## Board of Trustees Special Meeting
**Tuesday, August 4, 2020**
**Zoom Meeting**
9:30 a.m. – 10:00 a.m.

### Board of Trustees Meeting – 9:30 a.m.

<table>
<thead>
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<th>Roll Call</th>
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<tr>
<th>Consent Calendar:</th>
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<tbody>
<tr>
<td>• Approval of Agenda</td>
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Laura Wildfong

<table>
<thead>
<tr>
<th>Public Comments: Individuals may sign in for public comment, limited to 3 minutes each¹</th>
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</table>

Laura Wildfong

### Call Executive Session

The Board of Trustees may convene to an Executive Session to discuss matters covered under RCW 42.30.110, which may include:

1. To evaluate the performance of a public employee(s)
2. To discuss with legal counsel representing the agency litigation matters
3. To discuss and consider real estate acquisition
4. To plan or adopt the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or review the proposals made in the negotiations or proceedings while in progress.

Action from the Executive Session may be taken in Regular Session, if necessary, as a result of items discussed in the Executive Session.

### Study Session – 9:50 a.m.

<table>
<thead>
<tr>
<th>Title IX Changes and Policy Updates – Student Services</th>
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Dr. Ruby Hayden 1

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<th>Title IX Changes and Policy Updates – Human Resources</th>
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Meena Park 2

### Action Items

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<th>ITEM 1054: Request for Approval</th>
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<td>Policy 5.P.120 – 5.P.136 – Supplemental Title IX Rules</td>
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<th>ITEM 1055: Request for Approval</th>
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<tr>
<td>Policy 2.P.15.5 – Supplemental Title IX Rules</td>
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### Adjournment

Lake Washington Institute of Technology will schedule meetings in locations that are free of mobility barriers, and interpreters for deaf individuals and Braille or taped information for blind individuals can be provided when adequate notice is given to the Office of the President, 425.739.8200.

¹ Public comment is limited to matters which are not of a quasi-judicial nature. No more than six speakers may address the Board on any one subject. If there are both proponents and opponents of a matter who wish to speak, only the first three persons speaking in favor of the matter and the first three persons speaking in opposition of the matter may address the Board.
Lake Washington Institute of Technology

Emergency Approval

Situation

The federal Department of Education has issued new rules that colleges must implement no later than August 14, 2020 related to handling Title IX complaints.

Attached you will find nine (9) new policies, 5.P120 – 5.P.136, that serve as supplemental rules to the college’s current student conduct code. As such, they must also go through the process to be added to the college’s Washington Administrative Codes (WACs). These new policies cover changes to:

- Definitions
- College jurisdiction
- Rights for both complainants and respondents
- Expectations for training and roles of involved college staff

As multiple lawsuits have been filed by various states (including Washington) related to the implementation of these new rules, it is possible that an injunction or other legal process may allow the college to delay implementation.

The Assistant Attorney General, Derek Edwards, has reviewed and endorsed this policy.

Recommendation

That the Board of Trustees approve this emergency policy change.
5.P.120 Student Conduct Code—Supplemental Title IX Procedures – Order of Precedence (WAC 495D-121-680)

Policy
This supplemental procedure applies to allegations of Sexual Harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. § 106. To the extent these supplemental hearing procedures conflict with Lake Washington Institute of Technology’s standard disciplinary procedures, WAC 495D-121-320 through -670, these supplemental procedures shall take precedence.

5.P.122 Student Conduct Code—Supplemental Title IX Procedures – Prohibited Conduct Under Title IX (WAC 495D-121-690)

Policy
Pursuant to RCW 28B.50.140(13) and Title IX of the Education Act Amendments of 1972, 20 U.S.C. §1681, Lake Washington Institute of Technology may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of “sexual harassment.”

For purposes of this supplemental procedure, “sexual harassment” encompasses the following conduct:

1. Quid Pro Quo Harassment. A Lake Washington Institute of Technology employee conditioning the provision of an aid, benefit, or service of Lake Washington Institute of Technology on an individual’s participation in unwelcome sexual conduct.
2. 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 Lake Washington Institute of Technology’s educational programs or activities, or employment.
3. Sexual Assault. Sexual assault 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. 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. Consensual sexual intercourse between someone who is eighteen (18) years of age or older and someone who is under the age of sixteen (16).
4. 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
Exhibit 1

child in common, by a person who is cohabitating with or has cohabitated with the victim as a
spouse, by a person similarly situated to a spouse of the victim under the domestic or family
violence laws of State of Washington, or by any other person against an adult or youth victim
who is protected from that person’s acts under the domestic or family violence laws of the State
of Washington, RCW 26.50.010.

5. Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent
physical harm, sexual assault, or stalking committed by a person (i) who is or has been in a social
relationship of a romantic or intimate nature with the victim; and (ii) where the existence of
such a relationship shall be determined based on a consideration of the following factors:
   a. The length of the relationship;
   b. The type of relationship; and
   c. The frequency of interaction between the persons involved in the relationship.

6. Stalking. Engaging in a course of conduct directed at a specific person that would cause a
reasonable person to fear for their safety or the safety of others, or suffer substantial emotional
distress.

5.P.124 Student Conduct Code—Supplemental Title IX Procedures – Prohibited Conduct
Under Title IX (WAC 495D-121-700)

Policy
1. This supplemental procedure applies only if the alleged misconduct:
   a. Occurred in the United States;
   b. Occurred during a Lake Washington Institute of Technology educational program or
      activity; and
   c. Meets the definition of Sexual Harassment as that term is defined in this supplemental
      procedure.
2. For purposes of this supplemental procedure, an “educational program or activity” is defined as
   locations, events, or circumstances over which Lake Washington Institute of Technology
   exercised substantial control over both the respondent and the context in which the alleged
   sexual harassment occurred. This definition includes any building owned or controlled by a
   student organization that is officially recognized by Lake Washington Institute of Technology.
3. Proceedings under this supplemental procedure must be dismissed if the decision maker
determines that one or all of the requirements of Section 1(a)-(c) have not been met. Dismissal
   under this supplemental procedure does not prohibit Lake Washington Institute of Technology
   from pursuing other disciplinary action based on allegations that the Respondent violated other
   provisions of Lake Washington Institute of Technology’s student conduct code, WAC 495D-121-
   320 through -670.
4. If the Student Conduct Officer determines the facts in the investigation report are not sufficient
to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Student Conduct Officer
will issue a notice of dismissal in whole or part to both parties explaining why some or all of the
Title IX claims have been dismissed.

5.P.126 Student Conduct Code—Supplemental Title IX Procedures – Initiation of Discipline
(WAC 495D-121-710)
Policy

1. Upon receiving the Title IX investigation report from the Title IX Coordinator, the Student Conduct Officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the Respondent for engaging in prohibited conduct under Title IX.

2. If the Student Conduct Officer determines that there are sufficient grounds to proceed under these supplement procedures, the Student Conduct Officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with either the Chair of the Student Conduct Committee or the college’s appointed Title IX Hearing Officer and 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 the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
      i. The advisors will be responsible for questioning all witnesses on the party’s behalf;
      ii. An advisor may be an attorney; and
      iii. Lake Washington Institute of Technology will appoint the party an advisor of Lake Washington Institute of Technology’s choosing at no cost to the party, if the party fails to do so; and

3. Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

5.P.128 Student Conduct Code—Supplemental Title IX Procedures – Pre-Hearing Procedure (WAC 495D-121-720)

Policy

1. Upon receiving the disciplinary notice, the Chair of the Student Conduct Committee or the college’s appointed Title IX Hearing Officer will send a hearing notice to all parties, in compliance with WAC 495D-121-410. In no event will the hearing date be set less than ten (10) days after the Title IX Coordinator provided the Final Investigation Report to the parties.

2. A party may choose to have an attorney serve as their advisor at the party’s own expense. This right will be waived unless, at least five (5) days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

3. In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Lake Washington Institute of Technology intends to offer the evidence at the hearing.

5.P.130 Student Conduct Code—Supplemental Title IX Procedures – Rights of Parties (WAC 495D-121-730)
Policy

1. Lake Washington Institute of Technology’s Student Conduct Procedures, WAC 495D-121-320 through -670, and this supplemental procedure shall apply equally to all parties.
2. The Lake Washington Institute of Technology 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. During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX Coordinator will appoint an advisor of Lake Washington Institute of Technology’s choosing on the party’s behalf at no expense to the party.

