

Procedure

Title: Title IX Investigation and Resolution

Formerly: Title IX Investigation; Employee Title IX Disciplinary Hearing

Section: 502.1

Point of Contact: Title IX Coordinator, Director of Human Resources

Initial Date of Procedure: 08/14/2020

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Date of Last Review: 03/03/2026

Applies to: Students, Employees, Applicants, Visitors

Related:

427.5 Mandatory Reporting by Employees of Concerning Behaviors, Discrimination, Harassment, and Other Serious Crimes (policy)

427.5.A Mandatory Reporting by Employees of Concerning Behaviors, Discrimination, Harassment, and Other Serious Crimes (procedure)

502.0 Discrimination and Harassment

WAC 10-08-265

WAC 495B-121

RCW 26.50.010

RCW 28B.50.863

RCW 34.05.542

RCW 49.60

20 U.S.C. 1681 et seq.

34 C.F.R. § 106

Procedure

Introduction

The 2020 Department of Education federal regulations under Title IX, effective August 14, 2020, define sexual harassment and other sexual misconduct more narrowly than the Bellingham Technical College (BTC) policy and require specific procedures for investigating and adjudicating allegations that meet the federal definitions and other criteria, such as where alleged conduct occurred. BTC will continue to address all complaints of sexual harassment and will assess complaints to determine which policies apply.

Purpose

Bellingham Technical 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, Bellingham Technical College has enacted WAC 495B-121-350 and adopted the following procedures for receiving and investigating allegations of sexual harassment arising during education programs or activities. Any individual found responsible for violating BTC's Title IX policy is subject to disciplinary action up to and including dismissal from the College's educational programs or activities and/or termination of employment.

This procedure applies to all 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 alleged to have engaged in sexual harassment in violation of Title IX shall be governed by this procedure. To the extent this procedure conflicts with provisions set forth in employment contracts, Collective Bargaining Agreements (CBAs), employee handbooks, and other Bellingham Technical College employment policies and procedures, this procedure will take precedence.

Notwithstanding the foregoing, if Respondent is a tenured or probationary faculty member and the Employee Disciplinary Officer determines that the allegations in the investigation, if true, would warrant Respondent's dismissal from the College, the Employee Disciplinary Officer will refer the matter to the Tenure Review Committee for a hearing pursuant to RCW 28B.50.863 and applicable procedures set forth in the faculty union CBA. To the extent the Tenure Review Committee procedures are inconsistent or in conflict with this procedure, this procedure will prevail. At the end of the hearing, the Tenure Review Committee will issue a recommendation consistent with the provisions set forth herein. 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 Appointing Authority before final action is taken.

Definitions

For purposes of this procedure, the following terms are defined as follows:

1. **Advisor** is an individual chosen by a party or appointed by the College to (i) provide advice and support for a party throughout the resolution process, and (ii) conduct cross-examination on behalf of the party during any live hearing.
2. **Complainant** means an individual who is alleged to be the subject of conduct that could constitute sexual harassment.
3. **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 reasonably should know, that the 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.

4. **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.
5. **Formal Complaint** means a written statement submitted by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the College conduct an investigation. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education programs or activities of the College.
6. **Preponderance of the Evidence** is the burden of proof at Bellingham Technical College, meaning that there is a greater than 50% chance that a claim is true.
7. **Relevant** evidence is related to the allegation(s) of sexual harassment under investigation that tends to prove or disprove a fact in issue in the complaint. Evidence about a Complainant's sexual predisposition is never relevant, and evidence about a Complainant's prior sexual behavior is not relevant unless such evidence is offered to (i) prove that someone other than the Respondent committed the alleged conduct, or (ii) establish prior sexual behavior with the Respondent and are offered to prove consent.
8. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
9. **Sexual Harassment**, for purposes of this procedure, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - 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 determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person's equal access to the College's educational programs or activities or 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.** Non-forcible sexual intercourse between a person who is eighteen (18) years of age or older and someone 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, 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, 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:
 - 1. The length of the relationship;
 - 2. The type of relationship; and
 - 3. 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. **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 495B-121-335.
11. **Supportive Measures** are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or 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 or 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 and 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 (iv) impositions of orders prohibiting the parties from contact one another in 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.
12. **Title IX Administrators** are the Title IX Coordinator, Title IX Investigators, the Student Conduct Officer, Decision Maker, and college-appointed Advisors assigned to the parties by the College during Title IX disciplinary proceedings.
13. **Title IX Coordinator** is the Administrator responsible for processing Title IX complaints and conducting and/or overseeing formal investigations and informal resolution processes under this Investigation 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: (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 or 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.
- i. Recommending non-disciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other college administrators.

