

# TITLE IX TRAINING



February 18 & March 4, 2021

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**AGO TITLE IX TRAINING**

**February 18 and March 4, 2021**

Morning Session – 9:00 a.m. through Noon

**I. Introductory Remarks**

**II. Title IX Student and Employee Disciplinary Procedures**

- A. Legal Authority – Title IX & the APA
- B. Title IX Jurisdiction
- C. Investigation Procedures
- D. Live Hearing

*10 Minute Break*

**III. Evidence**

- A. Relevance
- B. Non-relevant Evidence
- C. Hearsay
- D. Testimony
- E. Documentary and Physical Evidence
- F. Evidentiary Objections

*10 Minute Break*

**IV. Preparing For and Presenting a Hearing**

- A. Preparation
- B. The Hearing

**LUNCH**

Afternoon Session – 1:30 through 3:30 p.m.

**I. Hearing Demonstration**

*10 Minute Break*

**II. Skills Practice – Small Groups**

**III. Debrief/Questions**

# TITLE IX PROCEEDINGS: OVERVIEW OF THE LAW AND ITS REQUIREMENTS

Bruce Marvin, Assistant Attorney General

## TITLE IX: THE STATUTE AND THE NEW REGULATIONS

- Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681–1688  
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681(a).
- The new Title IX regulations on responding to sexual harassment are found primarily at 34 C.F.R. §§ 106.30, 106.44, & 106.45.
- The U.S. Dept. of Ed. provided a lengthy explanation of the changes made by the new regulations in the Federal Register. 85 FR 30026.

## NEW TITLE IX RULES: INVESTIGATION AND PREHEARING PROCEDURES

- The new Title IX rules imposed significant investigation and prehearing procedures on IHEs. Those procedures include:
  - Limits on jurisdiction of Title IX;
  - Equitable treatment of the parties;
  - Title IX administrators may not have a conflict of interest or bias for or against a party;
  - Formal complaint required to start Title IX grievance process;
  - Notice to parties of investigation and interviews;
  - Right to advisors (needn't be attorneys);
  - Right to review evidence and findings before investigator issues final report; and
  - Prohibition against "gag orders."
- Federal investigation requirements were incorporated into College Title IX Grievance (Investigation) Procedures.

## NEW TITLE IX RULES: HEARING PROCEDURES

- The new Title IX rules imposed significant new requirements for hearing procedures, including:
  - Live hearings required;
  - Can't draw a negative inference if party is absent, won't testify or answer questions;
  - Evidence and testimony must be evaluated for relevance;
  - Out of court statement inadmissible unless the person who made it is available for cross-examination;
  - Parties entitled to advisor of their choice, who will conduct cross examinations; and
  - College will appoint advisor if party does not select one.
- Federal investigation requirements incorporated into:
  - Supplement Title IX Student Conduct Code Procedures; and
  - Title IX Employee Discipline Procedures.

## THE ADMINISTRATIVE PROCEDURE ACT (APA)

- The APA, RCW 34.05, provides procedures which also apply during a Title IX hearing.
- The APA ensures parties subject to agency action receive due process:
  - Notice of allegations;
  - Opportunity to present witness, evidence, and arguments;
  - Establishes evidentiary standards;
  - Impartial decision maker; and
  - Provides for creation of an administrative record for judicial review.
- APA procedural requirements are embedded in:
  - Student Conduct Code and Supplement Title IX Procedures; and
  - Title IX Employee Discipline Procedures.

## QUESTIONS?

For reference, [34 C.F.R. Part 106](#) - Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

**SKYLINE COLLEGE**  
**SUPPLEMENTAL TITLE IX EMPLOYEE DISCIPLINARY HEARING PROCEDURE**

**I. Order of Precedence**

This supplemental employee discipline 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. Disciplinary proceedings against an employee respondent alleged to have engaged in sexual harassment in violation of Title IX shall be governed by the College’s administrative hearing practices and procedures, Chapter WAC 132XX-110 and this supplemental hearing procedure. To the extent the supplemental hearing procedure conflicts with WAC 132XX-110, and/or provisions set forth in employment contracts, collective bargaining agreements, employee handbooks, and other College employment policies and procedures, this supplemental hearing procedure will take precedence.

Notwithstanding the foregoing, if Respondent is a tenured or probationary faculty member and the Vice President of Human Resources determines that the allegations in the investigation, if true, would warrant Respondent’s dismissal from the College, the Vice President of Human Resources will refer the matter to the Tenure Dismissal Committee for a hearing pursuant to RCW 28B.50.863 and applicable procedures set forth in the faculty union Collective Bargaining Agreement (CBA). To the extent the Tenure Dismissal Committee procedures are inconsistent or conflict with Sections II through VII of this Supplement Procedure, those Supplemental Procedure sections will prevail. At the end of the hearing, the Tenure Dismissal Committee will issue a Recommendation consistent with the provisions set forth in Section VIII. 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 Board of Trustees before final action is taken.

**II. Prohibited Conduct Under Title IX**

Pursuant to Title IX of the Education Act Amendments of 1972, 20 U.S.C. §1681, the College may impose disciplinary sanctions against an employee 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:

- A. **Quid Pro Quo Harassment.** A college employee conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct.
- B. **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’s educational programs or activities, or employment.
- C. **Sexual assault.** Sexual assault includes the following conduct:
  - 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. 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.
  3. Incest. Sexual intercourse or sexual contact with a person the 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. Consensual sexual intercourse between someone who is eighteen (18) years of age or older and someone who is under the age of sixteen (16).
- D. **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.
- E. **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
  - (c) The frequency of interaction between the persons involved in the relationship
- F. **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.

### III. Title IX Jurisdiction

- A. This supplemental procedure applies only if the alleged misconduct:
1. Occurred in the United States,
  2. Occurred during a College educational program or activity, and
  3. Meets the definition of Sexual Harassment as that term is defined in this supplemental procedure.



- B. For purposes of this supplemental procedure, an “educational program or activity” is defined as locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the College.
- C. Proceedings under this supplemental procedure must be dismissed if the Employee Discipline Officer 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 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.
- D. If the Employee Discipline 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 Employee Discipline 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.

#### **IV. Initiation of Discipline**

- A. Upon receiving the Title IX investigation report from the Title IX Coordinator, the Employee Discipline 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.
- B. If the Employee Discipline Officer determines that there are sufficient grounds to proceed under these supplement procedures, the Employee Discipline Officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the Presiding Officer and by serving the notice on the Respondent and the Complainant, and their respective advisors. The notice must:
  1. Set forth the basis for Title IX jurisdiction;
  2. Identify the alleged Title IX violation(s);
  3. Set forth the facts underlying the allegation(s);
  4. Identify the range of possible sanctions that may be imposed if the Respondent is found responsible for the alleged violation(s);
  5. Explain that each Party is entitled to be accompanied by an Advisor of their own choosing during the hearing and that:
    - a. Advisors will be responsible for questioning all witnesses on the Party’s behalf;
    - b. An Advisor may be an attorney and/or, if the Party is a represented employee, a union representative;
    - c. A represented employee who chooses an Advisor who is not a union representative, must submit a signed waiver of union representation that includes consent from the union; and
    - d. The College will appoint the Party an Advisor of the College’s choosing at no cost to the Party, if the Party fails to choose an Advisor;
  6. Explain that if a Party fails to appear at the hearing, a decision of responsibility may be made in the Party’s absence.

- C. Service of the disciplinary notice or any other document required to be served under this supplemental procedure may be done personally or by first class, registered, or certified mail, or by electronic mail to the Party's Skyline College email address.

#### **V. Pre-hearing Procedure**

- A. Upon receiving the disciplinary notice, the Presiding Officer will send a hearing notice to all parties in compliance with WAC 10-08-040. Pursuant to Skyline Title IX Grievance Procedure, the hearing date may not be scheduled less than ten (10) days after the Title IX Coordinator provided the Final Investigation Report to the Parties.
- B. A Party is entitled to be accompanied by an Advisor of their choice 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.
  - 1. If the Advisor is an attorney, the Advisor must file a notice of appearance with the Presiding Officer with copies to all parties and the Employee Discipline Officer at least five (5) days before the hearing. 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.
  - 2. If a Party is a represented employee who chooses not to use a union-provided Advisor, the Party must provide the Presiding Officer with a signed waiver of union representation, including written consent from the union.
- C. In preparation for the hearing, the Parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the College intends to offer the evidence at the hearing.

#### **VI. Rights of Parties**

- A. The provisions of this supplement procedure shall apply equally to both parties.
- B. The College bears the burden of offering and presenting sufficient testimony and evidence to establish that the Respondent is responsible for a Title IX violation by a preponderance of the evidence.
- C. The Respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.
- D. 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 or, if the Respondent holds a represented position, a union representative. 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.

#### **VII. Evidence**

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

- A. 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.
- B. Relevance means that information elicited by the question makes a fact in dispute more or less likely to be true.
- C. 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:
  - 1. Is asked or offered to prove someone other than the Respondent committed the alleged misconduct; or
  - 2. Concerns specific incidents of prior sexual behavior between the Complainant and the Respondent, which are asked or offered on the issue of consent.
- D. Cross-examination required – if a Party or witness does not submit to cross-examination during the live hearing, the Presiding Officer must not rely on any statement by that Party or witness in reaching a determination of responsibility.
- E. No negative inference - The Presiding 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.
- F. Privileged evidence – the Presiding Officer 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:
  - 1. Spousal/domestic partner privilege;
  - 2. Attorney-Client and attorney work product privileges;
  - 3. Privileges applicable to members of the clergy and priests;
  - 4. Privileges applicable to medical providers, mental health therapists, and counsellors;
  - 5. Privileges applicable to sexual assault and domestic violence advocates; and
  - 6. Other legal privileges identified in [RCW 5.60.060](#).

**VIII. Initial Order**

- A. The Presiding Officer will be responsible for 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's education programs or activities; and
  8. Describes the process for appealing the Initial Order to the College President.
- B. The Presiding Officer will serve the Initial Order on the Parties simultaneously.

### **IX. Appeals**

- A. The Parties have the right to appeal from the determination of responsibility and/or from a Title IX dismissal, in whole or part, of a formal complaint, as set forth in the Initial Order. To the extent they are consistent with the provisions of this Procedure, the right to appeal is subject to the same procedures and timeframes set forth in WAC 132XX-125-300 (Student Conduct Code Procedure for Appealing Initial Orders).
- B. 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 sanctions and conditions imposed in the Initial Order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.
- C. The President's Office shall serve the Final Decision on the parties simultaneously.
- D. All decisions reached through this process are final. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any Collective Bargaining Agreement.

**SKYLINE COLLEGE**  
**Title IX Grievance Procedure**

**Purpose**

Skyline College recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor the educational environment and workplace to 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, Skyline College has enacted Sexual Misconduct / Title IX Policy and adopted the following Title IX Grievance Procedure for receiving and investigating Sexual Harassment allegations arising during education programs and activities. Any individual found responsible for violating College’s Title IX policy is 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 Title IX Grievance Procedure is restricted to allegations of “Sexual Harassment,” as that term is defined in 34 C.F.R. §106.30. Nothing in this procedure limits or otherwise restricts the College’s ability to investigate and pursue discipline based on alleged 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, employment contracts, employee handbooks, and collective bargaining agreements.

**A. Definitions**

For purposes of this Title IX Grievance Procedure, the following terms are defined as follows:

1. **“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 the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

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

2. **“Complainant”** – an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
3. **“Respondent”** – an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

4. **“Formal Complaint”**- a writing submitted by the Complainant or signed by the Title IX coordinator alleging Sexual Harassment against a Respondent and requesting that the college conduct an investigation.
5. **“Education Program or Activity”** includes locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by the College.
6. **“Grievance Procedure”** - the process the College uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sexual harassment.
7. **“Supportive Measures”** are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent regardless of whether the Complainant or the Title IX Coordinator has filed a Formal Complaint. Supportive Measures restore or preserve a party’s access to the College’s education programs and activities without unreasonably burdening the other party, as determined through an interactive process between the Title IX Coordinator and the party.

Supportive Measures include measures designed to protect the safety of all parties and/or the College’s educational environment and/or to deter Sexual Harassment or retaliation. Supportive measures may include, but are not limited to (i) counseling and other medical assistance, (ii) extensions of deadlines or other course-related adjustments, (iii) modifications of work or class schedules, (iv) leaves of absence, (v) increased security or monitoring of certain areas of campus, and (vi) imposition of orders prohibiting the parties from contacting one another in housing or work situations. Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis. If supportive measures are not provided, the Title IX Coordinator must document in writing why this was clearly reasonable under the circumstances.

8. **“Summary 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 132XX-125-250.
9. **“Sexual Harassment”** – for purposes of these Title IX Grievance Procedures, Sexual Harassment occurs when a Respondent engages in the following discriminatory conduct on the basis of sex:
  - a. **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct.
  - b. **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’s educational programs or activities or College employment.

- c. Sexual assault. Sexual assault includes the following conduct:
- (i) 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.
  - (ii) 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.
  - (iii) 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).
  - (iv) 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).
  - (v) 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.
  - (vi) 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

- (vii) 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.
10. **“Title IX Administrators”** are the Title IX Coordinator, Title IX investigators, the Student Conduct Officer, Student Conduct Committee members, Employee Discipline Officer, Presiding Officer, and College-provided advisors assigned to the parties by the College during Title IX disciplinary proceedings.
  11. **“Title IX Coordinator”** is responsible for processing Title IX complaints and conducting and/or overseeing formal investigations and informal resolution processes under this Grievance Procedure. Among other things, the Title IX Coordinator is responsible for:
    - a. Accepting and processing all Title IX reports, referrals, and Formal Complaints.
    - b. Executing and submitting a Formal Complaint when appropriate and necessary.
    - c. Handling requests for confidentiality.
    - d. Determining during the Grievance Procedure (i) whether a Formal Complaint should be dismissed either in whole or in part, and if so, (ii) providing notice to both parties about why dismissal was necessary or desirable, and (iii) referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.
    - e. Maintaining accurate records of all complaints, reports, and referrals, and retaining investigation files, complaints, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.
    - f. Conducting investigations or assigning and overseeing investigations.
    - g. 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.
    - h. Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this Grievance Procedure.
    - i. Recommending non-disciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other College administrators.



### **C. Principles for Title IX Grievance Procedure**

1. Respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the grievance and disciplinary processes.
2. Before imposing discipline, the College is responsible for gathering and presenting evidence to a neutral and unbiased decision maker establishing responsibility for a Title IX violation by a preponderance of the evidence.
3. The College shall treat both the complainant and respondent equitably by providing Complainant with remedies against Respondent who has been found responsible for Sexual Harassment through application of the institution's Title IX grievance and applicable Title IX disciplinary procedures and by providing Respondent with Title IX procedural safeguards contained in this Title IX Grievance Procedures and in the applicable Title IX disciplinary procedures.
4. The investigator shall base investigation results on all relevant evidence, including both exculpatory and inculpatory evidence.
5. Formal and informal resolutions will be pursued within reasonably prompt timeframes with allowances for temporary delays and extensions for good cause shown. Grounds for temporary delay include recognized College holidays and breaks. Good cause supporting a request for an extension includes, but is not limited to: a party, a party's advisor, or a witness being unavailable; concurrent law enforcement activity; and the need for language assistance or accommodation of disabilities. Both parties will receive written notice of any temporary delay or extension for good cause with an explanation of why the action was necessary.
6. A Respondent found responsible for engaging in Sexual Harassment may receive discipline up to and including dismissal from the College. A description of other possible disciplinary sanctions and conditions that may be imposed against students can be found in WAC 132XX-125-100.  
  
An employee found responsible for Sexual Harassment may receive discipline up to and including dismissal from employment. A description of possible disciplinary sanctions and conditions that may be imposed against employees can be found in the Skyline College Employee Handbook and represented employee collective bargaining agreements, if applicable.
7. In proceedings against a student Respondent, the parties may appeal the Student Conduct Committee's ruling to the President pursuant to WAC 132XX-125-200 and Supplement Title IX Student Conduct Code Procedures, WAC 132XX-125-400.
8. In proceedings against an employee Respondent, the parties may appeal the Employee Disciplinary Decision to the President pursuant to the Skyline College Title IX Employee Discipline Procedures.
9. Title IX Administrators 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:

- 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](#).

