



WASHINGTON STATE COMMUNITY COLLEGE DISTRICT 17

July 29, 2024

BOARD OF TRUSTEES SPECIAL MEETING

The Board of Trustees of Washington State Community College District 17 will hold a special meeting on Monday, July 29th, 2024 at 9a.m. The meeting will be held at Spokane Falls Community College, 3410 W. Whistalks Way, Building 30, Room 212, Spokane, WA 99224. The purpose of the meeting is implementation of the new Title IX regulations and conduct emergency rulemaking to update the Standards of Conduct for Students WACs. Adjournment is scheduled for 9:45a.m.

To connect to the July 29th meeting virtually, go to:

[Join Zoom Meeting](#)

Meeting ID: 880 6040 6850

Passcode: 247447

Washington State Community College District 17

Spokane Falls Community College
Falls Gateway Building, Room 212
Spokane, WA 99224

[Join Zoom Meeting](#)

Meeting ID: 880 6040 6850

Passcode: 247447

Special Meeting
Monday, July 29, 2024

AGENDA

Trustee Mike Wilson; Chair, Trustee Todd Woodard; Vice-Chair
Trustee Anna Franklin, Trustee Glenn Johnson, Trustee Steve Yoshihara
9:00a.m. – 9:45a.m.

PLEASE NOTE: Times below are estimates only. The Board reserves the rights to alter the order of the agenda.

07/29/2023

Work Session Meeting Agenda

- 9:00 a.m.
1. **Call to Order**
 - ↳ Mike Wilson, Chair

 2. **Review and Approve Sex Discrimination (Title IX) Administrative Procedures and Rules Pursuant to Regulatory Changes**
 - Approve Administrative Procedure 2.30.01-F Sex Discrimination Procedure for Complaints Against Employees
 - Approve Administrative Procedure 2.30.01-G Sex Discrimination Investigation Procedure for Complaints Against Employees
 - Approve Administrative Procedure 3.30.01-D Sex Discrimination Procedure for Complaints Against Students
 - Approve Administrative Procedure 3.30.01-E Sex Discrimination Investigation Procedure for Complaints Against Students
 - Emergency Rulemaking Regarding Standards of Conduct for Students (WAC 132Q-10)
 - ↳ **Amy McCoy, CCS**

 3. **Executive Session**
 - a. Reserved for potential action generated from executive session

 4. **Potential Action Generated from Executive Session**
- Adjournment**

CCS MISSION

To provide all students an excellent education that transforms their lives
and expands their opportunities.

CCS VISION

Providing the best community college experience in the Northwest.

CCS VALUES

Students First | Equity | Access | Excellence | Integrity |
Leadership | Responsiveness | Stewardship

New Title IX Administrative Procedures and Emergency Rulemaking for Standards of Conduct for Students

Amy McCoy
Chief Compliance Officer
July 29, 2024

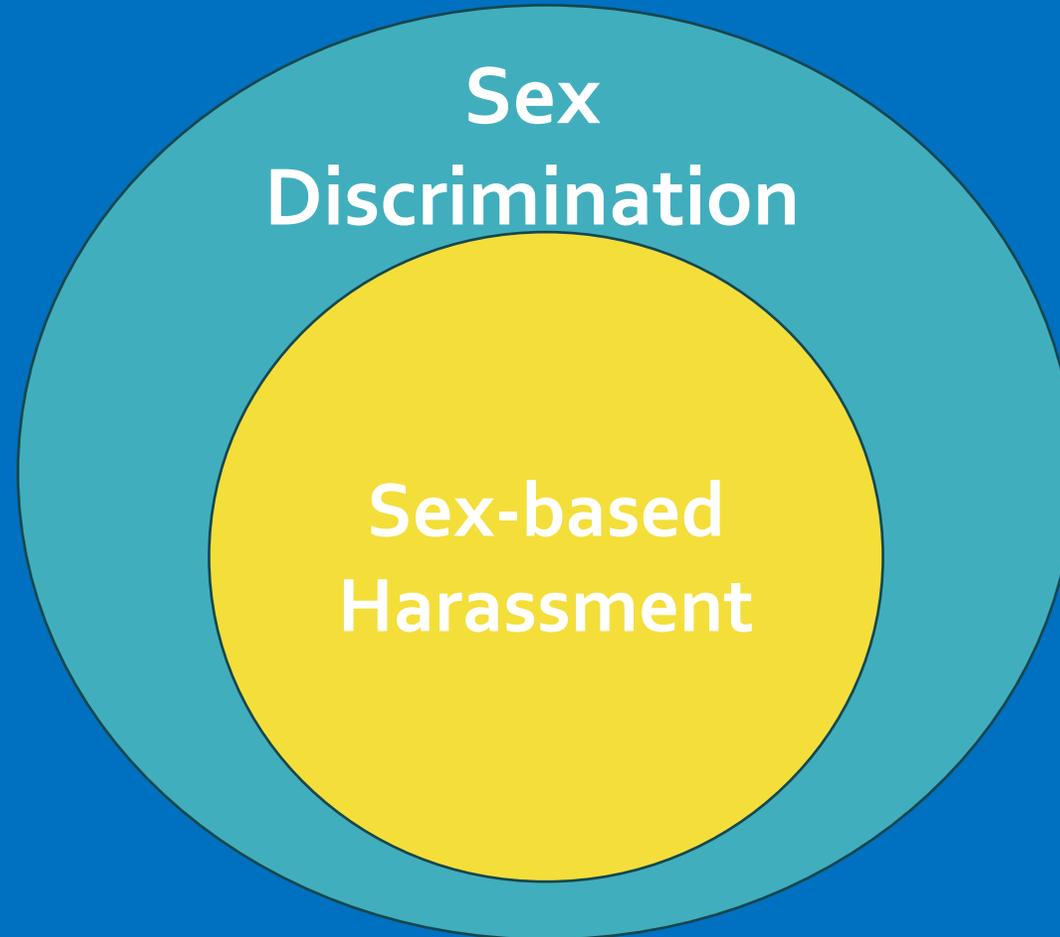


**Community Colleges
of Spokane**

Need for Changes

- Department of Education released Final Rule April 19, 2024
- Requires colleges to adopt student and employee disciplinary procedures addressing sex discrimination, including sex-based harassment, by August 1, 2024
- AG's Office released model procedures/conduct code July 10, 2024
- CCS Administrative Procedures and the Standards of Conduct for Students WACs were updated based on models

Sex Discrimination



Changes

- Includes protections for pregnancy, gender identity and retaliation
- Adds training and reporting requirements for all employees
- Enhances role of Title IX Coordinator
- Eases complaints by allowing oral or written

Changes

- Expands jurisdiction to all college programs and activities
- Applies to all forms of sex discrimination
- Creates complaint processes for
 - Sex Discrimination and
 - Sex-based harassment involving students

Changes

- Minimum requirements for all sex discrimination complaints
- Requirements for sex-based harassment not involving students
- Additional requirements for complaints involving a student as a complainant or respondent

Approve the Following Procedures

- 2.30.01-F Sex Discrimination Procedure for Complaints Against Employees
- 2.30.01-G Sex Discrimination Investigation Procedure for Complaints Against Employees
- 3.30.01-D Sex Discrimination Procedure for Complaints Against Students
- 3.30.01-E Sex Discrimination Investigation Procedure for Complaints Against Students

Approve the Following WAC Sections

- 132Q-10-600 (Sex discrimination - Supplemental student conduct code and procedures - Order of precedence)
- 132Q-10-601 (Sex discrimination - Prohibited conduct and definitions)
- 132Q-10-602 (Sex discrimination - Jurisdiction)
- 132Q-10-603 (Sex discrimination - Dismissal and initiation of discipline)

Approve the Following WAC Sections

- 132Q-10-604 (Sex discrimination - Prehearing procedure)
- 132Q-10-606 (Sex Discrimination - Presentation of Evidence),
- 132Q-10-607 (Sex discrimination - Initial order), and
- 132Q-10-608 (Sex discrimination - Appeals).

Questions?



**Community Colleges
of Spokane**

CCS Administrative Procedure

2.30.01-F Sex Discrimination Procedure for Complaints Against Employees

Implementing Board Policy [2.30.01](#)

Contact: Chief Human Resources Officer/Title IX Coordinator, 434-5037

1.0 Purpose

Community Colleges of Spokane (CCS) recognizes its responsibility to investigate, resolve, implement supportive and corrective measures, and monitor the educational environment and workplace to promptly and effectively stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington State's Law Against Discrimination, and their implementing regulations. To this end, CCS has enacted Board Policy 2.30.01 and adopted the following Sex Discrimination Complaint Procedure for Complaints Against Employees (the Complaint Procedure) for purposes of receiving and resolving allegations of Sex Discrimination arising within the College's educational programs and activities and workplace. Any individual found responsible for engaging in Sex Discrimination in violation of college policy may be subject to disciplinary action up to and including dismissal from the College's educational programs and activities and/or termination of employment.

Application of this Discipline Procedure is restricted to allegations of Sex Discrimination, which includes, but is not limited to, allegations of Sex-based Harassment, as those terms are defined within this procedure. This Discipline Procedure is effective for all conduct alleged to have occurred after August 1, 2024. For conduct alleged to have occurred prior to August 1, 2024, see CCS Administrative Procedure [2.30.01-D](#). Nothing in this procedure limits or otherwise restricts the College's ability to investigate alleged misconduct and pursue discipline based on violations of other federal, state, and local laws, their implementing regulations, and other College policies prohibiting gender discrimination through processes set forth in employment contracts, employee handbooks, and collective bargaining agreements.

2.0 Order of Precedence

This employee discipline procedure applies to allegations of Sex Discrimination and Sex-based Harassment subject to regulations promulgated under Title IX by the United States Department of Education. See [34 C.F.R. § 106](#). Disciplinary proceedings against an employee Respondent alleged to have engaged in Sex Discrimination or Sex-based Harassment shall be governed by the College's administrative hearing practices and procedures, Chapter [WAC 132Q-108](#), and this disciplinary procedure. To the extent this disciplinary procedure conflicts with [WAC 132Q-108](#), and/or provisions set forth in employment contracts, collective bargaining agreements, employee handbooks, and other College employment policies and procedures, this disciplinary procedure will take precedence.

Notwithstanding the foregoing, if Respondent is a tenured or probationary faculty member and the *Director of Human Resources Employment Services* determines that the facts found in the investigation report would warrant Respondent's dismissal from the College if proven at hearing, the *Director of Human Resources Employment Services* will refer the matter to the Tenure Review Dismissal Committee for a hearing pursuant to [RCW 28B.50.863](#) and applicable procedures set forth in the Master Contract. To the extent the Master Contract's Tenure Review Dismissal Committee procedures are inconsistent or conflict with Sections 3 through 8 of this disciplinary procedure, the disciplinary procedure sections will prevail. At the end of the hearing, the Tenure Review Dismissal Committee will issue a Recommendation consistent with the provisions set forth in Section VIII. Subject to the procedures set forth below, Complainant shall have the same right to appear and participate in the proceedings as the Respondent, including the right to present their position on the Recommendation to the Appropriate President before final action is taken.

3.0 Definitions

- 3.1 Complaint means a written or oral request that can be objectively understood as a request for the College to investigate and make a determination about alleged Sex Discrimination.
- 3.2 Complainant means the following individuals who have been subjected to alleged conduct that would constitute Sex Discrimination:
- 3.2.1 A student or employee; or
- 3.2.2 A person other than a student or employee who was participating or attempting to participate in the College's educational program or activity at the time of the alleged discrimination.
- 3.3 Confidential Employee means a College employee whose communications are privileged and confidential under Federal or State law. An employee's status as a Confidential Employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.
- 3.4 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 they know, or reasonably should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual conduct.
- Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.
- 3.5 Disciplinary Sanction means consequences imposed on a Respondent following a determination that the Respondent violated the College's policy prohibiting Sex Discrimination.
- 3.6 Investigation Procedure is the process the College uses to initiate, informally resolve, and/or investigate allegations that an individual has violated College policies prohibiting Sex Discrimination or Sex-based Harassment.
- 3.7 Mandatory Reporters are employees with authority to take corrective action, administrative leadership, instructors, and advisors, excluding Confidential Employees. Mandatory Reporters are required to report conduct that could reasonably constitute Sex Discrimination to the Title IX Coordinator. All other employees, excluding Confidential Employees, upon learning of conduct that could reasonably constitute Sex Discrimination must either (i) report the conduct to the Title IX Coordinator or (ii) provide the potential complainant with information regarding filing a Title IX complaint.
- 3.8 Peer Retaliation means Retaliation by a student against another student.
- 3.9 Pregnancy or Related Conditions means:
- 3.9.1 Pregnancy, childbirth, termination of pregnancy, or lactation;
- 3.9.2 Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- 3.9.3 Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

- 3.10 Program or Program and Activity means all operations of the College.
- 3.11 Relevant means related to the allegations of sex discrimination under investigation. Questions are Relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is Relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.
- 3.12 Remedies means measures provided to a Complainant or other person whose equal access to the College's educational Programs or Activities has been limited or denied by Sex Discrimination. These measures are intended to restore or preserve that person's access to educational Programs and Activities after a determination that Sex Discrimination has occurred.
- 3.13 Respondent means an individual who has been alleged to have violated the College's policy prohibiting Sex Discrimination.
- 3.14 Retaliation means intimidation, threats, coercion, or discrimination against any person by the College, a student, or an employee or other person authorized by the College to provide aid, benefit, or service under the College's education program or activity, for the purpose of interfering with any right or privilege secured by College policies and procedures prohibiting Sex Discrimination, or because the person has reported information, made a Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in this procedure, and any disciplinary proceeding for Sex Discrimination. Nothing in this definition precludes the College from requiring an employee to provide aid, benefit, or service under the College's education program/activity or employment to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.
- 3.15 Sex Discrimination which includes Sex-based Harassment, occurs when a Respondent causes more than *de minimis* (insignificant) harm to an individual by treating them differently from an otherwise similarly situated individual based on:
 - 3.15.1 sex stereotypes;
 - 3.15.2 sex characteristics;
 - 3.15.3 pregnancy or related conditions;
 - 3.15.4 sexual orientation; and/or
 - 3.15.5 gender identity.
 - 3.15.6 Preventing a person from participating in an education program/activity or employment consistent with their gender identity constitutes more than *de minimis* harm and is prohibited.
- 3.16 Sex-based Harassment. For purposes 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:
 - 3.16.1 **Quid pro quo harassment.** An employee 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.
 - 3.16.2 **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:

- 3.16.2.1 The degree to which the conduct affected the Complainant's ability to access the College's education program or activity;
- 3.16.2.2 The type, frequency, and duration of the conduct;
- 3.16.2.3 The Parties' ages, roles within the College's education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;
- 3.16.2.4 The location of the conduct and the context in which the conduct occurred; and
- 3.16.2.5 Other Sex-based Harassment in the recipient's education program or activity

3.16.3 **Sexual Violence.** Sexual Violence includes the following conduct:

- 3.16.3.1 **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.
- 3.16.3.2 **Nonconsensual sexual contact (Fondling).** 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.
- 3.16.3.3 **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.
- 3.16.3.4 **Statutory rape (Rape of a child).** Non forcible sexual intercourse with a person who is under the statutory age of consent.
- 3.16.3.5 **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, 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](#).
- 3.16.3.6 **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) 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.
- 3.17 Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others; or (ii) suffer substantial emotional distress.
- 3.18 Supportive Measures means reasonably available, individualized, and appropriate, non-punitive and non-disciplinary measures offered by the College to the Complainant or Respondent without unreasonably burdening either Party, and without fee or charge for purposes of:

Restoring or preserving that Party's access to the College's educational Program or Activity, including measures that are designed to protect the safety of the parties or the College's educational environment; or
 - 3.18.1 Providing support during the College's Investigation and Disciplinary Procedures, or during any informal resolution process.
 - 3.18.2 Supportive Measures may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more Parties; leave of absence; change in class, college employment, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to Sex-based Harassment.
- 3.19 Title IX Personnel are the Title IX Coordinator and their designees; Deputy Title IX Coordinators and their designees; Investigators; Director of Human Resources Employment Services and their designees; and Hearing Officers at both the hearing and appeal level, responsible for administering the College's Sex Discrimination investigation and disciplinary procedures; facilitators of the Informal Sex Discrimination Resolution Process; and any other employees who are responsible for implementing the College's Sex Discrimination investigation or Sex Discrimination disciplinary procedures for employees or have the authority to modify or terminate Supportive Measures.
- 3.20 Title IX Coordinator is responsible for processing Title IX Complaints and conducting or overseeing formal investigations and informal resolution processes under this Procedure.

