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**Procedure Title:** Workplace Harassment  
**Procedure Number:** 03-2020-0003  
**Board Policy Reference:** IV.B.

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**Accountable Administrator:** President  
**Position responsible for updating:** Chief Human Resources Officer  
**Original Date:** February 26, 2020  
**Date Approved by College Planning Council:** 10-27-21  
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Workplace harassment is prohibited and shall not be tolerated. This includes workplace harassment that occurs between College employees or between a College employee and the College in the workplace or at a work-related event that is off College premises and coordinated by or through the College, or between a College and a College employee off College premises. Elected board members, volunteers and interns are subject to this policy.

Any College employee who believes they have been a victim of workplace harassment may file a report with the College employee designated in the Administrative Procedure Workplace Harassment Reporting and Procedure, may file a report through the Bureau of Labor and Industries' (BOLI) complaint resolution process or under any other available law. The reporting of such information is voluntary. The College employee making the report is advised to document any incidents of workplace harassment.

“Workplace harassment” means conduct that constitutes discrimination prohibited by Oregon Revised Statute (ORS) 659A.030 (discrimination in employment based on race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age, or expunged juvenile record), including conduct that constitutes sexual assault<sup>1</sup> or that constitutes conduct prohibited by ORS 659A.082 (discrimination against person in uniformed service) or 659A.112 (discrimination in employment based on disability).

The College, upon receipt of a report from a College employee who believes they are a victim of workplace harassment, shall provide information about legal resources and counseling and support services, including any available employee assistance services. The College employee receiving the report, whether a supervisor of the employer or the College employee designated to receive reports, is advised to document any incidents of workplace harassment, and shall provide a copy of this policy and accompanying Administrative Procedure to the victim upon their disclosure about alleged workplace harassment.

All incidents of behavior that may violate this policy shall be promptly investigated.

Any person who reports workplace harassment has the right to be protected from retaliation.

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<sup>1</sup> “Sexual assault” means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

The College may not require or coerce a College employee to enter into a nondisclosure<sup>2</sup> or nondisparagement<sup>3</sup> agreement.

The College may not enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation, or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing workplace harassment that occurred between College employees or between a College employee and the College, in the workplace or at a work-related event that is off College premises and coordinated by or through the College, or between a College employee and employer off College premises.

The College may enter into a settlement agreement, separation or severance agreement that includes one or more of the following provisions only when a College employee claiming to be aggrieved by workplace harassment requests to enter into the agreement: 1) a nondisclosure or nondisparagement provision; 2) a provision that prevents disclosure of factual information relating to the claim of workplace harassment; or 3) a no-rehire provision that prohibits the employee from seeking reemployment with the College as a term or condition of the agreement. The agreement must provide the College employee at least seven days after signing the agreement to revoke it.

If the College determines in good faith that an employee has engaged in workplace harassment, the College may enter into a settlement, separation or severance agreement that includes one or more of the provisions described in the previous paragraph.

It is the intent of the Board that appropriate corrective action will be taken by the College to stop workplace harassment, prevent its recurrence and address negative consequences. Staff members in violation of this policy shall be subject to discipline, up to and including dismissal and/or additional workplace harassment awareness training, as appropriate. Other individuals (e.g., board members and volunteers) whose behavior is found to be in violation of this policy shall be subject to appropriate sanctions as determined and imposed by the President or designee or the Board.

The College shall make this policy available to all College employees and shall be made a part of community college orientation materials provided and copied to new College employees at the time of hire.

The President or designee will establish a process of reporting incidents of workplace harassment and the prompt investigation.

### **Reporting Procedure:**

Any community college employee who believes they have been a victim of workplace harassment may file an oral or written report consistent with this administration regulation, may file a report through the Bureau of Labor and Industries' (BOLI) complaint resolution process, or under any other available law.

Additional information regarding the filing of a report may be obtained through the compliance officer or President or designee.

A complaint alleging an unlawful employment practice as described in ORS 659A.030, 659A.082 or 659A.112 or section 4 of Senate Bill 479 (2019) must be filed no later than five years after the occurrence of the alleged unlawful employment practice.

All documentation related to workplace harassment complaints may become part of the personnel file of the employee who is the alleged harasser, as appropriate. Additionally, a copy of all workplace harassment reports,

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<sup>2</sup> A "nondisclosure" agreement or provision prevents either party from disclosing the contents of or circumstances surrounding the agreement.

<sup>3</sup> A "nondisparagement" agreement or provision prevents either party from making disparaging statements about the other party.

complaints, and documentation will be maintained by the community college as a separate confidential file and stored in the community college office.

**Step 1** Complaints may be oral or in writing and must be filed with the Director of Human Resources. Any staff member that receives a written or oral complaint shall report the complaint shall report the complaint to the Director of Human Resources.

### **Investigation Procedure**

The Director of Human Resources is responsible for investigating reports concerning workplace harassment. The investigator(s) shall be a neutral party having had no involvement in the report presented. If the alleged workplace harassment involves Director of Human Resources, the employee may report to VP, Administrative Services. All reports of alleged workplace harassment behavior shall be investigated.