**D. Title IX Administrators – Free from bias – Training requirements**

1. Title IX Administrators shall perform their duties free from bias or conflicts.
2. Title IX Administrators shall undergo training on the following topics:
  - a. The definition of Sexual Harassment under these procedures,
  - b. The scope of the College’s educational programs and activities,
  - c. How to conduct an investigation,
  - d. How to serve impartially without prejudgment of facts, conflicts of interest or bias,
  - e. Use of technology used during any investigation or hearing,
  - f. The relevance of evidence and questions, and
  - g. Effective report writing.
3. All Title IX Administrator training materials shall be available on the College’s Title IX webpage.

**E. Filing a Complaint**

Any employee, student, applicant, or visitor who believes that they have been the subject of Sexual Harassment should report the incident or incidents to the Skyline College’s Title IX Coordinator identified below. If the complaint is against that Title IX Coordinator, the Complainant should report the matter to the president’s office for referral to an alternate designee.

Name: Janice Jameson  
Title: Title IX Coordinator  
Office: Room 121 E, Eagle Hall  
Janice.Jameson@Skyline.edu  
527 303-2298

**F. Confidentiality**

1. The College will seek to protect the privacy of the Complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial

and/or disciplinary action, and comply with the federal and state law, as well as College policies and procedures. Although the College will attempt to honor Complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX Coordinator.

2. The Title IX Coordinator will inform and attempt to obtain consent from the Complainant before commencing an investigation of alleged Sexual 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. Factors to be weighed during this determination may include, but are not limited to:
  - a. The seriousness of the alleged Sexual Harassment;
  - b. The age of the Complainant;
  - c. Whether the Sexual Harassment was perpetrated with a weapon;
  - d. Whether the Respondent has a history of committing acts of Sexual Harassment or violence or has been the subject of other Sexual Harassment or violence complaints or findings;
  - e. Whether the Respondent threatened to commit additional acts of Sexual Harassment or violence against the Complainant or others; and
  - f. Whether relevant evidence about the alleged incident can be obtained through other means (*e.g.*, security cameras, other witnesses, physical evidence).
3. 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 ensure that Complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this Grievance Procedure.
4. 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.

#### **G. Complaint Resolution**

The Title IX resolution processes are initiated when the Title IX Coordinator's Office receives a written complaint alleging that a Respondent(s) sexually harassed a Complainant and requesting that the College initiate an investigation (a Formal Complaint). A Formal Complaint must be either submitted by the Complainant or signed by the Title IX Coordinator on behalf of the Complainant. Formal complaints submitted to the Title IX Coordinator may be resolved through either informal or formal resolution processes. The College will not proceed with either resolution process without a Formal Complaint.

For purposes of this Title IX Grievance Procedure, the Complainant must be participating in or attempting to participate in a College education program or activity at the time the Formal Complaint is filed.

### **1. Informal Resolution**

Under appropriate circumstances and if the impacted and responding parties agree, they may voluntarily pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegations involve a mandatory reporting situation, an immediate threat to the health, safety or welfare of a member of the college community, or in cases where an employee is alleged to have sexually harassed a student.

If an informal resolution is appropriate, the impacted party and the responding party may explore remedies or resolution through:

- Guided conversations or communications conducted by the Title IX coordinator / HRO representative or a mutually agreed upon third party;
- Structured resolution process conducted by a trained mediator; or
- Voluntarily agreed on alterations to either or both of the parties' work or class schedules or student housing arrangements.

If the parties agree to an informal resolution process, the college will commence the process within ten (10) days after the parties agree to this option and conclude within forty (40) days of beginning that process, subject to reasonable delays and extensions for good cause shown. The informal process is voluntary. Either the impacted or responding party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the impacted and responding party voluntarily resolve a report, 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 report has been closed.

### **2. Formal Resolution**

Formal resolution means that the Complainant's allegations of Sexual Harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigator will issue a report of the investigation findings. Upon completion of the investigation, the investigator will submit the final investigation report to the appropriate disciplinary authority to determine whether disciplinary proceedings are warranted.

### **H. Emergency Removal**

If a student Respondent poses an immediate threat to the health and safety of the College Community or an immediate threat of significant disruption to College operations, the College's student conduct officer may summarily suspend a Respondent pursuant to WAC 132XX-125-300, pending final resolution of the allegations. Nothing in this Grievance Procedure prohibits the College from placing non-student employees on administrative leave pending final resolution of the allegations.

## **I. Investigation Notices**

Upon receiving a Formal Complaint and determining that allegations comport with Title IX claims, the College will provide the parties with the following notices containing the following information:

1. Notice of formal and informal resolution processes. A description of the College's grievance resolution procedures, including the informal resolution procedure.
2. The investigator will serve the Respondent and the Complainant with a Notice of Investigation in advance of the initial interview with the Respondent to allow the Respondent sufficient time to prepare a response to the allegations and to inform the Complainant that the College has commenced an investigation. The investigation notice will:
  - a. Include the identities of the parties (if known), a description of the conduct alleged constituting Title IX Sexual Harassment, and the time and location of the incident (if known).
  - b. Confirm that the Respondent is presumed not responsible for the alleged conduct and that the College will not make a final determination of responsibility until after the grievance and disciplinary processes have been completed.
  - c. Inform parties that they are both entitled to have an advisor of their own choosing, who may be an attorney.
  - d. Inform parties they have a right to review and inspect evidence.
  - e. Inform parties about student conduct code provisions and employment policies that prohibit students and employees from knowingly submitting false information during the grievance and disciplinary processes.
3. Amended investigation notice. If during the course of the investigation, the College decides to investigate Title IX Sexual Harassment allegations about the Complainant or Respondent that are not included in the investigation notice, the College will issue an amended notice of investigation to both parties that includes this additional information.
4. Interview and meeting notices. Before any interviewing or meeting with a party about Title IX allegations, the College shall provide the party with a written notice identifying the date, time, location, participants, and purpose of the interview or meeting with sufficient time for the party to prepare for the interview or meeting.

## **J. Investigation Process – Dismissal**

1. Mandatory dismissal - The Title IX Coordinator will dismiss the Title IX allegations, if during the course of a formal investigation under the Title IX Grievance Process, the investigator determines that the alleged misconduct in the Formal Complaint:

- a. Does not meet the definition of Sexual Harassment under Title IX, even if proved; or
  - b. Did not occur in the context of a College Education Program or Activity; or
  - c. Occurred outside the United States.
2. Discretionary dismissal - The College may dismiss a Title IX claim in whole or in part, if:
    - a. The Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint in whole or in part;
    - b. Respondent is no longer enrolled with or employed by the College; or
    - c. Specific circumstances prevent the College from gathering evidence sufficient to complete the investigation of the Title IX allegations in whole or in part.
  3. The Title IX Coordinator will provide both parties written notice if Title IX allegations are dismissed with an explanation for the dismissal.
  4. Mandatory or discretionary dismissal of a Title IX claim 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 student and employee conduct.

**K. Investigation Process – Consolidation of Formal Complaints.**

When multiple Sexual Harassment allegations by or against different parties arise out of the same facts or circumstances, the College may consolidate the investigation of Formal Complaints, provided consolidation can be accomplished in compliance with confidentiality protections imposed by the Family Educational Records and Privacy Act (FERPA). This includes instances in which Complainant and Respondent have lodged Formal Complaints against one another or when allegations of sexual assault are lodged by a single Complainant against multiple Respondents, or when multiple Complainants lodge sexual assault complaints against single or multiple Respondents.

**L. Investigation Process – Required Procedures.**

During the investigation, the Investigator:

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.
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 shall be no broader than is

necessary to protect the threatened party or witness and must provide the impacted party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness and/or party.

4. Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, to any grievance 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 representing a party must enter a notice of appearance with the Title IX Coordinator and the Investigator at least five (5) days before the initial interview or meeting they plan to attend, so that the College can secure its own legal representation, if necessary.
6. 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 any evidence obtained during the investigation that is directly related to the allegations raised in the Formal Complaint, including inculpatory or exculpatory evidence, regardless of its source, as well as evidence the investigator does not intend to rely in the final investigation report. After disclosure, each party will receive ten (10) 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) days, the party will be deemed to have waived their right to submit comments and the investigator will finalize the report without this information.
7. The investigator will forward the final report to the Title IX Coordinator, who distribute the report and evidence to the parties, as well as the disciplinary authority responsible for determining whether pursuing disciplinary action is warranted.

## SKYLINE COLLEGE

### SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURE

#### WAC 132XX-125-400 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's standard disciplinary procedures, WAC 132XX-125-010 through -300, these supplemental procedures shall take precedence.

#### WAC 132XX-125-410 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 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:

- A. **Quid Pro Quo Harassment.** A college employee conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.
- B. **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's educational programs or activities, or employment.
- C. **Sexual assault.** Sexual assault includes the following conduct:
  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. 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.
  3. Incest. Sexual intercourse or sexual contact with a person the 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. Consensual sexual intercourse between someone who is eighteen (18) years of age or older and someone who is under the age of sixteen (16).
- D. **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.
- E. **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
  - (c) The frequency of interaction between the persons involved in the relationship
- F. **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 132XX-125-430 Title IX Jurisdiction**

- A. This supplemental procedure applies only if the alleged misconduct:
1. Occurred in the United States,
  2. Occurred during a College educational program or activity, and
  3. Meets the definition of Sexual Harassment as that term is defined in this supplemental procedure.
- B. For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the College.

- C. 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 from pursuing other disciplinary action based on allegations that the Respondent violated other provisions of the College's student conduct code, WAC 132XX-125-100.
- D. 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 132XX-125-440 Initiation of Discipline**

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

#### **WAC 132XX-125-450 Pre-Hearing Procedure**

- A. Upon receiving the disciplinary notice, the Chair of the Student Conduct Committee will send a hearing notice to all parties in compliance with WAC 132XX-125-040. 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.

- B. 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.
- C. In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the College intends to offer the evidence at the hearing.

### **WAC 132XX-125-460 Rights of Parties**

- A. The College's Student Conduct Procedures, WAC 132XX-125-010 through -300 and this supplemental procedure shall apply equally to all parties.
- B. The College bears the burden of offering and presenting sufficient testimony and evidence to establish that the Respondent is responsible for a Title IX violation by a preponderance of the evidence.
- C. The Respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.
- D. 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 132XX-125-470 Evidence**

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

- A. 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.
- B. Relevance means that information elicited by the question makes fact in dispute more or less likely to be true.
- C. 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:
  - 1. Is asked or offered to prove someone other than the Respondent committed the alleged misconduct; or
  - 2. Concerns specific incidents of prior sexual behavior between the Complainant and the Respondent, which are asked or offered on the issue of consent.
- D. 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.
- E. 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.

- F. 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:
1. Spousal/domestic partner privilege;
  2. Attorney-Client and attorney work product privileges;
  3. Privileges applicable members of the clergy and priests;
  4. Privileges applicable to medical providers, mental health therapists, and counsellors;
  5. Privileges applicable to sexual assault and domestic violence advocates; and
  6. Other legal privileges identified in [RCW 5.60.060](#).

**WAC 132XX-125-480 Initial Order**

- A. The Student Conduct Committee will be responsible for 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’s education programs or activities; and
  8. Describes the process for appealing the Initial Order to the College President.
- B. The Committee Chair will serve the Initial Order on the Parties simultaneously.

### **WAC 132XX-125-490 Appeals**

- A. The Parties shall have the right to appeal from the determination of responsibility and/or from the dismissal, in whole or part, of a formal complaint, as set forth in the Initial Order. The right to appeal will be subject to the same procedures and timeframes set forth in WAC 132XX-125-300.
- B. 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 sanctions and conditions imposed in the Initial Order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.
- C. President's Office shall serve the Final Decision on the parties simultaneously.

## **SKYLINE COLLEGE STUDENT CONDUCT CODE & PROCEDURES**

### **WAC 132XX-125-010 Authority**

The board of trustees, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student affairs or their designee. Unless otherwise specified, the student conduct officer or delegee shall serve as the principal investigator and administrator for alleged violations of this code.

### **WAC 132XX-125-020 Statement of Student Rights**

As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

#### **1. Academic Freedom.**

- a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.
- b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).
- c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

#### **2. Due Process.**

- a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.
- b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

- c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

### **WAC 132XX-125-030 Prohibited Student Conduct**

The college may impose disciplinary sanctions against a student 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: **Academic Dishonesty**. Any act of academic dishonesty, including but not limited to

1. cheating, plagiarism, and fabrication.
  - a) Cheating: includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.
  - b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.
  - c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.
2. **Other Dishonesty**. Any other acts of dishonesty. Such acts include, but are not limited to:
  - a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;
  - b) Tampering with an election conducted by or for college students; or
  - c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.
3. **Obstructive or Disruptive Conduct**. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders
  - a) instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or
  - b) any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.
4. **Assault, intimidation, harassment**. Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's



property. For purposes of this code, “bullying” is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

- 5. Cyber-Misconduct.** Cyber-stalking, cyber-bullying or on-line harassment. Use of electronic communications, including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another’s email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another’s email identity, non-consensual recording of sexual activity, and non-consensual distribution of a recording of sexual activity.
- 6. Property Violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other non-accidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.
- 7. Failure to Comply with Directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.
- 8. Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:
  - a) Commissioned law enforcement personnel or legally-authorized military personnel while in performance of their duties;
  - b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050(2) or (3), provided the vehicle is locked and the weapon is concealed from view; or
  - c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.
  - d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.
- 9. Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

## 10. Alcohol, Drug, and Tobacco Violations.

- a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.
- b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.
- c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in RCW 69.41, or any other controlled substance under RCW 69.50, except as prescribed for a student's use by a licensed practitioner.
- d) **Tobacco, electronic cigarettes and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

**11. Lewd Conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

**12. Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age ; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

**13. Sexual Misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the Supplemental Procedures to this Code. *See* WAC 132XX-125-400 *et seq.* (Supplemental Title IX Student Conduct Procedures).

- a) **Sexual Harassment.** The term "sexual harassment" means 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:
  - i) deny or limit the ability of a student to participate in or benefit from the college's educational program;

- ii) alter the terms or conditions of employment for a college employee(s); and/or
  - iii) create an intimidating, hostile, or offensive environment for other campus community members.
- b) **Sexual Intimidation.** The term “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.
- c) **Sexual Violence.** “Sexual Violence” is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.
- i. **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.
  - ii. **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.
  - iii. **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).
  - iv. **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).
  - v. **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.
  - vi. **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:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the persons involved in the relationship

vii. **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.

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

14. **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person’s protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college’s educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person’s race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age ; religion; creed; sexual orientation; gender identity; veteran’s status; or any other legally protected classification. See “Sexual Misconduct” for the definition of “sexual harassment.” Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

15. **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

16. **Misuse of Electronic Resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes but is not limited to:

- a) Unauthorized use of such resources or opening of a file, message, or other item;

- b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- c) Unauthorized use or distribution of someone else's password or other identification;
- d) Use of such time or resources to interfere with someone else's work;
- e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- g) Use of such time or resources in violation of applicable copyright or other law;
- h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- i) Failure to comply with the college's electronic use policy.

**17. Unauthorized Access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

**18. Safety Violations.** Non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

**19. Violation of Other Laws or Policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

**20. Ethical Violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline 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.

## **WAC 132XX-125-040 Disciplinary Sanctions and Terms and Conditions**

1. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

- a) **Disciplinary Warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.
  - b) **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.
  - c) **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.
  - d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.
  - e) **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 action is taken.
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:
- a) **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.
  - b) **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.
  - c) **Not in Good Standing.** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

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.
  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.
- d) **No Contact Order.** 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.

## **SKYLINE COLLEGE STUDENT CONDUCT PROCEDURES**

### **WAC 132XX-125-105 – Statement of Jurisdiction**

- (1) The student conduct code shall apply to student conduct that occurs
  - (a) on college premises;
  - (b) at or in connection with college sponsored activities; or
  - (c) to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.
- (2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences or any other college-sanctioned social or club activities.
- (3) Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a degree, 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 actual enrollment.
- (4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

### **WAC 132XX -125-110 - Definitions**

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

- (1) “Student conduct officer” is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.
- (2) “Conduct review officer” is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.
- (3) “The 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) “Disciplinary action” is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.
- (5) “Disciplinary appeal” is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten (10) instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.
- (6) “Respondent” is the student against whom disciplinary action is initiated.
- (7) “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 the document is emailed and deposited in the mail.