4.0 Prohibited Conduct

The College may impose disciplinary sanctions up to and including dismissal from the College against an employee who has been found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging, or assisting another person to commit or engage in acts of Sex Discrimination, which include Sex-based Harassment and Retaliation. These terms are defined in Section 3.

5.0 Jurisdiction & Dismissal of Complaints

- 5.1 This disciplinary procedure applies only if the alleged misconduct:
 - 5.1.1 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;

- 5.1.2 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
- 5.1.3 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.

For purposes of this disciplinary procedure, the College's "educational programs or activities" means all operations of the College.

- 5.2 The *Director of Human Resources Employment Services* after reviewing the investigation report or the Hearing Officer after receiving the Notice of Hearing determines the facts alleged, even if proven, are not sufficient to support jurisdiction, must issue a notice of dismissal in whole or part to both parties and the Title IX coordinator explaining why some or all of the claims have been dismissed.
- 5.3 The *Director of Human Resources Employment Services* after reviewing the investigation report or the Hearing Officer after receiving the Notice of Hearing may, but is not required to, dismiss the case if:
 - 5.3.1 The Respondent is no longer employed by the College. The College's discretion to dismiss a Sex-based Harassment Complaint lodged against a former employee may be limited by [RCW 28B.112.070](#), which requires the College to complete investigations into allegations of sexual misconduct by employees directed at students unless the student requests otherwise; or
 - 5.3.2 The Complainant has voluntarily withdrawn the Complaint and the Title IX Coordinator has declined to initiate a complaint, and the College determines that any remaining conduct outside the withdrawn allegations would not constitute Sex Discrimination, even if proven. If the Complainant is a student and the case involves allegations of Sex-based Harassment, the withdrawal must be presented by the Complainant in writing before the College will act.
- 5.4 Dismissal does not prohibit the College from pursuing disciplinary action against a Respondent based on allegations that the Respondent engaged in other misconduct prohibited by federal or state law, employment contracts or handbooks, or other College policies.
- 5.5 Both the Complainant and the Respondent may appeal the dismissal of a Complaint pursuant the appeal process in Section 11 of this procedure.
- 5.6 The notice of dismissal must be served on all parties and the Title IX Coordinator and contain an explanation of:
 - 5.6.1 Why dismissal was necessary or appropriate;
 - 5.6.2 The right to appeal the dismissal and a description of the procedure for appealing the dismissal; and
 - 5.6.3 If applicable, notice that the Complaint is being referred to an appropriate disciplinary authority for proceedings outside the jurisdiction of this procedure.
- 5.7 If the Dismissal involves an allegation of Sex-based Harassment, the Notice of Dismissal will be served on the Parties simultaneously.
- 5.8 When a Complaint is dismissed, Title IX Coordinator will, at a minimum:
 - 5.8.1 Offer supportive measures to the Complainant as appropriate;
 - 5.8.2 If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and

- 5.8.3 Take other prompt and effective steps, as appropriate, to ensure that Sex Discrimination does not continue or recur within the College's education Program or Activity.

6.0 Rights of Parties

- 6.1 The provisions of this disciplinary procedure shall apply equally to the Respondent and the Complainant.
- 6.2 The College bears the burden of offering and presenting sufficient evidence to establish that the Respondent is responsible for engaging in Sex Discrimination, Sex-based Harassment, or Retaliation related to or arising from such allegations by a preponderance of the evidence. A preponderance of the evidence means on a more probable than not basis.
- 6.3 The Respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

7.0 Initiation of Discipline

- 7.1 Upon receipt, the *Director of Human Resources Employment Services* shall independently review the investigation report provided by the Title IX Coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the College's Sex Discrimination policy; and if so, what disciplinary sanction(s) and/or remedies will be recommended in collaboration with the Appropriate Executive. The *Director of Human Resources Employment Services* shall, within ten (10) business days of receiving the investigation report, serve Respondent, Complainant, and the Title IX Coordinator with a Written Recommendation, which includes a description of the facts and conclusions supporting the recommendation, as well as a recommended sanction developed in collaboration with the Appropriate Executive. The time for serving a Written Recommendation may be extended by the Director of Human Resources Employment Services for good cause.
- 7.1.1 The Complainant or Respondent shall have 21 calendar days from service of the Written Recommendation to either accept the Written Recommendation or request a hearing. The request may be verbal or written but must be clearly communicated to the Title IX Coordinator.
- 7.1.2 Upon receiving a request for a hearing, the Title IX Coordinator shall promptly notify the other Party of the request and forward a copy of the Written Recommendation to the Hearing Officer.
- 7.1.3 If no request for a hearing is provided to the Title IX Coordinator within the 21 calendar day period, the Director of Human Resources Employment Services' Written Recommendation shall be final and the recommended disciplinary sanctions, if any, shall be implemented immediately by the Appropriate Executive.
- 7.2 Service of the Written Recommendation or any other document required to be served under this procedure shall be done:
- 7.2.1 In person; or
- 7.2.2 By first class or certified mail to the Party's last known address and by electronic mail to the Party's email address on file with the College.

8.0 Pre-Hearing Procedure

- 8.1 Upon receiving the Written Recommendation and request for a hearing, the Title IX Coordinator will send a hearing notice to all Parties in compliance with [WAC 10-08-040](#). The hearing date may not be scheduled less than ten (10) business days after the Final Investigation Report was provided to the Parties and the Title IX Coordinator. The

College may, at its discretion, contract with an administrative law judge or other qualified person to act as the Hearing Officer.

- 8.2 Complainants and Respondents may be accompanied by an Advisor of their choosing during the disciplinary process at the Party's own expense. The Advisor may be an attorney and/or, if the Party is a represented employee, a union representative. If a Party does not select their own advisor, the College will provide the Party with an advisor at no cost to the Party.
- 8.2.1 If the Advisor is an attorney, the Advisor must file a notice of appearance with the Title IX Coordinator at least five (5) business days before the hearing. The Title IX Coordinator will provide copies of the notice to all parties and the Hearing Officer. If a notice of appearance is not filed within this timeframe, the Party will be deemed to have waived their right to have an attorney as an Advisor.
- 8.2.2 If a Party is a represented employee who chooses not to use a union-provided Advisor, the Party must provide the Title IX Coordinator with a signed waiver of union representation, including written consent from the union.
- 8.3 In preparation for the hearing, the College will provide Parties with an accurate description of all relevant and not otherwise privileged evidence gathered by the investigator during the investigation, regardless of whether the College intends to offer the evidence at the hearing. All Parties shall have an equal opportunity to access the evidence upon request.
- 8.4 The Hearing Officer may, or upon the request of any Party, must, conduct the hearing with the Parties physically present in separate locations, with technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or the witness while that person is speaking.

9.0 Evidence

The introduction and consideration of evidence during the disciplinary hearing is subject to the following definitions, procedures, and restrictions:

- 9.1 Relevant or Relevance means a question or evidence is related to the allegations of Sex Discrimination at issue in the proceeding. Questions are relevant when they seek evidence that may aid in showing whether the alleged Sex Discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged Sex Discrimination occurred.
- 9.2 Impermissible evidence.
- 9.2.1 Privileged information. The Hearing Officer shall not consider legally privileged information unless the individual holding the privilege has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:
- 9.2.1.1 Spousal/domestic partner privilege;
- 9.2.1.2 Attorney-Client and attorney work product privileges;
- 9.2.1.3 Privileges applicable to members of the clergy and priests;
- 9.2.1.4 Privileges applicable to medical providers, mental health therapists, and counselors;
- 9.2.1.5 Privileges applicable to sexual assault and domestic violence advocates; and
- 9.2.1.6 Other legal privileges identified in [RCW 5.60.060](#).

- 9.2.2 Prior Sexual Behavior. 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:
 - 9.2.2.1 Is asked or offered to prove someone other than the Respondent committed the alleged misconduct; or
 - 9.2.2.2 Concerns specific incidents of prior sexual behavior between the Complainant and the Respondent, which are asked or offered on the issue of consent.
- 9.3 The Hearing Officer may not make an inference regarding responsibility solely on a witness's or Party's absence from the hearing or refusal to answer questions.
- 9.4 In a proceeding involving allegations of Sex-based Harassment in which a student is a Complainant, the Hearing Officer shall review, in advance, all questions the Complainant and Respondent propose to ask during the hearing for relevance and whether the questions seek otherwise impermissible evidence. The Hearing Officer shall explain on the record the reasons for excluding any questions. If a question is excluded as unclear or harassing, the party proposing the question shall have an opportunity to clarify or revise the question. If questions are submitted for review in writing, the written questions shall be retained as part of the hearing record.
- 9.5 In a proceeding involving allegations of Sex-based Harassment in which a student is the Complainant, all questioning of witnesses on behalf of the Complainant and Respondent shall be conducted either by their respective Advisors or the Hearing Officer. Determination of who will conduct the questioning is at the discretion of the Hearing Officer.

10.0 Initial Order

- 10.1 The Hearing Officer will be responsible for drafting an Initial Order that:
 - 10.1.1 Identifies the allegations of Sex Discrimination;
 - 10.1.2 Describes the complaint and disciplinary procedures, starting with the College's receipt of the Complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
 - 10.1.3 Makes findings of fact supporting the determination of responsibility;
 - 10.1.4 Reaches conclusions as to whether the facts establish whether the Respondent is responsible for engaging in Sex Discrimination in violation of Title IX;
 - 10.1.5 Contains a statement of, and rationale for, the Hearing Officer's determination of responsibility for each allegation;
 - 10.1.6 Describes the disciplinary sanction or conditions imposed against the Respondent, if any;
 - 10.1.7 Describes to what extent, if any, Complainant is entitled to remedies designed to restore or preserve Complainant's equal access to the College's programs or activities; and
 - 10.1.8 Describes the process for appealing the Initial Order to the Hearing Officer.
- 10.2 The Initial Order shall be served on the Parties and the Title IX Coordinator. If the case involves allegations of Sex-based Harassment, the Initial Order shall be served on the Parties and the Title IX Coordinator simultaneously.

11.0 Appeals

- 11.1 All Parties, including the Director of Human Resources Employment Services 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 Complaint during the investigative or hearing process. Appeals must be in writing and filed with the Title IX Coordinator within twenty-one (21) calendar 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 dismissal being challenged 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 dismissal shall be deemed final.
- 11.2 Upon receiving a timely appeal, the Title IX Coordinator will serve a copy of the appeal on all non-appealing Parties, who will have ten (10) business days from the date of service to submit written responses to Title IX Coordinator 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 Title IX Coordinator shall serve copies of the responses to the appealing Party. The Title IX Coordinator will forward the written responses to the Chancellor or their designee.
- 11.3 If necessary to aid review, the Chancellor or their designee may ask for additional briefing from the parties on issues raised on appeal.
- 11.4 The Chancellor or their designee, based on their review of the Parties' submissions and the hearing or investigative record, will make a Final Decision determining whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal 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.
- 11.5. The Final Decision shall be served on all Parties and the Title IX Coordinator. If the case involves allegations of Sex-based Harassment, the Final Decision shall be served on the Parties and the Title IX Coordinator simultaneously.
- 11.6. All decisions reached through this process are final and may be judicially appealed pursuant to applicable provisions of [RCW 34.05](#), 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.

12.0 Other Discrimination Complaint Options

Discrimination complaints may also be filed with the following federal and state agencies:

- 12.1 [Washington State Human Rights Commission](#)
- 12.2 [U.S. Dept of Education Office for Civil Rights](#)
- 12.3 [Equal Employment Opportunity Commission](#)

CCS Administrative Procedure

2.30.01-G Sex Discrimination Investigation Procedure for Complaints Against Employees

Implementing Board Policy [2.30.01](#)

Contact: Chief Human Resources Officer/Title IX Coordinator, 434-5037

1.0 Purpose

Community Colleges of Spokane recognizes its responsibility to investigate, resolve, implement supportive and corrective measures, and monitor the educational environment and workplace to promptly and effectively stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington State’s Law Against Discrimination, and their implementing regulations. To this end, College has enacted Board Policy [2.30.01](#) and adopted the following Sex Discrimination Investigation Procedure (the Investigation Procedure) for purposes of receiving and investigating allegations of Sex Discrimination arising within the College’s educational programs and activities and workplace. Any individual found responsible for engaging in Sex Discrimination in violation of College policy may be subject to disciplinary action up to and including dismissal from the College’s educational programs and activities and/or termination of employment.

Application of this Investigation Procedure is restricted to allegations of Sex Discrimination, which includes, but is not limited to, allegations of Sex-based Harassment, as those terms are defined within this procedure. This Investigation Procedure is effective for all conduct alleged to have occurred after August 1, 2024. For conduct alleged to have occurred prior to August 1, 2024, see CCS Administrative Procedure [2.30.01–D](#). Nothing in this procedure limits or otherwise restricts the College’s ability to investigate alleged misconduct and pursue discipline based on violations of other federal, state, and local laws, their implementing regulations, and other College policies prohibiting gender discrimination through processes set forth in the College’s employment contracts, employee handbooks, and collective bargaining agreements.

2.0 Definitions

For purposes of this Investigation Procedure, the following definitions apply:

- 2.1 Complaint means a written or oral request that can be objectively understood as a request for the College to investigate and make a determination about alleged Sex Discrimination.
- 2.2 Complainant means the following individuals who have been subjected to alleged conduct that would constitute Sex Discrimination:
 - 2.2.1 A student or employee; or
 - 2.2.2 A person other than a student or employee who was participating or attempting to participate in the College’s educational program or activity at the time of the alleged discrimination.
- 2.3 Confidential Employee means a College employee whose communications are privileged and confidential under Federal or State law. An employee’s status as a Confidential Employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.
- 2.4 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 they know, or reasonably should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual conduct.