Title IX Investigations

Title IX Jurisdiction

This procedure applies only if the alleged misconduct:

- 1. Occurred in the United States; and
- 2. Occurred during a Bellingham Technical College educational program or activity; and
- 3. Meets the definition of Sexual Harassment as that term is defined in this procedure.

Formal complaints under this procedure must be dismissed if the neutral Decision Maker determines that one or all of the requirements of Title IX jurisdiction items 1-3 have not been met. Dismissal under this 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.

If the Employee Disciplinary Officer or designee determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Title IX Coordinator will issue a Notice of Dismissal in whole or in part to both parties explaining why some or all of the Title IX claims have been dismissed.

Principles for Title IX Proceedings

- 1. The parties are entitled to an Advisor of their own choosing for the duration of the resolution process, 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.

2. Respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the investigation and disciplinary processes.
3. Before imposing discipline, the College is responsible for gathering and presenting evidence to a neutral and unbiased Decision Maker to establish responsibility for a Title IX policy violation by a preponderance of the evidence.
4. 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 investigation and applicable Title IX disciplinary procedures and by providing Respondent with procedural safeguards contained in these Title IX Investigation procedures and in applicable Title IX disciplinary procedures.
5. The Investigator is responsible for an unbiased presentation of all relevant evidence to the Decision Maker at the conclusion of their investigation.
6. Formal and informal resolutions will be pursued within reasonably prompt timeframes with allowances for temporary delays and extensions for good cause shown. 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.
7. A student found responsible for engaging in sexual harassment may receive discipline up to and including dismissal from Bellingham Technical College. A description of other possible disciplinary sanctions and conditions that may be imposed against students can be found in WAC 495B-121-270.
In proceedings against a student, the parties may appeal the Decision Maker's ruling in accordance with the Student Conduct Code.
An employee found responsible for sexual harassment may receive discipline up to and including dismissal from employment.
In proceedings against an employee, the parties may appeal the Employee Disciplinary Decision in accordance with CBAs and the appeal process herein.
8. 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 counselors;
- e. Privileges applicable to sexual assault and domestic violence advocates; and
- f. Other legal privileges identified in RCW 5.60.060.

Title IX Administrators

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 an 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.

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 Bellingham Technical College's Title IX Coordinator identified below. If the complaint is against the Title IX Coordinator, the Complainant should report the matter to the President's office for referral to an alternate designee.

Name: Abby Buchanan

Title: Title IX Coordinator

Office: Campus Center 222, (360)752-8305, title9@btc.edu

Confidentiality

1. Bellingham Technical 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 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. The Title IX Coordinator may elect to execute and submit a formal complaint on the Complainant's behalf when appropriate and necessary. 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 disclose the Complainant's identity only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this 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.

Emergency Removal

If a 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 or designee may summarily suspend a student Respondent pursuant to WAC 495B-121-335 pending final resolution of the allegations.

Nothing in this procedure prohibits the College from placing nonstudent employees on administrative leave pending final resolution of the allegations.

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 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.

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.

Informal Resolution

Informal resolution is a voluntary, structured process that allows parties to seek resolution without a formal hearing or determination of responsibility. Under appropriate circumstances and if the Complainant and Respondent agree, they may voluntarily pursue informal resolution. Informal resolution is not appropriate when the allegations involve sexual harassment of a minor, a significant 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. The Title IX Coordinator is responsible for determining the appropriateness of informal resolution.

If an informal resolution is appropriate, the Complainant and the Respondent may explore remedies or resolution through:

- Guided conversations or communications conducted by the Title IX Coordinator, Human Resources Director, or a mutually agreed upon third party;
- Structured resolution process conducted by a trained mediator; or
- Voluntarily agreed on alterations to either or both parties' work or class schedules.

The informal resolution process is voluntary. Parties may voluntarily agree to pursue informal resolution at any point after a formal complaint is filed. Similarly, either the

Complainant or Respondent may withdraw from the informal resolution process at any time, at which point the formal resolution process will commence. The Complainant has the option to withdraw the formal complaint in writing if they do not wish to proceed with the formal grievance process.

If the parties agree to an informal resolution process, the College will commence the process within 30 calendar days after the parties agree to this option and conclude within 120 calendar days of beginning that process, subject to reasonable delays and extensions for good cause shown. The parties are not required to have an Advisor during informal resolution, but they have the right to have an Advisor present for all meetings.

