

Administrative Procedures	
Procedure 235.5A Policy 235	Employee Sex Discrimination Disciplinary Procedure

Order of Precedence

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

Notwithstanding the foregoing, if Respondent is a tenured or probationary faculty member and the employee disciplinary officer¹ determines that the facts found in the investigation report would warrant Respondent’s dismissal from the College if proven at hearing, the employee disciplinary officer 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 CBA’s Tenure Dismissal Committee procedures are inconsistent or conflict with Sections II through VII of this disciplinary procedure, the disciplinary 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. Subject to the procedures set forth below, Complainant shall have the same right to appear and participate in the proceedings as the Respondent, including the right to present their position on the Recommendation to the President or designee before final action is taken.

Prohibited Conduct

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

For purposes of this supplemental procedure, the following conduct is prohibited:

- A. **Sex Discrimination.** Sex Discrimination occurs when a Respondent causes a Complainant more than *de minimis* (insignificant) harm by treating the Complainant

¹ The “employee disciplinary officer” is typically the employee’s supervisor or in their chain of command.

differently from other similarly-situated individual(s) based on:

- 1 Sex stereotypes;
- 2 Sex characteristics;
- 3 Pregnancy or related conditions;
- 4 Sexual orientation; or
- 5 Gender identity.

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

B. **Sex-based Harassment** is a type of Sex Discrimination that includes:

- 1 **Quid pro quo harassment.** An employee authorized by the College to provide an aid, benefit, or service under the College's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.
- 2 **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (*i.e.*, creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - a. The degree to which the conduct affected the Complainant's ability to access the College's education program or activity;
 - b. The type, frequency, and duration of the conduct;
 - c. The Parties' ages, roles within the College's education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;
 - d. The location of the conduct and the context in which the conduct occurred; and
 - e. Other Sex-based Harassment in the recipient's education program or activity.
- 3 **Sexual Violence.** Sexual Violence includes the following conduct:
 - a. **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without Consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.
 - b. **Nonconsensual sexual contact (Fondling).** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without Consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.
 - c. **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half

related. Descendant includes stepchildren, and adopted children under the age of eighteen (18).

- d. **Statutory rape (Rape of a child).** Non-forcible sexual intercourse with a person who is under the statutory age of consent as defined in RCW 9A.44.073-079.
 - e. **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Washington.
 - f. **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship;
 - ii. The type of relationship; and
 - iii. The frequency of interaction between the persons involved in the relationship.
- 4 **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others; or (ii) suffer substantial emotional distress.

- C. **"Retaliation"** means intimidation, threats, coercion, or discrimination against any person by the College, a student, or an employee or other person authorized by the College to provide aid, benefit, or service under the College's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted, or participated or refused to participate in any manner in a Sex Discrimination investigation, proceeding, or hearing, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for Sex Discrimination. Nothing in this definition prevents the College from requiring an employee to provide aid, benefit, or service under the College's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

Jurisdiction & Dismissal of Complaints

- A. This disciplinary procedure applies only if the alleged misconduct:
 - 1 Meets the definition of Sex Discrimination, Sex-based Harassment, or

Retaliation as defined in this disciplinary procedure, including causing more than de minimis harm to the Complainant;

- 2 Occurred in the United States or interfered with the Complainant's ability to access or participate in the College's educational programs or activities in the United States; and
- 3 Occurred during a College educational program or activity, or interferes with the Complainant's ability to access or participate in the College's educational programs or activities.

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

- B. The employee disciplinary officer after reviewing the investigation report or the decision maker² after receiving the Notice of Hearing determines the facts alleged, even if proven, are not sufficient to support jurisdiction, must issue a notice of dismissal in whole or part to both parties and the Title IX coordinator explaining why some or all of the claims have been dismissed.
- C. The employee disciplinary officer after reviewing the investigation report or the decision maker after receiving the Notice of Hearing may, but is not required to, dismiss the case if:
 - 1 The Respondent is no longer employed by the College. The College's discretion to dismiss a Sex-based Harassment Complaint lodged against a former employee may be limited by RCW 28B.112.070, which requires the College to complete investigations into allegations of sexual misconduct by employees directed at students unless the student requests otherwise; or
 - 2 The Complainant has voluntarily withdrawn the Complaint and the Title IX Coordinator has declined to initiate a complaint, and the College determines that any remaining conduct outside the withdrawn allegations would not constitute Sex Discrimination, even if proven. If the Complainant is a student and the case involves allegations of Sex-based Harassment, the withdrawal must be presented by the Complainant in writing before the College will act.
- D. Dismissal does not prohibit the College from pursuing disciplinary action against a Respondent based on allegations that the Respondent engaged in other misconduct prohibited by federal or state law, employment contracts or handbooks, or other College policies.
- E. Both the Complainant and the Respondent may appeal the dismissal of a Complaint pursuant the appeal process in Section IX of this procedure.
- F. The notice of dismissal must be served on all parties and the Title IX Coordinator and contain an explanation of:
 - a. Why dismissal was necessary or desirable;
 - b. The right to appeal the dismissal and a description of the procedure

