

DRAFT
POLICY & PROCEDURES ON SEXUAL HARASSMENT
5/91

Our Commitment:

The Evergreen State College endeavors to promote, maintain, and encourage a learning and work environment free from all forms of discrimination, including sexual harassment. All students, staff, faculty, and the public should be aware that the College is committed to the prevention and elimination of sexual harassment.

Our Responsibility:

25 Faculty members
All members of the College Community have the responsibility to conduct themselves in such a way as to contribute to an environment free of sexual harassment. Taking positive steps to sensitize employees and students with respect to this issue is also a responsibility of College administration. Should an administrator, supervisor, or student have knowledge of conduct involving sexual harassment or receive a complaint of sexual harassment that involves a member of the Community under his or her administrative jurisdiction, immediate steps must be taken to deal with the matter appropriately.

Guidelines for all community members: Faculty, staff, students, public
Sexual harassment is illegal. The College's policy on sexual harassment addresses violations of Chapter 49.60 RCW, the law against discrimination, Title VII of the 1964 Civil Rights Act as amended, and Title IX of the Federal Education Amendment of 1972. Title IX requires universities and other federally funded educational institutions to establish adequate grievance procedures for alleged violations. See related sections in the Faculty Handbook (Sections 3.300-Affirmative Action, and 3.500-Sexual Harassment), the Social Contract (Section III-Freedom and Civility and Section VI Prohibition Against Discrimination) and the Policies and Procedures Manual (Section IIIA-Affirmative Action). Individuals who have been found to violate these policies will be subject to sanctions, including dismissal and expulsion.

Retaliation:

Retaliation against individuals participating in the procedures described here is a violation of federal Civil Rights law concerning sexual harassment. Any act of retaliation will be dealt with by the College through grievance procedures. *This is unclear*

Definitions:

Sexual harassment of an Evergreen community member will be judged to occur in any of these circumstances: 1) when one's authority or power (explicitly or implicitly) is used to coerce another into unwanted sexual relations or to punish another for his

or her refusal or 2) when a member of the College community creates an intimidating, hostile, or offensive working or educational environment through verbal or physical conduct of a sexual nature that adversely affects another person's ability to learn to do his/her job. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education;
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual; or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive environment.

These definitions are based on the Equal Employment Opportunity Commission's guidelines which are designed for the workplace. These definitions are adapted and legally applicable to the educational setting.

While sexual harassment may take place in a situation of power differential between persons involved, this policy recognizes that sexual harassment may also occur between persons of similar status, i.e. student-student, faculty-faculty, staff-staff.

In determining whether alleged conduct constitutes sexual harassment, the record as a whole and the entire set of circumstances will be the determining factors. A decision will be made from the evidence on a case-by-case basis.

Academic Freedom:

This policy shall not be construed in a manner that curtails academic freedom of faculty and students to choose instructional materials and to discuss them in a manner appropriate to the theme of the program. The Evergreen State College subscribes to the American Association of University Professors statement of principles on academic freedom and tenure as modified by the College's faculty reappointment policy.

CONSENSUAL RELATIONS:

Consenting romantic and sexual relationships between faculty and student or between supervisor and employee; while not expressly forbidden, places participants at risk for later claims of sexual harassment (see Korf v. Ball State University (1984)). Faculty are referred to the American Association of University Professor's

investigated and processed more effectively. However, the law allows that formal complaints can be filed 180 days from the act of alleged harassment. Filing begins by meeting with the Affirmative Action Officer and by putting specific concerns in writing signed by the complainant.

The complainant must be aware that facts are harder to substantiate and the investigation becomes more difficult as time passes. All cases will be pursued to the extent evidence is available.

The College reserves the right to initiate an investigation of an employee, student, or faculty member where there is substantial evidence that sexual harassment has occurred.

The Affirmative Action Officer will immediately notify the respondent that a formal complaint of sexual harassment has been made. The respondent will receive a copy of the written complaint.

- more info on who this trained investigative team is? How are they selected? How are they trained?*
- (b) Within 15 business days after receipt of a formal complaint, a trained investigative team consisting of one female and one male from the College appointed by the President will complete a preliminary investigation and provide a written report to the Affirmative Action Officer. The team will consult with the complainant, the respondent and/or other appropriate persons including the supervisors of the respondent and the complainant.

The respondent is encouraged to provide the Affirmative Action Office a written response to the complaint. If the respondent fails to answer a charge or participate in an investigation concerning sexual harassment, this will not prevent the process from proceeding by his or her silence or absence. Failure to respond may result in the investigation proceeding solely on the basis of the complainant's testimony and evidence.