- (8) “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.

- (9) “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.
- (10) “Student” includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, non-credit courses, on-line courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for particular term but who have a continuing

relationship with the college, or who have been notified of their acceptance for admission are considered “students” for purposes of this Chapter.

- (11) “Business day” means a week-day, excluding weekends and college holidays.
- (12) A “Complainant” is an alleged victim of sexual misconduct.
- (13) “Sexual misconduct” has the meaning ascribed to this term in WAC 132XX-125-030(13).

### **WAC 132XX -125-115 – Initiation of Disciplinary Action**

- (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.
- (2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her 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. 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.
- (3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.
- (4) Within ten 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.
- (4) The student conduct officer may take any of the following disciplinary actions:
  - (a) Exonerate the respondent and terminate the proceedings.
  - (b) Impose a disciplinary sanction(s), as described in WAC 132XX-125-040

- (c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.
- (5) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

### **WAC 132XX -125-120 – Appeal from Disciplinary Action**

- (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten (10) days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.
- (2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.
- (3) The parties to an appeal shall be the respondent and the conduct review officer.
- (4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.
- (5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.
- (6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.
- (7) The student conduct committee shall hear appeals from:
  - (a) the imposition of disciplinary suspensions in excess of ten (10) instructional days;
  - (b) dismissals; and
  - (c) discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

- (9) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:
- (a) suspensions of ten instructional days or less;
  - (b) disciplinary probation;
  - (c) written reprimands; and
  - (d) any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.
- (10) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.
- (11) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:
- (a) the dismissal of a sexual misconduct complaint; or
  - (b) any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.
- (12) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.
- (13) Except as otherwise specified in this Chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

#### **WAC 132XX-125-125 – Brief Adjudicative Proceedings – Initial Hearing**

- (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.
- (2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the agency's view of the matter and (b) an opportunity to explain the party's view of the matter.

- (3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ten (10) days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten (10) days of service of the initial decision, the initial decision shall be deemed the final decision.
- (4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.
- (5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten (10) instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### **WAC 132XX-125-130 – Brief Adjudicative Proceeding – Review of an Initial Decision**

- (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within ten (10) days of service of the initial decision.
- (2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.
- (3) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.
- (4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty (20) days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty (20) days after the request is submitted.
- (5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten (10) instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

- (6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

#### **WAC 132XX -125-135 – Student Conduct Committee**

- (1) The student conduct committee shall consist of five members:
  - (a) Two full-time students appointed by the student government;
  - (b) Two faculty members appointed by the president;
  - (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.
- (2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.
- (3) Hearings may be heard 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 all committee members attending the hearing.
- (4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the Committee for disqualification of a committee member.

#### **WAC 132XX-125-140 – Appeal – Student Conduct Committee**

- (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedures Act, Chapter 34.05 RCW.
- (2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven (7) days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

- (3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.
- (4) Upon request filed at least five (5) days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.
- (5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.
- (6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.
- (7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.
- (8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.
- (9) In cases heard by the committee, each party may be accompanied at the hearing by a non-attorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four (4) business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

**WAC 132XX-125-145 – Student Conduct Committee Hearings – Presentation of Evidence**

- (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either (a) proceed with the hearing and issuance of its decision or (b) serve an decision of default in accordance with RCW 34.05.440.
- (2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.
- (3) The chair shall cause the hearing to be recorded by a method that they selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure 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.
- (4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.
- (5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.
- (6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.
- (7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

#### **WAC 132XX-125-150 – Student Conduct Committee- Initial Decision**

- (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.
- (2) Within twenty (20) days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.



- (3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.
- (4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.
- (5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

#### **WAC 132XX-125-155 – Appeal from Student Conduct Committee Initial Decision**

- (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten (10) days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.
- (2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.
- (3) The president shall provide a written decision to the party and the student conduct officer within twenty (20) days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.
- (4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the

sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

- (5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

### **WAC 132XX-125-160 – Summary Suspension**

- (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.
- (2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:
  - (a) Has violated any provision of the code of conduct; and
  - (b) Presents an immediate danger to the health, safety or welfare of members of the college community; or
  - (c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.
- (3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two (2) business days of the oral notice.
- (4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:
  - (a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;
  - (b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and
  - (c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

- (5) (a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.
- (b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.
- (c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.
- (d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.
- (e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.
- (f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.
- (6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The College will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

### **WAC 132XX -125-200 – Sexual Misconduct Proceedings**

Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

# **TITLE IX JURISDICTION**

Brandon Stallings & Emily Yates, Assistant Attorneys General

## **PURPOSE AND REACH**

- No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
- Title IX applies to institutions, both public and private, that receive federal assistance from the Department of Education.

## JURISDICTION

When does Title IX jurisdiction attach?

- Upon an institution's receipt of a formal complaint, and
- The formal complaint asserts that:
  - Sexual harassment as defined by the Title IX regulations
  - Occurred within the scope of the institution's education program or activity
  - Against a person in the United States.

## DISMISSAL (MANDATORY VS. DISCRETIONARY)

- What if an institution discovers that a jurisdictional element is lacking after a formal complaint is filed?
  - The institution must dismiss the complaint for purposes of Title IX.
  - However, the institution may still address the complaint under another policy, such as through a student conduct code.
- An institution may also dismiss a formal complaint if:
  - The complainant withdraws the complaint;
  - The respondent is no longer enrolled or employed with the institution; or
  - Specific circumstances prevent the gathering of sufficient evidence to reach a decision.
- What about RCW 28B.112.070?
  - Despite dismissing a formal complaint for purposes of Title IX, an institution must still investigate a student's claim of sexual misconduct against an employee, unless the student requests otherwise.

## FORMAL COMPLAINT

- What is a formal complaint?
  - A document filed by a complainant (i.e., alleged victim) or signed by a Title IX Coordinator alleging sexual harassment against a respondent and requesting an investigation.
    - Title IX Coordinator is not a party.
- No third party filings are permitted.
- At the time of the formal complaint, the complainant must be participating in or attempting to participate in the school's education program or activity.

## FORMAL COMPLAINT

- Can an institution resolve allegations of sexual harassment informally?
  - Yes, in certain circumstances:
    - After a formal complaint is filed;
    - As long as the complainant is not a student who has alleged harassment against an employee. See also RCW 28B.112.070;
    - The parties provide voluntary, informed, and written consent to attempt to resolve the matter informally; and
    - The institution deems the matter appropriate for informal resolution.
- A party or the institution may withdraw their agreement to the informal resolution process, thereby resuming the grievance process, any time before an informal resolution becomes final.

## SEXUAL HARASSMENT

- What is sexual harassment under Title IX?
  - Quid Pro Quo
  - Hostile Environment
  - Sexual Misconduct, including:
    - Sexual assault
    - Interpersonal violence
    - Stalking

## SEXUAL HARASSMENT (CONTINUUM OF CONDUCT)

Verbal	Written/ Displayed	Physical touch	Exerting power	Threats	Force
- Dirty joke	- Love letters and e-mails	- Violating space	- Requests for sexual favors	- Demands	- Groping
- Teasing	- Suggestive notes or e-mails	- Patting or slapping	- Favoritism or bullying	- Quid pro quo (threat or promise based on compliance with or refusal of sexual conduct)	- Kissing
- Comments on body, physical appearance, or sexual activity	- Suggestive graphics, images, or objects	- Squeezing	- Hazing rituals		- Disrobing
- Sexual rumors	- Leering, staring	- Pinching	- Cornering or blocking movement		- Stalking
- Suggestive comments	- Texting/sexting or other offensive use of social media	- Hugging	- Stalking		- Attempted Rape
- Sexually suggestive sounds, whistles		- Caressing	- Grooming		- Rape
- Generalizations, disparaging remarks or criticism of one sex		- Grabbing			* Behaviors in this category may be criminal actions under state law
		- Suggestive touching of self, sexual gestures			

## SEXUAL HARASSMENT (QUID PRO QUO)

Quid Pro Quo (this for that) sexual harassment?

- An institution's employee conditions the provision of an aid, benefit, or service of the institution on the complainant's participation in unwelcome sexual conduct.
- Example: A faculty member arranges to meet with a student after class and asks them out on a date. The student is hesitant to respond but reluctantly agrees out of fear their grade will be affected if they reject the faculty member's advances.

## SEXUAL HARASSMENT (HOSTILE ENVIRONMENT)

- Hostile Environment
  - Unwelcome conduct on the basis of sex that creates a hostile environment.
  - Determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies the complainant equal access to the institutions programs or activities.
    - Compare Title VII's use of "or."
  - This includes conduct that is not of a sexual nature but is directed towards someone because of their sex.
    - Example: A statement that a woman's place is in the home.



## SEXUAL HARASSMENT (HOSTILE ENVIRONMENT)

- Example of hostile environment sexual harassment:
  - A student employee, Terry, walks into a department and a staff member, Jamie, tells Terry that Terry looks “hot today.” Later, Jamie asks Terry to walk with Jamie to the library and get some coffee. Terry declines. During a lunch break, Jamie also tells Terry about Jamie’s sex life.
- These repeated comments are of a sexual nature and they are unwanted. They are beginning to impact Terry’s ability to do work and feel safe at the institution. At this point, Terry should notify the Title IX Coordinator about Jamie’s harassment.

## SEXUAL HARASSMENT (HOSTILE ENVIRONMENT)

- Does the gender, gender identity, or sexual orientation of a harasser matter?
  - No, sexual harassment can be committed by anyone.
- How about for the person harassed?
  - No, anyone can be harassed.
- Does it matter if the parties involved have the same gender, sexual orientation, or gender identity?
  - No, sexual harassment does not have to be directed at a member of the opposite gender, sexual orientation, or a different gender identity.
  - Example: Men and women in an office are collectively making fun of a gay man because he does not conform to their shared idea of traditional masculinity. This is a type of hostile environment sexual harassment.
- REMEMBER: Sexual harassment does not require a sexual relationship.

## SEXUAL HARASSMENT (HOSTILE ENVIRONMENT)

- What about situations where somebody shares a vulgar joke and the intended audience does not seem to mind. Is this a problem?
  - Even if someone intends for a statement to be funny, it may be offensive to others. If someone heard the joke and found it to be offensive, it might be sexual harassment.
  - Sexual harassment is viewed from the perspective of a reasonable person in the complainant's circumstances.
  - It does not matter if you intended for it to be a joke and the person you told the joke to did not find it offensive.

## SEXUAL HARASSMENT (SEXUAL MISCONDUCT)

- Sexual assault is any sexual act directed against another person, without a person's consent, including instances where a person is not capable of giving consent (as defined by the institution).
  - Rape → Penetration, no matter how slight of the vagina or anus, with any body part or object, without consent; or oral penetration by a sex organ of another person without consent.
  - Fondling → Touching of the intimate body parts of another person for the purpose of sexual gratification without the person's consent.
  - Incest → Sexual intercourse between persons who are related to each other within the degree wherein marriage is prohibited by state law.
  - Statutory Rape → Sexual intercourse with a person who is under the age of consent as defined by state law.
    - In Washington it is a crime for an adult (18 or older) to have sex with someone who is under the age of 16 even if there is consent.

## SEXUAL HARASSMENT (SEXUAL MISCONDUCT)

- Other acts of sexual misconduct include:
  - Voyeurism
  - Indecent exposure
  - Sex-based cyber harassment
  - Prostitution
  - Communications with a minor for immoral purposes
  - Disclosure of intimate images without consent

## SEXUAL HARASSMENT (SEXUAL MISCONDUCT)

- What is interpersonal violence?
  - **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.
  - **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.

## SEXUAL HARASSMENT (SEXUAL MISCONDUCT)

- **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for their health and/or safety or the health/safety of others; or,
  - Suffer substantial emotional distress.
  
- **Example:** Andy had a brief hook up with Tony one night after a party. Tony was interested in pursuing a relationship with Andy. Tony found Andy on social media and sent messages regularly. Andy was uninterested in pursuing a relationship with Tony and ignored the messages. This angered Tony, who started looking for ways to confront Andy. Tony closely monitored Andy's posts to determine Andy's whereabouts. Tony continued messaging Andy, including information about Andy's whereabouts, that Tony was watching who Andy talked to, and that Andy better respond to Tony's messages "or else."

## EDUCATION PROGRAM OR ACTIVITY

- What is an institution's education program or activity?
  - Locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the College.
  - Examples: campuses, dormitories, fraternities/sororities, home sporting events, off-campus outings sponsored by the institution (in the United States).

## UNITED STATES

- What if alleged misconduct occurred during a study-abroad program outside of the United States?
  - Title IX does not apply.
  - Another institutional policy might, however.
  - See RCW 28B.112.070.

# SEXUAL MISCONDUCT INTAKE

## TITLE IX

### JURISDICTION – *Misconduct took place at or in the following.*

- UNITED STATES
- EDUCATION PROGRAM OR ACTIVITY – Includes locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College.

### SEXUAL MISCONDUCT – *Check all that apply.*

- QUID PRO QUO HARASSMENT
- HOSTILE ENVIRONMENT
- SEXUAL ASSAULT
- DOMESTIC VIOLENCE
- DATING VIOLENCE
- STALKING

### POST-INVESTIGATION – *Check all that apply.*

- QUID PRO QUO HARASSMENT SUBSTANTIATED
- HOSTILE ENVIRONMENT SUBSTANTIATED
- SEXUAL ASSAULT SUBSTANTIATED
- DOMESTIC VIOLENCE SUBSTANTIATED
- DATING VIOLENCE SUBSTANTIATED
- STALKING SUBSTANTIATED

### DISCIPLINARY DECISION

- If no Title IX sexual misconduct substantiated, complaint dismissed.
- If Title IX sexual misconduct substantiated, initiate discipline process.

## ESC STUDENT CODE OF CONDUCT

### JURISDICTION – *Misconduct took place at or in the following.*

- COLLEGE PREMISE     AT OR IN CONNECTION WITH COLLEGE-SPONSORED ACTIVITY OR PROGRAM
- AT AN OFF-CAMPUS LOCATION AND CONDUCT AFFECTS A COLLEGE COMMUNITY'S MEMBER TO PARTICIPATE IN OR BENEFIT FROM COLLEGE EDUCATION OPPORTUNITIES, PROGRAMS, OR ACTIVITIES
- FOREIGN OR DOMESTIC TRAVEL WHERE STUDENT IS ENGAGED IN OFFICIAL ACTIVITIES

### SEXUAL MISCONDUCT – *Check all that apply.*

- SEXUAL HARASSMENT
- SEXUAL EXPLOITATION
- SEXUAL VIOLENCE
- DOMESTIC VIOLENCE
- RELATIONSHIP VIOLENCE
- STALKING

### POST-INVESTIGATION – *Check all that apply.*

- SEXUAL HARASSMENT SUBSTANTIATED
- SEXUAL EXPLOITATION SUBSTANTIATED
- SEXUAL VIOLENCE SUBSTANTIATED
- DOMESTIC VIOLENCE SUBSTANTIATED
- RELATIONSHIP VIOLENCE SUBSTANTIATED
- STALKING SUBSTANTIATED

### DISCIPLINARY DECISION

- If no sexual misconduct substantiated, complaint dismissed.
- If sexual misconduct substantiated, initiate discipline process.

**QUID PRO QUO HARASSMENT**

Proposing a bargain on the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.

**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's educational programs or activities, or employment.

**SEXUAL ASSAULT – Includes any of the following:**

**Nonconsensual Sexual Intercourse**—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.

**Nonconsensual Sexual Contact**—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.

**Incest**—Sexual intercourse or sexual contact with a person the 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).

**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).

**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.

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

**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.

**SEXUAL HARASSMENT**

Unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature that is sufficiently severe, pervasive, **or** persistent as to deny or limit based on sex, the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college or an employee to engage in their work duties, that creates an intimidating, hostile, or offensive environment for other community members.

**SEXUAL EXPLOITATION**

Taking nonconsensual or abusive sexual advantage of another for their own or another's benefit. Includes, but not limited to: nonconsensual recording of sexual activity; nonconsensual distribution of a consensual or nonconsensual recording or image; going beyond the boundaries of consent\*; forcing another person to engage in sexual activity for payment; or knowingly exposing someone to or transmitting a sexually transmitted infection.

