

Chapter 132S-110 WAC
TITLE IX HEARING PROCEDURE FOR STUDENTS

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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.

[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.]

WAC 132S-110-020 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the 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 harassment."

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

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college 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 the 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 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 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-110-020, filed 11/10/20, effective 12/11/20.]

WAC 132S-110-030 Title IX jurisdiction. (1) This procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

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

(2) For purposes of this procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the 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 procedure must be dismissed if the Title IX coordinator or designee determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this procedure does not prohibit the college from addressing allegations or taking disciplinary action against conduct that violates provisions of the college's student conduct code, chapter 132S-100 WAC, federal or state law, or other college policies.

(4) If the Title IX coordinator or designee determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or does not constitute a Title IX violation, the Title IX coordinator or designee 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.

[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-110-030, filed 11/10/20, effective 12/11/20.]

WAC 132S-110-040 Initiation of hearing. (1) Upon receiving the Title IX investigation report the Title IX coordinator or designee will review the report to determine whether there are sufficient grounds to proceed with a live hearing.

(2) If the Title IX coordinator or designee determines that there are sufficient grounds to proceed, the Title IX coordinator or designee will initiate a live hearing by filing a written notice with the chair of the Title IX student hearing panel 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); and

(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) If the party does not have an advisor, the college will provide a list of available advisors for the party to choose from at no cost to the party.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[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-110-040, filed 11/10/20, effective 12/11/20.]

WAC 132S-110-050 Prehearing procedure. (1) Upon receiving the notice of live hearing, the chair of the Title IX student hearing panel will send a hearing notice to all parties. In no event will the hearing date be set less than ten days after the Title IX coordinator or designee 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 hearing panel chair with copies to all parties and the Title IX coordinator.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the inves-

tigation, regardless of whether the college intends to offer the evidence at the hearing.

[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-110-050, filed 11/10/20, effective 12/11/20.]

WAC 132S-110-060 Rights of parties. (1) To the extent they are consistent with this procedure, the college's student conduct procedures, chapter 132S-100 WAC and this procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish whether or not 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 coordinator or designee will provide a list of available advisors for the party to choose from at no cost to the party.

[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-110-060, 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) 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.]

WAC 132S-110-080 Initial order. (1) The Title IX student hearing panel 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 responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
- (c) Describes findings of fact supporting the decision of the hearing panel;
- (d) Reaches conclusions as to whether the facts establish that the respondent is responsible or not responsible for engaging in sexual harassment in violation of Title IX;
- (e) Contains a statement of, and rationale for, the hearing panel's determination of 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 the college's education programs or activities; and
- (h) Describes the process for appealing the initial order to the college president.

(2) The hearing panel chair will serve the initial order on the parties simultaneously.

[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-110-080, filed 11/10/20, effective 12/11/20.]

WAC 132S-110-090 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 following procedures and time frames:

- (a) An appeal may be filed in writing with the president's office within twenty-one days of the notice of initial order, with copies to all parties and the Title IX coordinator.
- (b) The request for appeal must include a brief statement explaining the grounds for the appeal or why the party is seeking review. Disagreement with the initial order and/or sanctions does not, by itself, represent grounds for appeals.

(c) Decisions may be appealed for one or more of the following:

(i) To determine whether there was a procedural irregularity that substantially affected the outcome of the initial order. Deviation from designated procedures is not a basis for sustaining an appeal unless significant prejudice results.

(ii) To consider new evidence, sufficient to alter a decision, that was not reasonably available during fact finding and cross-examination, because such information and/or facts were not known, and the student bringing the appeal had no duty to discover or could not have reasonably discovered facts giving rise to the issues during investigation, live hearing, or fact finding. Refusal to participate during the investigation or live hearing does not constitute a right to appeal.

(iii) The Title IX coordinator or designee, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(d) A party who timely appeals a decision under this procedure, has a right to a prompt, fair, and impartial review of their appeal.

(e) Supportive measures will remain in effect pending an appeal.

(f) Complainants are afforded the same right to appeal as respondents. If both parties appeal the decision, the appeals will be reviewed in the order in which they are filed or reviewed together, if they state the same, similar, or related grounds or substance for appeal.

(2) 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).

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

[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-110-090, filed 11/10/20, effective 12/11/20.]