



**UMPQUA**  
Community College

## **ADMINISTRATIVE PROCEDURE**

---

---

**TITLE: Definitions under Prohibition of Discrimination, Harassment including Sexual Harassment and Sexual Assault, and Retaliation**

**ADMINISTRATIVE PROCEDURE # 3431**

**RELATED TO POLICY # 3430**

---

---

The College is committed to maintaining an academic and work environment that is free from discrimination, harassment including sexual harassment/sexual assault (“harassment” in this AP), and retaliation. Discrimination and harassment as defined in this Administrative Procedure is strictly prohibited and will not be tolerated. Retaliation is also prohibited against individuals who report discrimination, harassment, participate in workplace investigations, or otherwise assist in enforcement of the College’s policies and procedures.

For sexual harassment under Title IX, Complainants must proceed under BP 3433 Prohibition of Sexual Harassment under Title IX, AP 3433 Prohibition of Sexual Harassment under Title IX, and AP 3434 Responding to Harassment Based on Sex under Title IX.

Definitions under Oregon laws, including Chapter 659A, and HB 3415, and are not meant to be an exhaustive list that may constitute a violation of BP 3430.

- 1. Sexual Assault:** Sexual assault under this administrative procedure 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.
- 2. Sexual Harassment:** is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal or physical conduct of a sexual nature where such conduct is sufficiently severe or pervasive that it has the effect, intended or unintended, of unreasonably interfering with an individual’s work or academic performance or it has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person.

This definition encompasses:

- a. Quid pro quo sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.
- b. Hostile environment sexual harassment occurs when unwelcome sexual conduct based on a person's gender is sufficiently severe or pervasive so as to alter the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it is severe, i.e. a sexual assault.

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

- 1) **Jurisdiction:** Regardless of whether the reported incident occurred on campus or elsewhere, the College will analyze and may choose to respond or, in instances involving sexual harassment, sexual assault, domestic violence, dating violence, or stalking, may have an obligation to respond.
3. **Gender-based harassment:** Does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment. For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, assumed gender, or gender identity could constitute gender-based harassment.
  4. **Workplace Harassment:** Workplace harassment is conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that constitutes conduct prohibited by ORS 659A.082, or 659A.112.
  5. **General Harassment:** Harassment is unwelcome conduct that could be based on protected status as defined in ORS 659A.030 and unreasonably interferes with an individual's ability to work. Harassment comes in many forms, including but not limited to the following conduct that could constitute harassment:
    - a. Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes. This may include, but is not limited to, unwelcome sexual advances, teasing, derogatory insults, mocking or imitating a person's physical or mental limitations, criticizing a person's religious beliefs, suggestive, or insulting sounds.
    - b. Physical: Inappropriate or offensive touching, assault, or physical interference with free movement or work. This may include, but is not limited to, kissing, patting,

lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against or blocking another person, or obscene gestures.

- c. Visual or Written: The display or circulation of degrading visual or written material. This may include, but is not limited to, explicit or offensive posters, calendars, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions. This specifically includes using the College's computers, internet or communication devices or systems to access, send, receive or store racially, ethnically, sexually explicit, age-related, disability related or religiously, etc. offensive material.
- d. Hostile Environment: The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

6. **Retaliation**: is broadly construed and may include any on-duty or off-duty conduct, whether related to employment or not, that would tend to discourage an employee or other covered individual from reporting discrimination, harassment including sexual harassment/sexual assault, or participating in workplace investigations, or otherwise assist in enforcement of the College's policies and procedures.

Retaliation can include:

- a. Giving a covered individual "the cold shoulder" or treating them rudely;
  - b. Belittling a covered individual to others or giving an undeserved negative performance evaluation or reference;
  - c. Withholding information or cooperation necessary for the covered individual to do their job;
  - d. Changing a covered individual's work assignments or hours; or
  - e. Taking adverse action against a person who is close to the covered individual.
7. **Non-Disclosure Agreement**: Non-disclosure agreement means an agreement between the employer and employee not to disclose information related to complaints or personal action related to violations of the College's Prohibition Against Discrimination, Harassment or Retaliation policy (BP 3430).
8. **Non-disparagement Agreement**: Non-disparagement agreement means an agreement by an employee not to make negative or disparaging written or oral statements about any other employee or the College related to complaints or personnel actions related to violations of BP 3430.

The College may not require, coerce, or 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 non-disparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct that:

- a. i) Constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault; or  
ii) Constitutes discrimination prohibited by ORS 659A.082 or 659A.112; and
- b. i) Occurred between employees or between the College and an employee in the workplace or at a work-related event that is off the College premises and coordinated by or through the College; or  
ii) Occurred between the College and an employee off the College premises.

*Exceptions:* The College may enter into a settlement, separation or severance agreement that includes one or more of the following, only when an employee claiming to be aggrieved by conduct described above as workplace harassment requests to enter into the agreement:

- a. A provision described above;
- b. A provision that prevents the disclosure of factual information relating to a claim of discrimination or conduct that constitutes sexual assault; or
- c. A no-rehire provision that prohibits the employee from seeking re-employment with the College as a term or condition of the agreement.

An agreement entered into under this exception must provide the employee at least seven days after executing the agreement to revoke the agreement. The agreement may not become effective until after the revocation period has expired.

**REFERENCES:**

- ORS 659A
- ORS 243
- Oregon Workplace Fairness Act as amended
- HB 3415

**RESPONSIBILITY:**

The Executive Director of Human Resources is responsible for implementing and updating this procedure.

---

**NEXT REVIEW DATE: 2029 - 2030**  
**DATE OF ADOPTION: 5/3/2023**  
**DATE(S) OF REVISION:**  
**DATE(S) OF PRIOR REVIEW:**