- (c) Upon receipt of the investigative report any case found to lack merit will be dismissed by the Affirmative Action Officer upon receipt and review of the investigators' report. If, for any reason, more time is needed to make a determination of whether the case has merit, the complainant and respondent will be informed in writing of the reasons the investigation is delayed, and the probable date of completion. Charges brought with malicious intent are serious violations of the Social Contract and individuals engaging in such actions are subject to the grievance process (See WAC 174-120-010 through 080) and may receive a range of sanctions.

Notification:

1. Seek the assistance of the Affirmative Action Officer to notify the respondent that a problem has been brought to the Affirmative Action Officer's attention. In this capacity the Affirmative Action Officer does not mediate but merely informs the respondent of perceived sexual harassment. This can be done without revealing the name of the complainant unless specific characteristics of the complaint make this impossible. The verbal complaint must be specific and clear. (Information can be brought to the Affirmative Action Officer by a member of the community.)

*raise this
mean
3rd party/
observer?
if so, it's not
worded clear*

OR

Mediation:

2. Seek the assistance of the Affirmative Action Officer to serve as a mediator. In this role the Affirmative Action Officer listens to both sides of the situation and provides advice on resolution. Mediation may prevent guarantees of confidentiality. The complaint will be specific and clear.

OR:

Direct Resolution:

3. *who? The complainant?*
Resolve the matter directly with the person perceived to have been harassed with no intervention by the Affirmative Action Officer.

OR:

Formal Procedure:

4. File a formal complaint.

Formal Process

*Deadlines cited in this document are intended to serve as outside limits for actions to occur. In the interest of the parties concerned, all matters should be handled as expeditiously as possible.

- (a) Any formal complaint of sexual harassment should be filed by the complainant as soon as possible with the Affirmative Action Officer so that incidents can be

in order for an investigation to be terminated most a
mutual resolution be reached? what if the complainant wishes to
drop the formal investigation, can the college continue it?
who is involved in the mutual agreement: complainant, respondent only
or AFI, investigative team, 3rd party, supervisor, etc?

- (d) The investigative team will continue to obtain facts for a case which has merit and warrants further investigation. The investigators will call as many persons to be questioned as they deem necessary.
- (e) The investigative team will report their evidence in writing to the Affirmative Action Officer. The report will include (a) statement of allegation, (b) reply to the allegation by the respondent (c) statement of evidence, (d) recommendations and findings. The report will be shared with the respondent and the complainant. A written decision will be made by the Affirmative Action Officer no later than 15 days after receipt of a written investigating team report. The decision will be based on a review of the record as a whole and the entire set of circumstances. If, for any reason, an extension is necessary, the complainant and respondent will be informed in writing of the reasons for the extension, the status of the investigation, and the probable date of completion.
- (f) If the Affirmative Action Officer determines that sexual harassment has occurred, the appropriate parties involved in the case will be notified in writing. Sanctions will be recommended to the respondent's appointing authority. Both parties will be notified of the recommended sanctions. (see section on **Sanctions**)
- (g) All written proceedings, including the complaint, the response by the respondent, testimony of witnesses, and other documentation relating to the complaint will be placed in a confidential file in the Affirmative Action Office for a period of six years in order to comply with appropriate statutes of limitations (See Chapter 40.14.060 RCW). This is important if there is further litigation by either the complainant or the respondent.
- (h) If the finding is "no reasonable cause," the Affirmative Action Officer will notify the principal parties involved that the case is closed. Records of the investigation will remain with the Affirmative Action office and will not become a part of an individual's personnel file.

A formal investigation can be terminated at any time should a mutually satisfactory resolution be reached before a written finding is made.

SANCTIONS:

- (a) All sanctions are applied by the Vice President for Student Affairs in the case of students, by the appointing authority in the case of staff, or by the

Provost, in the case of faculty. Education about sexual harassment through the Affirmative Action Office will be a minimum required sanction.

- (b) Students held in violation may face a warning, conditional re-enrollment, disenrollment, or expulsion, depending on the seriousness of the case. Students are advised that acts of sexual harassment may render them liable to criminal prosecution or civil liability as well.
- (c) Faculty and staff held in violation may face a warning, reprimand, suspension without pay for a specified length of time, reassignment to different teaching or working responsibilities or termination. Faculty and staff are advised that acts of sexual harassment may render them liable to criminal prosecution or civil liability as well.

APPEAL OF SANCTIONS:

1. Classified staff may appeal according to the rules of the Higher Education Personnel Board (HEPB)
2. Administrative and exempt staff may appeal according to the procedures outlined in the Affirmative Action policy. Final appeal on the findings rests with The Evergreen State College Board of Trustees as outlined in the Affirmative Action policy.
3. Students appeal according to procedures in the student conduct code (see Social Contract, WAC 174-120-080).
3. Faculty may appeal pursuant to the procedures specified in the policy on Mid-Contract Termination with Adequate Cause (WAC 174-122).

** Faculty, staff, students - what about 'the public' - Harassment by or of a 'customer' or member of the community from outside the college.*

** Supervisor liability - to report.*