

Chapter 172-121 WAC

EASTERN WASHINGTON UNIVERSITY STUDENT CONDUCT CODE

WAC

172-121-010	Introduction.
172-121-020	Definitions.
172-121-030	Rights of students.
172-121-040	Jurisdiction.
172-121-050	External authorities.
172-121-060	Notification of criminal arrest.
172-121-070	Conduct review officials.
172-121-080	Administration and records.
172-121-090	Conduct review proceedings.
172-121-100	Complaints.
172-121-110	Preliminary conference.
172-121-120	Hearings.
172-121-130	Appeals.
172-121-140	Interim restriction.
172-121-200	Violations.
172-121-210	Sanctions.

WAC 172-121-010 Introduction. Eastern Washington University is an academic community dedicated to providing instruction in higher education, advancing knowledge through scholarship and research, and providing related services to the community.

As a public institution of higher education, the university has a special responsibility to create and maintain an academic environment that promotes freedom of inquiry and expression while protecting the rights, opportunities and welfare of students, faculty, staff and guests. To achieve this, the university establishes rules, regulations, procedures, policies, and standards of conduct.

Through the student conduct code as well as other university policies and directives, the university sets forth specific behavioral expectations for students and student organizations. It is the responsibility of each student to clearly understand and comply with those expectations. The responsibility for enforcement of the student conduct code rests with the university president.

The board of trustees of Eastern Washington University, acting under the authority granted by RCW 28B.35.120, has established the following regulations for student conduct and discipline.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-010, filed 5/20/09, effective 6/20/09.]

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Accused" refers to any student or student organization that is accused of violating the standards of conduct for students under this chapter.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any accused or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means any person who files a complaint alleging that a student or student organization violated the standards of conduct for students.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or a designee of the dean of students.

"Director of OSRR" refers to the director of the office of student rights and responsibilities, or designated representative.

"Hearing authority" refers to the university official holding a conduct review hearing. The conduct review officer is the hearing authority for a summary hearing while the student disciplinary council is the hearing authority for a council hearing.

"Local or surrounding communities" refers to communities having an existing relationship with Eastern Washington University (EWU) including, but not limited to, satellite campus communities and surrounding Spokane County communities.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Officer" or "the officer" refers to the conduct review officer as described in WAC 172-121-070.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, university policies, and graduate/undergraduate catalogs.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Student" includes all persons taking courses through the university, both full and part time, pursuing undergraduate, graduate or professional studies. Nonmatriculated, international students attending language institutes or foreign study programs through the university, and persons, who have been notified of acceptance for admission at EWU, are also considered students. Any person who engaged in conduct in violation of the student conduct code during a period in which they had student status as previously described in this subsection, remain subject to action under this conduct code even if

the person has graduated, withdrawn, or has not officially enrolled for a particular term at the university.

"Summary hearing" refers to a conduct review hearing before the conduct review officer.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased or used by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or a designee of the university president.

"Vice-president for student affairs" refers to the vice-president for student affairs or a designee of the vice-president for student affairs.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-020, filed 5/20/09, effective 6/20/09.]

WAC 172-121-030 Rights of students. (1) Any student or student organization accused of or charged with any violation of the student conduct code has the following rights in conduct review proceedings:

(a) The right to a fair and impartial conduct review hearing before the conduct review officer or the student disciplinary council;

(b) The right to prior written notice to attend a preliminary conference as described in WAC 172-121-110;

(c) The right to remain silent during any conduct review proceeding;

(d) The right to prior written notice to attend a council hearing as described in WAC 172-121-120 if the matter is not resolved through a summary hearing process;

(e) The right to waive his/her right to prior notice about a council hearing and to request that the case be heard in a summary hearing immediately following the preliminary conference;

(f) The right to know who is bringing the accusation(s) against them as described in WAC 172-121-110 and 172-121-120 (2)(b);

(g) The right to speak on his/her own behalf in all proceedings;

(h) The right to consult an advisor as described in WAC 172-121-090;

(i) The right to appeal as provided in WAC 172-121-130; and

(j) The right to be subjected to university disciplinary action only one time for the same incident.

(2) Any student or student organization appearing before a council hearing has the following additional rights:

(a) The accused has the right to hear all information and view all material to be presented against them;

(b) The accused and complainant have the right to present witnesses as described in WAC 172-121-120;

(c) The accused and complainant have the right to submit questions to be asked of witnesses as described in WAC 172-121-120.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-030, filed 5/20/09, effective 6/20/09.]

