

WSR 22-16-090

PROPOSED RULES

SKAGIT VALLEY COLLEGE

[Filed August 1, 2022, 5:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-043.

Title of Rule and Other Identifying Information: WAC 132D-310-005 Antidiscrimination policy, 132D-150-500 Order of precedence, 132D-150-560 Evidence, and 132D-150-580 Appeals.

Hearing Location(s): On September 6, 2022, at 2:00 - 2:30 p.m., Zoom <https://skagitvalleycollege.zoom.us/j/83434277600>.

Date of Intended Adoption: September 12, 2022.

Submit Written Comments to: Sandy Jordan, 2405 East College Way, Mount Vernon, WA 98273, email sandy.jordan@skagit.edu, fax 360-416-7773, by September 1, 2022.

Assistance for Persons with Disabilities: Contact Pam Davis, phone 360-416-7995, fax 360-416-7773, TTY 360-416-7718, email pam.davis@skagit.edu, by September 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Over the past year, college staff have been in the process of reviewing college policies related to Title IX to ensure compliance with the law and to consolidate and clarify language. Based on that work, it is recommended to repeal WAC 132D-310-005 and revise WAC 132D-150-500, 132D-150-560, and 132D-150-580 to ensure that we have policies and procedures that allows for Title IX and Non-Title IX harassment and discrimination procedures. The completion of this work is consistent with ongoing guidance from the Assistant Attorney General's (AAG) office and is consistent with language of other colleges in the Washington community and technical college system.

Reasons Supporting Proposal: The proposed changes will ensure compliance with Title IX and will clarify language. The completion of this work is consistent with ongoing guidance from the AAG's office and is consistent with language of other colleges in the Washington community and technical college system.

Statutory Authority for Adoption: RCW 28B.50.140.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Skagit Valley College, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Sandy Jordan, 2405 East College Way, Mount Vernon, WA 98273, 360-416-7923; Enforcement: Claire Peinado, 2405 East College Way, Mount Vernon, WA 98273, 360-416-7961.

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.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

August 1, 2022

Pam Davis

Executive Assistant to the President
Rules Coordinator

OTS-3784.1

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-500 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Skagit Valley College's standard disciplinary procedures, WAC 132D-150-010 through 132D-150-410, these supplemental procedures shall take precedence. Skagit Valley College may, at its discretion, contract with an administrative law judge or other person to act as a presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair. If any provision of this code is invalidated by court order or operation of law, the affected provision of the code will no longer apply.

[Statutory Authority: RCW 28B.50.150. WSR 21-13-151, § 132D-150-500, filed 6/22/21, effective 7/23/21.]

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-560 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee 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 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))~~ (5) 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.

[Statutory Authority: RCW 28B.50.150. WSR 21-13-151, § 132D-150-560, filed 6/22/21, effective 7/23/21.]

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-580 Appeals. ~~((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 132D-150-290.~~

~~(1) The president or their delegate 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).~~

~~(2) President's office shall serve the final decision on the parties simultaneously.)) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office or designee within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.~~

~~Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office or designee addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office or designee shall serve copies of the responses to the other parties.~~

~~Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office or designee.~~

~~The president or their designee, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.~~

~~The president's office or designee shall serve the final decision on the parties simultaneously.~~

All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in chapter 34.05 RCW.

[Statutory Authority: RCW 28B.50.150. WSR 21-13-151, § 132D-150-580, filed 6/22/21, effective 7/23/21.]

OTS-3802.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132D-310-005 Skagit Valley College
 antidiscrimination policy.