² The "decision maker" is typically the Title IX Coordinator or designee.

- for appealing the dismissal; and
 - c. If applicable, notice that the Complaint is being referred to an appropriate disciplinary authority for proceedings outside the jurisdiction of this procedure.
 - G. If the Dismissal involves an allegation of Sex-based Harassment, the Notice of Dismissal will be served on the Parties simultaneously.
 - H. When a Complaint is dismissed, Title IX Coordinator will, at a minimum:
 - a. Offer supportive measures to the Complainant as appropriate;
 - b. If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
 - c. Take other prompt and effective steps, as appropriate, to ensure that Sex Discrimination does not continue or recur within the College's education Program or Activity.

Rights of Parties

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

Initiation of Discipline

- A. Upon receipt, the employee disciplinary officer shall independently review the investigation report provided by the Title IX Coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the College's Sex Discrimination policy; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The employee disciplinary officer shall, within ten (10) business days of receiving the investigation report, serve Respondent, Complainant, and the Title IX Coordinator with a Written Recommendation, which includes a description of the facts and conclusions supporting the recommendation, as well as a recommended sanction. The time for serving a Written Recommendation may be extended by the employee disciplinary officer for good cause.
 - 1 The Complainant or Respondent shall have twenty-one (21) calendar days from service of the Written Recommendation to either accept the Written Recommendation or request a hearing before the decision maker. The request may be verbal or written, but must be clearly communicated to the employee disciplinary officer.

- 2 Upon receiving a request for a hearing, the employee disciplinary officer shall promptly notify the decision maker, the other Party and the Title IX Coordinator of the request and forward a copy of the Written Recommendation to the decision maker.
 - 3 If no request for a hearing is provided to the employee disciplinary officer within the twenty-one (21) calendar day period, the employee disciplinary officer's Written Recommendation shall be final and the recommended disciplinary sanctions, if any, shall be implemented immediately.
- B. Service of the Written Recommendation or any other document required to be served under this procedure shall be done:
- 1 In person; or
 - 2 By first class or certified mail to the Party's last known address and by electronic mail to the Party's College email address.

Pre-Hearing Procedure

- A. Upon receiving the Written Recommendation and request for a hearing, the decision maker will send a hearing notice to all Parties in compliance with WAC 10-08-040. The hearing date may not be scheduled less than ten (10) business days after the Title IX Coordinator provides the Final Investigation Report to the Parties and the employee disciplinary officer. The College may, at its discretion, contract with an administrative law judge or other qualified person to act as the decision maker.
- B. Complainants and Respondents may be accompanied by an Advisor of their choosing during the disciplinary process at the Party's own expense. The Advisor may be an attorney and/or, if the Party is a represented employee, a union representative. If a Party does not select their own advisor, the College will provide the Party with an advisor at no cost to the Party.
- 1 If the Advisor is an attorney, the Advisor must file a notice of appearance with the decision maker with copies to all parties and the employee disciplinary officer at least five (5) business 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 decision maker with a signed waiver of union representation, including written consent from the union.
- C. In preparation for the hearing, the College will provide Parties with an accurate description of all relevant and not otherwise privileged evidence gathered by the investigator during the investigation, regardless of whether the College intends to offer the evidence at the hearing. All Parties shall have an equal opportunity to access the evidence upon request.
- D. The decision maker may, or upon the request of any Party, must, conduct the hearing with the Parties physically present in separate locations, with technology enabling the decision maker and Parties to simultaneously see and hear the Party or the witness

while that person is speaking.