WAC 172-121-040 Jurisdiction. Eastern Washington University shall have jurisdiction over student behavior which occurs on university premises. The university may also exercise jurisdiction over student conduct which occurs at off-campus locations if the behavior adversely affects the university and/or the pursuit of its objectives and the university determines that a significant university interest is affected. The university has sole discretion in determining what conduct adversely impacts the university and/or the pursuit of its objectives.

Similarly, the student conduct code shall apply to conduct without regard to a student's academic status at the time the conduct took place. This includes all periods from the time of application for admission through the actual awarding of a degree, including times between academic periods or outside of normal business hours.

The student conduct code shall also apply to former students if the accused was in a student status as defined in WAC 172-121-020 when the misconduct took place. This is true even if the alleged misconduct is discovered after the student was awarded a degree or if the student withdrew from school while a disciplinary matter was pending.

These provisions are not intended to protect any person or class of persons from injury or harm, or to deny students their legally and/or constitutionally protected rights.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-040, filed 5/20/09, effective 6/20/09.]

WAC 172-121-050 External authorities. Many offenses under this code are also violations of federal, state or local laws. A student or student organization may face criminal and civil prosecution as well as university disciplinary action for violation of these laws.

The university reserves the right to initiate action for offenses that have an impact on the educational or administrative functions or the general well-being of the university and its surrounding communities. Proceedings under this code may be carried out prior to, simultaneously with, or following civil or criminal proceedings in the courts. University proceedings under the student conduct code are not subject to challenge or dismissal based solely on the disposition of any criminal charges related to the same incident.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-050, filed 5/20/09, effective 6/20/09.]

WAC 172-121-060 Notification of criminal arrest. A student is responsible for notifying the university of any off-campus arrest.

When the office of student rights and responsibilities (OSRR) is informed of the arrest of a student, the university may send a letter to the student requiring that he or she make an appointment for an interview with the OSRR. During this interview, the director of OSRR shall discuss with the student:

(1) The facts involved in the student's arrest;

(2) The student's obligation to keep the university informed of the progress of the criminal charge(s); and

(3) The student's obligation to advise the university of the final disposition of the criminal charge(s).

The university will cooperate fully with law enforcement and other agencies administering a corrective or rehabilita-

tive program for the student. The university reserves the right to initiate concurrent disciplinary action.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-060, filed 5/20/09, effective 6/20/09.]

WAC 172-121-070 Conduct review officials. (1) The director of OSRR shall:

(a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;

(b) Manage the proceedings as described in this chapter;

(c) Maintain all records of conduct review proceedings as described in WAC 172-121-080.

(2) Conduct review officer: The university president shall designate one or more conduct review officers. The director of OSRR may be designated as a conduct review officer. The conduct review officer(s) shall:

(a) Perform conduct review proceedings under this chapter; and

(b) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives.

(3) Student disciplinary council: The student disciplinary council hears cases of conduct code violations as described in WAC 172-121-120. The council also serves as an appeal authority under WAC 172-121-130.

(a) Council pool: For each academic year, a pool of council members is established based on availability. Appointment of council pool members and their terms of service are as follows:

(i) Faculty: Three faculty members shall be selected by the faculty senate for three-year terms;

(ii) Staff: Three university staff members shall be appointed by the university president for three-year terms;

(iii) Students: Six students shall be appointed by the president of the ASEWU for one-year terms. Student appointments shall be made with the advice and consent of the associated students' legislature, as described in the constitution of the ASEWU. Students holding a position with any of the associated student courts, or who are in any way affiliated with any judicial, quasi-judicial, or advocacy position with the courts of the ASEWU, may not be appointed to the council pool;

(iv) Nonvoting chair: Two nonvoting chairs shall be elected for a one-year term by members of the council pool. Reelection of chairs is permissible;

(v) Vacancies: Council pool vacancies shall be filled as needed by the designated appointing authority.

