

RCW 28B.112.040 Sexual misconduct—Definitions. The definitions in this section apply throughout this section and RCW 28B.112.050 through 28B.112.080 unless the context clearly requires otherwise.

(1) "Applicant" means a person applying for employment as faculty, instructor, staff, advisor, counselor, coach, athletic department staff, and any position in which the applicant will likely have direct ongoing contact with students in a supervisory role or position of authority. "Applicant" does not include enrolled students who are applying for temporary student employment with the postsecondary educational institutions, unless the student is a graduate student applying for a position in which the graduate student will have a supervisory role or position of authority over other students. "Applicant" does not include a person applying for employment as medical staff or for employment with an affiliated organization, entity, or extension of a postsecondary educational institution, unless the applicant will have a supervisory role or position of authority over students.

(2) "Association" means a scholarly or professional organization or learned society that sponsors activities or events for the benefit of individuals affiliated with postsecondary educational institutions, with a code of conduct forbidding sexual misconduct at such activities or events, and established investigative procedures for allegations that the code of conduct has been violated.

(3) "Employee" means a person who is receiving or has received wages as an employee from the postsecondary educational institutions and includes current and former workers, whether the person is classified as an employee, independent contractor, or consultant, and is in, or had, a position with direct ongoing contact with students in a supervisory role or position of authority. "Employee" does not include a person who was employed by the institution in temporary student employment while the person was an enrolled student unless the student, at the time of employment, is or was a graduate student in a position in which the graduate student has or had a supervisory role or authority over other students. "Employee" does not include a person employed as medical staff or with an affiliated organization, entity, or extension of a postsecondary educational institution, unless the employee has or had a supervisory role or position of authority over students. A person who would be considered an "employee" under this subsection, remains an "employee" even if the person enrolls in classes under an institution's employee tuition waiver program or similar program that allows faculty, staff, or other employees to take classes.

(4) "Employer" includes postsecondary educational institutions in this or any other state.

(5) "Investigation" means a procedure initiated in response to a formal complaint, as defined in 34 C.F.R. Sec. 106.30, provided that the procedure fully complies with the provisions of 34 C.F.R. Sec. 106.45.

(6) "Postsecondary educational institution" means an institution of higher education as defined in RCW 28B.10.016, a degree-granting institution as defined in RCW 28B.85.010, a private vocational school as defined in RCW 28C.10.020, or school as defined in RCW 18.16.020, that participates in the state student financial aid program.

(7) "Sexual misconduct" includes, but is not limited to, unwelcome sexual contact, unwelcome sexual advances, requests for sexual favors, other unwelcome verbal, nonverbal, electronic, or

physical conduct of a sexual nature, sexual harassment, and any misconduct of a sexual nature that is in violation of the postsecondary educational institution's policies or has been determined to constitute sex discrimination pursuant to state or federal law.

(8) "Student" means a person enrolled at a postsecondary educational institution and for whom educational records are maintained.

(9) "Substantiated findings" means a written determination regarding responsibility as described in 34 C.F.R. Sec. 106.45(b) (7) prepared at the conclusion of an investigation, as amended by any appeals process. [2023 c 79 § 2; 2020 c 335 § 2.]

Intent—2023 c 79: See note following RCW 28B.112.080.

Findings—Intent—2020 c 335: "The legislature recognizes that Washington's postsecondary educational institutions are some of the best schools in the nation, offering high quality education and life experiences for thousands of students. Washington institutions strive to create learning environments where all students can reach their full potential. The legislature also recognizes that in instances in which an employee of an institution engages in sexual misconduct against a student, institutions do not consistently disclose that information. The legislature declares that disclosure of such information is a matter of public safety for all Washington students as well as for students on campuses across the nation. The legislature finds that sexual misconduct, which may include harassment or assault, has serious public health and safety effects on students in Washington. These effects may deprive students of their opportunities to obtain an education which would otherwise improve their lives and health, and that of their own children. Other effects include an employee in a position of power and authority over students causing irreversible harm to the physical and mental health of students from sexual misconduct. The legislature finds that students of any postsecondary educational institution in Washington should be protected from their institution hiring an employee who has been found to have committed sexual misconduct at another postsecondary educational institution. The legislature, therefore, also finds that postsecondary educational institutions in Washington need to know if a prospective employee has been found to have committed sexual misconduct while employed at another institution. Therefore, the legislature intends to require postsecondary educational institutions to inquire about and conduct reference checks on any applicant the institution intends to extend an offer of employment to, regarding whether the applicant has ever been found to have committed, or is being investigated for, sexual misconduct. The legislature finds that nondisclosure agreements which prevent an institution from disclosing that an employee has committed sexual misconduct create a high potential for students in jeopardy of being victimized. Therefore, the legislature finds such nondisclosure agreements between an employee and institution, pursuant to which the institution agrees not to disclose findings of sexual misconduct supported by a preponderance of evidence or not to complete an investigation, are against public policy and should not be entered into by any Washington postsecondary educational institution and should not be enforced by Washington courts. Therefore, the legislature intends to provide clarity and

direction to postsecondary educational institutions for disclosing substantiated findings of sexual misconduct committed by its employees against students." [2020 c 335 § 1.]