

WSR 21-18-108

EMERGENCY RULES

COLUMBIA BASIN COLLEGE

[Filed August 31, 2021, 2:44 p.m., effective August 31, 2021, 2:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Department of Education (DOE) issued an announcement along with the Washington assistant attorney general's office regarding an update on a court ruling regarding hearsay. The court vacated the part of 34 C.F.R. § 106.45 (b) (6) (i) that prohibits a decision-maker from relying on statements that are not subject to cross-examination during the hearing: "If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility ..." This requires emergency updates to the college's student conduct code to be compliant with federal regulations.

Citation of Rules Affected by this Order: New [Amending] Supplemental Title IX Student Conduct Procedures, WAC 132S-110-010 and 132S-110-070.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Other Authority: Title IX of the Education Act Amendments of 1972, 20 U.S.C. Section 1681.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Columbia Basin College is required by the United States DOE to comply with the recently adopted Title IX regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2[0], Amended 0[2], Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 31, 2021.

Camilla Glatt
Vice President for
HR and Legal Affairs
Title IX Coordinator

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.]