(b) Session council: When a student disciplinary council is needed for a hearing or an appeal, council members shall be selected from the council pool as follows:

(i) Composition: A session council shall include, at a minimum, one nonvoting chair, two student members, and two faculty or staff members. The faculty/staff members may be both faculty, both staff, or one faculty and one staff member;

(ii) Selection: The director of OSRR shall select members from the council pool to serve as the session council. As much as possible, council members should be selected based on their availability;

(5/20/09)

(iii) If a nonvoting chair is unavailable, the director of OSRR shall select another member of the council pool to serve as chair;

(iv) Quorum: Four voting members constitute a quorum;

(v) Members of the student disciplinary council shall not participate in any case in which they are a defendant, complainant or witness; in which they have a direct or personal interest or bias; or in which they have acted previously in an advisory or adjudicatory capacity;

(vi) A council member's eligibility to participate in a case may be challenged by parties to the case or by other council members. When such a challenge is made, the session council shall make a decision on the challenge and respond as needed and appropriate; and

(vii) In the event members of the session council are disqualified or disqualify themselves from a case, a temporary (for that case only) replacement will be appointed by the director of OSRR.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-070, filed 5/20/09, effective 6/20/09.]

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any question regarding the interpretation or application of this student conduct code are referred to the vice-president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed every three years under the direction of the vice-president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of OSRR. As much as possible, records should include:

(i) A summary of the proceedings during a preliminary conference;

(ii) A written record of the statements made during a conduct review hearing;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings; and

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding.

(b) The director of OSRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the accused may review the records relative to their case. The accused shall request to review the case records by contacting the conduct review officer. The conduct review officer shall make every reasonable effort to support the accused's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

[Ch. 172-121 WAC—p. 3]

(b) Release of student disciplinary records. The university may not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

(iii) The university may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence as defined by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

(iv) The university will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of Title 18, United States Code), or a nonforcible sex offense, the report on the results of any disciplinary proceeding conducted by the university against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this subsection (3)(b)(iv). Such disclosure will be subject to the provisions of 20 U.S.C. 1094.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of his or her own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99) by providing a written consent to the office of student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting the office of student rights and responsibilities.

(viii) A student may obtain a copy of his or her disciplinary record by making a written request to the office of student rights and responsibilities. The office of student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by applicable law.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The conduct review officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the conduct review officer.

(c) Required holds: The conduct review officer shall place a hold on a student's academic record if the student is accused of violating the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student.

(i) In such cases, the student shall be notified that disciplinary action may be initiated when the student reenters or applies for readmission.

(ii) Holds of this type may not be implemented in cases where the university proceeds with a conduct review hearing or other disciplinary action under this chapter.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-080, filed 5/20/09, effective 6/20/09.]

WAC 172-121-090 Conduct review proceedings. (1)

General provisions:

(a) All conduct review proceedings are conducted in an informal manner.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules such as are applied in criminal or civil court, are not used in student conduct code proceedings.

(2) Notification for student organizations: When a charge is directed towards a student organization, the conduct review officer will communicate all matters relative to conduct review proceedings with the president of the organization or that position's designee.

(3) Advisors: The complainant and the accused may each be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor will be incurred by the complainant or the accused that employed the advisor;

(b) The advisor may be an attorney;

(c) The complainant and the accused are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any conduct review proceeding. The complainant and/or the accused may, however, speak quietly with their advisor during such proceedings;

(d) If an attorney is used as an advisor, the person using the attorney shall inform the conduct review officer or the council of their intent to do so at least two business days prior to any conduct review proceeding; and

(e) If the complainant and/or the accused elect to be advised by an attorney, the conduct review officer or the council may elect to have the university advised by an assistant attorney general.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-090, filed 5/20/09, effective 6/20/09.]

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any student, faculty member, staff member, or other member of the university community may file a complaint against a student or student organization for any violation of the student conduct code.

(b) A person wishing to file a complaint must submit the complaint, in writing, to one of the following:

(i) The office of student rights and responsibilities;

- (ii) The office of the dean of students; or
- (iii) Another designated university office or official.

(c) In instances of alleged violations of local, county, state or federal law, nothing in this student conduct code will prohibit or limit the rights of persons to go directly to the civil and/or criminal authorities and file charges.

(d) All complaints will be forwarded to the director of OSRR for further review and action.

(2) Complaint review. The director of OSRR will review the complaint to determine if there is sufficient information to hear the matter. During this review, the director of OSRR will also evaluate the circumstances to determine if any interim restriction action is warranted.