The investigator shall document the alleged, reported incident of workplace harassment; provide information about legal resources and counseling and support services, which may include community college-provided assistance services available to the College employee; provide a copy of the community college's Board policy Workplace Harassment to the College employee; and promptly initiate an investigation.

The investigator will arrange such meetings as may be necessary to discuss the issue with all concerned parties within five (5) working days after receipt of the report. The parties will have an opportunity to submit evidence and a list of witnesses. All findings of the investigation, including the response of the alleged harasser, shall be reduced to writing. The investigator shall notify the complainant in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law.

A copy of the report, complaint, or other documentation about the incident, and the date and details of notification to the complainant of the results of the investigation, together with any other documentation related to the workplace harassment incident, including disciplinary action taken or recommended, shall be forwarded to the human resources office.

**Step 2** If the complainant not satisfied with the decision at Step 1, the complainant may submit a written appeal to the President or their designee within five (5) business days after receipt of the compliance officer's response to the complaint.

The President or designee shall review the decision within five (5) business days and may meet with all parties involved. The President or designee will review the merits of the complaint and the compliance officer's decision. The President or designee will respond in writing to the complaint within ten (10) business days.

**Step 3** If a complainant is not satisfied with the decision at Step 2, a written appeal may be filed with the Board within five (5) business days of receipt of the President's or designee's response in Step II. The Board may decide to hear or deny the request for appeal at a Board meeting. The Board may meet with the concerned parties and their representative at the next regular or special Board meeting. The Board's decision will include the legal basis for the decision, findings of fact and conclusions of law. A copy of the Board's decision shall be sent to the complainant in writing within ten (10) days of this meeting.

If the Board chooses not to hear the appeal, the President's decision in Step 2 is final.

Reports involving the President should be referred to the Board chair on behalf of the Board. The Board chair will cause the information<sup>4</sup> required to be issued to the complainant as described in this administrative regulation. The Board chair shall present the complaint to the Board at a Board meeting. If the Board decides an investigation is warranted, the Board may refer the investigation to a third party. When the investigation is complete, the results will be presented to the Board. The Board may hold the hearing in executive session if the subject matter qualifies under Oregon law. The Board shall decide, within [30] days, in open session what action if any is warranted. The Board chair shall notify the complainant in writing within [10] days that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law.

Timelines may be extended based upon mutual consent of the College and the complainant in writing.

### **Follow-up Procedures**

The Director of Human Resources will follow up with the community college employee of the alleged harassment once every three months for the calendar year following the date on which the Director of Human Resources received a report of harassment, to determine whether the alleged harassment has stopped or if the employee has experienced retaliation. The Director of Human Resources will document the record of this follow-up. The Director of Human Resources will continue follow-up in this manner until and unless the employee directs the Director of Human Resources in writing to stop.

### **Other Reporting Options and Filing Information**

Nothing in this policy prevents an employee from filing a formal grievance in accordance with a collective bargaining agreement (CBA) or a formal complaint with BOLI or the Equal Employment Opportunity Commission (EEOC); or if applicable, the U.S. Department of Labor (USDOL) Civil Rights Center. Review the CBA for any provision that requires an employee to choose between the complaint procedure outlined in the CBA and filing a BOLI or EEOC complaint.

Nothing in Board policy Workplace Harassment or this administrative regulation prevents any person from seeking remedy under any other available law, whether civil or criminal.

An employee or claimant must provide advance notice of claim against the employer as required by ORS 30.275.

### **Filing a report with the U.S. Department of Labor (USDOL) Civil Rights Center.**

An employee whose agency receives federal financial assistance from the USDOL under the Workforce Innovation and Opportunity Act, Mine Safety and Health Administration, Occupational Safety and Health Administration, or Veterans' Employment and Training Service, may file a complaint with the state of Oregon Equal Opportunity Officer or directly through the USDOL Civil Rights Center. The complaint must be written, signed and filed within 180 days of when the alleged discrimination or harassment occurred.

### **Legal Reference(s):**

<a href="#">ORS 243.317-243.323</a>	<a href="#">ORS 659A.030</a>	<a href="#">ORS 659A.885</a>
<a href="#">ORS 659A.001</a>	<a href="#">ORS 659A.082</a>	<a href="#">OAR 584-020-0040</a>
<a href="#">ORS 659A.003</a>	<a href="#">ORS 659A.112</a>	<a href="#">OAR 584-020-0041</a>
<a href="#">ORS 659A.006</a>	<a href="#">ORS 659A.820</a>	
<a href="#">ORS 659A.029</a>	<a href="#">ORS 659A.875</a>	

Senate Bill 479 (2019) Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2012).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2012).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2018); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2019).

Bartsch v. Elkton School Community college, FDA-13-011 (March 27, 2014).

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<sup>4</sup> Provide information about legal resources and counseling and support services, which may include college-provided assistance services available to the employee, and a copy the college's Board policy GBEA - Workplace Harassment and this administrative regulation to the employee.