

WSR 22-24-083

PROPOSED RULES

PIERCE COLLEGE

[Filed December 5, 2022, 5:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-002.

Title of Rule and Other Identifying Information: Pierce College student conduct code.

Hearing Location(s): On January 17, 2023, at 11:00 a.m., Zoom, <https://pierce-college.zoom.us/j/86499760362>.

Date of Intended Adoption: February 7, 2023.

Submit Written Comments to: Julie Draper Davis, 9401 Farwest Drive S.W., Lakewood, WA 98498, email jdraperdavis@pierce.ctc.edu, by January 20, 2023.

Assistance for Persons with Disabilities: Contact access and disability services, phone 253-964-6468, email ads@pierce.ctc.edu, by January 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Address state law compliance requirements with hazing legislation.

Reasons Supporting Proposal: Hazing legislation implemented by Washington state.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.50.140(13).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Pierce College, Community College District Eleven, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Draper Davis, Pierce College District, 253-912-2331; Enforcement: Vice President of Learning and Student Success, Pierce College District, 253-840-8336.

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. The proposed rule will not impose any costs for the institution.

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. The proposed rule will not impose any costs for the institution.

November 30, 2022
Michele Johnson
Chancellor and CEO

OTS-4041.1

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-040 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;
(b) At or in connection with college-sponsored activities; or
(c) Off-campus where indicated in the rule or that in the judgment of the college adversely affects the college community, visitors, or the pursuit of the college's objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of notification of acceptance at the college through the actual receipt of a degree or certificate, 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) The student conduct officer has sole discretion on a case-by-case basis to determine whether the student conduct code will be applied to conduct that occurs off-campus.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-040, filed 5/13/21, effective 6/13/21; WSR 17-13-102, § 132K-135-040, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-070 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences in response to academic dishonesty. Faculty may impose up to and including a failing grade in an academic class and academic divisions or departments may impose up to and including dismissal from an academic program. Policies and procedures governing the imposition of academic

consequences for academic dishonesty can be found in the class syllabus and applicable program handbook.

(a) Cheating includes using or any attempt to use, give or obtain unauthorized assistance relating to the completion of an academic assignment, test, or exam.

(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. Plagiarism may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Multiple submissions includes submitting the same work in separate classes without the express permission of the instructor(s).

(e) Deliberate damage includes taking deliberate action to destroy or damage another's academic work or college property.

(f) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(3) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

(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 information, in response to the request or requirement of a college officer or employee.

(4) **Alcohol.** The use, possession, manufacture, distribution, sale, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail (email), text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false messages to third parties using another's identity (spoofing).

(6) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, not otherwise protected by law, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(ii) Create an intimidating, hostile, or offensive environment for other college community members and/or visitors.

(b) Discriminatory harassment may include, but is not limited to, physical, verbal, written, social media, and electronic communications.

(c) 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.

(7) **Disorderly conduct.** Conduct, or assisting or encouraging another person to engage in such conduct, which disrupts campus operations or the college's educational, social, or housing programs.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

(11) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

(12) **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 or physical harm, or serious mental or emotional harm to any student)~~ any act, on or off the college premises, 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 partici-

ate. Hazing does not include customary athletic events or other similar contests or competitions.

(13) **Lewd conduct.** Conduct which is vulgar, obscene, or indecent, unless otherwise protected by law.

(14) **Marijuana or other drugs.**

(a) Marijuana or marijuana products. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

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

(15) **Misuse of computer time or electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or unauthorized 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, harassing, 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 computer information systems resources acceptable use or subsequent similar policy.

(16) **Property violation.** Damage to, theft of, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or student organization;

(c) Any other member of the college community, or visitors.

(17) **Retaliation.** Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or

employment consequences, ridicule, intimidation, bullying, or ostracism.

(18) **Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures, or interfering with or otherwise compromising any college policy, equipment, or procedure relating to the safety and security of the college community or visitors including, but not limited to, tampering with fire safety equipment or triggering false alarms and other emergency response systems.

(19) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX defined in the supplemental procedures to this code. See WAC 132K-135-300, et seq.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Creates an intimidating, hostile, or offensive environment for other campus community members.

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

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

(i) 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.

(ii) 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.

(iii) 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 of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) 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.

(vi) 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.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For the purposes of this code, "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 they are unable to understand what is happening or are 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 conduct.

(20) **Tobacco, electronic cigarettes, and related products.** The college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products, including chapter 70.160 RCW.

(21) **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. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

(22) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college traffic and parking rules.

(23) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

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

(b) A student with a valid concealed weapons permit may store a pistol in the student's vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or chancellor may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

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

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-070, filed 5/13/21, effective 6/13/21; WSR 17-13-102, § 132K-135-070, filed 6/20/17, effective 7/21/17.]