

WSR 24-20-040

PROPOSED RULES

COLUMBIA BASIN COLLEGE

[Filed September 24, 2024, 10:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-073.

Title of Rule and Other Identifying Information: Columbia Basin College's student hearing procedure under Title IX, WAC 132S-110-020 and 132S-110-030, and other related rules as necessary.

Hearing Location(s): On November 14, 2024, at 1:30 - 2:30 p.m., at 2600 North 20th Avenue, Pasco, WA 99301 (Human Resources Conference Room); or join Zoom meeting <https://columbiabasin.zoom.us/j/82683969858?pwd=bh9AWQEv6PsIXBdLZhBr2giJMziIrW.1>, Meeting ID 826 8396 9858, Password 040369; or One-tap mobile +12532050468,,82683969858# US, +12532158782,,82683969858# US (Tacoma).

Date of Intended Adoption: November 14, 2024.

Submit Written Comments to: Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, email LCarpenter@columbiabasin.edu, fax 509-544-2029, beginning October 14, 2024, by November 14, 2024, 3:30 p.m.

Assistance for Persons with Disabilities: Contact Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, fax 509-544-2026, email LCarpenter@columbiabasin.edu, by November 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring Columbia Basin College's (college) Title IX hearing procedure for students into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the procedure to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Reasons Supporting Proposal: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

In addition to complying with the new final rule, the college is updating its Title IX hearing procedure for students to address jurisdiction and prohibited conduct changes. These new definitions of prohibited behavior and updated procedures are necessary to address conduct that may pose a threat to the general welfare of the college community and/or college operations and to protect the constitutional and procedural rights of individual students.

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

Statute Being Implemented: 20 U.S.C. § 1681.

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

Name of Proponent: Columbia Basin College, public.

Name of Agency Personnel Responsible for Drafting: Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, 509-542-4740; Implementation and Enforcement: Corey Osborn, 2600 North 20th Avenue, Pasco, WA 99301, 509-542-4740.

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. Under RCW 34.05.328 (5) (b), the proposed rule changes are exempt from the cost-benefit analysis requirement. The updates to the Title IX regulations are mandated by federal law and do not impose significant costs on state agencies or other entities. Therefore, a cost-benefit analysis is not necessary for this rule-making process.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 34 C.F.R. 106, Education, specifically, Title IX.

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is fully 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. This change is not anticipated to impose any additional cost on business.

September 24, 2024
Corey Osborn, Vice President
Human Resources and Legal Affairs

OTS-5644.1

AMENDATORY SECTION (Amending WSR 20-23-031, 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))~~ sex discrimination."

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: "sex discrimination" which includes sex-based harassment, occurs when a respondent causes more than de minimis harm to an individual by treating them differently from an otherwise similarly situated individual based on:

- (1) Sex stereotypes;
- (2) Sex characteristics;
- (3) Pregnancy or related conditions;
- (4) Sexual orientation; and
- (5) Gender identity.

For the purpose of this procedure, "sex-based harassment" is a type of sex discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(6) **Quid pro quo harassment.** An employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(7) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(a) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(b) The type, frequency, and duration of the conduct;

(c) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(d) The location of the conduct and the context in which the conduct occurred; and

(e) Other sex-based harassment in the recipient's education program or activity.

(8) **Sexual violence** 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)) 18.

(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.)) Nonforcible sexual intercourse with a person who is under the statutory age of consent.

((+4)) (9) **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 cohabita-

ted 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))~~ (10) **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))~~ (11) **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.

AMENDATORY SECTION (Amending WSR 20-23-031, 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.)~~ Meets the definition of sex discrimination, sex-based harassment, or retaliation as defined in this disciplinary procedure, including causing more than de minimis harm to the complainant;

(b) Occurred in the United States or interfered with the complainant's ability to access or participate in the college's educational programs or activities in the United States; and

(c) Occurred during a college educational program or activity, or interferes with the complainant's ability to access or participate in the college's educational programs or activities.

(2) For purposes of this procedure, an "educational program or activity" is defined as all operations of the college, including 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.