



AP 3435 Discrimination and Harassment Complaints and Investigations

References:

Title VII of the Civil Rights Act of 1964; 42 U.S. Code Sections 2000e et seq.;
Equal Employment Opportunity Commission (EEOC) Notice 915.002 (dated June 18, 1999);
ORS 659A;
ORS 659.850 to 659.860, OAR Chapter 715, Div 11 (Student complaints);
Chapter 451, Oregon 2019 Laws (Sexual harassment policies);
ORS 243;
Oregon HB 3415;
Age Discrimination in Employment Act of 1967 (ADEA);
Americans with Disabilities Act of 1990 (ADA);
Section 504 of the Rehabilitation Act of 1973; 29 U.S. Code Section 794;
Age Discrimination Act of 1975; 42 U.S. Code Sections 6101-6107;
Title II of the Americans with Disabilities Act, 28 Code of Federal Regulations Part 35;
BP 3433 Sexual Harassment Title IX;
AP 3433 Sexual Harassment Title IX;
AP 3432 Workplace Harassment;
AP 3434 Responding to Sexual Harassment Title IX

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. For other forms of sexual harassment or gender-based harassment, Complainants should use this procedure. Also, see AP 3432 related to workplace harassment.

Complaint: Any person who reports having suffered harassment, discrimination, or retaliation may file a complaint of harassment, discrimination, or retaliation. Complainants are encouraged to report harassment before it becomes severe or pervasive. Rogue Community College (“RCC”) strives to stop harassment before it rises to the level of a violation of state or federal law.

Authority over Parties:

RCC has authority over students, employees, and third parties for alleged violations of this procedure that occur on RCC’s property. RCC has authority over RCC employees and students for alleged violations of this policy that occur at RCC activities or events. RCC may exercise authority over events that occur off-campus to determine if



the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

RCC may have an obligation to respond to any complaint received by the institution which includes but is not limited to: (A) Sexual harassment; (B) Sexual assault; (C) Domestic violence; (D) Dating violence; or (E) Stalking.

Responsible Employees and Mandated Reporting:

If the report involves a minor, RCC and its employees will comply with state mandated reporting requirements.

All responsible employees are required to report all actual or suspected misconduct under this procedure immediately. RCC is on notice if a responsible employee has actual knowledge, or in the exercise of reasonable care should have known, about the misconduct. At RCC all employees, including student employees, other than Counselors acting in their professional capacity are considered responsible employees.

Any person may make a report by directly contacting the appropriate official listed below.

The following person has been designated to handle inquiries regarding the non-discrimination policies and serves as the ADA/504 Compliance Officer:

Vice President of People, Culture, & Safety and Chief Human Resources Officer (CHRO)
Jamee Harrington
541-956-7017
jharrington@roquecc.edu
Redwood Campus - Josephine Building

The following persons are responsible for coordinating Title IX (gender discrimination):

Lead Title IX Coordinator
Lucia Bartscher
Equity, Diversity, and Inclusion Coordinator
541-956-7124
lbartscher@roquecc.edu
Redwood Campus, L Building Rm L1
Table Rock Campus, TRC-A138

Deputy Title IX Coordinator
April Hamlin
Dean of Student Success



541-956-7255
ahamlin@roquecc.edu
Redwood Campus - C Building

Deputy Title IX Coordinator
Sean Taggart
Director of Risk Management
541-956-7061
staggart@roquecc.edu
Redwood Campus - A Building

The appropriate official will receive all relevant details about the alleged misconduct in order to determine what occurred and how to resolve the situation. This includes the names of the reporting party and responding party (if known), and the date, time, and location of the alleged misconduct.

Retaliation: Persons who make complaints of harassment or discrimination or provide information related to such complaints will be protected against retaliation. RCC will take all reasonable steps to protect the Complainant from further harassment or discrimination.

The appropriate officials referenced above are the individuals charged with receiving reports of discrimination, harassment, or retaliation. The actual investigation of reports may be assigned to other trained RCC employees or to outside persons or organizations under contract with RCC. At a minimum, the investigation will be assigned to other RCC staff or outside investigators whenever the officials listed above are named in the complaint or implicated by the allegations in the complaint.

