

Chapter 495C-121 WAC

STUDENT CONDUCT CODE

WAC

PART 1

GENERAL PROVISIONS

495C-121-010	Definitions.
495C-121-020	Authority.
495C-121-030	Jurisdiction.
495C-121-040	Student rights.
495C-121-050	Prohibited student conduct.
495C-121-060	Disciplinary sanctions and conditions.
495C-121-070	Faculty/administrator authority regarding classroom disruption.
495C-121-080	Disciplinary records.

PART 2

DISCIPLINARY PROCEDURES

495C-121-100	Initiation of disciplinary action.
495C-121-110	Appeals and referrals—Routing.
495C-121-120	Brief adjudicative proceedings—Initial hearing and decision.
495C-121-130	Brief adjudicative proceedings—Review of initial decision.
495C-121-140	Student conduct committee—Formation.
495C-121-150	Student conduct committee—Prehearing proceedings.
495C-121-160	Student conduct committee—Hearings.
495C-121-170	Student conduct committee—Initial decision.
495C-121-180	Student conduct committee—Review of initial decision.
495C-121-190	Summary suspension.

PART 3

SUPPLEMENTAL PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

495C-121-200	Supplemental definitions.
495C-121-210	Supplemental sexual misconduct procedures.
495C-121-220	Supplemental complaint process.
495C-121-230	Supplemental appeal rights.

PART 1

GENERAL PROVISIONS

WAC 495C-121-010 Definitions. The following definitions shall apply for the purposes of this student conduct code, chapter 495C-121 WAC:

(1) "College" means Clover Park Technical College, College District Twenty-nine.

(2) "College facilities" includes all campuses of the college, wherever located, and all land, buildings, vehicles, equipment, and other real and personal property which are owned, leased, used, or controlled by the college.

(3) "Committee" and "student conduct committee" means the committee which is formed under WAC 495C-121-140 and which hears the matters specified in WAC 495C-121-110.

(4) "Conduct review officer" is the vice-president of student services or other college administrator designated by the president to be responsible for receiving and then either reviewing or referring an appeal of student disciplinary action in accordance with WAC 495C-121-110 and following sections of this chapter. The president may reassign any

and all of the conduct review officer's responsibilities as set forth in this chapter as he/she deems appropriate.

(5) "Day" means a calendar day, except that when a "business day" is specified, business day means a weekday, excluding weekends and college holidays.

(6) "Disciplinary action" is the process by which the student conduct officer, or the committee upon a referral, imposes discipline against a student for violation of WAC 495C-121-050. Disciplinary action does not include instructional decisions and actions which are under the authority of faculty members and instructional administrators, such as determinations of academic credit and grading; any such determinations, and any review or appeal of these, are outside the scope of this chapter.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal discipline, as provided in WAC 495C-121-110 through 495C-121-180.

(8) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. §1232g; 34 C.F.R. Part 99).

(9) "Filing" is delivery of a document to the college official who is designated under this chapter to receive it for the purpose of review of a disciplinary action. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to that official or the official's assistant during regular office hours; or

(b) Sending the document both by first class mail postage prepaid to the official's office and by e-mail to his/her college e-mail address.

(10) "Includes" and "including" means contained as part of a larger described whole or grouping, but these terms are not a limitation and mean "but not limited to."

(11) "President" is the president of the college. The president may delegate any of his or her responsibilities under this chapter as he/she deems appropriate.

(12) "Respondent" is the student against whom disciplinary action is initiated.

(13) "Service" is the delivery of a document or copy of a document to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document both by first class and/or certified mail postage prepaid to the party's last known address and by e-mail to the e-mail address shown in the college's records.

Service is deemed complete either upon hand delivery or when the document has been both deposited in the mail and e-mailed.

(14) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially

enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(15) "Student conduct officer" is a college administrator designated by the president or vice-president of student services to be responsible for investigating allegations of student misconduct and taking disciplinary action as provided in WAC 495C-121-100. The president or vice-president of student services may reassign any of the student conduct officer's responsibilities under this chapter as he/she deems appropriate.

