

Chapter 495A-300 WAC
TITLE IX—GRIEVANCE PROCEDURES

Last Update: 12/22/20

WAC

495A-300-010	Preamble.
495A-300-015	Purpose.
495A-300-025	Definitions.
495A-300-035	Principles for Title IX grievance procedure.
495A-300-045	Title IX administrators—Free from bias—Training requirements.
495A-300-050	Filing a complaint.
495A-300-055	Confidentiality.
495A-300-060	Complaint resolution.
495A-300-065	Emergency removal.
495A-300-070	Investigation notices.
495A-300-075	Investigation process—Dismissal.
495A-300-080	Investigation process—Consolidation of formal complaints.
495A-300-085	Investigation process—Required procedures.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

495A-300-020	Informal procedure. [Statutory Authority: RCW 28B.10.140, 42.30.075, chapter 34.05 RCW and 1991 c 238. WSR 92-12-017, § 495A-300-020, filed 5/26/92, effective 6/26/92.] Repealed by WSR 21-01-196, filed 12/22/20, effective 1/22/21. Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.
495A-300-030	Formal procedure. [Statutory Authority: RCW 28B.10.140, 42.30.075, chapter 34.05 RCW and 1991 c 238. WSR 92-12-017, § 495A-300-030, filed 5/26/92, effective 6/26/92.] Repealed by WSR 21-01-196, filed 12/22/20, effective 1/22/21. Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.
495A-300-040	Other remedies. [Statutory Authority: RCW 28B.10.140, 42.30.075, chapter 34.05 RCW and 1991 c 238. WSR 92-12-017, § 495A-300-040, filed 5/26/92, effective 6/26/92.] Repealed by WSR 21-01-196, filed 12/22/20, effective 1/22/21. Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

WAC 495A-300-010 Preamble. Bates Technical College, District 28, is covered by Title IX of the Civil Rights Act of 1964 and Education Amendments Act of 1972. Title IX is a federal law that prohibits gender-based discrimination in educational institutions that receive federal funds.

Any employee, student, or visitor of Bates Technical College, District No. 28, who believes they have been the subject of a Title IX violation should report the incident(s) to the college's Title IX coordinator or designee.

Bates Technical College
Title IX Coordinator
Human Resources Office
1101 South Yakima Avenue
Tacoma, WA 98405-4895
For students: 253-680-7102
For employees: 253-680-7180

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-010, filed 12/22/20, effective 1/22/21. Statutory Authority: RCW 28B.10.140, 42.30.075, chapter 34.05 RCW and 1991 c 238. WSR 92-12-017, § 495A-300-010, filed 5/26/92, effective 6/26/92.]

WAC 495A-300-015 Purpose. Bates 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 Education Amendments Act 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, Bates Technical College has enacted the following college policies and the Washington Administrative Code (WAC): CP5920 - Employee disciplinary hearing, CP5920PR - Employee disciplinary hearing procedure, chapter 495A-115 WAC, Title IX student conduct procedures, and chapter 495A-121 WAC, Student rights and responsibilities and adopted this chapter, Title IX grievance procedures for receiving and investigating sexual harassment allegations arising during educational programs and activities. Any individual found responsible for violating Bates Technical College's Title IX rules and policies is subject to disciplinary action up to and including dismissal from Bates Technical College's educational programs and activities and/or termination of employment.

Application of this chapter, Title IX grievance procedures is restricted to allegations of sexual harassment as that term is defined in 34 C.F.R. Part 106.30. Nothing in this procedure limits or otherwise restricts Bates Technical 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.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-015, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-025 Definitions. For purposes of this chapter, Title IX grievance procedures, 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" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(3) "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(4) "Formal complaint" means a writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment

against a respondent and requesting that Bates Technical College conduct an investigation.

(5) "Education program or activity" includes locations, events, or circumstances over which Bates Technical 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 Bates Technical College.

(6) "Grievance procedure" is the process Bates Technical 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 nondisciplinary, nonpunitive 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 Bates Technical College's educational 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:

- (a) Counseling and other medical assistance;
- (b) Extensions of deadlines or other course-related adjustments;
- (c) Modifications of work or class schedules;
- (d) Leaves of absence;
- (e) Increased security or monitoring of certain areas of campus;

and

(f) 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 495A-121-062.