(3) Inform complainant. As part of the complaint review process, the director of OSRR will contact the complainant and explain to him/her:

(a) The complainant rights under the student conduct code;

(b) The allegations which the complainant has against the accused; and

(c) The potential conduct code violations related to the allegations.

(4) Following the complaint review, the director of OSRR will either dismiss the matter or arrange a preliminary conference with the accused.

(a) Dismiss the matter. If the director of OSRR believes that there is insufficient justification or insufficient evidence to pursue conduct review proceedings against the accused, he/she may dismiss the matter. In such cases, the director of OSRR will prepare a written record of the dismissal. The director of OSRR will also notify the complainant of their decision, if such notification is appropriate and feasible.

(b) Preliminary conference. If the director of OSRR does not dismiss the matter he/she will arrange a preliminary conference as described in WAC 172-121-110.

(5) Records. The dismissal letter, along with the original complaint and any other related documents, shall be maintained as described in WAC 172-121-080.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-100, filed 5/20/09, effective 6/20/09.]

WAC 172-121-110 Preliminary conference. (1)

Scheduling. If, after reviewing a complaint, the director of OSRR decides to initiate conduct review proceedings, the director of OSRR shall appoint a conduct review officer (CRO) to the case and notify the accused according to the following provisions:

(a) Notification shall be in writing;

(b) A written list of charges against the accused shall be included with the notification; and

(c) Notification shall include the name of the conduct review officer assigned to the case and the deadline for the accused to contact the CRO in order to schedule a preliminary conference.

(2) Failure to respond: If the accused fails to comply with the notification requirements, the director of OSRR shall schedule the preliminary conference and notify the accused. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.

(3) Appearance. Only the accused and the accused's advisor may attend the preliminary conference. The accused

(5/20/09)

may be assisted by an advisor during the preliminary conference. The complainant, complainant's advisor, and witnesses may not appear at the preliminary conference.

(4) Failure to appear. In cases where proper notice has been given but the accused fails to attend the preliminary conference, the CRO may:

(a) Proceed with a hearing and decide the case based on the information available; or

(b) Place a hold on the accused's academic records as described in WAC 172-121-080.

(5) Proceedings. During the preliminary conference, the conduct review officer will:

(a) Review the written list of charges with the accused;

(b) Inform the accused who is bringing the accusation(s) against them;

(c) Provide the accused with a copy of the student conduct code and any other relevant university policies;

(d) Explain the accused's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the accused's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

(6) After the preliminary conference, the conduct review officer will take one of the following actions:

(a) Conduct a summary hearing with the accused as described in WAC 172-121-120;

(b) Schedule a summary hearing with the accused as described in WAC 172-121-120; or

(c) Refer the case to the student disciplinary council for a council hearing under WAC 172-121-120.

(7) Records. Records of the preliminary conference shall be maintained as described in WAC 172-121-130.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-110, filed 5/20/09, effective 6/20/09.]

WAC 172-121-120 Hearings. (1) General provisions.

(a) Hearing authority: The hearing authority exercises control over hearing proceedings. All procedural questions are subject to the final decision of the hearing authority.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the hearing authority.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(2) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the accused fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the accused's input.

(b) Complainant's appearance: The complainant may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, so long as the complainant's identity can be reasonably established.

(c) Advisors: The complainant and the accused may be assisted by an advisor during conduct review hearings as described in WAC 172-121-090.

(d) Disruption of proceedings: Any person, including the accused, who disrupts a hearing may be excluded from the proceedings.

(e) Telephonic appearance. In the interest of fairness and expedience, the hearing authority may permit any person to appear by telephone, audio tape, written statement, or other means, as determined appropriate.

(3) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the hearing authority. However, hearing authorities are not bound by the rules of evidence observed by courts and may exclude incompetent, irrelevant, immaterial or unduly repetitious material.

(b) The accused has the right to view all material admitted into evidence by the hearing authority.

(i) If the accused wishes to view such material prior to the scheduled hearing, he/she shall contact the CRO. The CRO shall make a reasonable effort to support the request of the accused. To facilitate this process, the accused should contact the CRO as early as possible prior to the scheduled hearing.

(ii) In every case, the accused may examine any material presented against him/her during the course of the hearing.