(16) "Vice-president of student services" is the position which reports directly to the president and which the president assigns overall operational responsibility for this chapter. The president may reassign, or the vice-president may delegate, any such responsibility as he/she deems appropriate.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-010, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.10.528 and 28B.50.140(14), delegates to the president the authority to administer student disciplinary actions and appeals. Through enactment of this chapter, the president subdelegates and/or further assigns responsibilities related to student discipline to other college officials and positions.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-020, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-030 Jurisdiction. (1) The student conduct code, chapter 495C-121 WAC, shall apply to student conduct that occurs:

- (a) In or on college facilities;
 - (b) At or in connection with college-sponsored activities;
- or
- (c) Off-campus when in the judgment of the college it adversely affects the college community or the pursuit of its objectives.

(2) This chapter applies to conduct which occurs at all locations where students are engaged in college activities, including foreign or domestic travel, activities funded or sponsored by the associated students, athletic or recreational events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned activities.

(3) This chapter applies to conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. This chapter shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(4) The college has sole discretion, on a case-by-case basis, to determine whether this student conduct code will be applied to conduct that occurs off campus.

(5) In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college may proceed with

student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-030, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-040 Student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law, rules, and college policies:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, papers, and effects against unreasonable college searches and seizures are guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of misconduct that is subject to discipline is entitled to the procedural due process set forth in this chapter.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-040, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-050 Prohibited student conduct. The college may initiate disciplinary action against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, any of the following act(s) of misconduct:

(1) **Academic dishonesty.** Any act of academic dishonesty, including cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment or requirement.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment or requirement.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment or requirement, or providing false or deceptive information to an instructor concerning the completion of an assignment or requirement, including submitting for credit without authorization academic work also submitted for credit in another course.

(2) **Other dishonesty.** Any other act of dishonesty, including:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct or complete information, in response to the request or requirement of a college official or employee.

(3) **Obstruction or disruption.** Conduct which significantly obstructs or disrupts any operation of the college, any college meeting, any college class or other activity, any activity authorized to occur at a college facility, or any college-sponsored activity, including obstructing the free flow of pedestrian or vehicular movement or blocking access to or from any college facility or college-sponsored event.

(4) **Assault, abuse, intimidation, etc.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, reckless conduct, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property or which unreasonably disrupts the educational environment. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving an apparent power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(c) Reckless conduct means acts performed with a heightened degree of carelessness or indifference so as to create a significant risk of physical, mental, or emotional harm to another person.

(5) **Cyberstalking, cyberbullying or online harassment.** Use of electronic communications, including electronic mail, instant messaging, texting, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health, safety, or well-being of another person. Prohibited activities include unauthorized monitoring of another's electronic communications directly or through spyware, sending threatening messages, disrupting electronic communications, sending a computer virus or malware, sending false messages to third parties using another's identity, nonconsensual recording of sexual activity, or nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state, including college facilities;

(b) Any college student, official, employee, or organization; or

(c) Any other member of the college community or a college organization.

Property violation also includes possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Holding, wearing, transporting, storing, or otherwise possessing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon or device which is apparently capable of producing bodily harm, on or in any college facility, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) College-owned knives, tools, etc., that are being used for a legitimate educational purpose as part of a college instructional program;

(c) A student with a valid concealed pistol license may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the pistol is concealed from view; and

(d) The president may grant permission to bring such a weapon or device on or into a college facility when he/she determines that it is reasonably related to a legitimate pedagogical purpose, provided that such permission shall be in writing and shall be subject to all terms and conditions incorporated in that writing.

