

WAC 132U-305-010 Definitions. (1) **Actual knowledge:** Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.

(2) **Complainant:** Employee(s), applicant(s), student(s), or visitors(s) of Whatcom Community College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

(3) **Complaint:** A description of facts filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. In complaints where the Title IX coordinator signs a formal complaint, the Title IX coordinator is not a complainant or otherwise a party and must otherwise comply with their regulatory duties.

(4) **Consent:** 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 he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(5) **Decision maker:** The individual that leads and coordinates the disciplinary phase of these procedures, following a full investigation as outlined below. In cases involving only students as complainants and respondents the decision maker will be the director for student conduct or designee. In cases involving employees as either complainants, respondents, or both the decision maker will be the executive director for human resources or designee. The decision maker cannot be the Title IX coordinator involved in the case, or the investigator.

(6) **Resolution:** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline.

(7) **Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons. Any person alleged to have violated this policy is presumed not responsible until the resolution of the formal or informal process.

(8) **Retaliation:** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because the person reported an alleged violation of this policy or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in an investigation or disciplinary proceeding.

(9) **Supportive measures:** Nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. The Title IX coordinator is responsible for coordinat-

ing these measures. Supportive measures may include: Counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus safety escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures (See VAWA Section 304 for additional measures that may be required). These measures are available to complainants without the filing of a formal complaint.

[Statutory Authority: Chapter 28B.50 RCW. WSR 21-18-098, § 132U-305-010, filed 8/31/21, effective 10/1/21.]