discrimination and prevent its recurrence without initiating an investigation and disciplinary procedure.
- If, upon evaluating these and any other Relevant factors, the Director determines that the alleged conduct poses an imminent threat to the health or safety of the Complainant or to other members of the College community or that the alleged conduct prevents the College from ensuring equal access to its educational programs and activities, then the Director may initiate a complaint.
  - When initiating a complaint, the Director will provide the Complainant with advance notice of this decision and an opportunity to appropriately address reasonable concerns about the Complainant's safety or the safety of others, including the provision of Supportive Measures.
  - Regardless of whether a complaint is initiated, the Director of Equal Opportunity and Title IX Programs must take other prompt and effective steps, in addition to those steps necessary to implement remedies for the individual Complainant, to ensure that Protected Class Discrimination does not continue or recur within the College's educational Programs and Activities.
  - The analysis set forth above need not be performed if the Director reasonably determines that the alleged conduct could not constitute Protected Class Discrimination.

### **Dismissal of a Complaint**

Everett Community College may dismiss a complaint if:

- The College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the College's education program or activity and is not employed by the College. The College's discretion to dismiss a sex-based Harassment complaint lodged against a former employee may be limited by RCW 28B.112.070, which requires the College to complete investigations into allegations of sexual misconduct by employees directed at student Complainants, unless the Complainant requests otherwise;
- The College obtains the Complainant's voluntary withdrawal in writing of any or all of the allegations, the Title IX Coordinator declines to initiate a complaint, and the College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute discrimination even if proven;
- The College determines the conduct alleged in the complaint, even if proven, would not constitute discrimination. Before dismissing the complaint, the College will make reasonable efforts to clarify the allegations with the Complainant; or
- The conduct alleged by the Complainant falls outside the College's jurisdiction.

Upon dismissal, Everett Community College will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the College will notify the Parties simultaneously in writing.

Everett Community College will notify the Complainant that a dismissal may be appealed on the bases outlined in the 'Appeals' section. If dismissal occurs after the Respondent has been notified of the allegations, then the College will also notify the Respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, the College will follow the procedures outlined in the 'Appeals' section.

When a complaint is dismissed, Everett Community College will, at a minimum:

- Offer supportive measures to the Complainant as appropriate;

- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Director of Equal Opportunity and Title IX Programs to ensure that discrimination does not continue or recur within the College's education program or activity.

Dismissal of a Protected Class Discrimination complaint does not preclude the College from investigating and pursuing discipline based on allegations that a Respondent violated other federal or state laws and regulations, College conduct Policies, and/or other codes and contractual provisions governing student and employee conduct.

### **Basic Requirements of Grievance Procedures**

For all complaints of Protected Class Discrimination in which these Grievance Procedures apply, Everett Community College will:

- Treat Complainants and Respondents equitably;
- Presume that the Respondent is not responsible for the alleged discrimination until a determination is made at the conclusion of its grievance procedures;
- Require that any Title IX Personnel, informal resolution facilitator, investigator, or Decisionmaker not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. As long as there is no conflict of interest or bias, a Decisionmaker may be the same person as the Director of Equal Opportunity and Title IX Programs, investigator, or College Administrator;
- Take reasonable steps to protect the privacy of the Parties and witnesses during its grievance procedures. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The Parties cannot engage in retaliation, including against witnesses;
- Allow Parties to be accompanied by an Advisor of their choice, who may or may not be an attorney, for all grievance procedures and resolution processes. The Advisor's role may be limited to attending meetings, interviews, or live hearings with the Party and providing advice to the Party;
- Provide the Parties with the same opportunities, if any, to have people other than the advisor of the Parties' choice present during any meeting or proceeding;
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a Respondent; and
- Not discipline a Party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether discrimination occurred; and
- If a Party needs reasonable accommodations due to a qualifying disability or language assistance in order to fully and meaningfully participate in these grievance procedures, access requests must be made five (5) days prior to any meeting, interview, or live hearing by contacting the Director of Equal Opportunity and Title IX Programs.