**SEXUAL VIOLENCE**

An act or acts of a sexual nature against a person without their consent. Includes any of the following:

**Nonconsensual sexual intercourse**

- Any 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 another body part or object, or oral copulation by mouth to genital contact.
- Forcing a person to engage in vaginal or anal penetration by a penis, object, tongue or finger, or oral copulation by mouth to genital contact.

**Nonconsensual sexual contact**—Any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual contact includes intentional contact with the lips, breasts, buttock, groin, or genitals, or clothing covering any of those areas, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts, or any other intentional bodily contact in a sexual manner.

**DOMESTIC VIOLENCE**

Infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury, or assault committed against a current or former spouse or intimate partner, current or former cohabitant, a person with whom the person shares a child in common, or a person with whom one resides.

**RELATIONSHIP VIOLENCE**

Also known as dating violence. The infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be presumed based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**STALKING**

A course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

\**Consent* - Permission expressed by words or actions that is clear, knowing, and voluntary, regarding willingness to engage in sexual activity. Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity. Consent can be withdrawn once given, as long as that withdrawal is communicated. There is no requirement for a party to resist the sexual advance or request, and resistance is a clear demonstration of nonconsent. A person cannot consent if they are incapacitated. Consent cannot be obtained by force or coercion

# CONDUCTING AN INVESTIGATION UNDER THE NEW TITLE IX REGULATIONS

Bruce Marvin, Assistant Attorney General

## JURISDICTION TO INVESTIGATE UNDER TITLE IX

- The new regulations limit jurisdiction of Title IX to conduct that:
  - Arose out of the IHE's education program or activity;
  - Occurred against a person participating, or attempting to, in the IHE's educational program or activity;
  - Constitutes "sexual harassment";
  - Occurred within the United States; and
  - Is the subject of a "formal complaint" that was either filed by the complainant or signed by the IHE's Title IX Coordinator. 34 C.F.R. 106.44(a); 34 C.F.R. 106.30(a).
- If conduct falls outside Title IX's jurisdiction, IHE can still investigate:
  - For violations of its student conduct code & HR policies, state laws, etc.



## **RESPONSE TO ALLEGATION OF SEXUAL HARASSMENT**

- If the IHE has “actual knowledge” of sexual harassment in its education program or activity, then the IHE must:
  - Respond promptly; and
  - In a manner that is not “deliberately indifferent.”
- The Title IX Coordinator must:
  - Promptly contact the complainant to discuss availability of supports;
  - Explain the process for filing a formal complaint;
  - Explain supports are available whether a formal complaint is filed or not; and
  - Consider complaint’s wishes re: supports. 34 C.F.R. 106.44(a).

## **AFTER A FORMAL COMPLAINT HAS BEEN FILED (PT. 1)**

- The IHE must provide written notice to the known parties of:
  - The IHE’s Title IX grievance process;
  - The allegations of “sexual harassment,” including the:
    - Identities of the parties involved, if known;
    - Alleged conduct; and
    - The date and location of the incident, if known;
  - Their right to have an advisor of their choice (doesn’t have to be an attorney); and
  - Their right to inspect and review evidence. 34 C.F.R. 106.45(b)(2)(i).

## **AFTER A FORMAL COMPLAINT HAS BEEN FILED (PT.2)**

- Written notice provided by the IHE must also include a:
  - Statement that the respondent is presumed not responsible for the conduct;
  - Statement that a determination of responsibility will be made at the end of grievance and disciplinary processes; and
  - Warning about prohibition against knowingly submitting false information during process. 34 C.F.R. 106.45(b)(2)(i)(B).

## **WHEN CONDUCTING AN INVESTIGATORY INTERVIEW**

- Before any initial interview, investigator must provide parties and their advisors with the following:
  - Written notice of the:
    - Date, time, and location of the interview;
    - Identity of any participants in the interview; and
    - Purpose of all hearings, interviews, or other meetings.
  - Notice that they aren't restricted from:
    - Discussing the allegations under investigation; or
    - Gathering or presenting relevant evidence.
  - Sufficient time to prepare for the interview or meeting. 34 CFR 106.45(b)(5).

## DURING THE INVESTIGATORY PROCESS

- The IHE must ensure parties have an equal opportunity to:
  - Inspect evidence directly related to the allegations in the formal complaint;
  - Present witnesses, including fact and expert witnesses; and
  - Present evidence, including inculpatory and exculpatory evidence.
- Before completing its investigatory report, the IHE must:
  - Send each party and their advisor a copy of the evidence subject to inspection; and
  - Provide the parties and their advisors equal opportunity to review and respond to the draft investigation report and evidence ten (10) days prior to issuing final report.
- The IHE must send final report to parties and their advisors for their review and written response at least ten (10) days before commencing a disciplinary hearing. 34 CFR 106.45(b)(5).

## SOME CONSIDERATIONS REGARDING ADVISORS

- Must be available to parties during investigation and hearing processes.
- A party may have different advisors at different stages during the grievance process.
- A party must provide notice if an attorney will serve as their advisor.
- An advisor may not testify or answer questions on behalf of a party.
- Only advisors can conduct cross examination during a hearing.
  - If a party doesn't have an advisor at the hearing, the IHE must provide one at no charge to the party to conduct cross examination on the party's behalf.
- The IHE should consider having non-attorney advisors sign a Non-Disclosure Agreement (NDA) to protect confidentiality of the process.

## ADVISOR NONDISCLOSURE AGREEMENT

This Advisor Nondisclosure Agreement (Agreement) is entered into, by and between, \_\_\_\_\_, Title IX Coordinator, \_\_\_\_\_ College, and \_\_\_\_\_ (Advisor), who will be serving as an Advisor for \_\_\_\_\_ in Disciplinary Case No. \_\_\_\_\_. I am entering into this Agreement to protect Confidential Information related to the sexual harassment investigation and/or disciplinary proceeding in this matter from unauthorized disclosure.

**The Advisor's Role:** Advisors support complainants and respondents participating in the Title IX grievance process. They can accompany parties to investigatory meetings, help them review investigatory reports and inspect evidence, and assist them during hearings, among other services. Only advisors may cross-examine parties and witnesses during hearings. However, they cannot act as witnesses, provide evidence, or disrupt or delay the grievance process. See 34 C.F.R. 106.44 and 106.45. To protect the privacy of the people involved in the grievance process, advisors must sign and complete this Agreement.

**Confidential Information:** For purposes of this Agreement, "Confidential Information" shall include all information or documents I have obtained while serving as an Advisor that have been shared by or exchanged between the complainant, respondent, Title IX staff, investigators, witnesses, and/or other investigation or hearing participants in the above referenced case. This includes information and documents I acquired during interviews, meetings, disciplinary proceedings, or any other activities related to the case, including the draft and final investigation report and any related evidence. ***"Confidential Information" does not include discussions I may have in my capacity as with potential witnesses or others about the allegations of sexual misconduct that are under investigation and/or subject to a disciplinary proceeding.***

**Obligation:** I understand that my use of Confidential Information is restricted to my role and duties as an Advisor and that use of such information for any other purpose is strictly prohibited. I agree not to disclose or publish Confidential Information and to keep such information private and confidential except for purposes of fulfilling my role as an Advisor during the above-referenced Title IX investigation and/or disciplinary proceeding, or unless otherwise required by law, including court order, subpoena, or other valid legal process. In the event I am asked to disclose or publish some or all of the Confidential Information, I agree to provide the Title IX Coordinator with 10 business days' written notice of the request and any supporting documents, so the College can take appropriate action, as it deems necessary, including, but not limited to, providing the other Party notice.

***Nothing in this Agreement is intended to prohibit me in my capacity as an Advisor from discussing the allegations in the above-referenced case with others.***

**Violations:** I understand that unauthorized disclosure of Confidential Information in violation of this Agreement may:

- Result in my removal as an Advisor;
- Subject me to civil liability for invasion of privacy, defamation, and/or retaliation; and

- Result in disciplinary action up to and including dismissal from the College or termination of employment if I am a student or employee of the College.

**Time Period:** I understand that my obligations under this Agreement survive the termination of my role as an Advisor and/or the termination of the College's sexual harassment proceedings.

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*Advisor Signature*

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*Date*

# TITLE IX PROCEDURES FOR A LIVE HEARING

Derek Edwards, Senior Counsel

February 18, 2021

## THE ROLE OF THE ADVISOR AT THE LIVE HEARING

- Both parties entitled to any advisor of their choice
- May limit participation to cross-examination
- May be an attorney (no restrictions on participation for attorneys)
- Parties cannot engage in cross-examination of witnesses/parties. Must use an advisor
- If party does not have an advisor, the College must appoint one of the College's choice
- Committee must determine if a question on cross-examination is relevant and explain why not before a witness/party answers the question TIP: Remind witnesses to pause before answering questions

## USE OF THE INVESTIGATIVE REPORT

- College must make the investigative report and all evidence collected available at the disciplinary hearing;
- Each party may refer to the documents during the hearing, including for purposes of cross-examination

## WHAT IF A PARTY OR WITNESS REFUSES TO SUBMIT TO CROSS-EXAMINATION?

- If party or witness refuses to submit to cross-examination, the committee must not rely on any statement by the party/witness Tip: Call the Respondent as your first witness
- A statement means an intent to make a factual assertion
- Police reports, SANE reports, medical reports, and other documents and records may not be relied on to the extent they contain statements of parties or witnesses who have not submitted to cross-examination
- Videos and photographs are typically not statements
- Committee may not draw an adverse inference about responsibility solely because of the failure to testify on cross-examination

## **DETERMINATION OF RESPONSIBILITY INITIAL ORDER**

- Preponderance of the Evidence unless a higher standard for employees (e.g., clear preponderance; clear, cogent, & convincing)
- Description of procedural steps taken, beginning with receipt of the formal complaint, notices, interviews, site visits, methods of gathering evidence, and hearings held
- Findings and conclusions
- Determination of responsibility, any disciplinary sanctions, and any supportive measures for complainant
- Appeal Rights to the President or designee

## **APPEALS FROM THE INITIAL ORDER**

- Initial order becomes final upon expiration of the appeal date or entry of final order if appealed
- Procedures for students and employee respondents are in the student conduct code and employee grievance procedure for the President or President's delegee to review
- Either party may request reconsideration of the final order within 10 days
- Reconsideration does not stay the effectiveness of the order
- Either party may petition for judicial review within 30 days of the final order or denial of the petition for reconsideration.



# TITLE IX EVIDENCE

Derek Edwards, Senior Counsel

February 18, 2021

## RULES OF EVIDENCE DO NOT APPLY JUST RELEVANCE AND PRIVILEGES

- Apply the “plain and ordinary meaning” of relevance and recognized privileges
- A relevant question will tend to prove or disprove matters related to the allegations
- Embarrassing, sensitive, prejudicial, character evidence, and prior bad acts may be admissible, if relevant
- Give evidence the weight it deserves
- May exclude repetitive questions or badgering questions (ask advisor to rephrase the question) under rules of *order and decorum*

## SEXUAL HISTORY OF THE COMPLAINANT

- Questions about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
  1. The questions about sexual behavior are offered to prove that someone other than the respondent committed the offense; or
  2. The questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

## RECOGNIZED PRIVILEGES RCW 5.60.060

- Unless waived, privileges include:
  - Attorney-client communications and attorney work product
  - Spousal-domestic partner/(marital) communications
  - Priest/clergy communications
  - Physician/surgeon communications
  - Mental health and marriage counselors
  - Licensed counselors under RCW 18.19.180

## STATEMENTS FROM OUTSIDE THE PROCEEDING

- Out of hearing statements by a party opponent or by a witness are not admissible unless the party submits to cross-examination about the statement
- Examples: witness statements, investigation report, police reports, SANE reports, emails and texts, oral statements
- Lay a foundation to show the document is what it purports to be
- Be prepared to put on your case without the statements if the party/witness refuses to answer questions on cross-examination
- Non-testimonial records admissible after laying a foundation (photos, videos)

## TESTIMONY – DIRECT AND CROSS-EXAMINATION

- Direct: May lead to set the foundation, then open-ended questions
- Who, where, when, how, why
- Cross-examination, may ask yes or no questions
- Roles of the advisor: At a minimum, only advisors may cross-examine witnesses and the other party (with attorneys\advisors for parties may ask all questions)

## OBJECTIONS IN TITLE IX PROCEEDINGS

- Relevance
- Asked and answered
- Cumulative
- Badgering
- Argumentative
- Statement not submitted to cross-examination
- Lack of Authenticity
- Privileged

# HEARING PREPARATION AND PRESENTATION

Aileen Miller, Senior Counsel

## PREPARING FOR A HEARING

- Review grievance procedure and pertinent policies
- Review disciplinary notice and identify applicable code sections
  - Violation(s)
  - Definitions
- Review investigation report and materials to generate a list of:
  - Potential witnesses
  - Exhibits
- Review other parties' witness and exhibit list
  - Any objections?
  - Anticipate defense(s)

## CODE VIOLATION

- Jurisdiction
- Violation
  - Definition
  - Standard of Proof (more likely than not)
- Sources of standards:
  - Title IX Grievance Procedure
  - Student Conduct Code
  - Employee Handbooks, Policies, and/or Collective Bargaining Agreements

## PROVING A VIOLATION

- Use the elements of the violation and definitions to structure your case
- Link what you have to prove with the evidence you have
  - Exhibits
  - Witnesses
- Prepare to explain:
  - Discrepancies or gaps in evidence
  - Why some witnesses are more credible than others
  - Why some evidence is or is not entitled to weight

# Proof Table

Proof Table (Sample)			
Element	Jurisdiction		
	Facts	Witnesses	Exhibits
Student			
Occurred in program/activity (in US)			
Nonconsensual Sexual Intercourse			
Element	Facts	Witnesses	Exhibits
Actual or attempted sexual intercourse, however slight			
With an object or body part			
Without consent (knowing, voluntary, and clear permission)			
R knew or should have known Complt was physically incapacitated (per say nonconsensual)			
Respondent's intoxication is not a defense			

## Bullet or Checklist

- Student
- Occurred in educational program/activity
- Actual or attempted sexual intercourse (however slight)
- With an object or body part
- Without consent (knowing, voluntary, and clear permission)

## Alt proof/defenses:

- R should have known C was physically incapacitated
- R's intoxication is not a defense

## SCENARIO

- After doing multiple shots at a party, Devin and Ansley go to Ansley's dorm room. The two are engaging in a consensual sexual encounter, which Devin begins to intensify. Ansley responds by pulling away slightly, moving Devin's hands and saying "not so fast; I'm not sure." Devin cooperates briefly but then intensifies the contact once more. Ansley inches backwards and then becomes still. Nonetheless, Devin digitally penetrates Ansley.
- Dana, Devin's friend, says that both Devin and Ansley were really drunk when they left the party. Devin texted Dana at some point during the party saying "time for some KFC," which Dana says is their code for "fingering" someone.

Adapted from Yale University Sexual Misconduct Scenarios, September 9, 2013, <https://smr.yale.edu/sites/default/files/files/Sexual-Misconduct-Scenarios.pdf> (last visited February 9, 2021).

# Proof Table

Jurisdiction			
Element	Facts	Witnesses	Exhibits
Student	Devin	Ansley, maybe Devin	
Occurred in program/activity (in US)	On campus/in dorm room	Ansley, maybe Devin	
Nonconsensual Sexual Intercourse			
Element	Facts	Witnesses	Exhibits
Actual or attempted sexual intercourse, however slight	Penetration occurred	Ansley, maybe Devin and/or Dana	Text message
With an object or body part	Digital penetration	Ansley, maybe Devin	Text message
Without consent (knowing, voluntary, and clear permission)	Not so fast/I'm not sure	Ansley, maybe Devin	
R knew or should have known Compl was physically incapacitated (per say nonconsensual)	Devin saw Ansley do shots; Ansley falling down and throwing up	Ansley, Dana, other witnesses from party	
Respondent's intoxication is not a defense (placeholder for argument)			

## PREPARING YOUR CASE

- Witness and exhibit lists
  - Submit by deadlines
  - Review other parties' exhibits
- Compile and label exhibits
- Interview witnesses
- Prepare outline of testimony and associated questions (annotate)
- Think about the order you will call witnesses
- Craft opening and closing
- **Contingency plan in event Respondent or other key witnesses don't testify**



## WITNESS AND EXHIBIT LIST

Witness and Exhibit List for [Student's Name] Conduct Hearing	
Hearing date: _____, 20__ – ____ a.m./p.m.	
[COLLEGE'S/STUDENT'S] WITNESS LIST	
Name and Contact Information	Brief Description of Anticipated Testimony

Proposed Exhibit List	
Exhibit Letter/Number and Pages	Exhibit Title/Description

## PROPOSED EXHIBITS

- What do they look like when submitted?
- Are they organized in any way?
- Are they individually identified in any way?
  