Evidence

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

- A. Relevant or Relevance means a question or evidence is related to the allegations of Sex Discrimination at issue in the proceeding. Questions are relevant when they seek evidence that may aid in showing whether the alleged Sex Discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged Sex Discrimination occurred.
- B. Impermissible evidence.
 - 1 Privileged information. The decision maker shall not consider legally privileged information unless the individual holding the privilege has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:
 - a. Spousal/domestic partner privilege;
 - b. Attorney-Client and attorney work product privileges;
 - c. Privileges applicable to members of the clergy and priests;
 - d. Privileges applicable to medical providers, mental health therapists, and counselors;
 - e. Privileges applicable to sexual assault and domestic violence advocates; and
 - f. Other legal privileges identified in RCW 5.60.060.
 - 2 Prior Sexual Behavior. Questions or evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:
 - a. Is asked or offered to prove someone other than the Respondent committed the alleged misconduct; or
 - b. Concerns specific incidents of prior sexual behavior between the Complainant and the Respondent, which are asked or offered on the issue of consent.
- C. The decision maker may not make an inference regarding responsibility *solely* on a witness's or Party's absence from the hearing or refusal to answer questions.
- D. In a proceeding involving allegations of Sex-based Harassment in which a student is a Complainant, the decision maker shall review, in advance, all questions the Complainant and Respondent propose to ask during the hearing for relevance and whether the questions seek otherwise impermissible evidence. The decision maker shall explain on the record the reasons for excluding any questions. If a question is excluded as unclear or harassing, the Party proposing the question shall have an opportunity to clarify or revise the question. If questions are submitted for review in writing, the written questions shall be retained as part of the hearing record.

E. In a proceeding involving allegations of Sex-based Harassment in which a student is the Complainant, all questioning of witnesses on behalf of the Complainant and Respondent shall be conducted either by their respective Advisors or the Decision Maker. Determination of who will conduct the questioning is at the discretion of the Decision Maker.

E-F. All hearings shall be recorded by manual, electronic, or other type of recording device.

Initial Order

- A. The decision maker will be responsible for drafting an Initial Order that:
- 1 Identifies the allegations of Sex Discrimination;
 - 2 Describes the grievance and disciplinary procedures, starting with the College's receipt of the Complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
 - 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 Sex Discrimination in violation of Title IX;
 - 5 Contains a statement of, and rationale for, the decision maker's determination of responsibility for each allegation;
 - 6 Describes the 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 programs or activities; and
 - 8 Describes the process for appealing the Initial Order to the President or designee.

B. The Initial Order shall be served on the Parties and the Title IX Coordinator within twenty (20) calendar days of the disciplinary hearing. —If the case involves allegations of Sex-based Harassment, the Initial Order shall be served on the Parties and the Title IX Coordinator simultaneously.

Appeals

- A. All Parties, including the employee disciplinary officer in their capacity as a representative of the College, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a Complaint during the investigative or hearing process. Appeals must be in writing and filed with the President or designee within twenty-one (21) calendar days of service of the Initial Order or Notice of Dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the Initial Order or dismissal being challenged and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the Initial Order or dismissal shall be deemed final.

- B. Upon receiving a timely appeal, the President or designee will serve a copy of the appeal on all non-appealing Parties, who will have ten (10) business days from the date of service to submit written responses to the President or designee addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the President or designee shall serve copies of the responses to the appealing Party.
- C. If necessary to aid review, the President or designee may ask for additional briefing from the parties on issues raised on appeal.
- D. The President or designee, based on their review of the Parties' submissions and the hearing or investigative record, will make a Final Decision determining whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal if affirmed or denied, or if the disciplinary sanctions and conditions imposed in the Initial Order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.
- E. The Final Decision shall be served on all Parties and the Title IX Coordinator. If the case involves allegations of Sex-based Harassment, the Final Decision shall be served on the Parties and the Title IX Coordinator simultaneously.
- F. All decisions reached through this process are final and may be judicially appealed pursuant to applicable provisions of RCW 34.05, including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any Collective Bargaining Agreement.

History

The procedure repeals and replaces [Procedure 235.3A – Discrimination and Harassment – Employee Disciplinary Hearing Procedure](#) for any conduct occurring after July 31, 2024.