When the informal resolution process results in a voluntary resolution between the Complainant and Respondent, the facilitator will work with both parties to prepare a written agreement documenting the terms. The Title IX Coordinator or designee shall be responsible for review and approval of any draft agreement in adherence with BTC policies, legality, practicability, and ability to monitor for enforcement. After review, the final decision to sign the approved agreement is with the parties. Once approved and signed by both parties, the College will record the terms of the resolution and provide written notice to both parties that the case has been closed. The Title IX Coordinator or designee will be responsible for implementing agreed sanctions and remedies, and for monitoring the parties' adherence to the written agreement. Violations of the written agreement by either party may result in further sanctions.

Even if an informal resolution results in an agreement, BTC may take additional or further disciplinary action for employees, up to and including termination, if appropriate.

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. Upon completion of the investigation, the Investigator will submit the final investigation report to the appropriate disciplinary authority, who will use it to determine whether the complaint falls within Title IX jurisdiction and thus warrants a live hearing including cross-examination.

Investigation Process

Investigation Notices

Upon receiving a formal complaint and determining that allegations satisfy Title IX jurisdiction, 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 investigation procedures, including the informal resolution procedure.

2. The Investigator(s) 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 Notice of Investigation will:
 - a. Include the identities of the parties (if known), a description of the conduct allegedly 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 investigative 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 that 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 investigative and disciplinary processes.
3. Amended Notice of Investigation. If during the course of the investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the original Notice of Investigation or if the scope of the investigation has otherwise changed, the College will issue an amended Notice of Investigation to both parties that includes this additional information.
4. Interview and meeting notices. Before any interview 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.

Required Investigatory 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.

3. Will allow each party to be accompanied by an Advisor of their choosing, who may be an attorney, to any investigative meeting or interview. Advisors' roles during the investigative 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.
 - a. An attorney serving as an Advisor must enter a Notice of Appearance with the Title IX Coordinator and the Investigator at least five (5) calendar days before the initial interview or meeting they plan to attend, so that the College can secure its own legal representation, if necessary.
4. The Investigator will create a draft investigation report that fairly summarizes the relevant evidence. To accompany the report, the Investigator will compile all the evidence gathered during the course of the investigation that is directly related to the allegations in the formal complaint. This includes inculpatory or exculpatory evidence, regardless of its source, (relevant evidence) as well as evidence upon which the Investigator does not intend to rely in the final investigation report (directly related evidence). The investigator will not include irrelevant evidence within the evidence file, including (i) information about prior sexual history of the Complainant, (ii) legally recognized and un-waived privilege, and (iii) un-waived records related to medical, psychiatric, and/or psychological treatment.
5. 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 the evidence file. After disclosure, each party will have ten (10) calendar days to submit a written response, which the Investigator will consider prior to completion of the final investigation report. The party's written response will be included within the final evidence file. If a party fails to submit a written response within ten (10) calendar days, the party will be deemed to have waived their right to submit comments and the Investigator will finalize the report without this information.
6. The Investigator will forward the Final Investigation Report and final evidence file to the Title IX Coordinator, who will distribute the investigation report and evidence file to the parties, their Advisors, and the disciplinary authority responsible for determining whether disciplinary action is warranted. The disciplinary authority will issue notices of any proposed action in accordance with the Student Conduct Code or applicable employee disciplinary procedures.

Dismissal

1. **Mandatory Dismissal.** The Title IX Coordinator will dismiss the Title IX allegations if, at any point during the course of a Title IX investigation, the investigation reveals that the misconduct alleged 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. Bellingham Technical 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. The 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 with written notice if Title IX allegations are dismissed with an explanation for the dismissal.
4. Either party may appeal the dismissal of a formal complaint pursuant to either the appeal process set forth herein if the Respondent is an employee, or the appeal process in the Supplemental Title IX Student Conduct Procedure (WAC 495B-121-391) if the Respondent is a student.
5. Mandatory or discretionary dismissal of a Title IX claim does not preclude Bellingham Technical 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.

Disciplinary Hearing Procedures

Disciplinary Officers

For cases involving student Respondents, the below mentioned Disciplinary Officer shall be the Student Conduct Officer or designee.

For cases involving employee Respondents, the below mentioned Disciplinary Officer shall be the Human Resources Director or designee.