### *Timeframes*

Everett Community College has established the following timeframes for the major stages of the grievance procedures:

- Report Outreach: After receiving a report, the Director of Equal Opportunity and Title IX Programs will reach out to the Complainant within five (5) days to offer an initial intake meeting and provide resources.
- Complaint Evaluation: The evaluation of a formal complaint takes five (5) to ten (10) days.
- Supportive Measures: Supportive Measures are available when Prohibited Conduct is reported and whether or not a complaint is filed. Supportive Measures are available throughout the entire grievance procedures, and in some cases after a resolution process is completed; however, supportive measures are first offered during an initial intake meeting and typically take five (5) to ten (10) days to implement.
- Informal Resolution: Informal Resolutions can be pursued at any time prior to a Live Hearing or Determination of Responsibility, and typically take anywhere from ten (10) to twenty (20) days for the Informal Resolution Agreement to be put in place after both Parties have indicated a willingness to engage in the informal resolution process.
- Investigation: Investigations typically take sixty (60) to ninety (90) days to complete.
- Live Hearing: When a Live Hearing is requested by a Party or required by the circumstances of a complaint, it typically takes ten (10) to twenty (20) days to schedule and conduct the Hearing.

- Determination of Responsibility: Upon completion of the final investigation report or after a Live Hearing concludes, it typically takes ten (10) days for a determination of responsibility to be made by the Decisionmaker.
- Appeal: Appeals are possible either when a complaint is dismissed and/or after a Determination of Responsibility has been made and must be received within fifteen (15) days. Appeal Outcomes may take five (5) to (10) days to issue, or longer in instances where Appeals are challenged.

Everett Community College has also established the following process that allows for the reasonable extension of time frames on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay. Good cause may include, but is not limited to, considerations such as the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; health conditions of a Party, Title IX Personnel, or Hearing Panel members, or the need for language assistance or accommodation of disability. The Parties will receive regular updates on the progress of the grievance procedures to explain any extension or delays and next steps in the process.

### **Written Notice of Allegations**

Upon initiation of the College's Protected Class Nondiscrimination Grievance Procedures by an individual making a formal complaint to the College's Director of Equal Opportunity and Title IX Programs, Everett Community College will serve a Notice of Allegations to the Parties in writing with sufficient time for the Parties to prepare a response before any initial interviews, including when informal resolution is being pursued.

All official communications from the college will be served to the Parties by electronic transmission through use of their College issued email accounts for both students and employees. In the rare situation that a Party does not have a College issued email account, the last known personal email account or physical mailing address on record or provided to the college will be used. Service is deemed complete upon the date that the document is emailed to the Parties.

If a complaint includes allegations of sex-based harassment and the College has reasonable concerns for the safety of any person as a result of providing a Notice of Investigation and Allegations, service of the notice may be reasonably delayed in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

The Notice of Investigation and/or Allegations will include:

- The College's Protected Class Discrimination Policy and Grievance Procedures, including descriptions of procedures applicable to sex-based harassment and informal resolution processes, if applicable;
- Sufficient information for the Parties to respond to the allegations, including the identities of the Parties, a description of the alleged discriminatory conduct, and the time and location of the alleged incident, to the extent this information is available to the College;
- A statement that retaliation is prohibited;
- The Respondent is presumed not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance procedures. Prior to such a determination, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial investigator and/or Decisionmaker;
- The Parties may have an advisor of their choice who may be, but is not required to be, an attorney;
- The Parties are entitled to an equal opportunity to access a draft investigation report that accurately summarizes the relevant and not otherwise impermissible evidence. The Parties are entitled to an equal opportunity to review the actual relevant and not impermissible evidence upon the request of any Party; and
- The College prohibits knowingly making false statements or knowingly submitting false information during the grievance procedures.