- How do you:
  - Admit them
  - Talk about them
  - Identify them
  - Track what is, or is not, admitted

## ADMITTING DOCUMENTARY AND PHYSICAL EVIDENCE

- Stipulation Before Hearing
- Admission at Beginning of Hearing
  - Stipulation
  - Authentication and Foundation
- Admission Embedded in Hearing
  - Authentication and Foundation



## ADMITTING DOCUMENTARY AND PHYSICAL EVIDENCE

- Please look at the document identified as Exhibit A.
- Do you recognize it?
- What is it?
- Is it a true and accurate copy of [text message]?
- Move to admit.
- Ask additional questions, if any, about the exhibit.





## COMMON OBJECTION CHART

### I. RELEVANCE

Definition	Exceptions
<p>Relevant evidence is that which influences the issues, having probative value in proving a fact. If evidence has the tendency to make an important (material) fact more or less probable than it would be without the evidence, it is relevant.</p> <p>Relevance is a matter of logic and experience.</p> <p>Most problems with relevance involve circumstantial evidence. It is evidence that tends to render probable a certain inference that is important to the case. Habit, custom, similar acts, flight and concealment are common kinds of relevant circumstantial evidence.</p>	<p>All evidence must be relevant, but relevant evidence can be excluded for other reasons, such as it being hearsay.</p> <p>Even if evidence is logically relevant, it may be legally irrelevant and hence inadmissible if its probative value is substantially outweighed by the danger that it will (i) unduly prejudice the fact finder (ii), mislead or distract the fact finder, (iii) cause undue delay or waste time, (iv) raise collateral issues that have no bearing on the facts of the case, or (v) involve the presentation of needlessly cumulative evidence.</p>

## TRACKING EXHIBITS AND TESTIMONY

Hearing date: _____, 20____ - _____ a.m./p.m.					
WITNESS AND EXHIBIT TRACKING					
College Witnesses					
Respondent Witnesses					
PROPOSED EXHIBITS					
Ex. #	Description	Date	# of pages	Admitted	Offered by
				Y/N	
				Y/N	

## PREHEARING CONFERENCE

- Consider requesting if one isn't scheduled
- Address a variety of topics:
  - Objections to witnesses and exhibits
  - The extent to which exhibits can/will be preadmitted
  - How will exhibits be shown to the witnesses and hearing board/panel?
  - Hearing logistics
    - Separation of Complainant/Respondent
    - Separation of Witnesses
    - Bifurcation
    - Technical issues (how/when will exhibits be shared, labeled, organized)
    - Other ways to make the hearing run smoothly

## INTERVIEWING WITNESSES

- Interview both your witnesses and the other parties' witnesses
- Draft questions
- Listen and be flexible
- Help witnesses understand what to expect at the hearing
  - Waiting
  - Under oath and expected to tell the truth
  - Exhibits
  - Safeguards that are available (e.g., questioning through advisor, screens, physical separation, separate waiting rooms)
  - They will have to describe what happened in detail
- Revise questions, as needed



## QUESTIONS

- Who, what, when, where, why, how?
  - Not just what happened but when, what was said, what was felt, what was heard or smelled?
- Help understand and picture events
- Help determine what occurred
- Help determine what sanctions should be (if any)

How will the answer to the question help the hearing officer/panel understand whether or not a person's behavior meets the definition of a violation?

Are there contradictions that need clarification?

## CRAFTING QUESTIONS

- Direct examination
  - Open-ended questions
- Cross-examination
  - Leading questions
- Impeachment
  - Draft questions in advance
  - Consider witness bias, interest, disinterest
  - Ask questions to prove elements, and demonstrate when evidence is contradicted or corroborated
  - Ask questions to explain gaps or discrepancies
  - Don't rely on questions as a script
  - Listen to testimony and be prepared to follow-up
  - Contingency plan

## CRAFTING QUESTIONS

- Need to ask questions to provide clear picture of what happened.
- What were you wearing when you told Devin “not so fast, I’m not sure”?
- Were your pants still buttoned?
- How did they get unbuttoned?
- Then what happened?
- Where was Devin’s hand?
- Where was Devin touching you?
- When you say Devin touched your vagina, what does that mean?

## DEMONSTRATING CREDIBILITY

- **Weight and Credibility**
  - **Opportunity** to observe or know
  - **Ability** to observe accurately
  - **Quality** of memory and reasons for gaps in memory
  - **Personal interest** witness might have in the outcome
  - **Bias or prejudice** the witness may have shown
  - **Reasonableness** of the witness’s statements in context of all the other evidence
  - Any other factors that affect evaluation or belief of a witness or their testimony
- The testimony of one witness, if believed, is sufficient to support findings.

## OPENING STATEMENT AND CLOSING ARGUMENT

- Opening statement
  - Tell a story
  - What will the evidence show/establish?
    - Don't rely on evidence if you aren't sure it will be admitted
  - Not evidence or testimony
- Closing argument
  - Explain why the presiding officer or Board/Panel should rule in your favor?
  - What evidence and provisions of the Student Conduct Code/Policy support the ruling?
  - Why is some evidence or testimony entitled to more weight or more credible?
  - What sanctions should be imposed and why?
  - Not evidence or testimony

## HEARING

- Order of presentation
  - College has burden of proof so goes first
  - Complainant
  - Respondent
- Opening statement
- Call witnesses and admit exhibits (contingency plan/practice)
  - Know who can lay foundation and what that foundation is
  - Consider who to call as first witness
  - Object to improper questions or exhibits



## HEARING, CONT.

- Parties' cross-examine other parties' witnesses (complainant/respondent cross-examine through advisors)
- Closing argument
  - What is it that the College is asking the neutral hearing officer to do?
  - Find responsible
  - Impose sanctions
    - Why is a particular sanction or sanctions appropriate in light of the circumstances?

## PRACTICAL TIPS

- Get technical assistance for virtual hearing
- Prepare
- Organize materials and exhibits
- Be prepared to prove your case without hearsay (don't assume witnesses will submit to cross-examination)
- If you need one, ask for a recess
- Get legal advice and support

## TITLE IX TRAINING HYPOTHETICAL<sup>1</sup>

### CHARACTERS:

- Tyler – Student Complainant
- Jordan – Student Respondent
- Devon – Tyler’s Friend
- Officer Grundy – College Security Officer
- Title IX Officer
- College Counselor

**FACT PATTERN:** At approximately 9:00 p.m., Devon and Tyler arrived at an off-campus party. Devon recalls last seeing Tyler at approximately 9:30 p.m. Before separating, Devon saw Tyler drink approximately five shots of tequila. After drinking the tequila, Tyler estimates drinking another five beers between 9:30 p.m. and leaving the party.

At approximately 11:30 p.m., Jordan offered to walk Tyler home across campus. On the way to Tyler’s dormitory, Tyler and Jordan began singing loudly. The campus security log from that night states that campus security received a telephone complaint about “two drunken students in the quad” at approximately 11:45 p.m., and that Officer Grundy was dispatched. Officer Grundy’s incident report indicates that he made contact with the couple at approximately midnight, asked for and recorded their identification, and told them to “quiet down.” Tyler and Jordan complied with Officer Grundy’s directive. Officer Grundy’s incident report does not mention whether the students were inebriated.

After encountering Officer Grundy, Tyler recalls making several wrong turns while trying to get back to the dorm room. Jordan was not aware that Tyler had gotten lost. Security video footage from outside the entrance of the dormitory captures Tyler and Jordan shortly before they entered Tyler’s dormitory.

Once in Tyler’s room, Jordan initiated sexual activity. Tyler initially agreed to have sex, but then rolled away from Jordan. Jordan had sex with Tyler.

Later that week, Tyler discussed the incident with a college counselor, whom she had been seeing about substance abuse issues. The counselor recommended that Tyler report the incident to Title IX. Intake notes by the Title IX coordinator indicate that Tyler reported the incident to Title IX two weeks later. The Title IX coordinator is no longer employed by the College and has moved out of state.

Jordan claims to have seen Tyler drink one beer that evening, that they really “hit it off” at the party, and had a great time singing “YMCA” while they were walking across the quad. Jordan acknowledges that Tyler was probably “buzzed,” but that nothing in Tyler’s conduct or communications that evening suggested that Tyler lacked the capacity to knowingly and voluntarily consent to sexual contact. Tyler and Jordan are both under the age of 21.

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<sup>1</sup> Adapted from Yale University Sexual Misconduct Scenarios, September 9, 2013, <https://smr.yale.edu/sites/default/files/files/Sexual-Misconduct-Scenarios.pdf> (last visited February 9, 2021).

Tyler is currently enrolled at the College and filed a formal complaint against Jordan with Title IX.

**FOR DISCUSSION:**

- Title IX? Why?
- What if Tyler lived in off-campus housing?
- What if Tyler refused to file a formal complaint?
- What if Tyler transferred to a different college the following quarter?

What evidence supports inability to grant consent?

- Devon's report that Tyler drank five shots of tequila
- Tyler's estimate of drinking five beers
- Tyler's getting lost on the way to the dorm
- The videotape outside the dormitory
- Tyler's rolling away from Jordan after consenting to sex
- Complaint in campus security log about "drunken students" (also referenced in Grundy's report)

What evidence supports ability to grant consent?

- Tyler said "yes"
- No reference to inebriation by Officer Grundy in report (although notation about "drunken student" complaint is included)
- No citation for underage drinking or public inebriation
- Jordan not aware of amount of alcohol Tyler drank
- Tyler did not tell Jordan about being lost on the way to the dorm

Documentary evidence

- Campus security log
- Officer Grundy's report
- Title IX notes
- Security video

Potential challenges

- What if Jordan refuses to testify?
- What if other witnesses are not available to testify?
- Out of court statements?
- Security video?
- Counselor testimony?

**Skyline College**  
**Campus Security Authority**  
**Incident Report Form**

This incident report is to assist Skyline College in complying with the federal Clery Act and should be utilized by Campus Security Authorities (CSA) to report crimes to Public Safety as soon as possible after a crime has been reported to the CSA. Under the Clery Act, a crime is reported to a CSA when a student, employee, or third party brings information about an alleged crime to the attention of the CSA and the CSA believes the report was made in "good faith." Public Safety will use the information provided in this form to classify the crime for purposes of inclusion in the College's annual crime statistics.

I. **Date Incident Occurred:** October 3, 2020 **Date Incident Reported:** October 3, 2020

II. **CSA Contact Information (\*entry of contact information is mandatory)**

First and Last Name\*: Daryl Grundy Department: Skyline College Campus Security Office

Phone\*: (206) 999-9999 E-mail: Daryl.Grundy@skylinecollege.edu

III. **Date(s) of Incident Occurrence (select one)**

X Specific Date: October 3, 2020  Date Range: \_\_\_\_\_ to \_\_\_\_\_  Date(s) Unknown

IV. **Incident Location**

Location Name: Skyline College Quad

Address: Skyline College

Description (sidewalk, roadway, interior, etc.):

\_\_\_\_\_

\_\_\_\_\_

**Location Classification (Select one)**

- On-campus, residence hall
- On-campus, not in a residence hall
- Off-campus, public property immediately adjacent to campus (sidewalks, streets, etc.)
- Off-campus in University leased or controlled space
- Off-campus, not affiliated with and not adjacent to campus
- Unknown location

V. **Incident Description** (provide specific information related to the reported incident.)

Campus security received a call at 11:45 p.m. about "two drunken students in the quad." I was dispatched to investigate. I made contact with two students in the quad who were talking loudly. I asked for their student identification and identified them as Jordan Smith and Tyler Jones. I told them to quiet down. The two complied, and I left the scene.

## **HEARING PREPARATION OUTLINE/CHECKLIST**

### **I. Opening Statement**

- A. Opening statement does not constitute evidence
- B. Provides the Committee with a “roadmap” of what the student conduct officer hopes to establish at hearing
- C. Identifies each element of the student conduct charge and links each element with supporting evidence
- D. Informs the Committee how the Student Conduct Officer would like the Committee to rule.

### **II. Witness Identification**

- A. Student/respondent
  - 1. Establish the respondent is a student at the college (jurisdictional)
  - 2. Establish the respondent was at the scene of the incident on the relevant date and time that gave rise to the student conduct charges
  - 3. Establish the relationship between the respondent and the victim or other relevant persons
  - 4. If possible, establish other elements of violation based on respondent’s statements or actions (admissions)
- B. Victim
  - 1. Establish elements of violation based on victim’s observations and experience
  - 2. If respondent made incriminating statements against her/himself (admissions) to victim, offer statement through victim testimony
- C. Other eyewitnesses
  - 1. To be relevant an eyewitness should offer testimony that helps to establish one or more of the student conduct charge elements
  - 2. If respondent made incriminating statements against her/himself (admissions) to witness, offer statement through witness testimony
- D. Foundation witnesses
  - 1. Documentary evidence
    - a. Who can testify about the circumstances surrounding the preparation of the document/exhibit?;
    - b. If a copy of the original, who can testify the document/exhibit is a true and accurate copy of the original
    - c. Who is responsible for storing/maintaining the document in the ordinary course of business?

2. Photographic evidence
  - a. Who took the picture; or
  - b. Are there any witnesses that can testify that the scenes depicted in the photo are an accurate depiction of how the scene appeared on the relevant date and time
- E. Supporting (circumstantial) evidence witnesses
  1. Evidence that indirectly supports elements of student conduct violation
  2. Frequently used to establish motive, e.g., respondent took out large life insurance on victim policy shortly before victim is killed in “accident.”
  3. Circumstantial evidence examples
    - a. Eyewitness testimony of victim’s injuries: circumstantial evidence that victim was assaulted
    - b. Photos of victim’s injuries: circumstantial evidence that victim was assaulted
    - c. Security video footage of respondent leaving the scene of the incident shortly after the incident took place

### **III. Possible exhibits**

- A. Documents
  1. Security office reports
  2. Written statements
    - a. Respondent
    - b. Victim
    - c. Eyewitnesses
  3. Student conduct office documents
    - a. Charging document
    - b. Student appeal document
    - c. Prior discipline and disciplinary conditions (Committee consideration may be limited to issue of sanctions)
  4. Academic records
    - a. Syllabi
    - b. Grades
    - c. Scoring Sheets
    - d. Assignments
    - e. Class schedules
    - f. Program handbooks
  5. College policies

- B. Photographs
  - 1. Photos showing injuries to victim
  - 2. Damage to property photos
  - 3. Photos depicting the scene where the incident occurred

#### **IV. Case Presentation Organization**

- A. Order of witnesses – depending on the case – no hard and fast rule.
  - 1. Student/respondent
  - 2. Victim
  - 3. Other eyewitnesses
  - 4. Exhibit foundation witnesses
  - 5. Supporting (circumstantial) evidence witnesses
- B. Exhibits – organize testimony of exhibit foundation witnesses so that most important exhibits are admitted first

#### **V. Evidence Presentation**

- A. Testimonial evidence: ensure board chair swears in the witness
- B. Exhibits:
  - 1. Pre-mark all exhibits prior to the hearing
  - 2. Place pre-marked exhibits in binder and make 9 to 10 copies available at hearing
    - a. Members of the Committee (5)
    - b. Committee Advisor (1)
    - c. Respondent (and Complainant in Title IX cases) (1 to 2)
    - d. Copy for Student Conduct Officer (1)
    - e. Witness Copy (1)

#### **VII. Closing**

- A. The statements made in closing do not constitute evidence
- B. Connect the *testimonial facts* from the hearing to the elements of the charges against the respondent
- C. Connect each *exhibit* introduced at the hearing to the elements of the charges against the respondent
- D. Explain and use the exhibits to corroborate the student conduct officer's witnesses' factual testimony
- E. Explain and describe the circumstantial evidence that corroborates the student conduct officer's witnesses' factual testimony

- F. Provide argument why the sanction and/or conditions set forth in the discipline letter are reasonable and appropriate under the circumstances.
- G. Tell the Committee how the College would like it to rule, i.e., “Affirm the finding of responsibility and uphold the sanction imposed in the Disciplinary Letter.”