Initiation of Discipline

1. Upon receiving the Title IX investigation report from the Title IX Investigator, the relevant Disciplinary Officer will independently review the report to determine whether there are sufficient grounds to pursue disciplinary action against the Respondent for engaging in prohibited conduct under Title IX.
2. If the Disciplinary Officer determines that there are sufficient grounds to proceed under these supplemental procedures, the Disciplinary Officer will initiate a Title IX disciplinary proceeding by filing a written Disciplinary Notice with the hearing panel

and/or neutral Decision Maker and by serving the notice on the Respondent and the Complainant, and their respective Advisors. The notice must:

- a. Set forth the basis for Title IX jurisdiction;
 - b. Identify the alleged Title IX violation(s);
 - c. Set forth the facts underlying the allegation(s);
 - d. Identify the range of possible sanctions that may be imposed if the Respondent is found responsible for the alleged violation(s);
 - e. Explain that each party is entitled to be accompanied by an Advisor of their own choosing during the hearing and that:
 - i. Advisors will be responsible for questioning the opposing party and any witnesses on the party's behalf;
 - ii. An Advisor may be an attorney and/or, if the party is a represented employee, a union representative;
 1. 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
 - iii. The College will appoint the party an Advisor of the Colleges' choosing at no cost to the party, if the party fails to choose an Advisor; and
 - f. Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in the party's absence.
3. 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 BTC email address.

Pre-Hearing Procedure

1. Upon receiving the Disciplinary Notice, the hearing panel and/or neutral Decision Maker will send a Hearing Notice to all parties in compliance with WAC 10-08-265. Pursuant to the investigation procedure above, the hearing date may not be scheduled fewer than ten (10) calendar days after the Title IX Coordinator provided the Final Investigation Report and evidence file to the parties, their Advisors, and the assigned Decision Maker. BTC may, at its discretion, contract with an administrative law judge or other person to act as the Decision Maker.
2. In preparation for the hearing, the parties will have equal access to all evidence obtained by the Investigator during the investigation that is relevant to the allegations raised in the formal complaint (and not otherwise impermissible), regardless of whether the College intends to offer the evidence at the hearing.

Rights of Parties

1. The provisions of this procedure shall apply equally to all parties.

2. 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.
3. The Respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.
4. 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.
 - a. 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) calendar days before the hearing, the attorney files a Notice of Appearance with the Disciplinary Officer with copies to all parties.
 - b. If a party is a represented employee who chooses not to use a union-provided Advisor, the party must provide the hearing panel and/or neutral Decision Maker with a signed waiver of union representation, including written consent from the union.

Evidence

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

1. **Relevance:** The Committee Chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance. Relevance means that information elicited by the question makes a fact in dispute more or less likely to be true.
2. 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.
3. Complainant and Respondent may not ask questions directly of one another. Questions may be asked through a party's Advisor or by the Chair, but only after the Chair determines the question is relevant and not privileged or otherwise impermissible. The Chair has discretion to follow this procedure for other witnesses, as well.
4. **No negative inference:** The hearing panel and/or neutral Decision Maker may not make an inference regarding responsibility solely on a witness' or party's absence from the hearing or refusal to answer questions.

5. Privileged evidence: The hearing panel and/or neutral Decision Maker shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:
 - a. Spousal/domestic partner privilege;
 - b. Attorney-Client and attorney work product privileges;
 - c. Privileges applicable to members of the clergy and priests;
 - d. Privileges applicable to sexual assault and domestic violence advocates; and
 - e. Other legal privileges identified in RCW 5.60.060.

Initial Order

The hearing panel and/or neutral Decision Maker will be responsible for drafting an Initial Order that:

1. Identifies the allegations of sexual harassment;
2. Describes the procedural steps taken from receipt of the formal complaint through the determination, including any notifications 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 or any other college policy;
5. Contains a statement of, and rationale for, the Decision Maker'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 the Complainant's equal access to the Colleges' education programs or activities; and
8. Describes the process for appealing the Initial Order to the College President.

The hearing panel and/or neutral Decision Maker will serve the Initial Order on the parties and their respective Advisors simultaneously.

Appeals

1. All parties, including the Disciplinary Officer in their capacity as a representative of the College, have the right to appeal the determination of responsibility and/or dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the Appeal Officer 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.

2. Upon receiving a timely appeal, the Appeal Officer will serve a copy of the appeal on all non-appealing parties, who will have ten (10) calendar days from the date of service to submit written responses to the Appeal Officer 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 Appeal Officer shall serve copies of the responses to the appealing party.
3. The appealing party shall have five (5) calendar days from the date of service to submit a written reply addressing issues raised in the responses to the Appeal Officer.
4. The Appeal Officer, based on their review of the parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is 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.
5. The Appeal Officer shall serve the Final Decision on the parties simultaneously.
6. 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 CBA.