5.P.132 Student Conduct Code—Supplemental Title IX Procedures – Evidence (WAC 495D-121-740)

Policy

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

1. Relevance: The Committee Chair or the college’s appointed Title IX Hearing Officer shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.
2. Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.
3. 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.
4. Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the Committee or the college’s appointed Title IX Hearing Officer must not rely on any statement by that party or witness in reaching a determination of responsibility.
5. No negative inference: The Committee or the college’s appointed Title IX Hearing Officer may not make an inference regarding responsibility solely on a witness's or party’s absence from the hearing or refusal to answer questions.
6. Privileged evidence: The Committee or the college’s appointed Title IX Hearing Officer shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:
   a. Spousal/domestic partner privilege;
   b. Attorney-Client and attorney work product privileges;
   c. Privileges applicable to members of the clergy and priests;
   d. Privileges applicable to medical providers, mental health therapists, and counsellors;
5.P.134 Student Conduct Code—Supplemental Title IX Procedures – Initial Order (WAC 495D-121-750)

Policy

In addition to complying with WAC 495D-121-430, the Student Conduct Committee or the college’s appointed Title IX Hearing Officer will be responsible for conferring and drafting an Initial Order that:

1. Identifies the allegations of sexual harassment;
2. Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
3. Makes findings of fact supporting the determination of responsibility;
4. Reaches conclusions as to whether the facts establish whether the Respondent is responsible for engaging in Sexual Harassment in violation of Title IX;
5. Contains a statement of, and rationale for, the Committee’s or the college’s appointed Title IX Hearing Officer’s determination of responsibility for each allegation;
6. Describes any disciplinary sanction or conditions imposed against the Respondent, if any;
7. Describes to what extent, if any, Complainant is entitled to remedies designed to restore or preserve Complainant’s equal access to Lake Washington Institute of Technology’s education programs or activities; and
8. Describes the process for appealing the Initial Order to the Lake Washington Institute of Technology President.
9. The Committee Chair or the college’s appointed Title IX Hearing Officer will serve the Initial Order on the Parties simultaneously.

5.P.136 Student Conduct Code—Supplemental Title IX Procedures – Initial Order (WAC 495D-121-760)

Policy

1. The Parties shall have the right to appeal from the Initial Order’s determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and timeframes set forth in WAC 495D-121-440.
2. The President or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the Initial Order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).
3. President’s Office shall serve the Final Decision on the parties simultaneously.
Situation

The federal Department of Education has issued new rules that colleges must implement no later than August 14, 2020 related to handling Title IX complaints.

Attached you will find a new policy, 2.P.15.5, that separates Title IX from the existing Discrimination and Harassment policy. This new policy cover changes to:

- Definitions
- College jurisdiction
- Rights for both complainants and respondents
- Expectations for training and roles of involved college staff

As multiple lawsuits have been filed by various states (including Washington) related to the implementation of these new rules, it is possible that an injunction or other legal process may allow the college to delay implementation.

The Assistant Attorney General, Derek Edwards, has reviewed and endorsed this policy.

Recommendation

That the Board of Trustees approve this emergency policy change.
2.P.15.5: TITLE IX

POLICY
Lake Washington Institute of Technology (the 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 and the Violence Against Women Reauthorization Act. To this end, the College will enact and adopt Title IX Grievance Procedure for receiving and investigating Sexual Harassment allegations arising during education programs and activities. Any individual found responsible for violating Lake Washington Institute’s Title IX policy is subject to disciplinary action up to and including dismissal from the College educational programs and activities and/or termination of employment.

Application of this Title IX Grievance Procedure is restricted to allegations of “Sexual Harassment,” as that term is defined in 34 C.F.R. §106.30. Nothing in this procedure limits or otherwise restricts Lake Washington Institute of Technology’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 Lake Washington Institute of Technology’s code of student conduct, employment contracts, employee handbooks, and collective bargaining agreements.

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

In the event that an incident involves alleged misconduct by the Title IX/EO coordinator, reports should be made directly to the Executive Director of Human Resources.

RELEVANT LAWS AND OTHER RELATED INFORMATION
Title IX of the Educational Amendments of 1972
Section 504 of the Rehabilitation Act of 1973
Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 RCW 49.60.030
Supplemental Title IX Employee Disciplinary Hearing Procedure
Policy on Discrimination and Harassment
Procedure on Discrimination and Harassment
Title IX Procedures