

WSR 21-20-025

EXPEDITED RULES

COLUMBIA BASIN COLLEGE

[Filed September 24, 2021, 9:04 a.m.]

Title of Rule and Other Identifying Information: Amending Title IX Hearing Procedure for Students, WAC 132S-110-010 and 132S-110-070.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 132S-110 WAC, Columbia Basin College filed an emergency rule to update sections of chapter 132S-110 WAC, Title IX hearing procedure for students. Columbia Basin College is required by the United States Department of Education to comply with Title IX regulations.

Reasons Supporting Proposal: A recent court case holding (*Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021)) has affected the interpretation of how cross examination is used in the Title IX student process. Chapter 132S-110 WAC establishes procedures for hearing procedures for students. The proposed amendment clarifies hearing procedures regarding cross examination on how that is used in hearing procedures.

Statutory Authority for Adoption: Chapter 34.05 RCW.

Statute Being Implemented: 34 C.F.R. § 106.45 (b) (6) (i).

Rule is necessary because of federal law, and federal court decision, *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021).

Name of Proponent: Camilla Glatt, Vice President for human resources and legal affairs, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Camilla Glatt, 2600 North 20th Avenue, Pasco, WA, 509-542-5548.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The changes are required by law.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Content is explicitly and specifically dictated by statute.

This notice meets the following criteria to use the expedited repeal process for these rules:

The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This rule is being proposed under an expedited rule-making process that will eliminate the need for the college to hold public hearings, prepare a small business economic impact statement, or provide responses to the criteria for legislative rules. If you object to this use of the expedited rule-making process,

you must express your objections in writing and they must be sent to Camilla Glatt, Vice President for Human Resources and Legal Affairs, Columbia Basin College, 2600 North 20th Avenue, Pasco, WA 99301, by November 7, 2021.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Camilla Glatt, Columbia Basin College, 2600 North 20th Avenue, phone 509-542-5548, fax 509-544-2029, email cglatt@columbiabasin.edu, AND RECEIVED BY December 6, 2021.

September 24, 2021
Camilla Glatt
Vice President
for Human Resources
and Legal Affairs

OTS-3296.1

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-010 Order of precedence. This procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to the college's Title IX grievance policy and regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these hearing procedures conflict with Columbia Basin College's standard disciplinary procedures, WAC 132S-100-010 through 132S-100-500 these procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the hearing panel and hearing panel chair.

[Statutory Authority: RCW 28B.50.140 and 20 U.S.C. § 1092(f) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 20-23-031, § 132S-110-010, filed 11/10/20, effective 12/11/20.]

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-070 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The hearing panel chair 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 hearing panel must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5))~~ No negative inference: The hearing panel 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))~~ (5) Privileged evidence: The hearing panel 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.

[Statutory Authority: RCW 28B.50.140 and 20 U.S.C. § 1092(f) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 20-23-031, § 132S-110-070, filed 11/10/20, effective 12/11/20.]