**Proof Table**

<b>Jurisdiction</b>			
<b>Element</b>	<b>Facts</b>	<b>Witnesses</b>	<b>Exhibits</b>
Student			
Events on campus (or impact campus)			
<b>[Insert] Violation</b>			
<b>Element</b>	<b>Facts</b>	<b>Witnesses</b>	<b>Exhibits</b>

Hearing Date:
Time:
Location:
Contact: [Name and Number]

### **WITNESS INFORMATION**

You have been identified as a witness in a student disciplinary proceeding before a Hearing Officer/Disciplinary Board. This is not a court of law, but, rather, a part of our student discipline system for addressing complaints about student behavior. The purpose of the hearing is to ascertain the facts and determine whether a violation of the student conduct code occurred. The fact that allegations have been made and are taken seriously does not mean that they are true or that there was a violation of the code.

The role of a witness is not that of an advocate or helper for one side; a witness's obligation is simply to tell the truth. You have been asked to be a witness because you know something about the incident or about matters directly related to the incident in question. You are asked to share that information at the proceeding.

The parties involved and the Hearing Officer/Disciplinary Board may ask you questions. You are asked to give truthful, thoughtful answers.

You will be waiting outside of the conference room before testifying. When it is your turn to testify, you will be sworn in and then asked questions. When the Hearing Officer/Disciplinary Board excuses you, you may leave. The hearing process can take time. While efforts are made to schedule your testimony and minimize your wait time, some of the process can take more (or less) time than originally planned. This is a natural part of the process and it is important that we devote the time necessary to fully and fairly hear a matter. To that end, your patience is appreciated.

As student disciplinary proceedings are confidential, you should not discuss the case outside the proceeding. This means not talking with anyone about this matter or events or people related to it, not texting about it, and not posting about it on social media. If anyone asks you about anything having to do with this matter, simply change the subject and, if the person persists, tell them you have been asked by the College not to talk about it.

If you anticipate a scheduling conflict, notify the Student Conduct Office. Thank you for your availability and participation. We know that being a witness in a proceeding like this can be stressful and cause you to be anxious. But, this is an important matter and we know that you will do your best. To help you to fully participate and minimize your stress, we provide the attached Tips for Testifying.

Thanks again, and please contact [INSERT NAME] if you have any questions or concerns.

## TIPS FOR TESTIFYING

1. **Be prepared.** Know your facts. Before testifying, mentally review the events and go over your notes, if you have them. Do not memorize your testimony. Answer questions in your own words.
2. **Tell the truth, the whole truth, and nothing but the truth.** Answer briefly and accurately only about what you know. Do not embellish or assume.
3. **Do not guess or speculate.** If you do not know the answer, say you do not know the answer. If you must give an estimate, make sure that everyone understands your answer is an estimate.
4. **Listen carefully to the question.** Let the questioner finish before answering. Think before you speak. If you do not understand the question, ask that it be repeated or explained. If you once knew the answer, but do not now, answer that you do not recall. Do not look for assistance from other people who are present at the hearing.
5. **Answer only the question asked.**
6. **Speak clearly, loudly, and slowly.** Do not nod or make gestures. Your response needs to be audible so that an accurate recording can be made.
7. **Do not answer if an objection is made by a party.** Let the presiding officer rule on the objection, and then continue.
8. **If you make a mistake, admit it.** No one will hold a mistake against you, but they will hold it against you if it appears that you are lying or concealing the truth.
9. **Remain calm and composed.** Do not lose your temper

**TEMPLATE**

[NAME OF] COLLEGE, DISTRICT NO. [NUMBER]  
COLLEGE HEARING BOARD

In the Disciplinary Matter of:

[RESPONDENT'S NAME]  
Respondent.

NOTICE OF HEARING [&  
PREHEARING ORDER *optional*]

The \_\_\_\_\_ College Hearing Board to:

[RESPONDENT'S NAME], Respondent;

[COMPLAINANT'S NAME], Complainant; and

[COLLEGE PRESENTER'S NAME], [Title], \_\_\_\_\_ College

YOU ARE HEREBY NOTIFIED that the administrative hearing in the above-referenced case is scheduled for:

**DATE:** [DATE OF HEARING]

**TIME:** [TIME OF HEARING]

**LOCATION:** [BUILDING ADDRESS AND ROOM *or* VIA VIDEOCONFERENCE]

This adjudicative proceeding is to determine whether Respondent violated [INSERT CITATION(S) TO STUDENT CONDUCT CODE], as alleged in the [INSERT DATE] Disciplinary Letter from [STUDENT CONDUCT OFFICER] to Respondent. The letter alleges that on [TIME AND DATE], Respondent [INSERT DESCRIPTION OF ALLEGED MISCONDUCT]. If the Respondent is deemed to have violated the provisions of the student conduct code alleged, the Hearing Board will determine whether to affirm, reverse, or modify the sanction and/or impose any other disciplinary sanction in accordance with [CITATION TO DISCIPLINARY SANCTIONS PROVISION].

Pursuant to RCW 34.05.434 the names, addresses and telephone numbers of the presiding officer, the parties to whom notice is given and their representatives are attached and incorporated

NOTICE OF HEARING [&  
PREHEARING ORDER *OPTIONAL*]

herein by reference. [Note: The presiding officer can by order, exclude the address and phone number of a party, such as the Complainant, or use alternate contact information. This is recommended if safety is a concern, particularly in light of the types of allegations at issue in Title IX cases. Use work address and phone number for college's representative and presiding officer.]

Parties who fail to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with RCW 34.05.434.

This hearing will be conducted under the authority of RCW Chapter 28B.50, RCW Chapter 34.05, and WAC Chapter [STUDENT CONDUCT CHAPTER CITATION].

You may contact the [STUDENT SERVICES ADMINISTRATOR] in advance of the hearing to request an interpreter if you have limited English or hearing impaired, or if you need other accommodations during the hearing process.

PREHEARING ORDER [*optional*]

[THE NOTICE MAY INCLUDE A PREHEARING ORDER REQUIRING THE PARTIES TO EXCHANGE WITNESS LISTS AND PROPOSED EXHIBITS AT A CERTAIN DATE PRIOR TO THE HEARING].

DATED at \_\_\_\_\_, Washington, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_/S/\_\_\_\_\_  
[NAME OF CHAIR]  
Chair, Hearing Board  
[MAILING ADDRESS]  
[TELEPHONE]

[NAME], Committee Member  
[NAME], Committee Member  
[NAME], Committee Member  
[NAME], Committee Member

[NAME OF COUNSEL] Assistant Attorney  
General  
Counsel for the Hearing Board

**Parties Contact Information**

**Respondent:**

Name  
Address  
Telephone

**Complainant:**

Name  
Address  
Telephone

**Student Conduct Officer:**

Name  
Address  
Telephone

**PROOF OF SERVICE**

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

[RESPONDENT’S NAME] **Email and U.S. Mail Postage Prepaid**  
[ADDRESS]  
[EMAIL ADDRESS]

[COMPLAINANT’S NAME] **Email and U.S. Mail Postage Prepaid**  
[EMAIL ADDRESS]

[STUDENT CONDUCT OFFICER’S NAME] **Email and Hand-delivered**  
[ADDRESS]  
[EMAIL ADDRESS]

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this \_\_\_\_ day of February, 2021, at \_\_\_\_\_, Washington.

\_\_\_\_\_  
Signature

**SAMPLE**

SKYLINE COLLEGE, DISTRICT XXXIX  
HEARING BOARD

In the Disciplinary Matter of:

JOE E. STUDENT,

Respondent.

NOTICE OF HEARING &  
PREHEARING ORDER

The Skyline College Hearing Board to:

**Joe E. Student**, Respondent;

Ami Wright, Complainant, and

**Fairleigh Just**, Student Conduct Officer, Skyline College

**YOU ARE HEREBY NOTIFIED** that the administrative hearing in the above-referenced case is scheduled for:

**DATE:            March 24, 2021**

**TIME:            1 p.m.**

**LOCATION:    Via Zoom Videoconference – Log-on information will be sent at later date.**

This adjudicative proceeding is to determine whether Respondent violated WAC 132XX-125-130(3)(a), Nonconsensual sexual contact, as alleged in the February 1, 2021 Disciplinary Letter from Student Conduct Officer Fairleigh Just to Respondent. The letter alleges that on December 28, 2020 at approximately 9 p.m., Respondent sexually assaulted Complainant in her dorm room by sexually touching her breasts and groin area while she was intoxicated and incapable of giving consent. If the Respondent is deemed to have violated the provisions of the student conduct code alleged, the Hearing Board will determine whether to impose any disciplinary sanctions or conditions in accordance with WAC 132XX-125-001(4) and (5).

NOTICE OF HEARING [&  
PREHEARING ORDER *OPTIONAL*]



Pursuant to RCW 34.05.434 the names, addresses, and telephone numbers of the presiding officer, the parties to whom notice is given, and their representatives are attached and incorporated herein by reference. By order of the Chair, Complainant's mailing address will be provided to the Chair but will not be disclosed to Respondent. Any documents to be served on Complainant by Respondent will be provided to the Chair who will provide them to Complainant.

Parties who fail to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with RCW 34.05.434.

This hearing will be conducted under the authority of RCW Chapter 28B.50, RCW Chapter 34.05, and WAC Chapter 132XX-125.

You may contact the Vice President of Student Success in advance of the hearing to request an interpreter if you have limited English or are hearing impaired, or if you require other accommodations during the hearing process.

### **PREHEARING ORDER**

The Parties are **HEREBY ORDERED** to provide the Chair and to exchange among themselves the following no later than the close of business on **March 3, 2021**.

- A. Lists of witnesses they intend to call at the hearing.
- B. Any proposed exhibits they would like to be considered at the hearing.

The Parties are **HEREBY ORDERED** to provide the Chair and to exchange among themselves the following no later than the close of business on **March 10, 2021**.

- A. List of any objections to the other parties exhibits.
- B. List of stipulated exhibits.

The Complainant is to provide to the Chair a mailing address that can be used for service of filings. The Chair orders that Complainant's mailing address will be withheld from documents provided to Respondent.

DATED at Skyline, Washington, this 24th day of February, 2021

NOTICE OF HEARING [&  
PREHEARING ORDER *OPTIONAL*]

/S/

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Suzanne Smiley  
Chair, Hearing Board  
1800 Student Services Building  
Skyline College  
Skyline, WA 98000  
Tel: 555-475-0000

Jim Johnson, Committee Member  
Beverly Apsted, Committee Member  
Darren Riley, Committee Member  
Nathan Divots, Committee Member

Albert Merrill  
Assistant Attorney General  
Counsel for the Hearing Board

### **Parties Contact Information**

#### **Respondent:**

Joe E. Student  
123 Fairweather Lane  
Skyline, WA 98000  
Tel. 555-123-9898

#### **Complainant:**

Ami Wright  
Mailing address withheld  
Email: A.Wright@skylinecollege.edu  
Tel. 555-234-6789

#### **Student Conduct Officer:**

Fairleigh Just  
Student Conduct Officer  
Skyline College  
Student Services Bldg., Room 301  
Skyline, WA 98000  
Tel. 555-475-0001

NOTICE OF HEARING [&  
PREHEARING ORDER *OPTIONAL*]

**PROOF OF SERVICE**

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

**Joe E. Student**

123 Fairweather Lane  
Skyline, WA 98000  
Joe.Student@skyline.edu

**Email and U.S. Mail Postage Prepaid**

Ami Wright

Email: A.Wright@skylinecollege.edu

**Email and U.S. Mail Postage Prepaid**

**Fairleigh Just**

Student Conduct Officer  
Skyline College  
Student Services Bldg., Room 301  
Skyline, WA 98000  
Fairleigh.Just@skyline.edu

**Email and Hand-delivered**

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 24th day of February, 2021 at Skyline, Washington.

\_\_\_\_\_/s/\_\_\_\_\_  
Signature

Hearing date: \_\_\_\_\_, 20\_\_ – \_\_\_ a.m./p.m.

**WITNESS AND EXHIBIT LIST**  
*In re Discipline of [RESPONDENT'S NAME]*

**College Witnesses**

**Complainant Witnesses**

**Respondent Witnesses**

**PROPOSED EXHIBITS**

<b>Ex. #</b>	<b>Description</b>	<b>Date</b>	<b># of pages</b>	<b>Admitted</b>	<b>Offered by</b>
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	

				Y / N	
				Y / N	
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				Y / N	
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				Y / N	
				Y / N	
				Y / N	

**WITNESS AND EXHIBIT LIST**  
*In re Discipline of Jody Student*

**College Witnesses**

Jennifer Reiter, Director of Skyline College Computing Center  
Denise Houser, Skyline College Security Officer  
Sidney Haller, Complainant  
Jody Student, Respondent

**Complainant Witnesses**

Sidney Haller, Complainant

**Respondent Witnesses**

Jody Student, Respondent  
Kelly Karen, Student

**PROPOSED EXHIBITS**

<b>Ex. #</b>	<b>Description</b>	<b>Date</b>	<b># of pages</b>	<b>Admitted</b>	<b>Offered by</b>
1.	Notice of Summary Suspension	02/21/12	2	Y / N	Admin.
2.	Initial Disciplinary Order (Corrected)	02/29/12	3	Y / N	Admin
3.	Respondent's Written Notice of Appeal	02/29/12	1	Y / N	Admin
4.	Skyline College Conduct Incident Report re: Jody Student	02/17/12	17	Y / N	Admin
5.	Trespass Admonishment	02/21/12	1	Y / N	Admin
6.	Skyline College Instruction Computing, Student Rights and Responsibilities in Instructional Computing Facilities	03/13/12	3	Y / N	Admin.
7.	Skyline College Policies , Procedures and Guidelines, Computing Resources Appropriate Use Policy	03/13/12	3	Y / N	Admin

8.	Network Intrusion Detection	03/16/12	1	Y / N	Admin
9.	MySkyline Account Activation Screen		1	Y / N	Admin
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
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				Y / N	
				Y / N	
				Y / N	
				Y / N	

**Title IX Hearing  
Acknowledgement of Opportunity to  
Review Documents, Stipulation, and/or Objections**

I acknowledge that I had the opportunity to review the evidence and documents from the investigation and the documents or items that the parties may offer as exhibits at the hearing in this matter. A list of documents is attached.

I understand I have the right to offer documents as my exhibits by [INSERT DATE], which is the deadline issued in the [notice of hearing/prehearing order].

I also understand I have the right to request submission of other documents after this deadline and the decision as to whether or not the documents will be considered is at the discretion of presiding officer in this matter.

\_\_\_\_\_

Student's SignatureDate

**I have no objection to the admission of the documents and items proposed as exhibits by the parties.**

\_\_\_\_\_

Student's SignatureDate

**I have no objection to the admission of these documents or items as exhibits except for the following:**

Document	Objection [failure to state the basis for the objection will result in the admission of the exhibit]

\_\_\_\_\_

Student's SignatureDate



**PRESIDING OFFICER  
TITLE IX HEARING SCRIPT**

1. Good [Morning/Afternoon]. For the record, today is [date]. The time is \_\_\_\_\_ a.m./p.m. and we are meeting [via videoconferencing or in room in the Building at College].
2. This proceeding will be tape recorded.
3. My name is \_\_\_\_\_ and I will be serving as the chair of today's hearing.
4. The other members of the Board/Panel will now introduce themselves (**ask them to identify themselves for the record**).
5. Also present, are \_\_\_\_\_, AAG, who is the advisor to the Board; and \_\_\_\_\_ who helps the Board administer the hearing.
6. \_\_\_\_\_, will be presenting the case on behalf of the College.
7. Respondent, \_\_\_\_\_ is [**present / not present**] and is accompanied by, \_\_\_\_\_, who is serving as their advisor.
  - a. [if student has chosen not to have an attorney read: It's my understanding that you were informed of your right to be represented by an attorney in this proceeding and have chosen to represent yourself during this proceeding without assistance from an attorney. Is that correct?
  - b. I want to confirm you have had the opportunity to review copies of the evidence submitted. \_\_ Yes \_\_No.
    - i. And that you do/do not have objections to the admission of the evidence.
  - c. Please tell me if you cannot hear anything that is being said during the hearing.
8. Complainant, \_\_\_\_\_, is [**present / not present**] and is accompanied by, \_\_\_\_\_, who is serving as their advisor.
  - a. [If student has chosen not to have an attorney read: It's my understanding that you were informed of your right to be represented by an attorney in this proceeding and have chosen to represent yourself during this proceeding without assistance from an attorney. Is that correct?]
  - b. I want to confirm you have had the opportunity to review copies of the evidence submitted. \_\_ Yes \_\_No.
    - i. And that you do/do not have objections to the admission of the evidence.
  - c. Please tell me if you cannot hear anything that is being said during the hearing.