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

- 2.5 Disciplinary Sanction means consequences imposed on a Respondent following a determination that the Respondent violated the College's policy prohibiting Sex Discrimination.
- 2.6 Exculpatory Evidence means evidence that is favorable to or tends to absolve the Respondent. This type of evidence may justify or excuse the Respondent's actions, or show the Respondent is not guilty at all.
- 2.7 Inculpatory Evidence means evidence which incriminates the Respondent or proves their guilt. It is evidence that shows, or tends to show, a person's involvement in an act.
- 2.8 Interim Suspension means an emergency suspension of a student Respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in [WAC 132Q-10-320](#).
- 2.9 Investigation Procedure is the process the College uses to initiate, informally resolve, and/or investigate allegations that an individual has violated College policies prohibiting Sex Discrimination or Sex-based Harassment.
- 2.10 Mandatory Reporters are all college employees, excluding Confidential Employees. Mandatory Reporters are required to report conduct that could reasonably constitute Sex Discrimination to the Title IX Coordinator.
- 2.11 Peer Retaliation means Retaliation by a student against another student.
- 2.12 Pregnancy or Related Conditions means:
- 2.12.1 Pregnancy, childbirth, termination of pregnancy, or lactation;
 - 2.12.2 Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - 2.12.3 Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- 2.13 Program or Program and Activity means all operations of the College.
- 2.14 Relevant means related to the allegations of sex discrimination under investigation. Questions are Relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is Relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.
- 2.15 Remedies means measures provided to a Complainant or other person whose equal access to the College's educational Programs or Activities has been limited or denied by Sex Discrimination. These measures are intended to restore or preserve that person's access to educational Programs and Activities after a determination that Sex Discrimination has occurred.
- 2.16 Respondent means an individual who has been alleged to have violated the College's policy prohibiting Sex Discrimination.

- 2.17 Retaliation means intimidation, threats, coercion, or discrimination against any person by the College, a student, or an employee or other person authorized by the College to provide aid, benefit, or service under the College's education program or activity, for the purpose of interfering with any right or privilege secured by College policies and procedures prohibiting Sex Discrimination, or because the person has reported information, made a Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for Sex Discrimination. Nothing in this definition precludes the College from requiring an employee to provide aid, benefit, or service under the College's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.
- 2.18 Sex Discrimination: which includes Sex-based Harassment, occurs when a Respondent causes more than de minimis (insignificant) harm to an individual by treating them differently from an otherwise similarly situated individual based on:
- 2.18.1 sex stereotypes;
 - 2.18.2 sex characteristics;
 - 2.18.3 pregnancy or related conditions;
 - 2.18.4 sexual orientation; and
 - 2.18.5 gender identity.

Preventing a person from participating in an education program or activity consistent with their gender identity constitutes more than de minimis harm and is prohibited.

- 2.19 Sex-based Harassment - For purposes 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:
- 2.19.1 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.
 - 2.19.2 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:
 - 2.19.2.1 The degree to which the conduct affected the Complainant's ability to access the recipient's education program or activity;
 - 2.19.2.2 The type, frequency, and duration of the conduct;
 - 2.19.2.3 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;
 - 2.19.2.4 The location of the conduct and the context in which the conduct occurred; and
 - 2.19.2.5 Other sex-based harassment in the recipient's education program or activity.
 - 2.19.3 Sexual violence - Sexual violence includes the following conduct:
 - 2.19.3.1 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.

- 2.19.3.2 Nonconsensual sexual contact (Fondling). 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.
- 2.19.3.3 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 (18).
- 2.19.3.4 Statutory rape (Rape of a child). Non forcible sexual intercourse with a person who is under the statutory age of consent.
- 2.19.3.5 Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, or 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.
- 2.19.3.6 Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) 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.
- 2.19.4 Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others; or (ii) suffer substantial emotional distress.
- 2.20 Supportive Measures means reasonably available, individualized and appropriate, non-punitive and non-disciplinary measures offered by the College to the Complainant or Respondent without unreasonably burdening either Party, and without fee or charge for purposes of:
- 2.20.1 Restoring or preserving that Party's access to the College's educational Program or Activity, including measures that are designed to protect the safety of the parties or the College's educational environment; or
- 2.20.2 Providing support during the College's Investigation and Disciplinary Procedures, or during any informal resolution process.
- 2.20.3 Supportive Measures may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services;

increased security and monitoring of certain areas of campus; restriction on contact applied to one or more Parties; leave of absence; change in class, college employment, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to Sex-based Harassment.

- 2.21 Title IX Personnel are the Title IX Coordinator and designees; Deputy Title IX Coordinators and their designees; Investigators; Student Conduct Officers; Director of Human Resources Employment Services and designees; and Hearing Officers at both the hearing and appeal level, responsible for administering the College's Sex Discrimination investigation and disciplinary procedures; facilitators of the Informal Sex Discrimination Resolution Process; and any other employees who are responsible for implementing the College's Sex Discrimination investigation or Sex Discrimination disciplinary procedures for students or employees or have the authority to modify or terminate Supportive Measures.
- 2.22 Title IX Coordinator is responsible for processing Title IX Complaints and conducting or overseeing formal investigations and informal resolution processes under this Investigation Procedure.

3.0 Training Requirements

- 3.1 All Employees– All employees shall undergo annual training on the following topics:
- 3.1.1 The definition and scope of Sex Discrimination and Sex-based Harassment under these procedures;
 - 3.1.2 The College's obligation to address Sex Discrimination in its education programs and activities;
 - 3.1.3 Employee responsibility, upon learning of a student's pregnancy or related condition, to provide the student with the Title IX Coordinator's contact information and information about available assistance;
 - 3.1.4 Employee obligations to notify the Title IX Coordinator about conduct that may reasonably be Sex Discrimination.
- 3.2 Title IX Personnel - In addition to the required training for all employees, Title IX Personnel shall undergo annual training on the following topics:
- 3.2.1 The College's complaint procedures for Sex Discrimination and Sex-based Harassment involving a student;
 - 3.2.2 How to conduct an investigation;
 - 3.2.3 How to serve impartially without prejudgment of facts, conflicts of interest, or bias;
 - 3.2.4 Use of technology during an investigation or hearing;
 - 3.2.5 The definition of Relevance as used for purposes of evaluating evidence and questions for purposes of this investigation procedure; and
 - 3.2.6 Effective report writing.
 - 3.2.7 Informal resolution facilitators: procedures for the College's informal resolution process
- 3.3 Title IX Coordinator and Designees

In addition to the required training for all employees and for Title IX Personnel, the Title IX Coordinator and any designees shall undergo training on the following topics:

- 3.3.1** How to ensure the College's compliance with its Title IX obligations;

- 3.3.2 How to offer and coordinate supportive measures;
 - 3.3.3. Specific actions to prevent discrimination and ensure equal access upon learning of a student's pregnancy or related conditions;
 - 3.3.4. The College's recordkeeping system and requirements.
- 3.4 All Sex Discrimination training materials will be made available for review upon request.

4.0 Title IX Coordinator Investigation Duties

During an investigation, the Title IX Coordinator or their designee is responsible for the following:

- 4.1 Accepting, evaluating, and processing all Sex Discrimination and Sex-based Harassment Complaints, reports or referrals.
- 4.2 Conducting an intake meeting with the Complainant and, at that time, notifying the Complainant, or the individual who reported the conduct if the complainant is unknown, of the College's Sex Discrimination investigation and disciplinary procedures, as well as the informal resolution process if appropriate and available. After providing this information, the Title IX Coordinator will ascertain whether the Complainant would like the College to proceed with an investigation of the Sex Discrimination Complaint.
- 4.3 Initiating a Complaint subject to the procedure and factors set forth in Section 6 of this procedure.
- 4.4 When a Party is a student employee and the allegations involve Sex-based Harassment, making a fact-specific inquiry into whether the Party's primary relationship with the College is to receive an education and whether alleged Sex-based Harassment occurred while the Party was performing employment-related work and, and based on this inquiry, determine whether the Party should be treated as a student or an employee under this investigation procedure and related disciplinary procedures.
- 4.5 Addressing and resolving, if possible, questions regarding confidentiality raised by Parties and witnesses.
- 4.6 Determining whether a Complaint should be dismissed during the investigation phase, and if so, notifying the Complainant or the Parties (if Respondent has been notified of the Complaint) of the reasons for the dismissal, and providing the Complainant or Parties with information about the procedure for filing an appeal of the dismissal.
- 4.7 Maintaining accurate records of all Complaints, reports, and referrals.
- 4.8 Retaining investigation files, Complaints, reports, and referrals in compliance with applicable records retention periods or federal or state law, whichever is longer.
- 4.9 Either conducting an impartial investigation of a Complaint or assigning the investigation to an impartial investigator and overseeing the investigation.
- 4.10 Engaging in an interactive process with both Parties to identify and provide Supportive Measures that ensure during the investigation and disciplinary processes that the Parties have equitable access to education programs and activities and are protected from further discrimination or retaliation and making revisions to Supportive Measures as circumstances may require.
- 4.11 Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and to the appropriate disciplinary authority in compliance with this Investigation Procedure.
- 4.12 Recommending non-disciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to College disciplinary authorities and administrators.

5.0 Filing a Complaint

Any employee, student, applicant, or visitor who believes that they have been the subject of Sex Discrimination in violation of the College policies, should report the incident or incidents to the College's Title IX Coordinator identified below. The Complaint can be in writing or oral. If the Complaint is against the Title IX Coordinator, the Complainant should report the matter to the Chancellor's office for referral to an alternate designee.

Chief Human Resource Officer/Title IX Coordinator
501 N Riverpoint Blvd, Suite 126
PO Box 6000, MS 1004
Spokane, WA 99217
(509) 434-5037

Chancellor
501 N. Riverpoint Blvd. Suite 110
PO Box 6000, MS 1001
Spokane, WA 99217
(509) 434-5006

6.0 Title IX Coordinator Initiated Complaint

- 6.1 In the absence or withdrawal of any or all allegations in a Complaint, the Title IX Coordinator may file a Complaint based on their evaluation of the following factors:
- 6.1.1 A Complainant's request not to proceed with initiation of a Complaint;
 - 6.1.2 A Complainant's reasonable safety concerns regarding initiation of a Complaint;
 - 6.1.3 The risk additional acts of Sex Discrimination would occur if the Complaint is not initiated;
 - 6.1.4 The severity of the alleged Sex Discrimination, including whether the discrimination if established, would require the removal of the Respondent from campus or imposition of other disciplinary sanction(s) to end the discrimination and prevent its recurrence;
 - 6.1.5 The age and relationship of the parties, including whether the Respondent is a College employee;
 - 6.1.6 The scope of the alleged Sex Discrimination, including information suggesting a pattern, on-going Sex Discrimination, or Sex Discrimination alleged to have impacted multiple individuals;
 - 6.1.7 The availability of evidence to assist a Decisionmaker with determining whether Sex Discrimination occurred; and
 - 6.1.8 Whether the College could end the alleged Sex Discrimination and prevent its recurrence without initiating an investigation and disciplinary procedure.
- 6.2 If, upon evaluating these and any other Relevant factors, the Title IX Coordinator determines that the alleged conduct poses an imminent threat to the health or safety of the Complainant or to other members of the College community or that the alleged conduct prevents the College from ensuring equal access on the basis of sex to its educational programs and activities, then the Title IX Coordinator may initiate a Complaint.
- 6.3 When initiating a Complaint, the Title IX Coordinator will provide the Complainant with advance notice of this decision and an opportunity to appropriately address reasonable concerns about the Complainant's safety or the safety of others, including the provision of Supportive Measures.
- 6.4 Regardless of whether a Complaint is initiated under this section, the Title IX Coordinator must take other prompt and effective steps, in addition to those steps necessary to

implement remedies for the individual Complainant, to ensure that Sex Discrimination does not continue or recur within the College's educational Programs and Activities.

- 6.5 The analysis set forth above need not be performed if the Title IX Coordinator reasonably determines that the alleged conduct could not constitute Sex Discrimination.

7.0 Principles of Investigation Applicable to Sex Discrimination Complaints

The College shall provide an adequate, reliable, and impartial investigation of Complaints of Sex Discrimination by:

- 7.1 Treating Complainants and Respondents equitably.
- 7.2 Presuming that the Respondent is not responsible for the alleged misconduct unless or until a determination of responsibility is reached after completion of the investigation and disciplinary processes.
- 7.3 Having the investigation conducted by a neutral and unbiased investigator without a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent.
- 7.4 Having the investigator make findings of fact based on the preponderance of the evidence standard. A preponderance of the evidence means on a more probable than not basis.
- 7.5 Placing the burden on the College—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether Sex Discrimination occurred.
- 7.6 Objectively evaluating all evidence that is Relevant and not otherwise impermissible under Section 10.0, (10.5) and (10.6) of this procedure—including both inculpatory and exculpatory evidence—and provide credibility determinations that are not based solely on a person's status as a Complainant, Respondent, or witness.
- 7.7 Providing an equal opportunity for Parties to present fact witnesses and other inculpatory or exculpatory evidence that is Relevant and not otherwise impermissible.
- 7.8 Providing ten calendar days for each Party to review and submit written comments on the draft investigation report and, upon request, to review Relevant and not otherwise impermissible evidence gathered by the investigator before finalizing the investigation report; and
- 7.9 Taking reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the investigation procedure. Such steps shall not prevent the Parties from using the information or evidence for related disciplinary proceedings or litigation related to the Complaint of Sex Discrimination.

8.0 Confidentiality

- 8.1 The College will seek to protect the privacy of the Complainant to the fullest extent possible, consistent with the legal obligation to investigate, offer appropriate Supportive Measures and/or take disciplinary action, and comply with the federal and state law, as well as College policies and procedures. Although the College will attempt to honor Complainant requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX Coordinator.
- 8.2 The College has designated the following positions as Confidential Employees: mental health counselors and mental health counseling interns when acting in a mental health counselor capacity.

CCS Student Health Clinic
1810 N. Greene St.
Building 7, Room 118
Spokane, WA 99217
(509) 533-8611

SCC Counseling Services
1810 N. Greene St.
Building 1, Room 102
Spokane, WA 99217
(509) 533-7026

SFCC Counseling Center
3410 W. Whistalks Way
Spokane, WA 99224
Building 30, Room 243
(509) 533-3525

Confidential Employees, when acting in their confidential capacity, will maintain confidentiality of information shared by a Complainant and are not required to report conduct that may reasonably constitute Sex Discrimination to the Title IX Coordinator. When a Confidential Employee learns of conduct that reasonably may constitute Sex Discrimination, the Confidential Employee must explain (1) their status as a confidential employee, including the circumstances under which they are not required to notify the Title IX Coordinator about the possible Sex Discrimination, (2) how the Complainant can contact the Title IX Coordinator to make a Complaint about the possible Sex Discrimination, and (3) that the Title IX Coordinator may offer and coordinate Supportive Measures, as well as initiate an Informal Resolution Process or Investigation pursuant to these Investigation procedures.

