

WSR 21-10-031
PROPOSED RULES
CLOVER PARK
TECHNICAL COLLEGE

[Filed April 27, 2021, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [21-06-004].

Title of Rule and Other Identifying Information: Student code of conduct update/revision.

Hearing Location(s): On June 8, 2021, at 10-11 a.m., Zoom
<https://cptc-edu.zoom.us/j/89554399517>.

Date of Intended Adoption: July 15, 2021.

Submit Written Comments to: Dean Kelly, 4500 Steilacoom Boulevard, Lakewood, WA 98499, email dean.kelly@cptc.edu, by May 15, 2021.

Assistance for Persons with Disabilities: Contact Dean Kelly, phone 253-589-6066, email dean.kelly@cptc.edu, by May 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adopt new Title IX grievance procedures as mandated by the United States Department of Education (DOE).

Reasons Supporting Proposal: Requirement from United States Department of Education.

Statutory Authority for Adoption: RCW 288.50.140; WSR 14-11-070; United States Department of Education 34 C.F.R. Part 106; chapter 495C-121 WAC.

Statute Being Implemented: Chapter 495C-121 WAC.

Rule is necessary because of federal law, United States Department of Education 34 C.F.R. Part 106.

Name of Proponent: Clover Park Technical College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Clover Park Technical College, 4500 Steilacoom Boulevard, Lakewood, WA 98499, 253-589-5800.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Just updated language as required by DOE. No fiscal impact.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Just updated language in the code of conduct as it relates to adjudicating the process. No fiscal impact or costs.

April 27, 2021

Dean Kelly

Dean of Student Success

OTS-2854.1

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-210 Supplemental sexual misconduct procedures.

~~((In student discipline matters involving allegations of sexual misconduct by a student:~~

~~(1) Both the respondent and the complainant shall be provided the same, or substantially equivalent, procedural rights to participate. For the complainant, this includes the rights to meet with the student conduct officer during the initial disciplinary process under WAC 495C-121-100 and to appeal as provided in WAC 495C-121-230.~~

~~(2) These rules shall supplement the foregoing student disciplinary rules in WAC 495C-121-010 through 495C-121-190. In the event of conflict between these supplemental sexual misconduct rules and the foregoing rules, these supplemental rules shall prevail.) Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Clover Park Technical College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of sexual misconduct. The supplemental procedures provided for in WAC 495C-121-210 through 495C-121-270 shall supplement the other procedural requirements of this chapter and will govern all student conduct proceedings regarding alleged acts of sexual misconduct. In the event of a conflict between the supplemental procedure and other requirements of this chapter, the requirements of the supplemental procedure shall control.~~

For purposes of this supplemental procedure, "sexual misconduct" encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Clover Park Technical College's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of

Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-210, filed 5/19/14, effective 6/19/14.]

NEW SECTION

WAC 495C-121-215 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Clover Park Technical College educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Clover Park Technical College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section, have not been met. Dismissal under this Title IX supplemental procedure does not prohibit the college from pursuing other disciplinary action based on in situations where the allegations against the respondent, if true, would constitute violations of other provisions of the college's student conduct code, chapter 495C-121 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

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AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-220 Supplemental complaint process. With respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX compliance officer shall investigate, or assure investigation of, complaints or other reports of alleged sexual misconduct by a student. The investigation will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for possible disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue the mediation at any time. Mediation shall not be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process such complaints.

~~((4) The student conduct officer, prior to serving a disciplinary decision under WAC 495C-121-100, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or disciplinary conditions that may be imposed.~~

~~(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent under WAC 495C-121-100, will serve a written notice, in compliance with FERPA, informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions which are being imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of her/his rights to appeal as stated in WAC 495C-121-230. If protective disciplinary sanctions and/or conditions are imposed, the student conduct officer shall also make a reasonable effort to have the notice served upon the complainant prior to service upon the respondent.))~~

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-220, filed 5/19/14, effective 6/19/14.]

NEW SECTION

WAC 495C-121-225 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX compliance officer, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the stu-

dent conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

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NEW SECTION

WAC 495C-121-235 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 495C-121-150. In no event will the hearing date be set less than ten days after the Title IX compliance officer provides the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

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NEW SECTION

WAC 495C-121-240 Rights of parties. (1) Clover Park Technical College's student conduct procedures, chapter 495C-121 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX compliance officer will appoint an advisor of

the college's choosing on the party's behalf at no expense to the party.

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NEW SECTION

WAC 495C-121-250 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The chair of the student conduct committee shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

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NEW SECTION

WAC 495C-121-260 Initial order. (1) In addition to complying with chapter 495C-121 WAC, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of re-

sponsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Clover Park Technical College's educational programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The chair of the student conduct committee will serve the initial order on the parties simultaneously.

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NEW SECTION

WAC 495C-121-270 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495C-121-080.

(2) The president or designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

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REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 495C-121-230 Supplemental appeal rights.