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MODEL SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

WAC 132_-__-__¹ 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 *[College or University]*'s standard disciplinary procedures, WAC __-__-__ through __-,² these supplemental procedures shall take precedence.³

WAC 132_-__-__ 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 *[College or University]* 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"⁴ encompasses the following conduct:

- (1) Quid Pro Quo Harassment. A *[college or university]* employee conditioning the provision of an aid, benefit, or service of the *[College or University]* on an individual's participation in unwelcome sexual conduct.
- (2) Hostile Environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the *[College or University]*'s educational programs or activities, or employment.
- (3) Sexual Assault. Sexual assault includes the following conduct:

¹ Student conduct codes and procedures must be adopted through formal rule-making pursuant to Washington Administrative Procedure Act (the APA) and published in the Washington Administrative Code (WAC). See, e.g., RCW 28B.50.140(13); WAC 131-12-050(4), (5).

² Cite to existing student conduct code and procedure.

³ To comply with these procedures, College officials must read these supplemental procedures in conjunction with the regular procedures. The regular procedures still apply, even if they are not expressly mentioned in the supplemental procedures. The only time one won't comply with the regular procedures is when they conflict with the supplemental procedures, in which case, the supplemental procedures control.

⁴ Washington's Law Against Discrimination (WLAD), RCW 49.60, and Gender Equality in Higher Education Act, RCW 28B.110, provide broader protection from sexual misconduct than the narrow definitions of "sexual harassment" prohibited under Title IX. Accordingly, institutions will want to retain broader definitions of sexual misconduct that are in their regular student conduct code, as this conduct is still subject to regulation under state law and institutional policies prohibiting gender discrimination.

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- (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 132_-__-__ Title IX Jurisdiction

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- (1) This supplemental procedure applies only if the alleged misconduct:
 - (a) Occurred in the United States;
 - (b) Occurred during a *[College or University]* educational program or activity; and
 - (c) Meets the definition of Sexual Harassment as that term is defined in this supplemental procedure.
- (2) For purposes of this supplemental procedure, an “educational program or activity” is defined as locations, events, or circumstances over which the *[College or University]* exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the *[College or University]*.
- (3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of Section A(1)-(3) have not been met. Dismissal under this supplemental procedure does not prohibit the *[College or University]* from pursuing other disciplinary action based on allegations that the Respondent violated other provisions of the *[College or University]*’s student conduct code, WAC ____-____-____.⁵
- (4) 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.

WAC 132_-____-____ Initiation of Discipline

- (1) Upon receiving the Title IX investigation report from the Title IX Coordinator, 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 Committee and serving the notice on the Respondent and the Complainant, and their respective advisors. The notice must:
 - (a) Set forth the basis for Title IX jurisdiction;

⁵ Insert citation to the institution’s student conduct code.

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- (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);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The [College or University] will appoint the party an advisor of the [College or University]'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 132_-__-__ Pre-Hearing Procedure

- (1) Upon receiving the disciplinary notice, the Chair of the Student Conduct Committee will send a hearing notice to all parties, in compliance with WAC __-__-__. In no event will the hearing date be set less than ten (10) days after the Title IX Coordinator provided the Final Investigation Report to the parties.
- (2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five (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 [College or University] intends to offer the evidence at the hearing.

WAC 132_-__-__ Rights of Parties

- (1) The [College or University]'s Student Conduct Procedures, WAC __-__-__,⁶ and this supplemental procedure shall apply equally to all parties.

⁶ Citation to the institution's student conduct procedures.

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- (2) The [College or University] 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 Coordinator⁷ will appoint an advisor of the [College or University]'s choosing on the party's behalf at no expense to the party.

WAC 132_ - ____ - ____ 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.

⁷ This responsibility could also be assigned to the Chair of the Student Conduct Committee. This may invite allegations of bias or conflict of interest. The Title IX Coordinator does not have any part in the determination of responsibility, so may be a better choice.

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- (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 counsellors;
 - (e) Privileges applicable to sexual assault and domestic violence advocates; and
 - (f) Other legal privileges identified in RCW 5.60.060.

WAC 132_-__-__ Initial Order

In addition to complying with WAC __-__-__, the Student Conduct Committee 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 Committee'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 [College or University]'s education programs or activities; and
 - (8) Describes the process for appealing the Initial Order to the [College or University] President.
- (9) The Committee Chair will serve the Initial Order on the Parties simultaneously.

WAC 132_-__-__ Appeals

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- (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 ____-____-____.⁸
- (2) The President or their delegate 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) President’s Office shall serve the Final Decision on the parties simultaneously.

⁸ Citation to the procedure for appealing an Initial Order to the President under the institution’s student conduct procedure.