- 8.3 The Title IX Coordinator will inform the Complainant about the College's Sex Discrimination investigation and disciplinary processes and attempt to obtain consent from the Complainant before commencing an investigation of alleged Sex-based Harassment. If a Complainant asks that their name not be revealed to the Respondent or that the College not investigate the allegation, the Title IX Coordinator will inform the Complainant that maintaining confidentiality may limit the College's ability to fully respond to the allegations and that retaliation by the Respondent and/or others is prohibited. If the Complainant still insists that their name not be disclosed or that the College not investigate, the Title IX Coordinator will determine whether the College can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the College community, including the Complainant.
- 8.4 If the College is unable to honor a Complainant's request for confidentiality, the Title IX Coordinator will notify the Complainant of the decision and disclose the Complainant's identity only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this Investigation Procedure.
- 8.5 If the College decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX Coordinator will evaluate whether other measures are available to address the circumstances giving rise to the Complaint and prevent their recurrence and implement such measures if reasonably feasible.
- 8.6 Certain federal grants require the College's Authorized Organizational Representative to notify the appropriate agency of findings/determinations of Sexual Harassment, other forms of Harassment or sexual assault committed by key grant personnel including, but not limited to, program directors, principal investigators, or co-principal investigators.

- 8.6.1 The College may also be required to notify the agency if these personnel have been placed on administrative leave or if any administrative action has been imposed on them related to a finding.
- 8.6.2 Personally identifiable information regarding a Complainant will not be shared as part of this reporting process. be shared as part of this reporting process.

9.0 Notice of Investigation and other Notice Requirements

Notice of Investigation. Upon receiving a Complaint of Sex Discrimination, the Title IX Coordinator will initiate the investigation by serving the Respondent and the Complainant with a Notice of Investigation in advance of their initial interviews. This Notice will be served sufficiently in advance to allow the Parties adequate time to prepare for their initial interviews.

If a Complaint includes allegations of Sex-based Harassment and the College has reasonable concerns for the safety of any person as a result of providing a Notice of Investigation, service of the Notice may be reasonably delayed in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

The Notice of Investigation must:

- 9.1 Include a description of the College's Sex Discrimination Investigation and Disciplinary Procedures, including descriptions of procedures applicable to Sex-based Harassment and Informal Resolution processes, if applicable.
- 9.2 Sufficient information for the Parties to respond to the allegations, including the identities of the Parties, a description of the alleged discriminatory conduct, and the time and location of the alleged incident, to the extent this information is available to the College.
- 9.3 A statement that retaliation is prohibited.
- 9.4 Inform the Parties that they are entitled to have an Advisor of their choice and at their own expense, available during the investigation and any disciplinary proceedings and that the Advisor may be, but is not required to be an attorney, and that during the investigation, the Advisor's role will be limited to attending meetings or interviews with the Party and providing advice to the Party.
- 9.5 A statement that the Parties are entitled to an equal opportunity to access a description of the Relevant, not otherwise impermissible evidence and that both parties shall have an equal opportunity to review such evidence upon request.

In cases involving allegations of **Sex-based Harassment**, the Notice of Investigation shall also inform the Parties that:

- 9.6 The Respondent is presumed not responsible for the alleged Sex-based Harassment until a determination is made at the conclusion of the applicable disciplinary procedure and prior to such a determination, the Parties will have the opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.
- 9.7 A statement that the Parties are entitled to an equal opportunity to access the investigative report describing the Relevant, not otherwise impermissible evidence, and that both Parties shall have an equal opportunity to review this evidence upon request.
- 9.8 Notice that the College's employment policies and student conduct code prohibit employees and students from knowingly making false statements or knowingly submitting false information during an investigation or disciplinary proceeding.

Amended Notice of Investigation. If during the course of the investigation, the College decides to investigate Sex Discrimination allegations against a Party that are not included in the original Investigation Notice, the College will issue an amended Notice of Investigation to both Parties that includes this additional information and complies with the applicable notice requirements set forth above.

Notice of Meetings and Interview. In cases involving allegations of Sex-based Harassment, the College shall provide written notice to Parties whose participation is invited or expected of the date, time, location, participants, and purposes of all meeting or proceedings with sufficient time for the Party to prepare to participate.

10.0 Investigation Process

During the investigation, the investigator:

- 10.1 Will provide the parties with equal opportunity to present Relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence.
- 10.2 Will not restrict the ability of either Party to discuss the allegations under investigation or gather and present Relevant evidence, except when a no contact order has been imposed based on an individualized and fact specific determination that a Party poses a threat to the health, safety, or welfare of another Party and/or witnesses or when contact with a Party and/or witness is prohibited by court order. A College-imposed no contact order shall be no broader than is necessary to protect the threatened Party or witness and must provide the Party or their advisor with alternative means of gathering and presenting Relevant evidence from the protected witness or Party.
- 10.3 Will allow each Party to be accompanied by an Advisor of their choosing, who may be an attorney, to any investigation related meeting or interview. Advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the Party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney advising a Party must enter a notice of appearance with the Title IX Coordinator and the Investigator at least five (5) business days before the initial interview or meeting they plan to attend, so the College can secure its own legal representation, if necessary.
- 10.4 In cases involving allegations of Sex-based Harassment, the Investigator will provide both parties and their respective Advisors with an equal opportunity to review the draft investigation report and to inspect and review Relevant and not otherwise impermissible evidence upon request. After disclosure of the report, each Party will receive ten (10) calendar days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a Party fails to submit a written response within ten (10) calendar days, the Party will be deemed to have waived their right to respond, and the investigator will finalize the report without this information.
- 10.5 During Sex Discrimination and Sex-based Harassment investigations under this Procedure, the investigator may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:
 - 10.5.1 Spousal/domestic partner privilege;
 - 10.5.2 Attorney-Client and attorney work product privileges;
 - 10.5.3 Privileges applicable to members of the clergy and priests;
 - 10.5.4 Privileges applicable to medical providers, mental health therapists, and counsellors;
 - 10.5.5 Privileges applicable to sexual assault and domestic violence advocates; or

- 10.5.6 Other legal privileges identified in [RCW 5.60.060](#).
- 10.6 Prior Sexual Behavior. 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:
- 10.6.1 Is asked or offered to prove someone other than the Respondent committed the alleged misconduct; or
- 10.6.2 Concerns specific incidents of prior sexual behavior between the Complainant and the Respondent, which are asked or offered on the issue of consent.
- 10.7 Upon completion of the investigation, the Title IX Coordinator will distribute the final investigation report to the Parties. The Title IX Coordinator will also provide the investigation report and the evidence gathered during the investigation to the Director of Human Resources Employment Services, who is responsible for determining whether pursuing disciplinary action is warranted. Disciplinary recommendations will be made in collaboration with the Appropriate Executive.

11.0 Dismissal of Complaint During Investigation – Right to Appeal

- 11.1 During an investigation, a Sex Discrimination Complaint may be dismissed, in whole or in part, for the following reasons:
- 11.1.1 The Respondent cannot be identified, after the College has taken reasonable steps to do so;
- 11.1.2 The Respondent is not participating in the College's educational Programs or Activities and is not employed by the College. The College's discretion to dismiss a Sex-based Harassment Complaint lodged against a former employee may be limited by [RCW 28B.112.070](#), which requires the College to complete investigations into allegations of sexual misconduct by employees directed at student Complainants unless the Complainant requests otherwise.
- 11.1.3 The Complainant has voluntarily withdrawn any or all of the allegations in the Complaint, and the Title IX Coordinator has declined to initiate their own Complaint, and any remaining allegations would not constitute Sex Discrimination, even if proven. In cases involving allegations of Sex-based Harassment, the College must obtain the Complainant's withdrawal in writing before dismissal.
- 11.1.4 The conduct alleged by the Complainant, even if proven, would not constitute Sex Discrimination; or
- 11.1.5 The conduct alleged by the Complainant falls outside the College's disciplinary jurisdiction.
- 11.2 The Complainant and the Respondent (if the Respondent has been notified of the Complaint) may appeal the dismissal of a Complaint pursuant to the appeal process in CCS Administrative Procedure 2.30.01- F Sex Discrimination Procedure for Complaints Against Employees.
- 11.3 If the dismissal occurs during the investigation, the Title IX Coordinator will provide the Complainant or the Complainant and the Respondent (if the Respondent has been notified of the Complaint) written notice explaining:
- 11.3.1 Why dismissal was necessary or appropriate;
- 11.3.2 The right to appeal the dismissal and a description of the procedure for appealing the dismissal; and
- 11.3.3 If applicable, notice that the Complaint is being referred to an appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

- 11.4 If the Dismissal involves an allegation of Sex-based Harassment and the Parties have both been notified of the investigation, the Notice of Dismissal will be served on the Parties simultaneously.
- 11.5 When a Complaint is dismissed, the Title IX Coordinator will, at a minimum:
- 11.5.1 Offer Supportive Measures to the Complainant as appropriate;
 - 11.5.2 If the Respondent has been notified of the allegations, offer Supportive Measures to the Respondent as appropriate; and
 - 11.5.3 Take other prompt and effective steps, as appropriate, to ensure that Sex Discrimination does not continue or recur within the College's education Program or Activity.
- 11.6 Dismissal of a Sex Discrimination Complaint does not preclude the College from investigating and pursuing discipline based on allegations that a Respondent violated other federal or state laws and regulations, College conduct policies, and/or other codes and contractual provisions governing employee conduct.

12.0 Supportive Measures

- 12.1 The Title IX Coordinator must offer and coordinate Supportive Measures to both the Complainant and the Respondent. Supportive Measures may vary depending on the circumstances and what the College may determine to be reasonably available. Supportive Measures may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, college work schedules, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to Sex-based Harassment.
- 12.2 Supportive Measures may not be imposed for punitive or disciplinary purposes.
- 12.3 Supportive Measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties and/or the College's educational environment, or to provide support to the Parties during the formal or informal resolution processes.
- 12.4 The Title IX Coordinator may modify or terminate Supportive Measures during or after formal or informal resolution procedures are completed, as the Parties' and/or the College's circumstances change.
- 12.5 If, at any point during the Sex Discrimination investigation or disciplinary proceeding, a Party becomes dissatisfied with their Supportive Measures or undergoes a change of circumstances that warrants revisions to their Supportive Measures, the Party may submit a request to revise their Supportive Measures to the Title IX Coordinator. The Title IX Coordinator will respond to such a request within five (5) business days. If the Party disagrees with the Title IX Coordinator's decision, they may submit a written appeal to the Chancellor or their designee within ten (10) calendar days of receiving the Title IX Coordinator's decision. Review of the appeal shall be performed by an impartial employee with authority to modify or reverse the Title IX Coordinator's decision to provide, deny, modify or terminate Supportive Measures applicable to the Party seeking review. Challenged Supportive Measures will be reviewed to determine whether they are meeting the purposes set forth in Section 12.3 above.
- 12.6 In cases involving allegations of Sex Discrimination other than Sex-based Harassment and Retaliation, the College is not required to alter the alleged discriminatory practice(s) for the purpose of providing a Supportive Measure.

13.0 Emergency Removal

Nothing in this Investigation Procedure prohibits the College from placing an employee Respondent on administrative leave pending completion of the investigation and final resolution of any resulting disciplinary proceeding.

14.0 Complaint Resolution and Consolidation

The Sex Discrimination resolution processes are initiated when the Title IX Coordinator receives a written or oral Complaint from a Complainant alleging that a Respondent(s) discriminated against them on the basis of their sex and the Complainant asks that the College initiate an investigation. A Complaint may be submitted by the Complainant orally or in writing or it may be initiated and signed by the Title IX Coordinator on behalf of the Complainant. Complaints submitted to the Title IX Coordinator may be resolved through either informal or formal resolution processes.

14.1 Informal Resolution

- a. a Complainant who is a minor or a vulnerable adult;
- b. a Respondent poses an immediate threat to the health, safety or welfare of a member of the College community;
- c. an Employee, who is alleged to have engaged in Sex-based Harassment of a Student Complainant.

If Informal Resolution is appropriate, the Parties may explore resolution through:

- a. Guided conversations or communications conducted by the Title IX Coordinator, a Human Resource Representative, or some other mutually agreed upon third party;
- b. A structured resolution process conducted by a trained mediator; or
- c. Voluntary agreement between the Parties to alter either or both Parties' College work or class schedules.

A proposal to engage in Informal Resolution should be provided to the Parties in the Notice of Investigation or after the Notice of Investigation has been served on both Parties.

Before engaging in informal resolution, the College must provide written notification to the Parties of their rights and responsibilities. This notice shall explain:

- 14.1.1 The allegations;
- 14.1.2 The requirements of the informal resolution process;
- 14.1.3 That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and initiate or resume the formal resolution process;
- 14.1.4 That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will prevent the Parties from initiating or resuming the Formal Resolution process;
- 14.1.5 That the potential terms of any Informal Resolution agreement will only be binding on the Parties to the agreement; and
- 14.1.6 What information the College will retain from the informal resolution process and how that information will be used, if the process is not successful and the formal resolution process is initiated or resumed.

Because the informal resolution process is voluntary, either Party may withdraw from the Informal Resolution process at any time, at which point the formal investigation process will resume.

If the Parties voluntarily resolve a Complaint, the College will record the terms of the resolution in a written agreement signed by both Parties and provide written notice to both Parties that the Complaint has been closed.

If the Parties agree to an informal resolution process, the College will commence informal resolution within ten (10) business days after the parties agree to this option and conclude within thirty (30) business days of beginning that process; subject to reasonable delays and extensions for good cause shown.

14.2 **Formal Resolution**

Formal resolution means that the Complainant's allegations of Sex Discrimination will be subjected to a formal investigation by an impartial and unbiased investigator. The investigation may be conducted by the Title IX Coordinator, a designee or an Investigator. The results of the investigator's report will be shared with the Parties, the Title IX Coordinator, as well as the Director of Human Resources Employment Services who is responsible for determining whether disciplinary proceedings are warranted.

Originated: July 10, 2024

Cabinet approval: July 24, 2024

CCS Administrative Procedure

3.30.01 - D Sex Discrimination Procedure for Complaints Against Students

Implementing Board Policy [3.30.01](#)

Contact: SFCC Title IX Coordinator, 533-3514

SCC Title IX Coordinator, 533-7015

1.0 Purpose

Community Colleges of Spokane recognizes its responsibility to investigate, resolve, implement supportive and corrective measures, and monitor the educational environment and workplace to promptly and effectively stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington State's Law Against Discrimination, and their implementing regulations. To this end, Community Colleges of Spokane has enacted Board Policy 3.30.01 and adopted the following Sex Discrimination Procedure for purposes of receiving allegations of Sex Discrimination arising within the College's educational programs and activities and workplace. Any individual found responsible for engaging in Sex Discrimination in violation of College policy may be subject to disciplinary action up to and including dismissal from the College's educational programs and activities.

Application of this Complaint Procedure is restricted to allegations of Sex Discrimination, which includes, but is not limited to, allegations of Sex-based Harassment, as those terms are defined within this procedure. This Procedure is effective for all conduct alleged to have occurred after August 1, 2024. For conduct alleged to have occurred prior to August 1, 2024, see CCS Administrative Procedure [3.30.01-B](#). Nothing in this procedure limits or otherwise restricts the College's ability to investigate alleged misconduct and pursue discipline based on violations of other federal, state, and local laws, their implementing regulations, and other College policies prohibiting gender discrimination through processes set forth in the College's code of student conduct.