If, in the course of an investigation, Everett Community College decides to investigate additional allegations of Prohibited Conduct by the Respondent toward the Complainant that are not included in the written notice or that are included in a consolidated complaint, the College will provide written notice of the additional allegations to the Parties.

### **Informal Resolution Process**

Everett Community College's Protected Class Discrimination Grievance Procedures allows Parties to participate in an Informal Resolution Process, when both Parties agree. The College does not offer informal resolution to resolve a

complaint that includes allegations that an employee engaged in sex-based harassment of a student, when the circumstances of the allegation make an informal resolution not sufficient to address the complaint, or when such a process would conflict with Federal, State, or local law.

Informal Resolution is an alternative resolution process that does not include an investigation or hearing. Informal Resolution is typically a variety of facilitated, or structured, and adaptable processes between the Complainant, the Respondent, and/or other affected community members that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the Complainant and/or the College community. Informal Resolutions can include, but are not limited to, education, mediation, supportive resolution, and instances when a Respondent accepts responsibility for Prohibited Conduct.

Informal Resolution may be administered by the Director of Equal Opportunity and Title IX Programs, the Student Conduct Officer, or their designee.

Admission of responsibility for a policy violation is not required for participation in Informal Resolution Processes, but Parties must agree to end the behavior, prevent its recurrence, and address its effects through Informal Resolution.

Informal Resolution may be available, under appropriate circumstances, at any time prior to reaching a determination regarding responsibility through a Formal Resolution Process. It is not necessary to pursue an Informal Resolution prior to an Investigation or Formal Resolution Process.

The Director of Equal Opportunity and Title IX Programs, or designee, reserves the right to determine whether Informal Resolution is appropriate in a specific case. The College may consider the following factors to assess whether or not an Informal Resolution is appropriate:

- The likelihood of potential resolution;
- If the Complainant is a minor or a vulnerable adult;
- Power dynamics between the Parties;
- The nature and severity of the misconduct;
- Respondent's disciplinary history and immediate threat to the health, safety or welfare of a member of the College community;
- The skill of the Informal Resolution facilitator with the type of complaint;
- The complaint complexity; and
- Goals of the Parties.

Before the Director or their designee begins the Informal Resolution Process, both Parties must provide informed consent in writing. In addition, where both Parties and the College determine that Informal Resolution is worth exploring, the College will provide the Parties with a written notice disclosing:

- The allegations;
- The requirements of the Informal Resolution Process;
- That any Party has the right to withdraw from the informal resolution process and initiate or resume formal resolution procedures at any time before agreeing to a resolution;
- That if the Parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information the College will maintain and whether and how the College could disclose such information for use in the formal resolution grievance procedures, if such procedures are initiated or resumed.

If both Parties agree to an informal resolution process, the College will begin drafting an Informal Resolution Agreement within ten (10) days after the Parties agree to this option and complete the Agreement within twenty (20) days of beginning that process; subject to reasonable delays and extensions for good cause shown.

At any time prior to signing an Informal Resolution Agreement, either Party may withdraw from the Informal Resolution Process and proceed with the appropriate Formal Resolution Process. The Complainant may also request that a complaint be dismissed, which must be done in writing to the Director of Equal Opportunity and Title IX Programs.

Once an Informal Resolution Agreement is signed by all Parties, the resolution is binding, and the Parties generally are precluded from resuming or starting the applicable formal grievance process related to specific Prohibited Conduct that was alleged. Any breach of the terms of an Informal Resolution agreement may result in disciplinary action.

The College Administrator facilitating an Informal Resolution must be trained and cannot be the Investigator, Decisionmaker, or an Appeal Decisionmaker in the same case. In instances when a College Administrator has a conflict of interest or bias, the Informal Resolution will be facilitated by another qualified College designee.

If the Parties voluntarily resolve a complaint through an Informal Resolution Agreement, the College will record the terms of the resolution in a written agreement signed by both Parties and provide written notice to both Parties that the complaint has been closed.