(4) Reasonable cause. The hearing authority shall consider information presented at the hearing in determining whether there is reasonable cause to believe that the accused violated the student conduct code as charged. In determining whether such reasonable cause exists, the hearing authority shall decide whether it is more likely that the accused violated the student code by engaging in the conduct for which he or she is charged than that he or she did not.

(5) Sanctions. In determining what sanctions shall be imposed, the hearing authority may consider the information presented at the hearing as well as any information available from past conduct and academic performance. If a student fails to appear for a hearing, then the hearing authority shall review the evidence provided and may consider information available from past conduct and academic performance in determining what sanction should be imposed. The hearing authority cannot impose a sanction based solely on the failure to answer the charges or appear at the hearing.

(6) Witnesses.

(a) The complainant, the accused and the hearing authority may present witnesses at council review hearings. Witnesses may not appear during summary hearings unless the CRO specifically allows it.

(b) The complainant and the accused shall provide the name and reasonable contact information for each proposed witness to the office of student rights and responsibilities at least two business days before the scheduled hearing. For each proposed witness requested, the complainant and the accused must also provide a brief statement regarding what relevant information the witness may have.

(c) The office of student rights and responsibilities shall attempt to contact each proposed witness and request their attendance at the scheduled hearing. The office of student rights and responsibilities is not obligated to contact pro-

posed witnesses who appear to have no relevant first hand information.

(d) The accused has the right to hear or view all information provided by witnesses during the hearing.

(7) Questioning:

(a) The complainant and the accused may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the hearing authority. The hearing authority may ask such questions, but is not required to do so. The hearing authority may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitious. The hearing authority has complete discretion in determining what questions will be asked during the hearing.

(b) During a conduct review hearing, only the hearing authority may pose questions to persons appearing before them.

(c) The hearing authority may ask their own questions of any witness called before them.

(8) Risk management. The hearing authority may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate.

(9) Summary hearing procedures.

(a) The CRO may hold a summary hearing with the accused only if all of the following conditions are met:

(i) The accused waives his/her right to prior notice about a conduct review hearing;

(ii) The accused requests that the case be heard in a summary hearing with the CRO; and

(iii) The CRO agrees to conduct the summary hearing. The CRO is not obligated to conduct a summary hearing, but may instead refer the case to the student disciplinary council for a council hearing.

(b) Scheduling and notification. The summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time.

(i) If the summary hearing will be held at a later date or time, the CRO shall schedule the hearing in the presence of the accused so that the accused is informed of the date, time, and place of the hearing.

(ii) If the CRO is not able to schedule the hearing in the presence of the accused, the accused shall contact the CRO at a later time, as specified by the CRO, to be informed of the date, time, and location of the summary hearing. If the accused fails to contact the CRO, the CRO shall conduct the summary hearing without the accused present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The CRO may also place a hold on the accused's academic records under WAC 172-121-080.

(c) Deliberation: After the hearing, the conduct review officer shall decide whether there is reasonable cause to establish the accused violated the student conduct code.

(i) If the CRO determines that there is not sufficient information to establish reasonable cause, the CRO shall terminate the complaint.

(ii) If the CRO determines that there is reasonable cause to establish the accused violated the student conduct code, the CRO shall impose any number of sanctions as described in WAC 172-121-210.

(10) Council hearing procedures.

(a) Scheduling and notification. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, director of OSRR shall schedule the hearing and notify the accused and the council. The council must receive at least seventy-two hours notice as to the time and place of the hearing. The CRO may coordinate with the accused to facilitate scheduling, but is not required to do so. The CRO shall notify the accused of the preliminary conference. Notification will be in writing and will include the date, time and location of the hearing.

(b) Deliberations and sanctions. After the hearing, the council shall meet in closed session and determine by majority vote whether reasonable cause exists to indicate that the accused violated the conduct code. If the council decides that the accused did violate the conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session.

(c) Notification. The council's decision must be made within seven business days of the hearing conclusion. The council chair shall forward the council decision to the director of OSRR. The director of OSRR shall notify the accused of the council decision and sanctions (if any).

(11) Records. Records of the conduct review hearing shall be maintained as described in WAC 172-121-080.

[Statutory Authority: RCW 28B.35.120(12), 09-12-001, § 172-121-120, filed 5/20/09, effective 6/20/09.]