2.0 Authority

2.1 The Community Colleges of Spokane board of trustees, acting pursuant to [RCW 28B.50.140 \(14\)](#), delegates to the president of the college the authority to administer student disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of Student Affairs/Student Services or their designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

3.0 Statement of Jurisdiction

- 3.1 The student conduct code shall apply to conduct by students or student groups that occurs:
- 3.1.1 On college premises;
 - 3.1.2 At or in connection with college programs or activities; or
 - 3.1.3 Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.
- 3.2 Jurisdiction extends to locations in which students are engaged in college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the students, student government, student clubs or

organizations, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

- 3.3 Students are responsible for their conduct from the time they gain admission to the college through the last day of enrollment or award of any 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 enrollment.
- 3.4 These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.
- 3.5 The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.
- 3.6 Related Information: In addition to initiating disciplinary 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 reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

4.0 Definitions

The following definitions shall apply for purpose of this student conduct code:

- 4.1 **Business Day** means a weekday, excluding weekends and college holidays.
- 4.2 **College premises** shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.
- 4.3 **Complainant** means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:
 - 4.3.1 a student or employee; or
 - 4.3.2 a person other than a student or employee who was participating or attempting to participate in the College's education program or activity at the time of the alleged discrimination.
- 4.4 **Disciplinary action** is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.
- 4.5 **Filing** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by: (a) hand delivery of the document to the specified college official or college official's assistant; or (b) by sending the document by email and first-class mail to the specified college official's office and college email address. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.
- 4.6 **Pregnancy or Related Conditions** means: (a) pregnancy, childbirth, termination of pregnancy, or lactation; (b) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (c) recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

- 4.7 **President** is the President of the college. The President is authorized to: (a) delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and (b) reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.
- 4.8 **Program or Programs and Activities** means all operations of the College.
- 4.9 **Relevant** means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
- 4.10 **Remedies** means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.
- 4.11 **Respondent** is a student who is alleged to have violated the student conduct code.
- 4.12 **Service** is the process by which a document is officially delivered 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) 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 the document or upon the date that the document is emailed and deposited in the mail, whichever is first.
- 4.13 **Student Conduct Officer** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.
- 4.14 **Student employee** means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation, including but not limited to sex-based harassment, occurred while the individual was performing employment-related work.
- 4.15 **Student group** is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.
- 4.16 **Supportive measures** means reasonably available, individualized and appropriate, non-punitive and non-disciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:
- 4.16.1 Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or
- 4.16.2 Supportive measures may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

- 4.17 **Title IX Coordinator** is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

5.0 Prohibited Student Conduct

The college may impose disciplinary sanctions against a student or a college sponsored student organization, athletic team or living group, 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:

- 5.1 **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies.
- 5.2 **Sex Discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than *de minimis* harm to an individual by treating them different from a similarly-situated individual on the basis of: sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than *de minimis* (insignificant) harm on the basis of sex.
- 5.2.1 **Sex-Based Harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:
- 5.2.1.1 **Quid pro quo harassment.** A student, 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.
- 5.2.1.2 **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:
- 5.2.1.2.1 The degree to which the conduct affected the complainant's ability to access the college's education program or activity;
- 5.2.1.2.2 The type, frequency, and duration of the conduct;
- 5.2.1.2.3 The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- 5.2.1.2.4 The location of the conduct and the context in which the conduct occurred; and

5.2.1.2.5 Other sex-based harassment in the college's education program or activity.

5.2.1.3 **Sexual Violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

5.2.1.3.1 **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.

5.2.1.3.2 **Nonconsensual sexual contact (Fondling)** is 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.

5.2.1.3.3 **Incest** is 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 (18).

5.2.1.3.4 **Statutory Rape (Rape of a Child)** is non-forcible sexual intercourse with a person who is under the statutory age of consent.

5.2.1.3.5 **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, 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 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.

5.2.1.3.6 **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: (a) The length of the relationship; (b) The type of relationship; and (c) The frequency of interaction between the persons involved in the relationship.

5.2.1.3.7 **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

5.2.2 **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

5.2.2.1 Each party has the responsibility to make certain that the other has consented before engaging in the activity.

5.2.2.2 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.

5.2.2.2.1 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.

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

5.2.3 **Title IX Retaliation**, means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

6.0 Corrective Action, Disciplinary Sanctions, Terms & Conditions

6.1 One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.

6.1.1 **Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

6.1.2 **Written Reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

6.1.3 **Disciplinary Probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which

may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

- 6.1.4 **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the suspension is imposed.
- 6.1.5 **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the dismissal is imposed.
- 6.2 Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:
 - 6.2.1 **Education.** Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.
 - 6.2.2 **Loss of privileges.** Denial of specified privileges for a designated period of time.
 - 6.2.3 **Not in Good Standing.** A student deemed "not in good standing" with the college shall be subject to the following restrictions:
 - 6.2.3.1 Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.
 - 6.2.3.2 Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.
 - 6.2.4 **No contact directive.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.
 - 6.2.5 **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.
 - 6.2.6 **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.
 - 6.2.7 **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.
 - 6.2.8 More than one of the disciplinary terms and conditions listed above may be

imposed for any single violation.

- 6.3 If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

7.0 Initiation of Disciplinary Action

- 7.1 Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.
- 7.2 **Sex discrimination, including sex-based harassment.** The college's Title IX Coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.
- 7.3 Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.
- 7.4 If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.
- 7.4.1 Informal dispute resolution shall not be used to resolve sex-based harassment complaints without written permission from both the complainant and the respondent.
- 7.4.2 If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.
- 7.5 If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.
- 7.6 Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.
- 7.7 All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.
- 7.8 The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.
- 7.9 At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

- 7.10 Within ten (10) calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.
- 7.11 The student conduct officer may take any of the following disciplinary actions:
- 7.11.1 Exonerate the respondent and terminate the proceedings.
 - 7.11.2 Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132Q-10-400; or
 - 7.11.3 Refer the matter directly to the student conduct administrative panel for such disciplinary action as the panel deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct administrative panel, with a copy served on the respondent.
- 7.12 In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX Coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five (5) business days of receiving the investigation report, serve respondent, complainant, and the Title IX Coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.
- 7.12.1 The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before the student conduct administrative panel.
 - 7.12.2 The complainant and respondent shall have twenty-one (21) calendar days from the date of the written recommendation to request a hearing before the student conduct administrative panel.
 - 7.12.3 The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.
 - 7.12.4 The student conduct officer shall promptly notify the other party of the request.
 - 7.12.5 In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:
 - 7.12.5.1 The college is unable to identify respondent after taking reasonable steps to do so;
 - 7.12.5.2 Respondent is not participating in the college's educational programs or activities;
 - 7.12.5.3 The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX Coordinator has declined to initiate their own complaint;

- 7.12.5.4 The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or
- 7.12.5.5 The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.
- 7.12.6 In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.
- 7.12.7 If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of twenty-one (21) calendar days from the date of the written recommendation.
- 7.12.8 Upon receipt of the student conduct officer's written recommendation, the Title IX Coordinator or their designee shall review all supportive measures and, within five (5) business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.
- 7.12.9 If the respondent is found responsible for engaging in sex discrimination, the Title IX Coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

8.0 Hearings

- 8.1 The complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:
 - 8.1.1 **Notice.** The college must provide a notice that includes all information required in paragraph 2 of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.
 - 8.1.2 **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.
 - 8.1.3 **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in paragraph 8.2.2 of this section.
 - 8.1.4 **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.
 - 8.1.5 **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.
- 8.2 In cases involving allegations of sex-based harassment, the following additional procedures apply:

- 8.2.1 **Notice.** In addition to all information required in section 8.1.1 , the notice must also inform the parties that: (a) the respondent is presumed not responsible for the alleged sex-based harassment; (b) that the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker; (c) that they may have an advisor of their choice, who may be an attorney, to assist them during the hearing; and (d) they are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and (e) the student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.
- 8.2.2 **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the Notice of Hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.
- 8.2.3 **Advisors.** The college shall provide an advisor to the respondent and any complainant if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.
- 8.2.4 **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.
- 8.2.5 **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.
- 8.2.6 **Separate locations.** The chair may, or upon the request of any party, must, conduct the hearing with the parties physically present in separate locations, with technology enabling the panel and parties to simultaneously see and hear the party or the witness while that person is speaking.
- 8.2.7 **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.
- 8.3 Upon the failure of any party to attend or participate in a hearing, the student conduct administrative panel may either (a) proceed with the hearing and issuance of its decision or (b) serve a decision of default in accordance with [RCW 34.05.440](#).
- 8.4 The chair shall cause the hearing to be recorded by a method that they select, in accordance with [RCW 34.05.449](#). That recording, or a copy, shall be made available to any party upon request. The chair shall ensure maintenance of the record of the proceeding that is required by [RCW 34.05.476](#), which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with [WAC 10-08-190](#).

- 8.5 The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the panel.
- 8.6 The student conduct officer (unless represented by an Assistant Attorney General) shall present the college's case.
- 8.7 All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with [RCW 34.05.452](#).
- 8.8 The complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The panel chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.
- 8.8.1 Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.
- 8.8.2 The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.
- 8.8.3 The chair shall exclude, and the panel shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes but is not limited to information protected by the following: (a) spousal/domestic partner privilege; (b) attorney-client communications and attorney work product privilege; (c) clergy privileges; (d) medical or mental health providers and counselor privileges; (e) sexual assault and domestic violence advocate privileges; and (f) other legal privileges set forth in [RCW 5.60.060](#) or federal law.
- 8.8.4 The chair shall exclude and the panel shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.
- 8.8.5 The panel may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The panel must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

9.0 Appeals

- 9.1 Any party, including a complainant in sex-based harassment cases, may appeal the panel's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within twenty-one (21) calendar days of service of the panel's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

- 9.1.1 For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will process the appeal as the appeal authority. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal as the appeal authority.
- 9.2 The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to: (a) procedural irregularity that would change the outcome; (b) new evidence that would change the outcome and that was not reasonably available when the initial decision was made; and (c) the investigator, decisionmaker, or Title IX Coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.
- 9.3 Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all non-appealing parties, who will have ten (10) business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.
- 9.4 If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority's review shall be restricted to the hearing record made before the student conduct administrative panel and will normally be limited to a review of those issues and arguments raised in the appeal.
- 9.5 The appeal authority shall serve a written decision on all parties and their attorneys, if any, within twenty (20) calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to [Chapter 34.05 RCW, Part V](#).
- 9.6 In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on the complainant, respondent, and Title IX Coordinator.
- 9.7 The appeal authority shall not engage in an ex parte communication with any of the parties regarding an appeal.

CCS Administrative Procedure

3.30.01 - E Sex Discrimination Investigation Procedure for Complaints Against Students

Implementing Board Policy [3.30.01](#)

Contact: SFCC Title IX Coordinator, 533-3514
SCC Title IX Coordinator, 533-7015

1.0 Purpose

Community Colleges of Spokane (CCS) recognizes its responsibility to investigate, resolve, implement supportive and corrective measures, and monitor the educational environment and workplace to promptly and effectively stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington State's Law Against Discrimination, and their implementing regulations. To this end, CCS has enacted CCS Board Policy 3.30.01 and adopted the following Sex Discrimination Investigation Procedure (the Investigation Procedure) for purposes of receiving and investigating allegations of Sex Discrimination arising within CCS's educational programs and activities and workplace. Any individual found responsible for engaging in Sex Discrimination in violation of CCS policy may be subject to disciplinary action up to and including dismissal from CCS's educational programs and activities and/or termination of employment.

Application of this Investigation Procedure is restricted to allegations of Sex Discrimination, which includes, but is not limited to, allegations of Sex-based Harassment, as those terms are defined within this procedure. This Investigation Procedure is effective for all conduct alleged to have happened after August 1, 2024. For conduct alleged to have happened prior to August 1, 2024, see CCS Administrative Procedure [3.30.01-B](#). Nothing in this procedure limits or otherwise restricts CCS's ability to investigate alleged misconduct and pursue discipline based on violations of other federal, state, and local laws, their implementing regulations, and other CCS policies prohibiting gender discrimination through processes set forth in CCS's code of student conduct, employment contracts, employee handbooks, and collective bargaining agreements.

2.0 Definitions

For purposes of this Investigation Procedure, the following definitions apply:

- 2.1 **Complaint** means a written or oral request that can be objectively understood as a request for CCS to investigate and make a determination about alleged Sex Discrimination.
- 2.2 **Complainant** means the following individuals who have been subjected to alleged conduct that would constitute Sex Discrimination:
 - 2.2.1 A student or employee; or
 - 2.2.2 A person other than a student or employee who was participating or attempting to participate in CCS's educational program or activity at the time of the alleged discrimination.
- 2.3 **Confidential Employee** means a CCS employee whose communications are privileged and confidential under Federal or State law. An employee's status as a Confidential Employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.
- 2.4 **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 they know, or reasonably should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual conduct.

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

- 2.5 **Disciplinary Sanction** means consequences imposed on a Respondent following a determination that the Respondent violated CCS's policy prohibiting Sex Discrimination.
- 2.6 **Investigation Procedure** is the process CCS uses to initiate, informally resolve, and/or investigate allegations that an individual has violated CCS policies prohibiting Sex Discrimination or Sex-based Harassment.
- 2.7 **Mandatory Reporters** are all CCS employees, excluding Confidential Employees. Mandatory Reporters are required to report conduct that could reasonably constitute Sex Discrimination to the Title IX Coordinator.
- 2.8 **Peer Retaliation** means Retaliation by a student against another student.
- 2.9 **Pregnancy or Related Conditions** means:
- 2.9.1 Pregnancy, childbirth, termination of pregnancy, or lactation;
 - 2.9.2 Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - 2.9.3 Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- 2.10 **Program or Program and Activity** means all operations of CCS.
- 2.11 **Relevant** means related to the allegations of sex discrimination under investigation. Questions are Relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is Relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.
- 2.12 **Remedies** means measures provided to a Complainant or other person whose equal access to CCS's educational Programs or Activities has been limited or denied by Sex Discrimination. These measures are intended to restore or preserve that person's access to educational Programs and Activities after a determination that Sex Discrimination has occurred.
- 2.13 **Respondent** means an individual who has been alleged to have violated CCS's policy prohibiting Sex Discrimination.
- 2.14 **Retaliation** means intimidation, threats, coercion, or discrimination against any person by CCS, a student, or an employee or other person authorized by CCS to provide aid, benefit, or service under CCS's education program or activity, for the purpose of interfering with any right or privilege secured by CCS policies and procedures prohibiting Sex Discrimination, or because the person has reported information, made a Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for Sex

Discrimination. Nothing in this definition precludes CCS from requiring an employee to provide aid, benefit, or service under CCS's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

- 2.15 **Sex Discrimination**, which includes Sex-based Harassment, occurs when a Respondent causes more than *de minimis* (insignificant) harm to an individual by treating them differently from an otherwise similarly situated individual based on:

2.15.1 sex stereotypes;

2.15.2 sex characteristics;

2.15.3 pregnancy or related conditions;

2.15.4 sexual orientation; and

2.15.5 gender identity.

2.15.6 Preventing a person from participating in an education program or activity consistent with their gender identity constitutes more than *de minimis* harm and is prohibited.