### **Formal Resolution Process**

Once a report of Protected Class Discrimination has been received by the Director of Equal Opportunity and Title IX Programs, and when Informal Resolution is not elected or is unsuccessful, a Complainant has the option to file a formal complaint against a Respondent alleging Prohibited Conduct and requesting that the College resolve those allegations through Formal Resolution Processes, which includes an investigation and determination of responsibility. To file a complaint, the Complainant may do so online, in person, or by email to the Director of Equal Opportunity and Title IX Programs.

#### *Investigation*

Everett Community College will provide for adequate, reliable, and impartial investigation of complaints by:

- Providing to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate.
- Having the investigation conducted by a neutral and unbiased investigator without a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent;
- Having the investigator make findings of fact based on the preponderance of the evidence standard. A preponderance of the evidence means on a more probable than not basis;
- Placing the burden on the College, not on the Parties, to conduct an investigation that gathers sufficient evidence to determine whether Protected Discrimination occurred.
- Objectively evaluating all evidence that is Relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence, and provide credibility determinations that are not based solely on a person's status as a Complainant, Respondent, or witness;
- Providing an equal opportunity for Parties to present fact witnesses and other inculpatory or exculpatory evidence that is Relevant and not otherwise impermissible;
- Providing ten (10) days for each Party to review and submit written comments on the draft investigation report and, upon request, to review Relevant and not otherwise impermissible evidence gathered by the investigator before finalizing the investigation report; and
- Taking reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the investigation. Such steps shall not prevent the Parties from using the information or evidence for related disciplinary proceedings or litigation related to the complaint of Protected Class Discrimination.
- Providing the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

#### *Evidence*

During an investigation Complainants and Respondents will have an opportunity to submit information and other evidence to the investigator(s) and to identify witnesses. Although the Parties have the option to submit evidence and suggest



witnesses to be interviewed, the burden of gathering information in the investigation is with the College. All Parties are expected to share any relevant information and/or any information that is requested by the investigator(s).

Everett Community College will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the College to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the College obtains that Party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Everett Community College will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

### *Investigation Report*

Everett Community College will provide each Party and the Party's advisor, if any, with an equal opportunity to review the draft investigation report, in the following manner:

- The College will provide an equal opportunity to access an accurate description of relevant and not otherwise impermissible evidence. The College will provide the Parties with an equal opportunity to review the actual relevant and not otherwise impermissible evidence upon the request of any Party;
- The College will provide a reasonable opportunity to respond to the accurate description of the evidence;
- The College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures; and
- The College will provide each Party ten (10) days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a Party fails to submit a written response within ten (10) days, the Party will be deemed to have waived their right to respond and the investigator will finalize the report without this information.

The Director of Equal Opportunity and Title IX Programs will review the report for completeness and relevance, and direct further investigation as necessary before the report is finalized and a determination of responsibility is made by the Decisionmaker, or the final report is provided to Decisionmaker as part of a Live Hearing. When not required, student Parties may request that the matter be resolved through a Live Hearing by contacting the Director before a determination of responsibility is made.

### *Live Hearing for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents*

The following Live Hearing procedures are required for addressing complaints of sex-based harassment that involve a student Party as either a Complainant or Respondent. While not required for protected class complaints other than sex-based harassment, a student Party may request that the matter be resolved through a Live Hearing by contacting the Director of Equal Opportunity and Title IX Programs before a determination of responsibility is made. Complaints that only

involve employees as both the Complainant and Respondent will not be subject to Live Hearings under this Grievance Procedure.

Everett Community College will notify the Complainant and the Respondent in writing of the date and time of the Hearing and the name of the Hearing Presiding Officer and Hearing Panel members at least five (5) days in advance of the hearing, with the hearing to occur no fewer than ten (10) days after the Parties are provided with the final investigation report.