WAC 172-121-130 Appeals. (1) Basis: Appeals may be filed by either the accused or the complainant for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures. A hearing may have deviated from established procedures if:

(i) The hearing was not conducted fairly in light of the charges and information presented;

(ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;

(iii) The accused was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code.

(b) To determine whether the decision reached by the hearing authority was based on the information presented and that that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur.

(c) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(d) To consider new information or other relevant facts not previously presented because such information and/or facts were not known to the appellant at the time of the original hearing. In such cases, if the information was reasonably available at the time of the original hearing but the appellant did not make a good faith effort to discover the information, there is no basis for appeal. It is important for the parties to make a good faith effort to gather all relevant facts before the hearing. The university is not obligated to hold an appeal when the parties did not take reasonable efforts to prepare their case for the initial hearing.

(2) Filing: Following a conduct review hearing, if the accused or the complainant believes there is basis to support an appeal, they may file such an appeal, subject to the following provisions:

(a) The appeal must be submitted to the director of the office of student rights and responsibilities within five business days of receipt of the decision;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(3) Appeal authorities:

(a) For summary hearings heard by the conduct review officer, the appeal authority is the student disciplinary council.

(b) For council hearings heard by the student disciplinary council, the appeal authority is the dean of students.

(4) Forwarding of appeals: The director of the office of student rights and responsibilities shall, within five business days of receipt of an appeal, forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of OSRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the accused. When determining sanctions, the appeal authority may consider the complete record of the accused's prior conduct and academic performance in addition to all other information associated with the case

(9) Further proceedings. After an appeal authority has completed an appeal action, no further appeals may be made under this chapter.

(10) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether reasonable evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation resulted in a material change in the outcome of the case or the sanctions imposed.

(11) Records: Records of appeal proceedings shall be maintained as described in WAC 172-121-080.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-130, filed 5/20/09, effective 6/20/09.]

WAC 172-121-140 Interim restriction. Ordinarily, the disciplinary authority of the university will be invoked only after all related review, hearing, and appeal procedures have been completed. However, in situations where there is cause to believe that a student or a student organization endangers the health, safety, or welfare of themselves, the university community, or property of the university community, the dean of students may take immediate action(s) against the student or student organization without prior notice or hearing.

Simultaneous with such action(s), the dean of students will refer the charges to the conduct review officer, who will process such charges in accordance with the provisions of this student conduct code.

Interim restriction is subject to the following:

(1) Interim restriction actions may only be imposed in the following situations:

(a) When a student or student organization poses an immediate threat to:

- (i) The health, safety or welfare of any part of the university community or public at large;
- (ii) The student's own physical safety and well-being; or
- (iii) Any property of the university community;

(b) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community;

(c) In all cases where a student is undergoing criminal proceedings for any felony charge.

(2) During the interim restriction period, a student may be restricted by any or all of the following means:

(a) Denial of access, including but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(b) Interim suspension, including temporary total removal from the university or restriction of access to campus;

(c) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The dean of students will determine what restriction(s) will be ordered.

[Ch. 172-121 WAC—p. 8]

(4) All interim restrictions that involve any type of restriction from any university premises will be accomplished by giving a notice against trespass. The notice against trespass may be given by any manner specified in WAC 172-122-200.

(5) The dean of students will prepare a brief memorandum for record containing the reasons for the interim restriction. The dean of students will forward copies of the memorandum for record by personal delivery or by U.S. mail to the restricted student, the office of student rights and responsibilities, and all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) constitute a violation of the student conduct code; and

(c) How the circumstances of the case necessitated the interim restriction action(s).

(6) In all such cases, the student or student organization may appeal the interim restriction to the vice-president for student affairs. The challenge must be submitted, in writing, within ten business days after the interim restriction action is taken, unless the student requests an extension. Requests for extension will only be granted to review the following issues:

(a) The reliability of the information concerning the student's behavior; and

(b) Whether the student's continued presence or prior or present behavior warrants interim restriction for the causes listed in subsection (1) of this section.

(7) As a result of the challenge, the vice-president for student affairs will schedule a meeting with the accused. The vice-president for student affairs may have the dean of students or any other person deemed relevant attend the meeting. The accused may have an advisor present at the meeting so long as the name of that person is provided to the director of OSRR at least two business days prior to the scheduled meeting.