- 2.16 **Sex-based Harassment**. For purposes 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:

2.16.1 **Quid pro quo harassment**. An employee, agent, or other person authorized by CCS to provide an aid, benefit, or service under CCS'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.

2.16.2 **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:

2.16.2.1 The degree to which the conduct affected the Complainant's ability to access the recipient's education program or activity;

2.16.2.2 The type, frequency, and duration of the conduct;

2.16.2.3 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;

2.16.2.4 The location of the conduct and the context in which the conduct occurred; and

2.16.2.5 Other sex-based harassment in the recipient's education program or activity.

- 2.16.3 **Sexual violence**. Sexual violence includes the following conduct:

2.16.3.1 **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.

2.16.3.2 **Nonconsensual sexual contact (Fondling).** 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.

2.16.3.3 **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 (18).

2.16.3.4 **Statutory rape (Rape of a child).** Non forcible sexual intercourse with a person who is under the statutory age of consent.

2.16.3.5 **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, 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 7.105.010.

2.16.3.6 **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) 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.

2.16.4 **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others; or (ii) suffer substantial emotional distress.

2.17 **Interim Suspension** means an emergency suspension of a student Respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in [WAC 132Q-10-320](#).

- 2.18 **Supportive Measures** means reasonably available, individualized, and appropriate, non-punitive and non-disciplinary measures offered by CCS to the Complainant or Respondent without unreasonably burdening either Party, and without fee or charge for purposes of:
- 2.18.1 Restoring or preserving that Party's access to CCS's educational Program or Activity, including measures that are designed to protect the safety of the parties or CCS's educational environment; or
 - 2.18.2 Providing support during CCS's Investigation and Disciplinary Procedures, or during any informal resolution process.
 - 2.18.3 Supportive Measures may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more Parties; leave of absence; change in class, college employment, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to Sex-based Harassment.
- 2.19 **Title IX Personnel** are the Title IX Coordinator and designees; Deputy Title IX Coordinators and designees; Investigators; Student Conduct Officers; and Decision Makers at both the hearing and appeal level, responsible for administering CCS's Sex Discrimination investigation and disciplinary procedures; facilitators of the Informal Sex Discrimination Resolution Process; and any other employees who are responsible for implementing CCS's Sex Discrimination investigation or Sex Discrimination disciplinary procedures for students or employees or have the authority to modify or terminate Supportive Measures.
- 2.20 **Title IX Coordinator** is responsible for processing Title IX Complaints and conducting or overseeing formal investigations and informal resolution processes under this Investigation Procedure.

3.0 Training Requirements

- 3.1 **All Employees**— All employees shall undergo training on the following topics:
- 3.1.1 The definition and scope of Sex Discrimination and Sex-based Harassment under these procedures;
 - 3.1.2 CCS's obligation to address Sex Discrimination in its education programs and activities;
 - 3.1.3 Employee responsibility, upon learning of a student's pregnancy or related condition, to provide the student with the Title IX Coordinator's contact information and information about available assistance; and
 - 3.1.4 Employee obligations to notify the Title IX Coordinator about conduct that may reasonably be Sex Discrimination.
- 3.2 **Title IX Personnel** - In addition to the required training for all employees, Title IX Personnel shall undergo training on the following topics:
- 3.2.1 CCS's grievance procedures for Sex Discrimination and Sex-based Harassment involving a student;
 - 3.2.2 How to conduct an investigation;

- 3.2.3 How to serve impartially without prejudgment of facts, conflicts of interest, or bias;
- 3.2.4 Use of technology during an investigation or hearing;
- 3.2.5 The definition of Relevance as used for purposes of evaluating evidence and questions for purposes of this investigation procedure; and
- 3.2.6 Effective report writing.
- 3.2.7 Informal resolution facilitators: procedures for CCS's informal resolution process

3.3 Title IX Coordinator and Designees

In addition to the required training for all employees and for Title IX Personnel, the Title IX Coordinator and any designees shall undergo training on the following topics:

- 3.3.1 How to ensure CCS's compliance with its Title IX obligations;
- 3.3.2 How to offer and coordinate supportive measures;
- 3.3.3 Specific actions to prevent discrimination and ensure equal access upon learning of a student's pregnancy or related conditions; and
- 3.3.4 CCS's recordkeeping system and requirements.

- 3.4 All Sex Discrimination training materials will be made available for review upon request.

4.0 Title IX Coordinator Investigation Duties

During an investigation, the Title IX Coordinator or designee is responsible for the following:

- 4.1 Accepting, evaluating, and processing all Sex Discrimination and Sex-based Harassment Complaints, reports, or referrals.
- 4.2 Conducting an intake meeting with the Complainant and, at that time, notifying the Complainant, or the individual who reported the conduct if the complainant is unknown, of CCS's Sex Discrimination investigation and disciplinary procedures, as well as the informal resolution process if appropriate and available. After providing this information, the Title IX Coordinator will ascertain whether the Complainant would like CCS to proceed with an investigation of the Sex Discrimination Complaint.
- 4.3 Initiating a Complaint subject to the procedure and factors set forth in Section 5 of this procedure.
- 4.4 When a Party is a student employee and the allegations involve Sex-based Harassment, making a fact-specific inquiry into whether the Party's primary relationship with CCS is to receive an education and whether alleged Sex-based Harassment occurred while the Party was performing employment-related work and, and based on this inquiry, determine whether the Party should be treated as a student or an employee under this investigation procedure and related disciplinary procedures.
- 4.5 Addressing and resolving, if possible, questions regarding confidentiality raised by Parties and witnesses.
- 4.6 Determining whether a Complaint should be dismissed during the investigation phase, and if so, notifying the Complainant or the Parties (if Respondent has been notified of the Complaint) of the reasons for the dismissal, and providing the Complainant or Parties with information about the procedure for filing an appeal of the dismissal.

- 4.7 Maintaining accurate records of all Complaints, reports, and referrals.
- 4.8 Retaining investigation files, Complaints, reports, and referrals in compliance with applicable records retention periods or federal or state law, whichever is longer.
- 4.9 Either conducting an impartial investigation of a Complaint or assigning the investigation to an impartial investigator and overseeing the investigation.
- 4.10 Engaging in an interactive process with both Parties to identify and provide Supportive Measures that ensure during the investigation and disciplinary processes that the Parties have equitable access to education programs and activities and are protected from further discrimination or retaliation and making revisions to Supportive Measures as circumstances may require.
- 4.11 Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and to the appropriate disciplinary authority in compliance with this Investigation Procedure.
- 4.12 Recommending non-disciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to CCS disciplinary authorities and administrators.

5.0 Filing a Complaint

Any employee, student, applicant, or visitor who believes that they have been the subject of Sex Discrimination in violation of CCS policies, should report the incident or incidents to CCS's Title IX Coordinator identified below. The Complaint can be in writing or oral. If the Complaint is against the Title IX Coordinator, the Complainant should report the matter to the President's office for referral to an alternate designee.

SFCC Title IX Coordinator
3410 W. Whistalks Way, MS 3010
Spokane WA 99224-5288
Phone: 509.533.3514

SCC Title IX Coordinator
1810 N. Greene St., MS 2150
Spokane, WA 99217-5399
Phone: 509.533.7015

SFCC President
Spokane Falls Community College
3410 W. Whistalks Way, MS 3010
Spokane WA 99224-5288
Phone: 509.533.3535

SCC President
Spokane Community College
1810 N. Greene St., MS 2150
Spokane, WA 99217-5399
Phone: 509.533.7042

6.0 Title IX Coordinator Initiated Complaint

- 6.1 In the absence or withdrawal of any or all allegations in a Complaint, the Title IX Coordinator may file a Complaint based on their evaluation of the following factors:
 - 6.1.1 A Complainant's request not to proceed with initiation of a Complaint;
 - 6.1.2 A Complainant's reasonable safety concerns regarding initiation of a Complaint;
 - 6.1.3 The risk additional acts of Sex Discrimination would occur if the Complaint is not initiated;
 - 6.1.4 The severity of the alleged Sex Discrimination, including whether the discrimination if established, would require the removal of the Respondent from campus or imposition of other disciplinary sanction(s) to end the discrimination and prevent its recurrence;

- 6.1.5 The age and relationship of the parties, including whether the Respondent is a CCS employee;
 - 6.1.6 The scope of the alleged Sex Discrimination, including information suggesting a pattern, on-going Sex Discrimination, or Sex Discrimination alleged to have impacted multiple individuals;
 - 6.1.7 The availability of evidence to assist a Decisionmaker with determining whether Sex Discrimination occurred; and
 - 6.1.8 Whether CCS could end the alleged Sex Discrimination and prevent its recurrence without initiating an investigation and disciplinary procedure.
- 6.2 If, upon evaluating these and any other Relevant factors, the Title IX Coordinator determines that the alleged conduct poses an imminent threat to the health or safety of the Complainant or to other members of CCS community or that the alleged conduct prevents CCS from ensuring equal access on the basis of sex to its educational programs and activities, then the Title IX Coordinator may initiate a Complaint.
- 6.3 When initiating a Complaint, the Title IX Coordinator will provide the Complainant with advance notice of this decision and an opportunity to appropriately address reasonable concerns about the Complainant's safety or the safety of others, including the provision of Supportive Measures.
- 6.4 Regardless of whether a Complaint is initiated under this section, the Title IX Coordinator must take other prompt and effective steps, in addition to those steps necessary to implement remedies for the individual Complainant, to ensure that Sex Discrimination does not continue or recur within CCS's educational Programs and Activities.
- 6.5 The analysis set forth above need not be performed if the Title IX Coordinator reasonably determines that the alleged conduct could not constitute Sex Discrimination.

7.0 Principles of Investigation Applicable to Sex Discrimination Complaints

CCS shall provide an adequate, reliable, and impartial investigation of Complaints of Sex Discrimination by:

- 7.1 Treating Complainants and Respondents equitably.
- 7.2 Presuming that the Respondent is not responsible for the alleged misconduct unless or until a determination of responsibility is reached after completion of the investigation and disciplinary processes.
- 7.3 Having the investigation conducted by a neutral and unbiased investigator without a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent.
- 7.4 Having the investigator make findings of fact based on the preponderance of the evidence standard. A preponderance of the evidence means on a more probable than not basis.
- 7.5 Placing the burden on CCS—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether Sex Discrimination occurred.
- 7.6 Objectively evaluating all evidence that is Relevant and not otherwise impermissible under Sections 11.1 and 11.6 of this procedure—including both inculpatory and exculpatory evidence—and provide credibility determinations that are not based solely on a person's status as a Complainant, Respondent, or witness.

- 7.7 Providing an equal opportunity for Parties to present fact witnesses and other inculpatory or exculpatory evidence that is Relevant and not otherwise impermissible.
- 7.8 Providing ten (10) calendar days for each Party to review and submit written comments on the draft investigation report and, upon request, to review Relevant and not otherwise impermissible evidence gathered by the investigator before finalizing the investigation report; and
- 7.9 Taking reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the investigation procedure. Such steps shall not prevent the Parties from using the information or evidence for related disciplinary proceedings or litigation related to the Complaint of Sex Discrimination.

8.0 Confidentiality

- 8.1 CCS will seek to protect the privacy of the Complainant to the fullest extent possible, consistent with the legal obligation to investigate, offer appropriate Supportive Measures and/or take disciplinary action, and comply with the federal and state law, as well as CCS policies and procedures. Although CCS will attempt to honor Complainant requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX Coordinator.
- 8.2 Confidential Employees, when acting in their confidential capacity, will maintain confidentiality of information shared by a Complainant and are not required to report conduct that may reasonably constitute Sex Discrimination to the Title IX Coordinator. When a Confidential Employee learns of conduct that reasonably may constitute Sex Discrimination, the Confidential Employee must explain (1) their status as a confidential employee, including the circumstances under which they are not required to notify the Title IX Coordinator about the possible Sex Discrimination, (2) how the Complainant can contact the Title IX Coordinator to make a Complaint about the possible Sex Discrimination, and (3) that the Title IX Coordinator may offer and coordinate Supportive Measures, as well as initiate an Informal Resolution Process or Investigation pursuant to these Investigation procedures.
- 8.3 The Title IX Coordinator will inform the Complainant about CCS's Sex Discrimination investigation and disciplinary processes and attempt to obtain consent from the Complainant before commencing an investigation of alleged Sex-based Harassment. If a Complainant asks that their name not be revealed to the Respondent or that CCS not investigate the allegation, the Title IX Coordinator will inform the Complainant that maintaining confidentiality may limit CCS's ability to fully respond to the allegations and that retaliation by the Respondent and/or others is prohibited. If the Complainant still insists that their name not be disclosed or that CCS not investigate, the Title IX Coordinator will determine whether CCS can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of CCS community, including the Complainant.
- 8.4 If CCS is unable to honor a Complainant's request for confidentiality, the Title IX Coordinator will notify the Complainant of the decision and disclose the Complainant's identity only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this Investigation Procedure.
- 8.5 If CCS decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX Coordinator will evaluate whether other measures are available to address the circumstances giving rise to the Complaint and prevent their recurrence and implement such measures if reasonably feasible.

9.0 Notice of Investigation and other Notice Requirements

Notice of Investigation. Upon receiving a Complaint of Sex Discrimination, the Title IX Coordinator or designee will initiate the investigation by serving the Respondent and the Complainant with a Notice of Investigation in advance of their initial interviews. This Notice will be served sufficiently in advance to allow the Parties adequate time to prepare for their initial interviews.

If a Complaint includes allegations of Sex-based Harassment and CCS has reasonable concerns for the safety of any person as a result of providing a Notice of Investigation, service of the Notice may be reasonably delayed in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

The Notice of Investigation must:

- 9.1 Include a description of CCS's Sex Discrimination Investigation and Disciplinary Procedures, including descriptions of procedures applicable to Sex-based Harassment and Informal Resolution processes, if applicable.
- 9.2 Sufficient information for the Parties to respond to the allegations, including the identities of the Parties, a description of the alleged discriminatory conduct, and the time and location of the alleged incident, to the extent this information is available to CCS.
- 9.3 A statement that retaliation is prohibited.
- 9.4 Inform the Parties that they are entitled to have an Advisor of their choice and at their own expense, available during the investigation and any disciplinary proceedings and that the Advisor may be, but is not required to be an attorney, and that during the investigation, the Advisor's role will be limited to attending meetings or interviews with the Party and providing advice to the Party.
- 9.5 A statement that the Parties are entitled to an equal opportunity to access a description of the Relevant, not otherwise impermissible evidence and that both parties shall have an equal opportunity to review such evidence upon request.

In cases involving allegations of Sex-based Harassment, the Notice of Investigation shall also inform the Parties that:

- 9.6 The Respondent is presumed not responsible for the alleged Sex-based Harassment until a determination is made at the conclusion of the applicable disciplinary procedure and prior to such a determination, the Parties will have the opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.
- 9.7 A statement that the Parties are entitled to an equal opportunity to access the investigative report describing the Relevant, not otherwise impermissible evidence, and that both Parties shall have an equal opportunity to review this evidence upon request.
- 9.8 Notice that CCS's employment policies and student conduct code prohibits employees and students from knowingly making false statements or knowingly submitting false information during an investigation or disciplinary proceeding.