Reporting Options if the Responding Party is a:

- Board of Education Member: Any Reporting Party or Respondent who believes a Board of Education member has violated this procedure should immediately notify the Title IX Coordinator of their concerns. The Title IX Coordinator will forward these concerns to the third-party firm for review.
- Vice President or College President: Any Reporting Party or Respondent who believes the President cannot be impartial or has violated this procedure should immediately notify the Title IX Coordinator of their concerns. The Title IX Coordinator will forward these concerns to the third-party firm for review.
- Chief Human Resources Officer: Any Reporting Party or Responding Party who believes the CHRO cannot be impartial or who has violated this procedure should immediately notify the College President.
- Title IX Coordinator/Deputy Coordinator: Any Reporting Party or Responding Party who believes the Title IX Coordinator/Deputy Coordinator cannot be impartial or who has violated this procedure should immediately notify the Chief Human Resources Officer.



Standard of Proof

RCC will use a “preponderance of the evidence” standard of proof in determining whether there has been a violation of this policy. This standard of proof is also known as “more likely than not” standard.

Who May File a Complaint: Any student, employee, or third party who believes they have been discriminated against, harassed, or retaliated by a student, employee, or third party in violation of this procedure and the related policy.

Where to File a Complaint: An employee, student, or third party who believes they have been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing to any of the following people:

- The Chief Human Resources Officer
- The Title IX Coordinator
- Students may discuss their report confidentially with an RCC Counselor who is generally not obligated to disclose the information
- Employees may file a report with their supervisor

Complainants filing employment-related complaints shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or through the Oregon Bureau of Labor and Industries (BOLI) complaint resolution process.

An employee or claimant must provide advance notice of a claim against the employer as required by the Oregon Tort Claims Act (ORS 30.275).

Any RCC employee who receives a harassment, discrimination, or retaliation complaint shall notify the CHRO immediately.

Filing a Timely Complaint: Since failure to report harassment and discrimination impedes RCC’s ability to stop the behavior, RCC strongly encourages anyone who believes they are being harassed or discriminated against, to file a complaint. RCC also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes RCC’s ability to investigate and remediate.

All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination; the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.



RCC will investigate complaints involving acts that occur off campus if they are related to an academic or work activity or if the harassing conduct interferes with or limits a student's or employee's ability to participate in or benefit from the school's programs or activities.

Privileged or Confidential Reporting

An RCC responsible employee should, whenever possible, before a student or employee reveals information that they may wish to keep confidential, ensure that the person making the report understands the employee's obligations to report to RCC, the reporting party's option to request confidentiality, which RCC will take into consideration, and the reporting party's ability to share the information confidentially with designated RCC employees.

Professional, licensed, mental health counselors, who provide mental-health counseling to members of the RCC community, or interns, graduate students, and others supervised by professional licensed counselors, are not required to report any information received in confidence.

Communicating that the Conduct is Unwelcome: RCC encourages, but does not require, students and employees to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste or inappropriate.

Intake and Processing of the Complaint: Upon receiving notification of a harassment or discrimination complaint, the CHRO or their designee shall:

- Offer options to informally resolve the charges, including but not limited to mediation, rearrangement of work or academic schedules, obtaining apologies, providing informal counseling, training, etc.
- Advise all parties that /they need not participate in an informal resolution of the complaint, as described above, and they have the right to end the informal resolution process at any time.
- Advise student Complainants that they may file a complaint with the Office for Civil Rights of the U.S. Department of Education and employee Complainants may file a complaint with the Oregon Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC). All Complainants should be advised that they have a right to file a complaint with local law enforcement, if the act complained of is also a criminal act. RCC must investigate even if the complainant files a complaint with local law enforcement. In addition, RCC should ensure that Complainants are aware of any available resources, such as health and mental health services.

- Take interim steps to protect a Complainant from coming into contact with the Respondent, especially if the Complainant is a victim of sexual violence. The CHRO or designee should notify the Complainant of their options to avoid contact with the Respondent. For instance, RCC may prohibit the alleged perpetrator from having any contact with the Complainant pending the results of the investigation. When taking steps to separate the Complainant and the alleged perpetrator, RCC shall minimize the burden on the Complainant.

Upon Receiving the Report – Health and Safety

The CHRO or designee together with relevant campus partners will make an immediate assessment concerning the health and safety of the reporting party and campus community as a whole. RCC will provide the reporting party with immediate, supportive measures necessary to protect their health and safety.