9. The Complainant and Respondent are responsible for presenting their cases today. [They can confer with their advisor throughout the proceeding.] However, like all witnesses, the Respondent and Complainant cannot confer with anyone, including their advisors, to formulate answers in response to questions posed while they are testifying.
10. This proceeding will be as informal as practical within the requirements of the Administrative Procedures Act. Evidence and testimony will be accepted through the Board chair, evaluated for relevance and, when deemed appropriate, admitted into the record. All witnesses will be sworn in before testifying.
11. Any cross-examination of witnesses on behalf of the Complainant or Respondent will be done through their advisors.
12. Are there any preliminary matters?
13. The Title IX Hearing Board/Panel has been convened to hear evidence to determine whether Respondent engaged in conduct that violated Title IX on [date of incident] . The specific allegation(s) is/are [state allegations].
14. The issue before the Board is whether there is sufficient evidence to support a finding that the Respondent is responsible for these alleged violations. If a finding of responsible is made, the Board will impose what it determines to be appropriate disciplinary sanctions and/or conditions, as authorized and set forth in WAC

\_\_\_\_\_.

### **ORDER OF PRESENTATION**

15. First, we will discuss the exhibits that the parties are seeking to admit into the record.
16. Next, we will hear opening statements from the College presenter, the complainant, then the respondent. (Opening statements are just a short explanation of what you want to present and hope to accomplish at this hearing. You may make an opening statement through your advisor but are not required to do so.)
17. Then each party will have the opportunity to call witnesses. I will place each witness under oath before questioning. The College will call its witnesses first, followed by the complainant's witnesses, followed by the respondent's witnesses. Each party will have the opportunity to ask questions of the other parties' witnesses, through their advisor. The Hearing Board/Panel and I will also have an opportunity to ask questions of witnesses. Questions must be relevant; as the presiding officer, I am responsible for making the ultimate determination whether a question is relevant.
18. If the complainant testifies, the College presenter, the complainant's advisor/attorney, and members of the Hearing Board/Panel members may ask questions directly. The respondent's attorney/advisor may ask the complainant questions.

19. If the respondent testifies, the College presenter, the respondent's attorney/advisor, or the Hearing Board/Panel members may ask questions directly. The complainant's attorney/advisor may ask the respondent questions.
20. At the end of the case, each party will have the opportunity to provide a closing argument based on the evidence provided here today.

Are there any questions?

### **OPENING STATEMENTS**

21. As mentioned previously, the First step in the process is the opening statement. An opening statement is a brief roadmap that a party provides to the Board/Panel to help them understand the evidence you will be presenting during the hearing. The Opening Statement is not evidence.

[College Presenter/Complainant/Respondent] would you like to make an opening statement?

- College Presenter opening statement (goes first since they are the ones bringing forth the case).
- Complainant opening statement.
- Respondent opening statement.

### **SWEAR IN RESPONDENT/COMPLAINANT/COLLEGE PRESENTER**

Do you swear and affirm to tell the truth during this hearing?

NAME OF STUDENT, do plan on providing testimony today?

If so, advise of their rights: You have the right to remain silent and that any testimony you provide can be used in future criminal proceedings.

NAME OF STUDENT, do plan on providing testimony today?

If so, advise of their rights: You have the right to remain silent and that any testimony you provide can be used in future criminal proceedings.

COLLEGE PRESENTER, do plan on providing testimony today?

If so, advise of their rights: You have the right to remain silent and that any testimony you provide can be used in future criminal proceedings.

### **PRESENTATION OF THE CASE**

[College Presenter/Complainant/Respondent], you may call your first witness.

**SWEARING IN THE WITNESSES:**

[NOTE: the Complainant and Respondent can only question one another through their advisors]

**To the Party:** Please call your first/next witness.

**To the Witness:** Do you swear or affirm that you will tell the whole truth and nothing but the truth?

[Witness responds]

**To the Witness:** Please state and spell your name for the record.

[Witness responds]

[College Presenter/Complainant/Respondent] \_\_\_\_\_, you may ask your questions.

Cross Examination – [College Presenter / Complainant / Respondent /Advisor] \_\_\_\_\_ do you have questions? [Repeat until each party has asked their questions.]

Board/Panel Questions – Does the Board have any questions?

Redirect – [as the party who called the witness] do you have any follow-up questions?

[If objections are raised during witness testimony, consult with the AAG representing the Board/Panel and make a ruling.]

[Repeat until each party has called their witnesses and the witness has been questioned by all parties and the Board/Panel]

**[NOTE: Follow the steps below if the Chair has not already ruled on admission of evidence in advance of the hearing.]**

**Exhibits** – [If the [College Presenter / Complainant / Respondent / Advisor] provided any documents for consideration at the hearing, and they were not stipulated to, or admitted prior to the hearing you will need to formally admit them into evidence.]

**Admission:** \_\_\_\_\_are you asking to admit into evidence any Exhibits. [If yes, then mark exhibits] [College Presenter / Complainant / Respondent / Advisor] is moving for admission of Exhibits \_\_ through \_\_ into evidence.

[College Presenter / Complainant / Respondent / Advisor] do you have any objection?

**Response:**

- **No Objection:** Complainant’s Exhibits \_\_\_ through \_\_\_ are admitted into evidence.
- **Objection:** [If an objection is made, listen to the objection and then confer with AAG assisting Board/Panel.]
  - You can then: (1) admit exhibits into evidence over the objection of the person objecting; (2) admit only some of the exhibits into evidence; (3) indicate that a decision on whether to admit any exhibit will be taken under advisement and noted in the Board’s final order.

**Conclusion:** Do you rest your case at this time? [Are you done with your case?]

**CLOSING ARGUMENT**

Now is the time for closing argument. A closing argument is the opportunity for the parties to argue their case. The purpose is to tell the Board what conclusions the party believes that the Board/Panel should draw from the evidence, what findings the party believes the Board should make, and tell the Board how the party wants the Board to rule. Closing argument is not evidence.

[College Presenter]\_\_\_\_\_ do you want to make a closing argument?  
\_\_\_\_\_ makes argument

[Complainant]\_\_\_\_\_ do you want to make a closing argument?  
\_\_\_\_\_ makes argument

[Respondent]\_\_\_\_\_ do you want to make a closing argument?  
\_\_\_\_\_ makes argument

This HEARING is adjourned for the Board/Panel to deliberate prior to reaching a decision. The decision will not be issued today, but will be delivered to the Parties in writing within 20 days of the close of this hearing.

(All people except the Board/Panel and its AAG advisor should exit.)

**General Notes**

You control the hearing, so you can go off the record if you need to ask the AAG questions, conduct a short break, etc. If you do go off the record, you should always say “We will take a 5

minute break” turn off the recording, then when you reconvene turn the recording back on and say “We are now back on the record. The time is \_\_\_\_.”

The hearing is required to be recorded under our state’s Administrative Procedures Act (APA) and the Title IX regulations. The recording may be audio only or audiovisual. Regardless, you will need to make sure that people (witnesses and Committee members) are speaking loud enough to be recorded and that people are making audible answers (and not just nodding their heads up and down or side to side).

Any party (the College or student) may want to present documents to the Board for inclusion in the agency record of the hearing. The College should always have enough copies of any documents for each member of the Committee and the student. The student may not be prepared with copies. In the latter case, it may be necessary to take a short break so that copies can be made for everyone.

Students often don’t have exhibits. However, if any are presented you can use the student’s last name to identify their exhibits. Example: “(Name of Student) has handed the Committee a letter from his professor with the date of \_\_\_\_\_. Are you wanting this document to be entered into evidence? Then we will mark the exhibit Jones Exhibit 1.” If you have a prehearing conference, you can direct the parties to label their exhibits in this manner so that they are labeled before the hearing.

**OPENING STATEMENT OUTLINE – TITLE IX  
Case No.**

I. Introduction

- A. Good Morning / Afternoon
- B. For the record – My name is...
- C. [Include your title and role in the hearing; e.g. “I am the Title IX Officer and I will be presenting the college’s case today against (Joe or Jane Student/Employee)]

II. My goal for this opening statement is to provide a roadmap/outline of anticipated evidence

- A. In short – anticipate that the evidence will establish...
  - 1. That (Student) was an enrolled student during [insert relevant time periods] academic terms or (Employee was employee at the college as (job title or position) during [insert relevant time periods].
  - 2. On or around [insert brief statement of the incident including date, time, location (to establish jurisdiction).]
  - 3. On or around ... [add additional incidents as relevant.]
  - 4. Additionally, [insert brief statement of other relevant issues.]

III. In particular, evidence will establish that:

- A. [Put in the specifics of what you will be proving with the evidence.]
- B.
- C.
- D.

IV. The evidence will consist of testimony and exhibits

- A. Testimony will be given from the following people:
  - 1. [List each person and their position, e.g. student, instructor, dean, etc., ]
  - 2.
  - 3.
- B. Anticipated exhibits will include:
  - 1. Exhibit A – [add brief description]
  - 2. Exhibit B –
  - 3. Exhibit C –

V. Bottom line, at the conclusion of the presentation of evidence I will be asking you on behalf of the college to:

- A. One, find that [name] violated WAC XXX-XXX-XXX by [what did they do].

- B. Two, find that [name] violated WAC XXX-XXX-XXX by [what did they do].
- C. Three, find that [name] violated WAC XXX-XXX-XXX by [what did they do].
- D. Finally, with a finding of responsibility for [name]'s current violations, [optional if applicable: combined with [name]'s history of academic misconduct violations (as demonstrated in Exhibits [X, Y, Z]), the college requests that the Committee/Panel issue the sanction(s) of [list disciplinary sanctions or conditions]].



## SCRIPTS FOR CALLING WITNESSES AND ADMITTING EVIDENCE

### CALLING A WITNESS

*The following script is for the introduction of a witness who is a college employee, but the same principles apply when you are calling a student or a party who is unaffiliated with the college.*

I call [NAME OF WITNESS] to the stand.

*Witness is sworn in by the Chair*

Please state and spell your name for the record.

What is your position at Skyline College?

How long have you held this position?

*If applicable: What training do you have in the area of [AREA OF EXPERTISE]?  
What are your duties as [POSITION]?*

### ADMITTING EVIDENCE

*The following script is for the introduction of documentary evidence.*

Please turn to what has been pre-marked as Exhibit \_\_\_\_.

Do you recognize this exhibit?

Can you describe it for us?

Is this a true and correct copy?

*If the exhibit has not already been admitted, the Student Conduct Officer continue as follows:*

I move to have this document admitted as Exhibit \_\_\_\_.

*Chair will ask other parties whether there are any objections, which may require argument before the Chair and the Committee makes a ruling.*

## OUTLINE FOR DIRECT EXAMINATION

**Witness is sworn in by Chair. (“Do you swear or affirm to tell the truth?”)**

### **Background**

Please state and spell your name for the record. [If not asked by Chair.]

What is your position at \_\_\_\_\_ College? (*or* Are you a student at \_\_\_\_\_ College?)

How long have you held this position? (*or* How long have you been enrolled at the college?)

What are your duties as \_\_\_\_\_? (*or* What area are you studying/classes are you taking?)

What training/experience do you have in the area of \_\_\_\_\_? (*or—if relevant—*Are you taking XX class?)

### **Questions Specific to the Alleged Incident/Violation**

Do you know [Complainant/Respondent/others]?

Are you familiar with the incident/events involving [Complainant/Respondent/others] that occurred on [date of alleged incident]?

[Ask questions regarding location to establish jurisdiction.] Where did this occur?

What did you personally see/hear?

[Write out the rest of the questions to draw out the details of what happened that this witness knows. Use the proof table to outline what elements of each violation you need to prove. Use open-ended questions (Who, what, where, when, how) and avoid leading questions in direct exam.]

### **Introducing Exhibits and Authenticating**

**[If you have Exhibits for this witness to introduce and authenticate use this section. Insert wherever needed throughout the testimony.]**

**Please turn to what has been marked as EXHIBIT XXX (*INSERT DESCRIPTION OF DOCUMENT*).**

Do you recognize this document?

Would you describe it for us?

Is this a true and correct copy of the [name of document]?

**(*MOVE TO HAVE EXHIBIT ADMITTED INTO EVIDENCE IF THIS HAS NOT BEEN DONE IN ADVANCE.*)**

**SAMPLE DIRECT TESTIMONY – DIRECTOR OF IT**

**Witness is sworn in by Chair (“Do you swear or affirm to tell the truth?”)**

**Background**

Please state and spell your name for the record.

What is your position at Skyline College? (Director of IT)

How long have you held this position?

What training do you have in the area of IT?

What are your duties as Director of IT?

How many staff do you supervise?

**Please turn to what has been marked as EXHIBIT 8 (*INSERT DESCRIPTION OF DOCUMENT*).**

Do you recognize this document?

Would you describe it for us?

Is this a true and correct copy of the Message System operating manual?

*(MOVE TO HAVE EXHIBIT ADMITTED INTO EVIDENCE IF THIS HAS NOT BEEN DONE IN ADVANCE.)*

Do your duties at Skyline include maintaining the “ABC Alert” Emergency Message System (EMS)?

What is the Emergency Message System?

What types of applications are used to send the emergency message? (Twitter, email, text messages, etc.)

Why does the college have this system?

Who is authorized to send messages out on the EMS? (Only four individuals have access—name individuals if possible—President, VP Admin, Director of Public Safety, and VP of HR).

Who are the recipients of the EMS alerts? (All Skyline students and staff.)

How many recipients are there? (In excess of 4,000.)

**Respondent and Frodo Lives Email**

Do you know Respondent Student?

In what context have you gotten to know him?

**Please turn to what has been marked as EXHIBIT 4 – (“Frodo Lives” email)**

Do you recognize this exhibit?

Can you describe it for us?

Is this a true and correct copy of this email?

*(MOVE TO HAVE EXHIBIT ADMITTED INTO EVIDENCE IF NECESSARY.)*

How did it first come to your attention?

What did you do once you learned that the email had been sent on the ABC Alert EMS?

Who did you talk to?

Did anyone help you?

What did you learn during your investigation?

**PERPETRATOR IDENTIFIED**

Who did you determine was responsible for the Frodo email?

What did you do after you identified Mr. Student as the perpetrator of the Frodo email?  
*(Spoke with VP of Student Services—shut down Student’s account with ABC computing.)*

Did you receive any communications from Mr. Student after the event?

What did he say?

Did he say anything about the Frodo message? *(Only if witness needs prompting.)*

What was your response to his request that his account be reinstated?

**Attempt to cloak identity**

During your investigation did you find Mr. Student took steps to cover his tracks?

What would have happened if he had not deleted this information?

How did you identify him?

**Assistance Provided by Student**

Once he was caught, was Student cooperative?

What information did he share?

Based on your contact with Mr. Student, did you reach any conclusions regarding his motives for sending Frodo message?

**College Computer Use Policies**

As the Campus Safety Director, are you familiar with the policies the College has in place regarding student use of college technology?

**Please turn to what has been marked as EXHIBIT 10 – Computing Resources Appropriate Use Policy**

Are you familiar with Exhibit 10?

What is it?

Is this a true and correct copy of the policy?

Are you required to use this policy while exercising your duties at the college?

*(MOVE TO ADMIT INTO EVIDENCE IF NECESSARY.)*

What purpose does the policy serve?

What is prohibited?

(Used in accordance with local, state, and federal law.

Not used to transmit communications when doing so would violate law or regulation.

Prohibits using someone else's password.

Prohibits using network to gain unauthorized access to any computer system.)

What are consequences for violating this policy?

- “Failure to comply may result in loss of access to College computing resources, as well as administrative, civil or criminal action under Washington State or federal law.”

**Please turn to what has been marked as EXHIBIT 9** – (Welcome to my ABC page—shrink wrap—agree to abide by all Highline and Instructional computing use policies)

Do you recognize this document?

