

WSR 22-24-008
PROPOSED RULES
CLOVER PARK
TECHNICAL COLLEGE

[Filed November 28, 2022, 3:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-068.

Hearing Location(s): On January 13, 2023, at 9 - 10 a.m., Zoom
<https://cptc-edu.zoom.us/j/9466251249>.

Date of Intended Adoption: February 1, 2023.

Submit Written Comments to: Dean Kelly, 4500 Steilacoom Boulevard, email dean.kelly@cptc.edu, by January 9, 2023.

Assistance for Persons with Disabilities: Contact Dean Kelly, phone 253-589-6066, email dean.kelly@cptc.edu, by January 9, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adopt new and revised language on hazing as mandated by the Washington state legislature (HB [2SHB] 1751).

Reasons Supporting Proposal: Requirement from Washington state legislature (HB [2SHB] 1751).

Statutory Authority for Adoption: RCW 288.50.140; United States Department of Education, 34 C.F.R. Part 106, HB [2SHB] 1751.

Statute Being Implemented: Chapter 495C-121 WAC.

Rule is necessary because of federal law, United States Department of Education, 34 C.F.R. Part 10; Washington state HB [2SHB] 1751.

Name of Proponent: Clover Park Technical College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dean Kelly, 4500 Steilacoom Boulevard, Lakewood, WA 98499, 253-589-6066.

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. Updating language as required by HB [2SHB] 1751.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Updated language in the student code of conduct. No additional costs.

November 28, 2022

Dean Kelly

Interim Vice President Student Success

OTS-4117.1

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-010 Definitions. The following definitions shall apply for the purposes of this student conduct code, chapter 495C-121 WAC:

(1) "College" means Clover Park Technical College, College District (~~Twenty-nine~~) 29.

(2) "College facilities" includes all campuses of the college, wherever located, and all land, buildings, vehicles, equipment, and other real and personal property which are owned, leased, used, or controlled by the college.

(3) "Committee" and "student conduct committee" means the committee which is formed under WAC 495C-121-140 and which hears the matters specified in WAC 495C-121-110.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and then either reviewing or referring an appeal of student disciplinary action in accordance with WAC 495C-121-110 and following sections of this chapter. The president may reassign any and all of the conduct review officer's responsibilities as set forth in this chapter as he/she deems appropriate.

(5) "Day" means a calendar day, except that when a "business day" is specified, business day means a weekday, excluding weekends and college holidays.

(6) "Disciplinary action" is the process by which the student conduct officer, or the committee upon a referral, imposes discipline against a student for violation of WAC 495C-121-050. Disciplinary action does not include instructional decisions and actions which are under the authority of faculty members and instructional administrators, such as determinations of academic credit and grading; any such determinations, and any review or appeal of these, are outside the scope of this chapter.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal discipline, as provided in WAC 495C-121-110 through 495C-121-180.

(8) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. §1232g; 34 C.F.R. Part 99).

(9) "Filing" is delivery of a document to the college official who is designated under this chapter to receive it for the purpose of review of a disciplinary action. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to that official or the official's assistant during regular office hours; or

(b) Sending the document both by first class mail postage prepaid to the official's office and by email to his/her college email address.

(10) "Hazing" as used in RCW 28B.10.901 and 28B.10.902, includes any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.

(11) "Includes" and "including" means contained as part of a larger described whole or grouping, but these terms are not a limitation and mean "but not limited to."

~~((11))~~ (12) "President" is the president of the college. The president may delegate any of his or her responsibilities under this chapter as he/she deems appropriate.

~~((12))~~ (13) "Respondent" is the student against whom disciplinary action is initiated.

~~((13))~~ (14) "Service" is the delivery of a document or copy of a document to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document both by first class and/or certified mail postage prepaid to the party's last known address and by email to the email address shown in the college's records.

Service is deemed complete either upon hand delivery or when the document has been both deposited in the mail and emailed.

~~((14))~~ (15) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

~~((15))~~ (16) "Student conduct officer" is a college administrator designated by the president or vice president of student services to be responsible for investigating allegations of student misconduct and taking disciplinary action as provided in WAC 495C-121-100. The president or vice president of student services may reassign any of the student conduct officer's responsibilities under this chapter as he/she deems appropriate.

~~((16))~~ (17) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, affinity groups, members of a class or student cohort, student performance groups, and student living groups within student housing.

(18) "Vice president of student services" is the position which reports directly to the president and which the president assigns overall operational responsibility for this chapter. The president may reassign, or the vice president may delegate, any such responsibility as he/she deems appropriate.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-010, filed 5/19/14, effective 6/19/14.]

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-030 Jurisdiction. (1) The student conduct code, chapter 495C-121 WAC, shall apply to student conduct that occurs:

(a) In or on college facilities;

(b) At or in connection with college-sponsored activities; or

(c) Off-campus when in the judgment of the college it adversely affects the college community or the pursuit of its objectives.

~~(2) ((This chapter applies to conduct which occurs at all locations where students are engaged in college activities, including foreign or domestic travel, activities funded or sponsored by the associated students, athletic or recreational events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned activities.~~

~~(3) This chapter applies to conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. This chapter shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.~~

~~(4) The college has sole discretion, on a case-by-case basis, to determine whether this student conduct code will be applied to conduct that occurs off campus.) Jurisdiction extends to, but is not limited to, locations where students or student groups are engaged in official college activities, including foreign or domestic travel, activities funded or sponsored by the associated students, athletic events or recreational events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities and college-sanctioned housing.~~

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college may proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-030, filed 5/19/14, effective 6/19/14.]