Amended Notice of Investigation. If during the course of the investigation, CCS decides to investigate Sex Discrimination allegations against a Party that are not included in the original Investigation Notice, CCS will issue an amended Notice of Investigation to both Parties that includes this additional information and complies with the applicable notice requirements set forth above.

Notice of Meetings and Interview. In cases involving allegations of Sex-based Harassment, CCS shall provide written notice to Parties whose participation is invited or expected of the date, time, location, participants, and purposes of all meeting or proceedings with sufficient time for the Party to prepare to participate.

10.0 Investigation Process

During the investigation, the investigator:

- 10.1 Will provide the parties with equal opportunity to present Relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence.
- 10.2 Will not restrict the ability of either Party to discuss the allegations under investigation or gather and present Relevant evidence, except when a no contact order has been imposed based on an individualized and fact specific determination that a Party poses a threat to the health, safety, or welfare of another Party and/or witnesses or when contact with a Party and/or witness is prohibited by court order. A CCS-imposed no contact order shall be no broader than is necessary to protect the threatened Party or witness and must provide the Party or their advisor with alternative means of gathering and presenting Relevant evidence from the protected witness or Party.
- 10.3 Will allow each Party to be accompanied by an Advisor of their choosing, who may be an attorney, to any investigation related meeting or interview. Advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the Party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney advising a Party must enter a notice of appearance with the Title IX Coordinator and the Investigator at least five (5) business days before the initial interview or meeting they plan to attend, so CCS can secure its own legal representation, if necessary.
- 10.4 In cases involving allegations of Sex-based Harassment, the Investigator will provide both parties and their respective Advisors with an equal opportunity to review the draft investigation report and to inspect and review Relevant and not otherwise impermissible evidence upon request. After disclosure of the report, each Party will receive ten (10) calendar days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a Party fails to submit a written response within ten (10) calendar days, the Party will be deemed to have waived their right to respond and the investigator will finalize the report without this information.
- 10.5 During Sex Discrimination and Sex-based Harassment investigations under this Procedure, the investigator may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:
 - 10.5.1 Spousal/domestic partner privilege;
 - 10.5.2 Attorney-Client and attorney work product privileges;
 - 10.5.3 Privileges applicable to members of the clergy and priests;
 - 10.5.4 Privileges applicable to medical providers, mental health therapists, and counselors;
 - 10.5.5 Privileges applicable to sexual assault and domestic violence advocates; or
 - 10.5.6 Other legal privileges identified in [RCW 5.60.060](#).

- 10.6 Prior Sexual Behavior. 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:
- 10.6.1 Is asked or offered to prove someone other than the Respondent committed the alleged misconduct; or
 - 10.6.2 Concerns specific incidents of prior sexual behavior between the Complainant and the Respondent, which are asked or offered on the issue of consent.
- 10.7 Upon completion of the investigation, the Title IX Coordinator will distribute the final investigation report to the Parties. The Title IX Coordinator will also provide the investigation report and the evidence gathered during the investigation to the Student Conduct Officer, who is responsible for determining whether pursuing disciplinary action is warranted.

11.0 Dismissal of Complaint During Investigation – Right to Appeal

- 11.1 During an investigation, a Sex Discrimination Complaint may be dismissed, in whole or in part, for the following reasons:
- 11.1.1 The Respondent cannot be identified, after CCS has taken reasonable steps to do so;
 - 11.1.2 The Respondent is not participating in CCS's educational Programs or Activities .
 - 11.1.3 The Complainant has voluntarily withdrawn any or all of the allegations in the Complaint, and the Title IX Coordinator has declined to initiate their own Complaint, and any remaining allegations would not constitute Sex Discrimination, even if proven. In cases involving allegations of Sex-based Harassment, CCS must obtain the Complainant's withdrawal in writing before dismissal.
 - 11.1.4 The conduct alleged by the Complainant, even if proven, would not constitute Sex Discrimination; or
 - 11.1.5 The conduct alleged by the Complainant falls outside CCS's disciplinary jurisdiction.
- 11.2 The Complainant and the Respondent (if the Respondent has been notified of the Complaint) may appeal the dismissal of a Complaint pursuant to the [Student Conduct Code appeal process](#).
- 11.3 If the dismissal occurs during the investigation, the Title IX Coordinator will provide the Complainant or the Complainant and the Respondent (if the Respondent has been notified of the Complaint) written notice explaining:
- 11.3.1 Why dismissal was necessary or appropriate;
 - 11.3.2 The right to appeal the dismissal and a description of the procedure for appealing the dismissal; and
 - 11.3.3 If applicable, notice that the Complaint is being referred to an appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.
- 11.4 If the Dismissal involves an allegation of Sex-based Harassment and the Parties have both been notified of the investigation, the Notice of Dismissal will be served on the Parties simultaneously.

- 11.5 When a Complaint is dismissed, the Title IX Coordinator will, at a minimum:
 - 11.5.1 Offer Supportive Measures to the Complainant as appropriate;
 - 11.5.2 If the Respondent has been notified of the allegations, offer Supportive Measures to the Respondent as appropriate; and
 - 11.5.3 Take other prompt and effective steps, as appropriate, to ensure that Sex Discrimination does not continue or recur within CCS's education Program or Activity.
- 11.6 Dismissal of a Sex Discrimination Complaint does not preclude CCS from investigating and pursuing discipline based on allegations that a Respondent violated other federal or state laws and regulations, CCS conduct policies, and/or other codes and contractual provisions governing student and employee conduct.

12.0 Supportive Measures

- 12.1 The Title IX Coordinator must offer and coordinate Supportive Measures to both the Complainant and the Respondent. Supportive Measures may vary depending on the circumstances and what CCS may determine to be reasonably available. Supportive Measures may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class or college work schedules, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to Sex-based Harassment.
- 12.2 Supportive Measures may not be imposed for punitive or disciplinary purposes.
- 12.3 Supportive Measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties and/or CCS's educational environment, or to provide support to the Parties during the formal or informal resolution processes.
- 12.4 The Title IX Coordinator may modify or terminate Supportive Measures during or after formal or informal resolution procedures are completed, as the Parties' and/or CCS's circumstances change.
- 12.5 If, at any point during the Sex Discrimination investigation or disciplinary proceeding, a Party becomes dissatisfied with their Supportive Measures or undergoes a change of circumstances that warrants revisions to their Supportive Measures, the Party may submit a request to revise their Supportive Measures to the Title IX Coordinator. The Title IX Coordinator will respond to such a request within five (5) business days. If the Party disagrees with the Title IX Coordinator's decision, they may submit a written appeal to the President or their designee within five (5) business days of receiving the Title IX Coordinator's decision. Review of the appeal shall be performed by an impartial employee with authority to modify or reverse the Title IX Coordinator's decision to provide, deny, modify, or terminate Supportive Measures applicable to the Party seeking review. Challenged Supportive Measures will be reviewed to determine whether they are meeting the purposes set forth in Section 2.18 above.
- 12.6 In cases involving allegations of Sex Discrimination other than Sex-based Harassment and Retaliation, CCS is not required to alter the alleged discriminatory practice(s) for the purpose of providing a Supportive Measure.

13.0 Emergency Removal

If a student Respondent poses an immediate threat to the health and safety of CCS Community or an immediate threat of significant disruption to CCS operations, CCS's Student Conduct

Officer, after consulting with the Title IX Coordinator, may interim suspend the Student Respondent pursuant to [WAC 132Q-10-320](#). The Interim Suspension shall remain in place pending completion of the investigation and final resolution of any resulting disciplinary proceedings.

14.0 Complaint Resolution and Consolidation

The Sex Discrimination resolution processes are initiated when the Title IX Coordinator receives a written or oral Complaint from a Complainant alleging that a Respondent(s) discriminated against them on the basis of their sex and the Complainant asks that CCS initiate an investigation. A Complaint may be submitted by the Complainant orally or in writing or it may be initiated and signed by the Title IX Coordinator on behalf of the Complainant. Complaints submitted to the Title IX Coordinator may be resolved through either informal or formal resolution processes.

14.1 Informal Resolution

Under appropriate circumstances and only if the Complainant and the Respondent voluntarily agree, the Parties may pursue informal resolution during the investigation of a concern. Informal Resolution is not appropriate when the allegation involves:

- 14.1.1 a Complainant who is a minor or a vulnerable adult;
- 14.1.2 a Respondent poses an immediate threat to the health, safety or welfare of a member of the CCS community;
- 14.1.3 an Employee, who is alleged to have engaged in Sex-based Harassment of a Student Complainant.

If Informal Resolution is appropriate, the Parties may explore resolution through:

- 14.1.4 Guided conversations or communications conducted by the Title IX Coordinator, or some other mutually agreed upon third party;
- 14.1.5 A structured resolution process conducted by a trained mediator; or
- 14.1.6 Voluntary agreement between the Parties to alter either or both Parties' CCS work or class schedules.

A proposal to engage in Informal Resolution should be provided to the Parties in the Notice of Investigation or after the Notice of Investigation has been served on both Parties.

Before engaging in informal resolution, CCS must provide written notification to the Parties of their rights and responsibilities. This notice shall explain:

- 14.1.7 The allegations;
- 14.1.8 The requirements of the informal resolution process;
- 14.1.9 That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and initiate or resume the formal resolution process;
- 14.1.10 That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will prevent the Parties from initiating or resuming the Formal Resolution process;

14.1.11 That the potential terms of any Informal Resolution agreement will only be binding on the Parties to the agreement; and

14.1.12 What information CCS will retain from the informal resolution process and how that information will be used, if the process is not successful and the formal resolution process is initiated or resumed.

Because the informal resolution process is voluntary, either Party may withdraw from the Informal Resolution process at any time, at which point the formal investigation process will resume.

If the Parties voluntarily resolve a Complaint, CCS will record the terms of the resolution in a written agreement signed by both Parties and provide written notice to both Parties that the Complaint has been closed.

If the Parties agree to an informal resolution process, CCS will commence informal resolution within ten (10) calendar days after the parties agree to this option and conclude within thirty (30) calendar days of beginning that process; subject to reasonable delays and extensions for good cause shown.

14.2 Formal Resolution

Formal resolution means that the Complainant’s allegations of Sex Discrimination will be subjected to a formal investigation by an impartial and unbiased investigator. The investigation may be conducted by the Title IX Coordinator. The results of the investigator’s report will be shared with the Parties, the Title IX Coordinator, as well as the appropriate disciplinary authority who is responsible for determining whether disciplinary proceedings are warranted.

14.3 Consolidation of Complaints

Complaints of Sex Discrimination may be consolidated when the Complaints are against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations of Sex Discrimination arise out of the same facts or circumstances.

ACTION: WASHINGTON ADMINISTRATIVE CODE (WAC) AMENDMENTS EMERGENCY RULEMAKING

BACKGROUND

On April 19, 2024, the U.S. 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.

This rule necessitates an update to the Standards of Conduct for Students WACs (Student Code of Conduct) to ensure prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

CCS proposes to amend the following Washington Administrative Code sections:

- 132Q-10-600 (Sex discrimination - Supplemental student conduct code and procedures - Order of precedence),
- 132Q-10-601 (Sex discrimination - Prohibited conduct and definitions),
- 132Q-10-602 (Sex discrimination - Jurisdiction),
- 132Q-10-603 (Sex discrimination - Dismissal and initiation of discipline),
- 132Q-10-604 (Sex discrimination - Prehearing procedure),
- 132Q-10-606 (Sex Discrimination - Presentation of Evidence),
- 132Q-10-607 (Sex discrimination - Initial order), and
- 132Q-10-608 (Sex discrimination - Appeals).

Chapter 132Q-10 Standards of Conduct for Students

Changes incorporate language from the United States Department of Education's Title IX Final Rule. The proposed changes are consistent with CCS Board Policy 3.30.01 on Non-discrimination/Anti-harassment Educational Programs.

A draft is attached for board review. A Rule Making Order (CR-103E) is being filed with the Office of the Code Reviser. The rule will become effective after the Board of Trustees takes action and it is filed with the Office of the Code Reviser. The initiation date is August 1, 2024.

RECOMMENDATION

It is recommended that the Board of Trustees of Washington State Community College District 17 amend the following Washington Administrative Code sections in accordance with the Title IX Final Rule: 132Q-10-600 (Sex discrimination - Supplemental student conduct code and procedures - Order of precedence), 132Q-10-601 (Sex discrimination - Prohibited conduct and definitions), 132Q-10-602 (Sex discrimination - Jurisdiction), 132Q-10-603 (Sex discrimination - Dismissal and initiation of discipline), 132Q-10-604 (Sex discrimination - Prehearing procedure), 132Q-10-606 (Sex Discrimination - Presentation of Evidence), 132Q-10-607 (Sex discrimination - Initial order), and 132Q-10-608 (Sex discrimination - Appeals).

Prepared by: Amy McCoy
Chief Compliance Officer

Presented by: Amy McCoy
Chief Compliance Officer

July 29, 2024

Chapter 132Q-10 WAC

STANDARDS OF CONDUCT FOR STUDENTS

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

WAC 132Q-10-600 Sex discrimination - Supplemental student conduct code and procedures - Order of precedence. This supplemental student conduct code and procedure applies to allegations of ~~sexual~~ discrimination for incidents occurring on or after August 1, 2024 ~~harassment~~ subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Community Colleges of Spokane's standard disciplinary procedures, WAC 132Q-10-101 through 132Q-10-503, these supplemental procedures shall take precedence. ~~The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.~~

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 22-12-002, § 132Q-10-600, filed 5/19/22, effective 6/19/22;
WSR 21-10-010, § 132Q-10-600, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-601 Sex discrimination - Prohibited conduct and definitions 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 Community Colleges of Spokane 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 discrimination."

For purposes of this supplemental procedure, the following definitions apply. ~~,"sexual harassment" encompasses the following conduct:~~

~~(1) Quid pro quo harassment. A Community Colleges of Spokane employee conditioning the provision of an aid, benefit, or service of the Community Colleges of Spokane 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 Community Colleges of Spokane'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 eighteen.~~

~~(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.~~

~~(4) 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.~~

~~(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.~~

(1) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) a student or employee

(b) a person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(2) "Pregnancy or Related Conditions" means: (a) pregnancy, childbirth, termination of pregnancy, or lactation; (b) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (c) recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(3) "Program" or "Programs and Activities" means all operations of the college.

(4) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(5) "Remedies" means measures provided to a Complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex

discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(6) "Respondent" is a student who is alleged to have violated the student conduct code.

(7) "Sex Discrimination." The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them different from a similarly-situated individual on the basis of: sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

a. Sex-Based Harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

i. Quid pro quo harassment. A student, 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.

ii. 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:

1. The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

2. The type, frequency, and duration of the conduct;

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

4. The location of the conduct and the context in which the conduct occurred; and

5. Other sex-based harassment in the college's
education program or activity.

iii. Sexual Violence. "Sexual violence" includes
nonconsensual sexual intercourse, nonconsensual
sexual contact, domestic violence, incest,
statutory rape, domestic violence, dating violence,
and stalking.

1. 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.

2. Nonconsensual sexual contact (Fondling) is

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.