What is it?

Is this a true and correct copy of this document?

*(MOVE TO ADMIT IF NECESSARY.)*

Have you researched whether Mr. Student reviewed this page?

When, where, how?

### **Impacts on College**

How did Mr. Student’s actions impact the College?

Did action undermine confidence in Emergency system?

How much additional time did you and your team have to work to identify issue over weekend of February 18th.

Describe how Student’s actions disrupted teaching at college – (has caused college to revoke heightened privileges and interfered with ability to offer some classes).

What other repercussions (students will no longer be trusted users) (turned off student privileges—lower level—interfered with instructor’s ability to teach class).

## EVIDENTIARY OBJECTIONS

A party can make evidentiary objections when the other party asks a question that, if answered, would let information into evidence that is unreliable, irrelevant, prejudicial, confusing or otherwise not helpful to deciding what the facts are.

The usual form of the objection is something like this: *I object on the grounds that the question* “calls for hearsay,” “is cumulative,” “is not authentic,” “has been asked and answered,” or “is irrelevant.” Similarly, the same objections apply when a party seeks to admit a document into evidence.

This outline discusses the following common objections:

1. Relevance
2. Hearsay
3. Character Evidence
4. Assumes Facts Not In Evidence
5. Nonresponsive
6. Leading/Suggestive
7. Badgering/Argumentative
8. Asked and Answered/Cumulative/Repetitive
9. Compound Question
10. Lack of Authentication/Lack of Foundation
11. Calls for Speculation
12. Privileged
13. Previous Sexual History

Other objections include, but are not limited to, Argumentative, Incompetent, Leading, Calls for Speculation.

For more information about evidentiary objections, *see* Edward J. Imwinkelried, *EVIDENTIARY Foundations*, (9th ed. 2015). Professor Imwinkelried is a professor of law at the University of California at Davis and is an expert in the field of evidence. *Evidentiary Foundations* was first published approximately 20 years ago and is widely accepted among lawyers as a reliable source of practical information for dealing with real-world evidence issues; *see also* Washington State Court Rules: Rules of Evidence, found on the internet at:

[https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.list&group=ga&set=ER](https://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=ER).

## 1. RELEVANCE

Definition	Exceptions
<p>Relevant evidence is that which influences the issues; having probative value in proving a fact. If evidence has the tendency to make an important (material) fact more or less probable than it would be without the evidence, it is relevant.</p> <p>Relevance is a matter of logic and experience.</p> <p>Most problems with relevance involve circumstantial evidence. It is evidence that tends to render probable a certain inference that is important to the case. Habit, custom, similar acts, flight, and concealment are common kinds of relevant circumstantial evidence.</p>	<p>All evidence must be relevant, but relevant evidence can be excluded for other reasons, such as it being hearsay.</p> <p>Even if evidence is logically relevant, it may be legally irrelevant and, hence, inadmissible if its probative value is substantially outweighed by the danger that it will (i) unduly prejudice the fact finder, (ii) mislead or distract the fact finder, (iii) cause undue delay or waste time, (iv) raise collateral issues that have no bearing on the facts of the case, or (v) involve the presentation of needlessly cumulative evidence.</p>

## 2. HEARSAY

Definition	Examples	Exceptions
<p>Hearsay is testimony that is “in court” about what another person said when they were “out of court” about “something,” and is offered as an attempt to prove the truth of that “something.”</p> <p>The critical question in determining whether the out-of-court statement is or is not hearsay is the purpose of the testimony. If the facts and terms of the utterance itself, rather than reference in the utterance to other facts are at issue, the utterance is not hearsay.</p> <p>For example, it is not hearsay if the testimony is simply offered to prove (i) that the words themselves were spoken, (ii) someone’s state of mind,</p>	<p>Rick said that Aileen copied Tom’s answers to the test.</p> <p>He couldn’t have assaulted her after midnight at the party because Dave said he was back at the apartment before 10:00 p.m., and <i>The Voice</i> was still on.</p>	<ol style="list-style-type: none"> <li>1. A statement by a party against their interest, or an admission that they did something or said something that they now deny.</li> <li>2. Business and hospital records kept in the ordinary course of business. Also, public records.</li> <li>3. Contemporaneous statements, i.e., those made as part of a transaction or event that give meaning to the event.</li> <li>4. Former testimony or sworn statements can be</li> </ol>



<p>(iii) that the declarant was conscious, or (iv) slander.</p> <p>However, unlike in a court of law, where hearsay is prohibited (subject to several exceptions) in administrative hearings, such as student conduct hearings, hearsay evidence is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.</p>		<p>admitted; usually if the declarant is now unavailable.</p> <p>5. Spontaneous exclamation or excited utterance. These are statements made in connection with a startling occurrence rather than on reflection. Spontaneity is the key. <b>Look! He's running the red light!</b></p> <p>6. State of Mind. If the declarant's state of mind is a fact at issue, testimony or evidence about their statements relative to their state of mind are admissible, e.g., <i>mental condition</i> (intent, motive, belief, assent) <i>emotional condition</i> (anger, fear, affection) or <i>physical sensation</i> (pain, discomfort, illness).</p> <p>7. Statements as to reputation.</p>
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### 3. CHARACTER EVIDENCE

Definition	Exceptions
<p>In general, evidence of a character trait cannot be used as circumstantial evidence of a person's conduct. For example, proving that a person is cautious and careful is not admissible to prove that they drove their car in just that manner at a given point in time. Such evidence would be deemed irrelevant.</p> <p>Character witnesses must be reliable, and it is generally accepted that they must be a member of the community (residential, social, or business) to which the party or witness whose character is at issue also belongs, and (ii) must have been a</p>	<p>The truthfulness of any witness is always relevant, except when the witness is also the defendant in a criminal trial. Similarly, in a student conduct hearing, the presiding officer may decide that testimony regarding the reputation of the accused for untruthfulness may be too prejudicial to allow.</p>

member of the community for a reasonable length of time.	
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#### 4. ASSUMES FACTS NOT IN EVIDENCE

Definition	Examples
A question of a witness (or interviewee) that assumes unproven facts to be true is objectionable. This is because it asks the trier of fact to assume the truth or accuracy of something for which no evidence has been introduced.	The classic example is the “When did you stop beating your brother?” question where there has been no evidence that the witness has ever struck their brother.  “Did you know that ...” and “Have you heard ...?” are other types of questions that are likely to assume unproven facts.

#### 5. NONRESPONSIVE

Definition	Examples	Exceptions
An answer that goes beyond the scope of the questions and includes subject matter not called for by the question is nonresponsive.  <i>See DRAGNET (“Just the facts, ma’am.”)</i>	Rambling answers or narrations where the witness attempts to tell the “whole story” rather than simply answering the questions.	In the relatively informal setting of a student conduct hearing, the presiding officer may allow longer, narrative style answers if it will move the hearing along. But objections should be made if the narrative includes hearsay, opinions, or assumes facts not in evidence.

#### 6. LEADING/SUGGESTIVE

Definition	Examples	Exceptions
A question that suggests to a witness an answer the examiner desires is leading.  To avoid leading questions, begin questions with such words as:  “How...?” “What...?” “Who...?” “Why...?” “Where...?”	A question that describes an incident in detail, and then asks, “Is this the way it happened?” is a type of leading question because it provides a natural inference that the questioner desires a specific answer.	Leading questions may be allowed to refresh the recollection of a witness, or with disabled witnesses.  Leading questions are proper in cross-examination except where it is clear that the witness is favorable to the cross-examiner’s position or client. To ask leading

	“Did she not then put the money in her pocket?”	questions, use such phrases as “Isn’t it correct that ...?” and “Did ...?” and “Is...?”
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## 7. BADGERING/ARGUMENTATIVE

Definition	Exceptions
<p>Badgering the witness or being argumentative occurs when, instead of being questioned, a witness is subjected to derisive comments (“You expect the jury to believe that?”); with legal arguments posed as questions (“With all the evidence against you, how can you deny that you stole the watch?”); or questions that assume facts not in evidence (“There were 10 people blocking your view, yet you can identify the security guard?”).</p> <p>Source: <a href="http://USLegal.com">USLegal.com</a></p>	<p>These examples might be appropriate during closing argument, or rephrased. Argumentative questions may be proper if directed to an adverse party, as an attempt to secure a judicial admission contrary to the position of the party. Argumentative questions also may be proper if the witness has given an opinion. Then counsel may properly state different facts than those used by the witness in forming their opinion and inquire if a different conclusory opinion is correct.</p> <p><i>Leonard Bucklin, Building Trial Notebooks</i></p>

## 8. ASKED AND ANSWERED/CUMULATIVE/REPETITIVE

Definition	Exceptions
<p>Asked and Answered: When the question being asked has both been asked and been answered before by this attorney and this witness.</p> <p>Cumulative: The material has been asked and covered before. For instance, one party may request that several people testify to the same incident.</p> <p>Repetitive: Similar to cumulative and tediously going over material already admitted.</p>	<p>It is not an objection to a question on cross-examination that has been covered in direct examination.</p>

## 9. COMPOUND QUESTION

Definition	Exceptions
The question is really two questions posed as one. Objection should only be used when the question is misleading and the answer could be misconstrued by the trier of fact.	You can usually break the compound question into two separate questions.

## 10. LACK OF AUTHENTICATION/FOUNDATION

Definition	Exceptions
Use this objection when the witness has not shown or established that they are not competent to testify about the matter at hand. The witness must lay a foundation that the exhibit or testimony is what it purports to be. For instance, “Are you familiar with the surveillance system at the College? How? Do you recognize what has been marked as exhibit 1 for identification? (The surveillance tape?) What is it? Move for admission of exhibit 1 for identification.	Objections to lack of foundation or authentication are waived if not made prior to testimony or admission of the exhibit.

## 11. CALLS FOR SPECULATION

Definition	Exceptions
Objections that the witness is speculating is a form of relevance. If the witness is guessing at the answer, it has no bearing on the proceeding.	None, but the objection is waived if there is no prompt objection.

## 12. PRIVILEGED

Definition	Exceptions
Spousal or Domestic Partner Communications. Spouse or domestic partner may not be questioned about communications during marriage or domestic partnership.  Attorney-client privilege or work product.  Priest-clergy Penitent Communications (include Christian Science clergy).	Consent by both marriage and domestic partners.  Attorney-client communications if waived by prior disclosure.

<p>Physician/surgeon patient communications (includes peer support counselors).</p> <p>A mental health counselor, independent clinical social worker, or licensed marriage and family therapist.</p> <p>Sexual Assault and Domestic Violence Advocate Communications.</p> <p><a href="#">RCW 5.60.060</a></p>	
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### 13. PREVIOUS SEXUAL HISTORY

Definition	Exceptions
<p><a href="#">Evidence Rule 412</a>. The following evidence is not admissible in any civil proceeding involving alleged sexual misconduct except as provided in sections (c) and (d):</p> <ol style="list-style-type: none"> <li>1. Evidence offered to prove that any alleged victim engaged in other sexual behavior.</li> <li>2. Evidence offered to prove any alleged victim's sexual predisposition.</li> </ol> <p>Title IX Rules: Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.</p>	<p>In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.</p> <p><b>Title IX Exception:</b> Evidence of prior sexual conduct is only admissible in two circumstances: 1) if the purpose is to prove that someone other than the respondent committed the sexual misconduct; or 2) if it is offered to prove that the complainant consented to the conduct.</p>

## WITNESS IMPEACHMENT & REFRESHING THE WITNESS'S RECOLLECTION

**Witness Impeachment.** This can take place when a witness says something different in court than they said before, and you want to explore this inconsistency to cast doubt on the witness's credibility. Impeachment is not directly asking a witness to admit to being a liar or to admit that they remembered something incorrectly. The liar will not admit to lying and the honest but mistaken witness will not know they are mistaken. Impeachment is the process of introducing circumstantial evidence that shows the likelihood that the witness does not understand the need to tell the truth, is mistaken or has an incomplete recollection, or is lying.

In a nutshell, you want to commit the witness to their current testimony, and then confront the witness with their prior inconsistent statement. In essence, you are challenging their credibility.

Any party, including the party calling the witness, may challenge the credibility of a witness. Ways to do this include (i) asking the witness about a time in the past when they said something different than they are now saying, (ii) introducing a document into evidence that reflects negatively on the witness's truthfulness or knowledge, (iii) showing that the witness is biased, (iv) challenging their character by properly showing they have been untruthful in the past, or (v) showing a defect of capacity, ability, or opportunity for the witness to observe, remember, or recount the matters about which they testified.

- You've spoken about this before, correct?
- It was when you were interviewed by the investigator?
- And your student advisor was also there with you?
- And the investigator asked you about this?
- And you told him you were telling the truth?
- And you also made a written statement about this?
- And you had a chance to review the written statement?
- And you did review it?
- And you signed it, didn't you, swearing that it was true?
- Just like you swore to the truth here today?
- And I am going to show you what is marked as Exhibit 10.
- This is your signature, isn't it?
- And this is your written statement?
- Can you read what is written on \_\_\_\_\_?

**Refreshing a Witness's Recollection.** Sometimes a witness will say "I don't know," or "I don't remember." Technically, it is improper to attempt to refresh a witness's recollection when they say "I don't know" (but you could perhaps impeach them as per above). Therefore, especially with a friendly witness, you should try to elicit a response that demonstrates a failure of

recollection. For example, “Are you saying you don’t remember?” or “Are you sure you don’t know?” or “Is it more likely you don’t remember?” If the witness expresses a failure of recollection or a possible failure of recollection, you can then attempt to refresh their recollection. You should state in your question what you are suggesting will refresh their recollection. For example, “Would looking at your witness statement refresh your recollection?” or “Would looking at a video of the event refresh your recollection?” Even if the witness persists with “I don’t know,” the finder of fact will be dubious of the testimony when you present the witness with items that would naturally refresh their recollection.

## CLOSING ARGUMENT OUTLINE

### I. Introduction

- A. Thank you for willingness to sit on this hearing board—without you, the student conduct hearing process would not be possible.
- B. I want to talk to you about:
  - 1. First, the legal framework for how you may want to analyze this case;
    - a. At the same time, I will also talk about the particular facts of the case in the context of the legal framework.
  - 2. I will also discuss the sanction we are requesting [you impose *or if appeal*: you uphold that was imposed by the student conduct office] and why it is appropriate in this case.

### II. Legal Framework for How to Decide the Case

#### A. Standard of Proof – More likely than not

“Preponderance of evidence” means that it must be shown it is *more likely than not* that the Student Conduct Code violation did in fact occur.

#### B. Credibility

For purpose of determining credibility, among the factors that you may consider is *the reasonableness of each witness’ testimony or statements in the context of all of the other evidence* – Here,

- 1. XXX testified [facts testified to]
- 2. But [list other testimony/evidence that contradicts that testimony]:
  - a.
  - b.
- 3. I submit to you that given all the evidence, XXX’s testimony (what it was) is not reasonable and therefore not credible [list reasons bias/reason to lie]
  - a.
  - b.

### III. Legal Framework for How to Decide the Case (cont.)

#### A. Circumstantial Evidence

- 1. Direct evidence

“direct evidence” refers to evidence that is given by a witness who has directly perceived something at issue in this case.
- 2. Circumstantial evidence

The term “circumstantial evidence” refers to evidence from which, based on your common sense and experience, you may reasonably infer



something that is at issue in this case.

Here: [describe evidence]

3. Circumstantial evidence and direct evidence are of equal weight or value. One is not more important or less important than the other

## **B. Elements**

1. *[List violations]*

- a. [list the elements of each violation – use proof table]

- [list the evidence proving each element]

- b.

2. *[List next violation]*

- a.

Applying the preponderance of evidence standard of proof (more likely than not), the evidence offered in this hearing has established that Respondent violated the prohibition against [violation] (WAC \_\_\_\_\_).

## **IV. Sanction/Conditions**

- A. Taking into consideration the actions by Respondent, [list sanctions / conditions] are appropriate and reasonable sanctions

- B. Given that [summarize specific acts justifying sanctions]

- C. Under these circumstances, [sanction] is more than reasonable

## **V. Conclusion**

For all of these reasons, I would ask that the Committee [make/uphold] the determination that [Respondent] is responsible for violating this/these provision(s) of the Student Conduct Code and [impose/uphold] the sanction/condition of [list sanctions/conditions you are requesting]