Where RCC determines that there is a substantial threat to the campus community, it will issue a timely warning. RCC will issue the warning according to RCC's administrative procedures. RCC will not disclose the victim's name or other identifying information when issuing the warning.

Confidentiality

Where the reporting party requests confidentiality or that RCC not conduct an investigation, RCC will take all reasonable steps to investigate while honoring the request. Where the reporting party insists that RCC not disclose their name or other identifiable information to the Respondent, RCC will inform the Complainant that its ability to respond will be limited. RCC will evaluate this request in the context of its responsibility to provide a safe and nondiscriminatory environment for all employees and students. However, RCC will take steps to offer appropriate remedial measures to the reporting party.

When weighing a request for confidentiality against the seriousness of the alleged harassment discrimination, or retaliation, the CHRO or designee, in consultation with appropriate campus partners may consider, but are not limited to, the following factors:

- Whether the alleged behavior included acts of violence;
- Whether there is an increased risk of the alleged perpetrator committing acts of violence;
- Whether there is an increased risk of future acts of violence under similar circumstances;
- Whether the alleged behavior was perpetrated with a weapon;
- The age of the person subjected to the violence;
- And whether RCC possess other means to obtain relevant evidence.



Investigation of the Complaint: RCC shall conduct a prompt, thorough, and impartial investigation into every complaint and claim of harassment, discrimination, or retaliation. This procedure will be followed if the reported conduct falls within the jurisdiction of this procedure. If the reported conduct falls outside the jurisdiction of this procedure, RCC will direct the reporting party to the appropriate process to resolve their report.

No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with the academic, educational, extracurricular, athletic, and other programs of RCC, whether those programs take place in RCC's facilities, in an RCC controlled vehicle, or at a class or training program sponsored by RCC at another location. RCC shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.

RCC will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, RCC may weigh the request for confidentiality against the seriousness of the alleged harassment, the Complainant's age, whether there have been other harassment complaints about the same individual, and the alleged perpetrator's rights to receive information about the allegations if the information is maintained by RCC as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. RCC will inform the Complainant if it cannot maintain confidentiality.

Investigation Steps: RCC will fairly and objectively investigate harassment and discrimination complaints. Employees designated to serve as Investigators under this policy shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how RCC's grievance procedures operate. The Investigator cannot have any actual bias or conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps: interviewing the Complainant(s); interviewing Respondents; identifying and interviewing witnesses and reviewing evidence identified by each Party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of RCC's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic/security files of all involved Parties; and reaching a conclusion as to the allegations. When RCC evaluates the complaint, it shall do so using a preponderance of the evidence standard. RCC will decide whether it is more likely than not that discrimination or harassment has occurred after considering all the evidence it has gathered.



If there are conflicting versions of relevant events, RCC's Investigator will weigh each Party's credibility. Factors that will be considered in determining credibility include: inherent plausibility; demeanor; motive to falsify; corroboration; and past record.

At the conclusion of the investigation each party will be provided with a summary report.

Timeline for Completion: RCC will undertake its investigation promptly and swiftly as possible. If there are parallel criminal investigation, RCC will cooperate with the external law enforcement agency and will coordinate to ensure that this process does not hinder legal process or proceedings. Extenuating circumstances such as a request from law enforcement may require delay of the investigation. RCC will cooperate to the fullest extent possible but will not be able to delay its process indefinitely.

Cooperation Encouraged: All employees will cooperate with an RCC investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of RCC to investigate thoroughly and respond effectively. However, lack of cooperation by a Complainant or witnesses does not relieve RCC of its obligation to investigate. RCC will take reasonable steps to collect information and remedy any effects on the complainant if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed.

Written Summary Report: The results of the investigation of a complaint shall be set forth in a written summary report – prepared by the Investigator – that will include at least all of the following information:

- A description of the circumstances giving rise to the complaint;
- A description of the procedural steps taken during the investigation;
- A summary of the testimony provided by each Party and any witnesses the Investigator interviewed;
- An analysis of relevant evidence collected during the course of the investigation including a list of relevant documents; and
- Any other information deemed appropriate by RCC.