The College will conduct the live hearing with the Parties physically present in the same geographic location or, at the College's discretion or upon the request of either Party, will conduct the live hearing with the Parties physically present in separate locations with technology enabling the Decisionmaker and Parties to simultaneously see and hear the Party or witness while that person is speaking.

The College will create an audio or audiovisual recording or transcript of any live hearing and make it available to the Parties for inspection and review upon request. Reasonable care will be taken to create a quality recording or transcript and if making recording minimize technical problems, however, technical problems that result in no recording or an inaudible recording are not a valid basis for appeal. A Respondent, Complainant, advisor, and/or witness may not bring electronic devices that capture communication (e.g., computer, cell phone, audio/video recorder, etc.) to a hearing, unless authorized by the Hearing's Officer.

The Hearing Panel, which may be the student conduct committee, will be formed by trained and qualified Decisionmakers. A lead Hearing Officer, or the Director, will be available for conducting pre-hearing procedural meetings with the Parties upon request. The panel may be comprised of one to five Decisionmakers, who may be internal and/or external to the College.

The College will provide a process that enables the Hearing Officer, who would also be a Decisionmaker, to question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of Prohibited Conduct.

Everett Community College's process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of Parties and witnesses, including questions challenging credibility, will allow the Decisionmaker to ask such questions. Each Party will also be allowed to propose such questions to the Hearing Presiding Officer that the Party wants asked of any Party or witness, and have those questions asked by the Hearing Officer, subject to the procedures for evaluating and limiting questions discussed below.

The Hearing Presiding Officer will determine whether a proposed question is relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the Party or witness being questioned will not be permitted. The Hearing Officer will give a Party an opportunity to clarify or revise a question that is determined to be unclear or harassing. If the Party sufficiently clarifies or revises the question, the question will be asked.

Parties are reminded that, consistent with the prohibition on retaliation, intimidation, threats of violence, and other conduct intended to cause a Party or witness to not appear for a hearing are expressly prohibited. The Hearing Officer may, at their discretion, exclude witnesses or witness testimony the Hearing Officer considers irrelevant or duplicative. The Hearing Officer will explain any decision to exclude a witness or testimony as not relevant.

The Decisionmaker may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed relevant and not impermissible. The Decisionmaker will not draw an inference about whether the Prohibited Conduct occurred based solely on a Party's or witness's refusal to respond to such questions.

The Hearing Officer has wide discretion over matters of decorum at the hearing, including the authority to excuse from the hearing process participants who are unwilling to observe rules of decorum.

The Decisionmaker(s), by way of a simple vote will consider all relevant evidence and make a determination of responsibility, by preponderance of evidence standard, whether the Respondent has violated a College Policy. While they may be present, the Director of Equal Opportunity and Title IX Programs is not a Decisionmaker in a Live Hearing.

If it is determined that the preponderance of evidence standard cannot be met or that there is no reasonable cause to determine a policy violation, the matter will be closed subject to a final appeal.

#### *Determination of Responsibility Regarding Protected Class Discrimination*

Everett Community College will identify qualified Decisionmaker(s) to make a determination of responsibility regarding alleged Prohibited Conduct at the completion of the Formal Resolution Process. The Decisionmaker may be the investigator(s) of a complaint, members of the College Grievance Committee, external contractors trained in civil rights compliance, or an appropriate College designee.

The Decisionmaker will:

- Use the preponderance of the evidence standard of proof to determine whether Prohibited Conduct occurred;
- Be allowed to question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of discrimination;
- Evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the Decisionmaker is not persuaded under the applicable standard by the evidence that discrimination occurred, whatever the quantity of the evidence is, the Decisionmaker will not determine that discrimination occurred;
- Notify the Parties in writing of the determination whether Prohibited Conduct occurred including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal; and
- Not impose discipline on a Respondent unless there is a determination at the conclusion of the grievance procedures that the Respondent engaged in Prohibited Conduct.

