

WSR 23-01-104
PROPOSED RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed December 19, 2022, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-054.

Title of Rule and Other Identifying Information: Amend chapter 132Q-10 WAC, Standards of conduct for students in order to be complaint [compliant] with HB 1751, "Sam's Law," hazing prevention, RCW 28B.10.900.

Hearing Location(s): On February 21, 2023, at 10:00 a.m., at Lodge Building, 3305 West Whistalks Way, Spokane, WA 99224.

Date of Intended Adoption: February 21, 2023.

Submit Written Comments to: Patrick McEachern, 3410 West Whistalks Way, Spokane, WA 99224-5204, email Patrick.McEachern@sfcc.spokane.edu, by February 16, 2023; or Connan Campbell, 1810 North Greene Street, Spokane, WA 99217-5320, email Connan.Campbell@scc.spokane.edu, by February 16, 2023.

Assistance for Persons with Disabilities: Contact John O'Rourke, phone 509-434-5185, TTY 509-434-5275, email john.orourke@ccs.spokane.edu, TTY 1-800-833-6384, by February 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend chapter 132Q-10 WAC, Standards of conduct for students, in order to be complaint [compliant] with HB 1751, "Sam's Law," hazing prevention, RCW 28B.10.900.

Reasons Supporting Proposal: Changes required as result of Washington's adoption of "Sam's Law," hazing prevention, RCW 28B.10.900.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.10.900.

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

Name of Proponent: Community Colleges of Spokane, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick McEachern or Connan Campbell, Spokane, Washington, 509-533-3514 or 509-533-7015.

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. Community Colleges of Spokane is not a listed agency under RCW 34.05.328 and is, therefore, exempt from this provision.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

December 19, 2022
John O'Rourke
WAC Coordinator

OTS-4160.1

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-105 Definitions. For the purposes of this chapter, the following terms shall mean:

(1) "Accused student" means any student accused of violating the standards of conduct for students.

(2) "Appeals board" is a district-wide board composed of one administrator from each college appointed by the chief executive of that college. The appeals board considers appeals from a student conduct board's determination or from the sanctions imposed by the student conduct officer. The appeals board is convened by the student conduct officer.

(3) The "chief student services officer" is the vice president of student services of Spokane Community College or of Spokane Falls Community College, or a person designated by the college president to be responsible for the administration of the standards of conduct for students. The chief student services officer also serves as the Title IX coordinator for matters regarding conduct of Community Colleges of Spokane (CCS) students.

(4) "College" means Spokane Community College, Spokane Falls Community College, and all locations of CCS.

(5) "College official" includes any person employed by the college performing assigned duties with the exception of work study students.

(6) "College premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the Community Colleges of Spokane (including adjacent streets and sidewalks).

(7) "College president" includes the president of Spokane Falls Community College and the president of Spokane Community College. Each president is authorized to designate a chief student service officer on behalf of his or her respective institutions.

(8) "Complainant" means any member of CCS, including employee(s), contractor(s), visitor(s), or guest(s) who submits a report alleging that a student violated the standards of conduct for students. When students believe they have been victimized by another student's misconduct, they have the same rights under these standards as are provided to the complainant, even if another member of CCS submitted the charge itself. For the purposes of complaints involving sexual misconduct, the "complainant" is the alleged victim of sexual misconduct even if the complaint is filed by a third party including, but not limited to, complaints filed by CCS, SFCC, or SCC.

(9) "Disciplinary action" is the process by which discipline is imposed against a student, members of a student organization, or a student organization for a violation of the standards of conduct for students by a student conduct officer, the student conduct board, the student conduct administrative panel, the appeals board, or a faculty member.

(10) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the chief student services officer, the student conduct officer, the student conduct board, or the student conduct administrative panel. Appeals of all appealable disciplinary action shall be determined by the appeals board.

(11) "Disciplinary hearing" is the process during which an accused student has the opportunity to respond to a complaint alleging a violation(s) of the standards of conduct for students. The accused

student has the opportunity to explain what he or she did and to provide evidence that is relevant to the complaint. Alleged misconduct that would not result in suspension in excess of ~~((ten))~~ 10 instructional days or an expulsion shall be reviewed through a brief adjudicative proceeding held by the student conduct officer or the student conduct board.

(12) "Faculty member" means a teacher, counselor, or librarian or person who is otherwise considered by the college to be a member of its faculty.

(13) "Filing" is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review. Unless expressly specified otherwise, filing shall be accomplished by:

(a) Hand delivery of the document to the school official or school official's assistant; or

(b) By sending the document by email and first class mail to the recipient's college email and office address. Papers required to be filed with the college shall be deemed filed upon actual receipt during office hours at the office of the specified official.

(14) "Instructional day" means Monday through Friday, except for federal or state holidays, when students are in attendance for instructional purposes.

(15) "Member of CCS" includes any person who is a student, faculty member, college official, guest, contractor, or visitor of CCS. A person's status in a particular situation is determined by the chief student services officer.

(16) "Notice" or "service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

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

(b) By sending the document by email and by certified mail or first class mail to the party's last known address. Service is deemed complete upon hand delivery of document or upon the date the document is emailed and deposited into mail.

(17) "Respondent" is the student against whom disciplinary action is initiated.