(9) "Sexual harassment," for purposes of this chapter, Title IX grievance procedures, occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(a) Quid pro quo harassment. A Bates Technical 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 Bates Technical College's educational programs or activities or Bates Technical 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.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(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 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:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) 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.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(10) "Title IX administrators" are the Title IX coordinator, Title IX investigators, the student conduct officer, student/faculty disciplinary committee members, human resources disciplinary officer, hearing panel and/or neutral decision maker, and Bates Technical 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 claim to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.
- (e) Maintaining accurate records of all claims, reports, and referrals, and retaining investigation files, claims, 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 educational 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 nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other college administrators.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-025, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-035 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 chapter, Title IX grievance procedures and in the applicable CP5920 - Title IX employee disciplinary hearing, CP5920PR - Title IX employee disciplinary hearing procedure, and chapter 495A-121 WAC, Student rights and responsibilities.
- (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 time frames with allowances for temporary delays and extensions for good cause shown. Grounds for temporary delay include, but are not limited to, quarter breaks or medical leave. 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 ac-

commodation 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 495A-121-044.

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 respective collective bargaining agreements and for the exempt employees under CP5920PR - Title IX employee disciplinary hearing procedure.

(7) In proceedings against a student respondent, the parties may appeal the student/faculty disciplinary committee's ruling to the president pursuant to WAC 495A-121-063 and Title IX student conduct procedures, WAC 495A-115-090.

In proceedings against an employee respondent, the parties may appeal the employee disciplinary decision to the president or designee pursuant to CP5920 - Title IX employee disciplinary hearing and CP5920PR - Title IX employee disciplinary hearing procedures.

(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 or 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.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-035, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-045 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 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 Bates Technical College's Title IX web page.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-045, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-050 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 college's Title IX coordinator identified below. If the claim is against the Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee. For assistance contact the Title IX coordinator or designee via mail or telephone:

Title IX Coordinator
Human Resources Office
1101 South Yakima Avenue
Tacoma, WA 98405-4895
For students: 253-680-7102
For employees: 253-680-7180

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-050, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-055 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 Bates Technical College's policies and procedures. Although the college will attempt to honor complainant's 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 such as 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.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-055, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-060 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 Bates Technical College educational 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:

(a) Guided conversations or communications conducted by the Title IX coordinator, designee, or a mutually agreed upon third party;

(b) Structured resolution process conducted by a trained mediator; or

(c) Voluntarily agreed on alterations to either or both of the parties' work or class schedules.

If the parties agree to an informal resolution process, the college will commence the process within ten workdays after the parties agree to this option and conclude within thirty workdays 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.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-060, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-065 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 Bates Technical College's operations, the college's student conduct officer may summarily suspend a respondent pursuant to WAC 495A-121-062, pending final resolution of the allegations. Nothing in this grievance procedure prohibits the college from placing nonstudent employees on administrative leave pending final resolution of the allegations.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-065, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-070 Investigation notices. Upon receiving a formal complaint and determining that allegations comport with Title IX complaints, 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 at least forty-eight hours in advance 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.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-070, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-075 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 procedures, 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 complaint 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 written notice if Title IX allegations are dismissed with an explanation for the dismissal.

(4) Mandatory or discretionary dismissal of a Title IX complaint does not preclude the college from investigating and pursuing disci-

pline based on allegations that a respondent violated other federal or state laws and regulations, Bates Technical College's conduct policies, and/or other codes and contractual provisions governing student and employee conduct.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-075, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-080 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 Rights 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.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-080, filed 12/22/20, effective 1/22/21.]

WAC 495A-300-085 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 witness(es) or when contact with a party and/or witness(es) is prohibited by court order. A college-imposed no contact shall be no broader than is necessary to protect the threatened party or witness(es) and must provide the impacted party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness(es) and/or party.

(3) 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 workdays 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 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 upon which the investigator does not intend to rely in the final investigation report. After disclosure, each party will receive ten workdays 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 workdays, the party will be deemed to have waived their right to submit comments, and the investigator will finalize the report without this information.

(5) The investigator will forward the final report to the Title IX coordinator, who will distribute the report and evidence to the parties, as well as the disciplinary authority responsible for determining whether pursuing disciplinary action is warranted.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-085, filed 12/22/20, effective 1/22/21.]