3. Incest is 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 (18).

4. Statutory Rape (Rape of a Child) is non-forcible sexual intercourse with a person who is under the statutory age of consent.

5. Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, 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 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.

6. Dating violence is physical violence, bodily
injury, assault, the infliction of fear of
imminent physical harm, sexual assault, or
stalking committed by a person who is or has
been in a social relationship of a romantic or
intimate nature with the victim; and where the
existence of such a relationship shall be
determined based on a consideration of the
following factors:

a. The length of the relationship;

b. The type of relationship; and

c. The frequency of interaction between the
persons involved in the relationship.

7. Stalking means engaging in a course of
conduct directed at a specific person that
would cause a reasonable person to fear for
the person's safety or the safety of others or
to suffer substantial emotional distress.

b. "Consent." For purposes of this code, "consent" means
knowing, voluntary and clear permission by word or
action, to engage in mutually agreed upon sexual
activity.

i. Each party has the responsibility to make certain
that the other has consented before engaging in the
activity.

ii. 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.

iii. 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.

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

c. "Title IX Retaliation," means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in

any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(8) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation, including but not limited to sex-based harassment, occurred while the individual was performing employment-related work.

(9) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

(10) "Supportive measures" means reasonably available, individualized and appropriate, non-punitive and non-disciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

a. Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

b. Supportive measures may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a

leave of absence; change in class or work schedules, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(11) "Title IX Coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 21-10-010, § 132Q-10-601, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-602 Sex discrimination ~~Title IX~~ Jurisdiction.

(1) This supplemental procedure applies only if the alleged misconduct meets the definition of "sex discrimination" as that term is defined in WAC 132Q-10-601 and occurs:

~~(a) Occurred in the United States;~~

~~(b) Occurred during a Community Colleges of Spokane 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 Community Colleges of Spokane 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 Community Colleges of Spokane.~~

~~(3) Proceedings under this supplemental procedure must be dismissed if one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Upon receipt of the formal complaint, the Title IX coordinator shall make an initial inquiry into whether Title IX jurisdiction extends to the complaint. If the Title IX coordinator determines there is no Title IX jurisdiction, the Title IX coordinator will issue a notice of dismissal in whole or part explaining why some or all~~

~~of the Title IX claims have been dismissed. Dismissal under this supplemental procedure does not prohibit the Community Colleges of Spokane from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Community Colleges of Spokane's student conduct code, WAC 132Q-10-101 through 132Q-10-503.~~

~~(4) After receipt of the investigation report, if the 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 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. Dismissal under this supplemental procedure does not prohibit the Community Colleges of Spokane from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Community Colleges of Spokane's student conduct code, WAC 132Q-10-101 through 132Q-10-503. meets the definition of "sex discrimination" as that term is defined in WAC 132Q-10-601 and occurs:~~

(a) On college premises;

(b) At or in connection with college programs or activities; or

(c) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 21-10-010, § 132Q-10-602, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-603 Sex discrimination - Dismissal and

Initiation of discipline. ~~(1) Upon receiving the Title IX investigation report from the Title IX coordinator or designee, the 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 student conduct officer determines that there are sufficient grounds to proceed under these supplemental~~

~~procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct administrative panel 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 Community Colleges of Spokane 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) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.~~

(1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.

(2) The college's Title IX Coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplinary process for allegations of sex discrimination, including sex-based harassment, against a student shall be addressed through the student conduct code.

(3) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(4) When interim suspension or other restriction proceedings are conducted under WAC 132Q-10-320, the complainant shall be notified that an interim suspension has been imposed on the same day that the interim suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the interim suspension order.

(5) The student conduct officer shall review the investigation report provided by the Title IX Coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five (5) business days of receiving the investigation report, serve respondent, complainant, and the Title IX Coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct administrative panel.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct administrative panel.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) The student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX Coordinator has declined to initiate their own complaint. In

cases involving allegations of sex-based harassment, the

Complainant must withdraw their complaint in writing;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of twenty-one (21) calendar days from the service of the written recommendation.

(g) Upon receipt of the student conduct officer's written recommendation, the Title IX Coordinator or their designee shall review all supportive measures and, within five (5) business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek

review in accordance with the college's Title IX investigation procedure.

(h) If the respondent is found responsible for engaging in sex discrimination, the Title IX Coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 21-10-010, § 132Q-10-603, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-604 Sex discrimination - Prehearing procedure.

~~(1) Upon receiving the disciplinary notice, the chair of the student conduct administrative panel will send a hearing notice to all parties, in compliance with WAC 132Q-10-315. In no event will the hearing date be set less than ten days after the Title IX coordinator or designee 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 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 Community Colleges of Spokane intends to offer the evidence at the hearing.~~

(1) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct administrative panel must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. § 106.45 and § 106.46.

(2) In sex discrimination cases, the College may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding

officer, authorized to exercise any or all duties of the student conduct administrative panel and/or committee chair.

(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) Notice. The college must provide a notice that includes all information required in WAC 132Q-10-315, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the

time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in paragraph 4(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(4) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. In addition to all information required by WAC 132Q-10-315, the prehearing notice must also inform the parties that: (i) the respondent is presumed not responsible for the alleged sex-based harassment; (ii) that the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker; (iii) that they may have an advisor of their choice, who may be an attorney, to assist them during the hearing; and (iv) they are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and (v) the student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date

specified in the Notice of Hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the

investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but is not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must, conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 21-10-010, § 132Q-10-604, filed 4/23/21, effective 5/24/21.]

~~WAC 132Q-10-605 Rights of parties. (1) The Community
Colleges of Spokane's student conduct procedures, WAC 132Q-10-
101 through 132Q-10-503, and this supplemental procedure shall
apply equally to all parties.~~

~~(2) The Community Colleges of Spokane 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 will appoint an
advisor of the college's choosing on the party's behalf at no
expense to the party.~~

~~[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 21-10-010, § 132Q-10-605, filed 4/23/21, effective 5/24/21.]~~

WAC 132Q-10-606 Sex Discrimination - Presentation of

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) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the~~

~~committee must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(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.~~

~~(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.~~

(1) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly

question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to information protected by the following: (a) spousal/domestic partner privilege; (b) attorney-client communications and attorney work product privilege; (c) clergy privileges; (d) medical or mental health providers and counselor privileges; (e) sexual assault and domestic violence advocate privileges; and (f) other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or

imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13). WSR 21-10-010, § 132Q-10-606, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-607 Sex discrimination - Initial order.

(1) The student conduct administrative panel will ~~In~~ addition to complying with WAC 132Q-10-330.

~~, the student conduct administrative panel 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 of the formal complaint through the determination of responsibility, including notices 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;~~

~~(e) Contains a statement of, and rationale for, the student conduct administrative panel's determination of responsibility for each allegation;~~

~~(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;~~

~~(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the Community Colleges of Spokane's education programs or activities; and~~

~~(h) Describes the process for appealing initial orders from Spokane Community College to Spokane Falls Community College's vice president of student affairs or initial orders from Spokane Falls Community College to the vice president of student services.~~

~~(2) The committee chair will serve the initial order on the parties simultaneously. In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX Coordinator.~~

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 21-10-010, § 132Q-10-607, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-608 Sex discrimination - Appeals. ~~(1) All parties, including the student conduct officer in their capacity as a representative of the college shall 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 appropriate vice 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 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 dismissal shall be deemed final.~~

~~(2) For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will process the appeal. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal.~~

~~(3) Upon receiving a timely appeal, the appropriately identified vice president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the appropriate vice 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 appropriate vice president shall serve copies of the responses to the other parties.~~

~~(4) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the appropriate vice president's office.~~

~~(5) The appropriate vice president or their delegate, based on their review of parties' submission 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 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 for the new disciplinary sanctions and conditions.~~

~~(6) The appropriate vice president of student affairs/services shall serve the final decision on the parties simultaneously.~~

~~(7) 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.~~

(1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within twenty-one (21) calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

a. For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will process the appeal as the appeal authority. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal as the appeal authority.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to: (a) procedural irregularity that would change the outcome; (b) new

evidence that would change the outcome and that was not reasonably available when the initial decision was made; and (c) the investigator, decision maker, or Title IX Coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all non-appealing parties, who will have ten (10) business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority's review shall be restricted to the hearing record made before the student conduct administrative panel and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The appeal authority shall serve a written decision on all parties and their attorneys, if any, within twenty (20) calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to Chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on the complainant, respondent, and Title IX Coordinator.

(7) The appeal authority shall not engage in an ex parte communication with any of the parties regarding an appeal.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 22-12-002, § 132Q-10-608, filed 5/19/22, effective 6/19/22;
WSR 21-10-010, § 132Q-10-608, filed 4/23/21, effective 5/24/21.]

Chapter 132Q-10 WAC

STANDARDS OF CONDUCT FOR STUDENTS

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

WAC 132Q-10-600 Sex discrimination - Supplemental student conduct code and procedures - Order of precedence. This supplemental student conduct code and procedure applies to allegations of sex discrimination for incidents occurring on or after August 1, 2024 subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Community Colleges of Spokane's standard disciplinary procedures, WAC 132Q-10-101 through 132Q-10-503, these supplemental procedures shall take precedence.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13). WSR 22-12-002, § 132Q-10-600, filed 5/19/22, effective 6/19/22; WSR 21-10-010, § 132Q-10-600, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-601 Sex discrimination - Prohibited conduct and definitions . Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the

Community Colleges of Spokane 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 "sex discrimination."

For purposes of this supplemental procedure, the following definitions apply.

(1) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) a student or employee

(b) a person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(2) "Pregnancy or Related Conditions" means: (a) pregnancy, childbirth, termination of pregnancy, or lactation; (b) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (c) recovery from

pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(3) "Program" or "Programs and Activities" means all operations of the college.

(4) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(5) "Remedies" means measures provided to a Complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(6) "Respondent" is a student who is alleged to have violated the student conduct code.

(7) "Sex Discrimination." The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them different from a similarly-situated individual on the basis of: sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

a. Sex-Based Harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

- i. Quid pro quo harassment. A student, 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.

- ii. 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:

1. The degree to which the conduct affected the complainant's ability to access the college's education program or activity;
2. The type, frequency, and duration of the conduct;
3. The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
4. The location of the conduct and the context in which the conduct occurred; and
5. Other sex-based harassment in the college's education program or activity.

iii. Sexual Violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

1. 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.

2. Nonconsensual sexual contact (Fondling) is 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.

3. Incest is 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 (18).

4. Statutory Rape (Rape of a Child) is non-forcible sexual intercourse with a person who is under the statutory age of consent.

5. Domestic violence is physical violence, bodily injury, assault, the infliction of fear of

imminent physical harm, sexual assault, 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 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.

6. Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has

been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- a. The length of the relationship;
- b. The type of relationship; and
- c. The frequency of interaction between the persons involved in the relationship.

7. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

b. "Consent." For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

i. Each party has the responsibility to make certain that the other has consented before engaging in the activity.

ii. 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.

iii. 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.

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

c. "Title IX Retaliation," means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(8) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation, including but not limited to sex-based harassment, occurred while the individual was performing employment-related work.

(9) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

(10) "Supportive measures" means reasonably available, individualized and appropriate, non-punitive and non-disciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

- a. Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

- b. Supportive measures may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class or work schedules, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(11) "Title IX Coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 21-10-010, § 132Q-10-601, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-602 Sex discrimination Jurisdiction. (1)

This supplemental procedure applies only if the alleged misconduct meets the definition of "sex discrimination" as that term is defined in WAC 132Q-10-601 and occurs:

(a) On college premises;

(b) At or in connection with college programs or activities; or

(c) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a

student or staff to participate in the college's programs and activities.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 21-10-010, § 132Q-10-602, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-603 Sex discrimination - Dismissal and initiation of discipline.

(1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.

(2) The college's Title IX Coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplinary process for allegations of sex discrimination, including sex-based harassment, against a student shall be addressed through the student conduct code.

(3) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to

participate in the disciplinary process and to appeal any disciplinary decision.

(4) When interim suspension or other restriction proceedings are conducted under WAC 132Q-10-320, the complainant shall be notified that an interim suspension has been imposed on the same day that the interim suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the interim suspension order.

(5) The student conduct officer shall review the investigation report provided by the Title IX Coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five (5) business days of receiving the investigation report, serve respondent, complainant, and the Title IX Coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written

recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct administrative panel.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct administrative panel.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) The student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX Coordinator has declined to initiate their own complaint. In cases involving allegations of sex-based harassment, the Complainant must withdraw their complaint in writing;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of twenty-one (21) calendar days from the service of the written recommendation.

(g) Upon receipt of the student conduct officer's written recommendation, the Title IX Coordinator or their designee shall review all supportive measures and, within five (5) business days, provide written direction to the complainant and respondent as to any supportive measures that will be

implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(h) If the respondent is found responsible for engaging in sex discrimination, the Title IX Coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 21-10-010, § 132Q-10-603, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-604 Sex discrimination - Prehearing procedure.

(1) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct administrative panel must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in

relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. § 106.45 and § 106.46.

(2) In sex discrimination cases, the College may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct administrative panel and/or committee chair.

(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) Notice. The college must provide a notice that includes all information required in WAC 132Q-10-315, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in paragraph 4(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process,

which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(4) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. In addition to all information required by WAC 132Q-10-315, the prehearing notice must also inform the parties that: (i) the respondent is presumed not responsible for the alleged sex-based harassment; (ii) that the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker; (iii) that they may have an advisor of their choice, who may be an attorney, to assist them during the hearing; and (iv) they are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and (v) the student conduct code prohibits knowingly making false statements

or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the Notice of Hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but is not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must, conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 21-10-010, § 132Q-10-604, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-606 Sex Discrimination - Presentation of

Evidence(1) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee

chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to information protected by the following: (a) spousal/domestic partner

privilege; (b) attorney-client communications and attorney work product privilege; (c) clergy privileges; (d) medical or mental health providers and counselor privileges; (e) sexual assault and domestic violence advocate privileges; and (f) other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13). WSR 21-10-010, § 132Q-10-606, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-607 Sex discrimination - Initial order.

(1) The student conduct administrative panel will comply with WAC 132Q-10-330.

(2) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX Coordinator.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13). WSR 21-10-010, § 132Q-10-607, filed 4/23/21, effective 5/24/21.]

WAC 132Q-10-608 Sex discrimination - Appeals.

(1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within twenty-one (21) calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

a. For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will process the appeal as the appeal authority. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal as the appeal authority.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to: (a)

procedural irregularity that would change the outcome; (b) new evidence that would change the outcome and that was not reasonably available when the initial decision was made; and (c) the investigator, decision maker, or Title IX Coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all non-appealing parties, who will have ten (10) business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority's review shall be restricted to the hearing record made before the student conduct administrative panel and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The appeal authority shall serve a written decision on all parties and their attorneys, if any, within twenty (20) calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to Chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on the complainant, respondent, and Title IX Coordinator.

(7) The appeal authority shall not engage in an ex parte communication with any of the parties regarding an appeal.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13).
WSR 22-12-002, § 132Q-10-608, filed 5/19/22, effective 6/19/22;
WSR 21-10-010, § 132Q-10-608, filed 4/23/21, effective 5/24/21.]