(18) "Sexually violent conduct" is a sexual or gender-based violation of the standards of conduct for students including, but not limited to:

(a) Nonconsensual sexual activity including sexual activity for which clear and voluntary consent has not been given in advance; and sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping, incapacitated due to alcohol or drugs, has an intellectual or other disability that prevents the individual from having the capacity to give consent, or is subject to duress, threat, coercion or force.

(b) Sexual assault, domestic violence, dating violence, and sexual or gender-based stalking;

(c) Nonphysical conduct such as indecent liberties, sexual exploitation, indecent exposure, sexual exhibitionism, sex or gender-based digital media stalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, nonconsensual posting or recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

(19) "Student" includes a person taking courses at or through the college, either full time or part time. For the purposes of the standards of conduct for students, the term applies from the time of appli-

cation for admission through the actual receipt of a degree or certificate, even though conduct may occur before classes begin or after classes end. The term also applies during the academic year, during periods between terms of actual enrollment and includes individuals who are not officially enrolled for a particular quarter but have a continuing relationship with the college (including suspended students), and students participating in study abroad programs. "Student" also includes "student organization" and persons who withdraw after allegedly violating the standards of conduct for students.

(20) "Student organization" (~~means any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such~~) is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations formally recognized as such, members of a class or student cohort, and student performance groups.

(21) "Student conduct administrative panel" is a panel appointed by the president of the college to hear initial complaints referred by the student conduct officer involving allegations of sexual misconduct or other misconduct which may result in a suspension of more than ~~(ten)~~ 10 instructional days or dismissal/expulsion from the college. The panel shall consist of three faculty members appointed by the president and two members of the administration, but not the vice president of student services, appointed by the president at the beginning of the academic year. One of the members of the administration shall serve as the chair of the committee. If that individual is not available for a hearing or has a conflict of interest, the other member of the administration shall chair the individual hearing. The chairs shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct. The student conduct officer convenes the board and appoints the chair for each hearing. Hearings may be held by a quorum of three members of the committee so long as one faculty member and one administrator are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(22) "Student conduct board" is a board appointed by the president of the college to hear initial complaints referred by the student conduct officer to determine whether a student has violated the general standards of conduct for students, and to impose sanctions when a violation has been committed for misconduct that would result in discipline involving an academic suspension of ~~(ten)~~ 10 instructional days or less or a discipline not involving dismissal or expulsion from the college. The board shall have at least one member from the respective groups: Faculty, students, and administration. The student conduct officer convenes the board and appoints the chair. Hearings may be held by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of the committee members attending the hearing.

(23) "Student conduct officer" means the individual or individuals designated by the college president to facilitate and coordinate student conduct matters pursuant to these standards of conduct for students.

(24) "Title IX coordinator" means the vice president of student services for the college or his/her designee who is responsible for

coordinating Title IX matters regarding students of CCS who is also known as the chief student services officer.

[Statutory Authority: RCW 28B.50.140. WSR 15-15-161, § 132Q-10-105, filed 7/21/15, effective 8/21/15.]

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-120 Jurisdiction of the standards of conduct for students. The standards of conduct for students apply to conduct that occurs on college premises, at college-sponsored activities, and to off-campus conduct that adversely affects CCS's educational environment and/or the pursuit of its objectives as set forth in its mission. Jurisdiction extends to locations in which students are engaged in official college activities including, but not limited to, athletic events, activities funded by associated students, training internships, cooperative and distance education, online education, study abroad programs, practicums, supervised work experiences, any other college-sanctioned social or club activities, and/or foreign or domestic travel associated with any of these events or activities. Students are responsible for their 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. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college student conduct officer, or their designee, has sole discretion, on a case-by-case basis to determine ((what)) whether the student conduct ((occurring off campus adversely impacts the college and/or the pursuit of its objectives)) code will be applied to conduct by students or student groups that occurs off campus.

[Statutory Authority: RCW 28B.50.140. WSR 15-15-161, § 132Q-10-120, filed 7/21/15, effective 8/21/15.]

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-218 Hazing. ~~((1) Conspiring to engage in hazing or participating in hazing of another.~~

~~(a) Hazing means any activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical harm, regardless of the person's willingness to participate.~~

~~(b) Hazing activities may include the following: Abuse of alcohol during new member activities; striking another person whether by use of any object or one's body; creation of excessive fatigue; physical and/or psychological shock; and morally degrading or humiliating games or activities that create a risk of bodily, emotional, or mental harm.~~

~~(c) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and intercollegiate athletics, or other similar~~

~~contests or competitions, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited.~~

~~(2) Washington state law prohibits hazing which may subject violators to criminal prosecution under RCW 28B.10.901.~~

~~(3) Washington state law (RCW 28B.10.901) provides sanctions for hazing.)~~ (1) Hazing is any act committed as part of:

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

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

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

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

(a) 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;

(b) Humiliation by the ritual act;

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

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

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

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

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

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

(6) 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 any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit 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 anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, 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, including the beginning and end dates of the sanction(s).

(7) As described in WAC 132Q-10-140, a student organization and/or individual members may be subject to appropriate sanctions for student conduct violations.

(8) Additional disciplinary sanctions for hazing violations can be found in WAC 132Q-10-400.

[Statutory Authority: RCW 28B.50.140. WSR 15-15-161, § 132Q-10-218, filed 7/21/15, effective 8/21/15.]