(8) During the appeal meeting, the vice-president for student affairs will review available materials and statements. After the meeting, the vice-president for student affairs may either uphold or terminate the interim restriction action.

(9) The interim restriction does not replace the regular hearing process, which will proceed consistent with this chapter.

(10) Records. Records of interim restriction proceedings shall be maintained as described in WAC 172-121-080.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-140, filed 5/20/09, effective 6/20/09.]

WAC 172-121-200 Violations. The following are defined as offenses which are subject to disciplinary action by the university.

(1) Acts of academic dishonesty. University policy regarding academic dishonesty is governed by the university academic integrity policy. However, repeated violations, as described in the academic integrity policy, are subject to action under the student conduct code. Academic dishonesty includes, but is not limited to, any of the following activities:

(a) Plagiarism: Representing the work of another as one's own work;

(5/20/09)

(b) Preparing work for another that is to be used as that person's own work;

(c) Cheating by any method or means;

(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research;

(e) Knowingly furnishing false information to a university official relative to academic matters.

(2) Acts of social misconduct.

(a) Violence/threats/abuse/endangerment.

(i) Abuse or harm of others. Conduct which causes physical abuse, harm, threats, intimidation, coercion, detention, and/or other conduct which threatens or endangers the health or safety of any person.

(ii) Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to another person or property.

(b) Sexual misconduct. Sexual misconduct is any sexual activity with another person that is unwanted and nonconsensual. Sexual misconduct includes, but is not limited to:

(i) Unwanted verbal (including telephone), written (including electronic media), pictorial or physical conduct of a sexual nature which a reasonable person would consider to be harassing, intimidating, hostile, offensive and/or which adversely affects the learning or living environment of the campus;

(ii) Unwanted, forceful, sexual contact. The use of force may include, but is not limited to use of body weight, pushing or hitting, coercion, threats, or intimidation;

(iii) The use of force (body weight, hitting or pushing, use of a weapon, threats to kidnap or kill, for example) to overcome earnest resistance to engaging in sexual intercourse. Earnest resistance may be verbal, physical or both;

(iv) Sexual intercourse which occurs without consent whether force is used or not. Consent requires actual words or conduct demonstrating freely given agreement to the sexual activity. Sexual activity is nonconsensual when the victim is incapable of consent by reason of mental incapacity, drug/alcohol intoxication, illness, unconsciousness or physical helplessness. Silence and passivity do not constitute consent;

(v) Voyeurism. Voyeurism occurs when an individual, for the purpose of arousing or gratifying his/her sexual desire, knowingly views, photographs, or films another person, without that person's knowledge or consent, while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy;

(vi) Charges of sexual harassment may be adjudicated under the university sexual harassment policy in addition to any processing under this student conduct code.

(c) Harassment. Harassment of any sort is prohibited. Conduct (physical, verbal, graphic, written, or electronic) that is sufficiently severe, pervasive, or persistent to have the purpose or effect of unreasonably interfering with an individual's ability to work, study, or participate in his/her regular life or university activities. Examples of harassment include, but are not limited to the following:

(i) Cyberstalking;

(ii) Unwanted telephone calls;

(iii) Unwanted text messaging; and/or

(iv) Unwanted conversation.

(d) Stalking. Any repeated conduct directed specifically at another person that causes that person to fear for his/her health and safety. Such behaviors and activities may include, but are not limited to the following:

(i) Nonconsensual communication or contact, including face-to-face, telephone calls, voice messages, electronic mail, instant messaging, written letters, unwanted gifts, etc.;

(ii) Harassment, either by the individual or through a third party;

(iii) Use of threatening or obscene gestures;

(iv) Pursuing or following;

(v) Surveillance or other types of observation;

(vi) Use of electronic devices or software to track or obtain private information;

(vii) Trespassing;

(viii) Vandalism; and

(ix) Nonconsensual touching.

(e) Unauthorized use of electronic or other devices: Making an audio or video record of any person while on university premises without his or her prior knowledge, or without his or her effective consent when such a recording is of a private conversation or of images taken of a person(s) at a time and place where she or he would reasonably expect privacy and where such images are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

(3) Property violations. Theft from, or damage to, or misuse of university property or the property of any person on or off campus are subject to university disciplinary action.

