

New Standards of Conduct for Students: Sexual Misconduct and Title IX Regulations

WAC 132Q-10-105 Definitions

For the purposes of this chapter, the following terms shall mean:

- (1) "Accused student" means any student accused of violating the standards of conduct for students.
- (2) "Appeals board" is a district-wide board composed of one administrator from each college appointed by the chief executive of that college. The appeals board considers appeals from a student conduct board's determination or from the sanctions imposed by the student conduct officer. The appeals board is convened by the student conduct officer.
- (3) The "chief student services officer" is the vice president of student services of Spokane Community College or the Vice President of Student Affairs of Spokane Falls Community College, or a person designated by the college president to be responsible for the administration of the standards of conduct for students. The chief student services officer also serves as the Title IX coordinator for matters regarding conduct of Community Colleges of Spokane (CCS) students.
- (4) "College" means Spokane Community College, Spokane Falls Community College, and all locations of CCS.
- (5) "College official" includes any person employed by the college performing assigned duties with the exception of work study students.
- (6) "College premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the Community Colleges of Spokane (including adjacent streets and sidewalks).
- (7) "College president" includes the president of Spokane Falls Community College and the president of Spokane Community College. Each president is authorized to designate a chief student service officer on behalf of his or her respective institutions.
- (8) "Complainant" means any member of CCS, including employee(s), contractor(s), visitor(s), or guest(s) who submits a report alleging that a student violated the standards of conduct for students. When students believe they have been victimized by another student's misconduct, they have the same rights under these standards as are provided to the complainant, even if another member of CCS submitted the charge itself. For the purposes of complaints involving sexual misconduct, the "complainant" is the alleged victim of sexual misconduct even if the complaint is filed by a third party including, but not limited to, complaints filed by CCS, SFCC, or SCC.
- (9) "Disciplinary action" is the process by which discipline is imposed against a student, members of a student organization, or a student organization for a violation of the standards of conduct for students by a student conduct officer, the student conduct board, the student conduct administrative panel, the appeals board, or a faculty member.
- (10) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the chief student services officer, the student conduct officer, the student conduct board, or the student conduct administrative panel. Appeals of all appealable disciplinary action shall be determined by the appeals board.
- (11) "Disciplinary hearing" is the process during which an accused student has the opportunity to respond to a complaint alleging a violation(s) of the standards of conduct for students. The accused student has the opportunity to explain what he or she did and to provide evidence that is relevant to the complaint. Alleged misconduct that would not result in suspension in excess of ten instructional days or an expulsion shall be reviewed through a brief adjudicative proceeding held by the student conduct officer or the student conduct board.
- (12) "Faculty member" means a teacher, counselor, or librarian or person who is otherwise considered

by the college to be a member of its faculty.

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

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

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

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

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

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

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

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

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

(18) "Sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. These terms are defined in detail further in this Code. See WAC 132Q-10-243 through 132Q-10-245. Sexual harassment prohibited by Title IX is defined in the Supplemental Procedures to this Code. See WAC 132Q-10-501 through 132Q-10-503.

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

(20) "Student organization" means any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such.

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

(22) "Student conduct board" is a board appointed by the president of the college to hear initial

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

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

(24) "Title IX coordinator" means the vice president of student services for the college or his/her designee who is responsible for coordinating Title IX matters regarding students of CCS who is also known as the chief student services officer.

WAC 132Q-10-243 Sexual Harassment

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

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

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

(3) creates an intimidating, hostile, or offensive environment for other campus community members.

WAC 132Q-10-244 Sexual Violence

"Sexual violence" is a type of sexual discrimination and harassment. Sexual violence includes the following: Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking. This conduct also includes, but is not limited to, indecent liberties, sexual exploitation, indecent exposure, sexual exhibitionism, sex-based cyberharassment, prostitution or the solicitation of a prostitute, peeping or other voyeurism, or exceeding the boundaries of consent including allowing others to view consensual sex, the nonconsensual posting or recording of sexual activity, domestic violence, dating violence, and stalking.

(1) **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 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) **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) **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.

(4) **Cyberstalking** is when a person, with the intent to harass, intimidate, torment or embarrass any

other person makes an electronic communication including, but not limited to, electronic mail, internet based communications (social media sites and electronic bill boards), pager service, or instant messaging using (a) any lewd, lascivious, indecent, or obscene words, images or language, or suggesting the commission of any lewd or lascivious act; (b) anonymously or repeatedly whether or not conversation occurs; or (c) threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

(5) **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.

(6) **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.

(7) **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).

(8) **Statutory Rape:** Consensual intercourse between a person who is eighteen (18) years of age or older, and a person who is under the age of sixteen (16).

(9) **Indecent liberties** means knowingly causing sexual contact with a person by forcible compulsion or when the person is incapable of consent by reason of mental defect, mental incapacitation, or physical helplessness. Sexual contact is defined as any nonconsensual touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party.

(10) **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. 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.

i) 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.

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

(11) **Voyeurism** is arousing or gratifying sexual desire by viewing, photographing, or filming another person without that person's knowledge and consent and/or while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy. It also includes the distribution of a recording of sexual activity.

****NEW SECTION** WAC 132Q-10-245 Sexual Intimidation**

"Sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

MODEL SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

WAC 132Q-10-600 Order of Precedence

This supplemental procedure applies to allegations of Sexual Harassment subject to Title IX jurisdiction

pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. § 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.

WAC 132Q-10-601 Prohibited Conduct Under Title IX

Pursuant to RCW 28B.50.140(13) and Title IX of the Education Act Amendments of 1972, 20 U.S.C. §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." For purposes of this supplemental procedure, "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 (18).
 - (d) Statutory Rape. Consensual sexual intercourse between someone who is eighteen (18) years of age or older and someone who is under the age of sixteen (16).
- (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 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 (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:

- (a) The length of the relationship;
 - (b) The type of relationship; and
 - (c) 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.

WAC 132Q-10-602 Title IX Jurisdiction

(1) This supplemental procedure applies only if the alleged misconduct:

- (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 Section (1)(a)-(c) 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 WAC 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.

WAC 132Q-10-603 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 supplement 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; and
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

WAC 132Q-10-604 Pre-Hearing 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 (10) 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 (5) 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.

WAC 132Q-10-605 Rights of Parties

(1) The Community Colleges of Spokane's Student Conduct Procedures, WAC 132Q-10-101 through WAC 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.

WAC 132Q-10-606 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.

WAC 132Q-10-607 Initial Order

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:

- (1) Identifies the allegations of sexual harassment;
- (2) 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;
- (3) Makes findings of fact supporting the determination of responsibility;

- (4) Reaches conclusions as to whether the facts establish whether the Respondent is responsible for engaging in Sexual Harassment in violation of Title IX;
- (5) Contains a statement of, and rationale for, the Student Conduct Administrative Panel's determination of responsibility for each allegation;
- (6) Describes any disciplinary sanction or conditions imposed against the Respondent, if any;
- (7) 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
- (8) 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.
- (9) The Committee Chair will serve the Initial Order on the Parties simultaneously.

WAC 132Q-10-608 Appeals

- (1) The Parties shall have the right to appeal from the Initial Order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and timeframes set forth in WAC 132Q-10-335.
- (2) For appeals coming from Spokane Community College, the Vice President of Student Affairs at Spokane Falls Community College will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the Initial Order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s). For appeals coming from Spokane Falls Community College, the Vice President of Student Services at Spokane Community College will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the Initial Order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).
- (3) The appropriate Vice President of Student Affairs/Services shall serve the Final Decision on the parties simultaneously.