AMENDATORY SECTION (Amending WSR 16-06-026, filed 2/22/16, effective 3/24/16)

WAC 495C-121-050 Prohibited student conduct. The college may impose disciplinary sanctions against a student or student group who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit any act of misconduct, which includes, but is not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty, including cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment or requirement.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment or requirement.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment or requirement, or providing false or deceptive information to an instructor concerning the completion of an assignment or requirement, including submitting for credit without authorization academic work also submitted for credit in another course.

(2) **Other dishonesty.** Any other act of dishonesty, including:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct or complete information, in response to the request or requirement of a college official or employee.

(3) **Obstruction or disruption.** Conduct which significantly obstructs or disrupts any operation of the college, any college meeting, any college class or other activity, any activity authorized to occur at a college facility, or any college-sponsored activity, including obstructing the free flow of pedestrian or vehicular movement or blocking access to or from any college facility or college-sponsored event.

(4) **Assault, abuse, intimidation, etc.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, reckless conduct, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property or which unreasonably disrupts the educational environment. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving an apparent power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(c) Reckless conduct means acts performed with a heightened degree of carelessness or indifference so as to create a significant risk of physical, mental, or emotional harm to another person.

(5) **Cyber misconduct. Cyberstalking, cyberbullying or online harassment.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, texting, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health, safety, or well-being of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications directly or through spyware, sending threatening messages, disrupting electronic communications, sending a computer virus or malware, sending false messages to third parties using another's identity, nonconsensual recording of sexual activity, or nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

- (a) The college or state, including college facilities;
- (b) Any college student, official, employee, or organization;
- (c) Any other member of the college community or a college organization.

Property violation also includes possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Holding, wearing, transporting, storing, or otherwise possessing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon or device which is apparently capable of producing bodily harm, on or in any college facility, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) College-owned knives, tools, etc., that are being used for a legitimate educational purpose as part of a college instructional program;

(c) A student with a valid concealed pistol license may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the pistol is concealed from view;

(d) The president may grant permission to bring such a weapon or device on or into a college facility when he/she determines that it is reasonably related to a legitimate pedagogical purpose, provided that such permission shall be in writing and shall be subject to all terms and conditions incorporated in that writing; and

(e) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization, or any pastime or amusement engaged in with respect to such an organization, that causes, or is likely to cause, bodily danger, physical harm, or serious mental or emotional harm to any student, regardless of whether the victim has consented.~~)

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group;

(ii) Any pastime or amusement engaged in with respect to such a student group; or

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm to any student.

(b) Examples of hazing include, but not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** Use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** Use, possession, delivery, sale, or being observably under the influence of marijuana, the psychoactive compounds found in marijuana, or any product containing marijuana or such compounds that is intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college facilities or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed health care practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Use of tobacco, electronic cigarettes or smoking devices, and/or related products on or in any college facility is prohibited, except that such use in a designated smoking area or in a closed private vehicle is permitted when consistent with applicable law and rules. "Related products" include cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** Any act of sexual misconduct, including sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or distribution of such a recording.

(c) Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, 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.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any 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.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic.

(15) **Retaliation.** Taking adverse action against any individual for reporting, providing information, or otherwise participating in a process for addressing alleged violations of federal, state, or local law, or college policies, including allegations of discrimination or harassment.

- (16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college, which includes:
- (a) Unauthorized use of such resources or opening of a file, message, or other item;
 - (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
 - (c) Unauthorized use or distribution of someone else's password or other identification;
 - (d) Use of such time or resources to interfere with someone else's work;
 - (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
 - (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
 - (g) Use of such time or resources in violation of applicable copyright or other law;
 - (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
 - (i) Failure to comply with the college's policies or procedures governing the use of such time or resources.
- (17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.
- (18) **Safety violations.** Any nonaccidental conduct that violates, interferes with, or otherwise compromises any law, rule, policy, procedure, or equipment relating to the safety and security of college facilities or the college community, including tampering with fire safety equipment or triggering false alarms or other emergency response systems.
- (19) **Motor vehicle operation.** Operation of any motor vehicle in an unsafe manner or contrary to posted signs or college procedures.
- (20) **Violation of laws or policies.** Violation of any federal, state, or local law or regulation, or college rule, policy, or procedure, which regulates the behavior of the college's students, including a parking rule.
- (21) **Student procedures violations.** Misuse of or failure to follow any of the procedures relating to student complaints or misconduct, including:
- (a) Falsification or misrepresentation of information;
 - (b) Failure to obey a subpoena;
 - (c) Disruption or interference with the orderly conduct of a proceeding;
 - (d) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;
 - (e) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member or other disciplinary official; or
 - (f) Failure to comply with any disciplinary action, term, or condition imposed under this chapter.
- (22) **Ethical violation.** Ethical violations include, but are not limited to, breach of a generally recognized and published code of ethics or standard of professional practice that governs the conduct of a particular profession, which the student has been specifically

informed about and is required to adhere to as a condition of enrolling in a course or participating in an educational program.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: RCW 28B.50.140. WSR 16-06-026, § 495C-121-050, filed 2/22/16, effective 3/24/16; WSR 14-11-070, § 495C-121-050, filed 5/19/14, effective 6/19/14.]

NEW SECTION

WAC 495C-121-065 Hazing prohibited—Sanctions. (1) Hazing by a student or student group is prohibited pursuant to WAC 495C-121-050.

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit an entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual conduct, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

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