



TITLE IX IMPLEMENTATION 2024

Stakeholder Feedback & Emergency Rulemaking

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Title IX Rule – Time Line

Draft Rule - July 12, 2022

Final Rule – April 19, 2024

Effective Date - **AUGUST 1, 2024**

NOTE: Old procedures continue to apply to sexual harassment allegations that arose before August 1, 2024

Action Item: Archive old procedures and make them available for use on sexual harassment cases arising before August 2024

Purpose of New Procedures

- Implement College's Title IX Policy;
- Comply with new Title IX Rule issued by US Department of Education; and
- Ensure employees and students accused of violating sex discrimination policy receive constitutional and statutory due process
- **Action Item:** Review and revise, if necessary, College Title IX Policy to conform to new Title IX Rule – **may require Board action**

Stakeholder Feedback

Issues Raised:

- Unified discrimination investigation and disciplinary procedures
- Single investigator model
- Capitalization of defined terms (or not)
- Consistent definitions and terminology across all three procedures
- Clarifying meaning of “*de minimis*” and “preponderance of the evidence”
- Calendar v. Business days

Revisions - Title IX Investigation Procedure

“Mandatory Reporters” added to Section B - *Definitions*

OPTION 1 **“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 how to file a Title IX complaint.

OPTION 2 **“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.

Revisions - Title IX Investigation Procedure

Confidential Employee paragraph added to Section H - *Confidentiality*

The College has designated the following positions as Confidential Employees:

LIST CONFIDENTIAL EMPLOYEE POSITIONS AND CONTACT INFORMATION

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.

Revisions – Employee Discipline

Service Requirements – Section V *Initiation of Discipline*

Service of the Written Recommendation or any other document required to be served under this procedure shall be done:

1. In person; or
2. By first class or certified mail to the Party's last known address and by electronic mail to the Party's College email address.

Disclosure of Evidence – Section VI *Prehearing Procedure*

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.

Revisions – Student Conduct Code

STUDENT CONDUCT COMMITTEE, pp 30-31

Option 1 The College may, in its sole 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 committee and/or committee chair.

Option 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 committee and/or committee chair.

Revisions – Student Conduct Code

STUDENT CONDUCT COMMITTEE - PRESENTATION OF EVIDENCE, p. 36

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.

Adoption Procedures

- **Model Investigation Procedure** - May be adopted by College Administration – does **not** need to be adopted by the Board
- **Model Employee Disciplinary Procedure** – Also may be adopted by College Administration – does **not** need to be adopted by the Board
- **Model Student Conduct Code** – Must be adopted as a formal Rule pursuant to the Administrative Procedure Act – **Board approval required**

Student Conduct Code - Rulemaking

Rulemaking governed by Washington's Administrative Procedure Act (the APA), RCW 34.05.310-.395

Permanent rulemaking usually is a three step process

- Publication of the proposed rule
- Public comment proposed rule
- Adoption by Board and codification of the rule in WAC

Student Conduct Code – Emergency Rulemaking

Rulemaking process reduced to one step in an emergency

An emergency arises when the agency “for good cause finds:”

- “state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule;” or
- immediate adoption or revision of rule is necessary “for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest”

RCW 34.05.350(1)(a)&(b).

Emergency Rule Adoption

Emergency rule must be adopted by Board at an Open Public Meeting

Rule effective upon filing with Code Reviser or on date specified (August 1, 2024)

Rule remains in effect for **120 days** (November 29, 2024)

Emergency rule **cannot be renewed** unless

- There has been a change in circumstance; or
- **College has filed a notice to engage in rulemaking and is actively engaged in permanent rulemaking process**

RCW 34.05.350(2)

Emergency Rulemaking Action Items

- Identify the College's Rules Coordinator (if none, make arrangements to appoint)
- Contact Code Reviser's Office / determine lead time for ORDER TYPING SERVICE (OTS)
- Arrange for electronic filing with Code Reviser if this is not already in place
- Revise and modify model Student Conduct Code as necessary and submit to OTS
- Identify regular Board meeting or, if necessary, schedule special Board meeting prior to August 1, 2024
- Finalize CR-103E
- Receive Board approval
- File emergency rule and CR-103E with Code Reviser's Office
- Start planning for permanent rulemaking

Permanent Rulemaking

- Begin adopting permanent rule within 120 days or jeopardize ability to renew emergency rule
- Confer with student government about proposed changes to student conduct code
- Attend AGO permanent rulemaking presentation on September 25, 2024 at 11 a.m.
 - Review permanent rulemaking process
 - Provide updates on Model procedures
 - Discuss and provide advice on various legal challenges to new Rule

Other Title IX Issues

Notice Requirements

- New Rule requires College to publish notices regarding Title IX policy and procedures
- Content and publication requirements at [34 C.F.R. § 106.8 \(c\)](#)

Pregnancy and related conditions policy and procedure

- Model policy and procedure will be circulated later this month

Revise College's Title IX policy to align with new Title IX procedures

- May require Board action

QUESTIONS?