

WAC 132J-126-320 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."

For purposes of this supplemental procedure, "sexual harassment" ~~((encompasses))~~ means conduct on the basis of sex that satisfies one or more of 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))~~ determined by 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:

(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 of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(d) Statutory rape. ~~((Consensual))~~ Nonforcible sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

(4) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, ~~((or stalking))~~ coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, 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))~~ 26.55.010.

(5) **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) **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 22-08-065, filed 4/4/22, effective 5/5/22)

WAC 132J-126-420 Title IX jurisdiction. (1) This supplemental 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 sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as 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 supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132J-126-090.

(4) If the ((Title IX coordinator)) student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the ((Title IX coordinator)) student conduct officer 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.

AMENDATORY SECTION (Amending WSR 22-08-065, filed 4/4/22, effective 5/5/22)

WAC 132J-126-430 Initiation of discipline. (1) Upon receiving ((the)) a Title IX investigation report from the Title IX coordinator, the ((judicial)) student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a

disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the ~~((judicial))~~ student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the ~~((judicial))~~ student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); ~~((and))~~
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so ~~((--(3)--))~~; and
- (f) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

AMENDATORY SECTION (Amending WSR 22-08-065, filed 4/4/22, effective 5/5/22)

WAC 132J-126-440 Prehearing procedure. (1) Upon ~~((filing and serving))~~ receiving the ~~((written))~~ disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132J-126-190. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five business days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

AMENDATORY SECTION (Amending WSR 22-08-065, filed 4/4/22, effective 5/5/22)

WAC 132J-126-450 Rights of parties. (1) The college's student conduct procedures, chapter 132J-126 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator (~~or chair of the student conduct committee~~) will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

AMENDATORY SECTION (Amending WSR 22-08-065, filed 4/4/22, effective 5/5/22)

WAC 132J-126-460 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee 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) Complainant and respondent may not ask questions directly of one another. Questions may be asked through a party's advisor or by the chair, after the chair determines the question is relevant and not privileged or otherwise impermissible. The chair has discretion to follow this procedure for other witnesses as well.

(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((+5))~~ (6) Privileged evidence: The committee 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.

AMENDATORY SECTION (Amending WSR 22-08-065, filed 4/4/22, effective 5/5/22)

WAC 132J-126-470 Initial order. (1) In addition to complying with WAC 132J-126-210, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;
(b) Describes the ~~((grievance and disciplinary procedures, starting with filing))~~ procedural steps taken from receipt of the formal complaint through the determination ((of responsibility)), including ((notices)) any notifications to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination ~~((of responsibility))~~;

(d) Reaches conclusions ~~((as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX))~~ applying the conduct code to the facts;

(e) Contains a statement of, and rationale for, the ~~((student conduct committee determination of responsibility for each allegation))~~ result as to each allegation, including a determination regarding responsibility;

(f) Describes any disciplinary sanctions or conditions imposed against the respondent, if ~~((any))~~ the committee determines the respondent violated the conduct code;

(g) ~~((Describes to what extent, if any, complainant is entitled to))~~ Determines whether remedies designed to restore or preserve complainant's equal access to the college's education programs or activities will be provided by the college; and

(h) Describes the process for appealing the initial order to the college president.

(2) The committee chair ~~((of the student conduct committee))~~ will serve the initial order on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 22-08-065, filed 4/4/22, effective 5/5/22)

WAC 132J-126-480 Appeals. (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions ~~((of law))~~ in the initial order or notice of dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or notice of dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 business

days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five business days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal ((if)) is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. (~~No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.~~)

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
132J-126-320	132J-126-410