If there is a determination that Prohibited Conduct occurred, the Director of Equal Opportunity and Title IX Programs will, as appropriate:

- Coordinate the provision and implementation of remedies to a Complainant and other people the College identifies as having had equal access to the College's education program or activity limited or denied by discrimination;
- Coordinate any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
- Take other appropriate prompt and effective steps to ensure that discrimination does not continue or recur within Everett Community College's education program or activity.

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 Prohibited Conduct and their associated sanctions will be disclosed to an authorized requestor.

The determination regarding responsibility becomes final either on the date that the College provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

#### **Disciplinary Sanctions and Remedies**

Following a determination that Prohibited Conduct occurred, Everett Community College may impose disciplinary sanctions, which may include education, community service, referral to counseling, warnings, probation, suspension, suspension from participation in activities or privileges, suspension from the College or the residence halls, or expulsion. In determining sanctions, the College Administrator or their designee will consider whether the nature of the conduct at issue warrants removal from the College, either permanent (expulsion) or temporary (suspension).

The College may also provide remedies, which are designed to restore or preserve a Complainant's equal access to the College's programs or activities.

The Director of Equal Opportunity and Title IX Programs may also recommend non-disciplinary corrective measures to stop, remediate, and/or prevent recurrence of Prohibited Conduct to College Administrators.

### **Appeals**

When a complaint is dismissed under this Grievance Procedure and/or after a determination of responsibility has been made at the completion of a formal resolution process, Parties have a right to submit an appeal to the Director of Equal Opportunity and Title IX Programs within fifteen (15) days on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made; and
- The Director, investigator, or Decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

If a Party appeals a dismissal or determination whether Prohibited Conduct occurred, Everett Community College will:

- Notify the Parties in writing of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the Parties;
- Ensure that the appeal Decisionmaker did not take part in an investigation, determination of responsibility, or dismissal of the complaint;
- Ensure that the Decisionmaker for the appeal has been trained consistent with the Title IX training requirements;
- Communicate to the Parties in writing that the College will provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the Parties in writing of the result of the appeal and the rationale for the result. Appeal outcomes will be provided to the Parties within (10) days, or longer in instances where Appeals are challenged.

### **Withdrawal or Resignation Prior to Resolution**

Should a Respondent withdraw or resign from Everett Community College during a resolution process, the formal complaint may be dismissed as the College has lost primary disciplinary jurisdiction over the Respondent. However, the College may continue the resolution process when, at the discretion of the Director of Equal Opportunity and Title IX Programs or as required by law, doing so may be necessary to address safety and/or remedy any ongoing effects of the Prohibited Conduct or determine whether a degree should be issued or revoked. Enrollment Services and/or Human Resources will be notified accordingly.

In cases where a student Respondent withdraws or leaves while the resolution process is pending which results in the case being dismissed, the College may reopen the complaint and complete the resolution process if the student registers for classes at Everett Community College in the future.

An employee Respondent who resigns with unresolved allegations of protected class discrimination may not be eligible for rehire at Everett Community College. The College's discretion to dismiss a sex-based harassment complaint lodged against a former employee may be limited by [RCW 28B.112.070](#), which requires the College to complete investigations into allegations of sexual misconduct by employees directed at students unless the student requests otherwise.

All records retained by the College will reflect the withdrawal and resignation status of the Respondent.

All responses to future 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.

### **Record Retention**

Everett Community College shall retain for a period of seven (7) years after the date of case closure: the official file relating to an Informal Resolution or Formal Resolution, including any Supportive Measures, Investigation, Live Hearing, Sanctioning, and/or Appeals processes involving allegations of Protected Class Discrimination. In cases in which a

Respondent was found to have violated the Nondiscrimination Policy and was expelled or terminated, Everett Community College may retain such official case files indefinitely.

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.

#### **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**

Original Date: August 1, 2024

#### **Approved By**

Board of Trustees