Reaching a Determination:

The following people may make determinations of responsibility following these procedures:

- The Chief Human Resources Officer
- The Director of Risk Management
- The Dean of Student Success
- In particular circumstances outlined above, a third-party firm (hired for the purpose of investigating cases subject to this procedure) or College President



Once the appropriate person receives the investigative report, they, using the preponderance of the evidence standard, will make a determination as to whether harassment, discrimination, or retaliation which would violate RCC's policies and procedures has occurred with respect to each allegation in the complaint. Written notice as to the administrative determination and right to appeal shall be provided to the Parties.

Discipline and Corrective Action:

If harassment, discrimination or retaliation occurred in violation of the policy or procedure, RCC shall take disciplinary action against the Respondent and any other remedial action it determines to be appropriate consistent with State and federal law. The action will be prompt, effective, and commensurate with the severity of the conduct. Remedies for the Complainant might include, but are not limited to:

- providing an escort for the Complainant between the parking lot and /their workplace, classroom, office, or other location on campus;
- ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
- preventing offending third parties from entering campus;
- providing counseling services or a referral to counseling services;
- providing a referral to medical services;
- providing academic support services, such as tutoring;
- arranging for a student-Complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant being disciplined.

If RCC imposes discipline, the nature of the discipline will not be communicated to the Complainant. However, RCC may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the Complainant. For example, RCC may inform the Complainant that the harasser must stay away from the Complainant.

In the case of a crime of violence or a non-forcible sex offense, and the Respondent is a student, the final results of any disciplinary proceeding conducted by RCC against the Respondent may be disclosed to the Complainant, if RCC determines as a result of the disciplinary proceedings, the student violated RCC's rules or policies. The final results of any disciplinary proceeding include only the name of the student, the violation committed, and any sanction imposed by the institution on that student.



Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

RCC will ensure that Complainants and witnesses know how to report any subsequent problems, and the CHRO or designee should follow-up with Complainants to determine whether any retaliation or new incidents of harassment have occurred.

If RCC cannot take disciplinary action against the Respondent because the Complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

Appeals

If RCC imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the applicable procedure, which will be identified in the notice of determination, for appealing a disciplinary decision.

A Complainant or Respondent may appeal the administrative determination within 10 business days by submitting a written appeal to the Chief Human Resources Officer or designee. The grounds for appeal are:

- A procedural irregularity affected the outcome;
- New evidence was not reasonably available at the time of RCC's determination regarding responsibility, and this new evidence could affect the outcome; or
- Anyone involved in the investigation or adjudication had a conflict of interest or actual bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

The Chief Human Resources Officer or designee shall issue a final decision in the matter as promptly as possible.

File Retention

RCC will retain on file for a period of at least seven years after closing the case copies of:

- the original complaint;
- the investigatory report;
- the summary of the report if one is prepared;
- the notice provided to the Parties, of RCC's administrative determination and the right to appeal;
- any appeal; and
- RCC's final decision.



Dissemination of Policy and Procedures

RCC's board policy and administrative procedures related to discrimination and harassment will include information that specifically addresses sexual violence. RCC's board policy and administrative procedures will be provided to all students and employees, and will be available at the Human Resources Office, the Student Compliance Office, the Risk Management Office, and posted on RCC's website.

When hired, employees are required to sign that they have received the policy and procedures, and the signed acknowledgment of receipt is placed in each employee's personnel file. In addition, these policies and procedures are incorporated into RCC's course catalogs and orientation materials for new students.

Training

RCC will provide training to all employees. This includes counselors, faculty, health personnel, campus security, coaches, and all staff who regularly interact with students. Training for academic staff should emphasize environmental harassment in the classroom. RCC will also make training available to all students on admission.

In years in which a substantive policy or procedural change has occurred, all RCC employees will attend a training update or receive a copy of the revised policies and procedures.

Participants in training programs will be required to sign a statement that they have either understood the policies and procedures, their responsibilities, and their own and RCC's potential liability, or that they did not understand the policy and desire further training.

Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and violence toward students, RCC will provide preventive education programs and make victim resources, including comprehensive victim services, available through community referrals. RCC will include such programs in their orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, RCC's policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate RCC and law enforcement authorities. Since victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of RCC or campus rules were involved, RCC will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the victim at fault for sexual violence. RCC will grant amnesty for other rule violations (unless there is a health or safety concern) that are reported as part of a report under this procedure.



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