(4) Weapons. No individual shall have on his/her person, in his/her vehicle or otherwise in his/her possession any gun, pistol, or firearm or explosives, dangerous chemicals or other dangerous weapons or instruments on the university campus or other university premises except as follows:

(a) Authorized law enforcement officers are permitted to carry arms while on duty and engaged in their regular duties;

(b) Activities requiring use of the prohibited items may be conducted on approval of the activity by the board of trustees;

(c) Persons are permitted to have firearms in their possession directly en route to or from campus firearm storage facilities where such possession is incidental to approved on or off campus possession or use of such firearms;

(d) Examples of weapons under this section include, but are not limited to: Shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, any item that can be used as an object of intimidation and/or threat, replica or look-a-like weapons, etc.

(5) Disobedience. Disobedience, interference, resistance, or failure to comply with direction of an identified university official or other authority acting in the line of duty, including:

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before uni-

versity officials or disciplinary bodies when directed to do so, or the violation of sanctions imposed after such proceedings;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students, the self-harm prevention team, or other authorized university official.

(6) Trespassing/unauthorized use of keys.

(a) Trespass. The unauthorized entry into or onto, or the unauthorized remaining in any building or facility or on any property.

(b) Unauthorized use of keys and unauthorized entry. Unauthorized possession, duplication, or use of keys to university premises or unauthorized entry to or use of university premises.

(7) Deception, forgery, fraud, unauthorized representation.

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

(8) Safety.

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

(9) Alcohol, drugs, and controlled substances.

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is also prohibited.

(b) Illegal drugs and paraphernalia. Use, possession, distribution, manufacture, or sale of drug paraphernalia and/or illegal drugs, including marijuana, narcotics or other controlled substances, is prohibited except as authorized by federal or state law. Being under the influence of an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance is also prohibited while on property owned or operated by the university, except when legally prescribed by a licensed medical practitioner.

(10) Hazing. Any action required of or imposed on current or potential members of an organization or group which, regardless of location of the incident or consent of the participant(s):

(a) Produces or is reasonably likely to produce bodily harm or danger, mental or physical discomfort, embarrassment, harassment, fright, humiliation or ridicule; or

(b) Compels an individual to participate in any activity which is illegal, perverse or publicly indecent or contrary to university rules, regulations or policies, or which is known by

the compelling person(s) to be contrary to the individual's moral or religious beliefs.

(11) Disruptive conduct/obstruction.

(a) Disruptive conduct. Conduct which disrupts or obstructs teaching, research, administration, disciplinary proceedings, freedom of movement or other lawful activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

(d) Demonstration. Participation in a campus demonstration which violates the university regulations governing campus assembly and peaceful demonstration.

(12) Violations of other laws, regulations and policies.

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies or regulations.

(13) Assisting. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code. Conduct involving being an accessory to any person who violates this code.

(14) Acts against the administration of this code.

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code, including but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

(15) Other provisions:

(a) Responsibility for guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying; and

(iii) Any other agreements related to the student's study program in the foreign country.

(c) Student organization and/or group offenses. Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-200, filed 5/20/09, effective 6/20/09.]

WAC 172-121-210 Sanctions. If any student or student organization is found to have committed any of the offenses

described in WAC 172-121-200, one or more of the following sanctions may be imposed against the student or student organization. Failure to comply with any imposed sanction may result in additional sanctions.

(1) Individual student sanctions:

(a) Admonition: An oral statement to a student that he/she has violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The university conduct officer and the student disciplinary council may assess monetary fines up to a maximum of four hundred dollars against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.30.125, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment

and further assessment apply to either continued attendance or return after a period of suspension.

(j) Deferred suspension: Notice of suspension from the university with the provision that the student may remain enrolled contingent on meeting a specified condition or conditions. Not meeting the specified condition(s) will immediately invoke the suspension for the period of time and under the conditions originally imposed.

(k) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered.

(l) Dismissal: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Dismissal actions will be accomplished by issuing both an order of dismissal and a notice against trespass. The notice against trespass may be given by any manner specified in chapter 9A.52 RCW.

(m) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time.

(2) Student organizations and/or group sanctions: Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Charter restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. It may be recommended by the appropriate disciplinary body, but may only be imposed by the university president;

(d) Charter revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. It may be recommended by the appropriate judicial body, but can only be imposed by the university president;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of university facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-210, filed 5/20/09, effective 6/20/09.]