(9) **Hazing.** Any initiation into a student organization, or any pastime or amusement engaged in with respect to such an organization, that causes, or is likely to cause, bodily danger, physical harm, or serious mental or emotional harm to any student, regardless of whether the victim has consented.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** Use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** Use, possession, delivery, sale, or being observably under the influence of marijuana, the psychoactive compounds found in marijuana, or any product containing marijuana or such compounds that is intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college facilities or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed health care practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Use of tobacco, electronic cigarettes or smoking devices, and/or related products on or in any college facility, except that such use in a smoking shelter designated by the college or in a closed private vehicle is permitted when con-

sistent with applicable law and rules. "Related products" include cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** Any act of sexual misconduct, including sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for campus community members.

(b) Sexual intimidation is a type of "sexual harassment" that involves threatening or emotionally distressing conduct based on sex, including nonconsensual recording of sexual activity or distribution of such a recording.

(c) Sexual violence incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, and gender- or sex-based stalking. The term further includes acts of dating violence or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic.

(15) **Retaliation.** Taking adverse action against any individual for reporting, providing information, or otherwise participating in a process for addressing alleged violations of federal, state, or local law, or college policies, including allegations of discrimination or harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college, which includes:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's policies or procedures governing the use of such time or resources.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college facilities, or unauthorized entry onto or into college facilities.

(18) **Safety violations.** Any nonaccidental conduct that violates, interferes with, or otherwise compromises any law, rule, policy, procedure, or equipment relating to the safety and security of college facilities or the college community, including tampering with fire safety equipment or triggering false alarms or other emergency response systems.

(19) **Motor vehicle operation.** Operation of any motor vehicle in an unsafe manner or contrary to posted signs or college procedures.

(20) **Violation of laws or policies.** Violation of any federal, state, or local law or regulation, or college rule, policy, or procedure, which regulates the behavior of the college's students, including a parking rule.

(21) **Student procedures violations.** Misuse of or failure to follow any of the procedures relating to student complaints or misconduct, including:

(a) Falsification or misrepresentation of information;

(b) Failure to obey a subpoena;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(e) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member or other disciplinary official; or

(f) Failure to comply with any disciplinary action, term, or condition imposed under this chapter.

(22) **Ethical violation.** Breach of a generally recognized and published code of ethics or standard of professional practice that governs the conduct of a particular profession, which the student has been specifically informed about and is required to adhere to as a condition of enrolling in a course or participating in an educational program.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-050, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-060 Disciplinary sanctions and conditions. (1) **Disciplinary sanctions.** The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(a) Disciplinary warning. An oral statement to a student that there is a violation and that any further violation may be cause for further disciplinary action. Although verbal, the student conduct officer should make a record of the warning. The respondent cannot appeal a disciplinary warning.

(b) Written disciplinary reprimand. A written notice informing a student that he/she has violated one or more terms of the code of conduct and that future misconduct involving the same or similar behavior may result in the imposition of a more severe disciplinary sanction.

(c) Disciplinary probation. A written notice placing specific term(s) and condition(s) upon the student's continued attendance at the college. Disciplinary probation may be for a limited period of time or for the duration of the student's attendance at the college.

(d) Disciplinary suspension. Temporary revocation of enrollment and termination of student status, for a stated period of time. The student may be prohibited from coming onto any college facility and may be subject to law enforcement action for criminal trespass for violating that prohibition. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) Dismissal. Revocation of enrollment and of all rights and privileges of membership in the college community, and exclusion from college facilities, without any time limitation. There will be no refund of tuition or fees for the quarter in which the action is taken. The student may be subject to law enforcement action for criminal trespass for violating that exclusion. A dismissal may be subsequently ended only by a written decision of the president, for documented good cause.

(2) **Disciplinary conditions.** Disciplinary conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction under subsection (1) of this section include:

(a) Restitution. Reimbursement for (i) damage to, or theft or misuse of, real or personal property or money, or (ii) injury to persons. This reimbursement may take the form of money, appropriate service, or other compensation.

(b) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation, at the student's expense, by an appropriately certified or licensed professional. The student may choose the professional within the scope of practice and with the professional credentials as specified by the college. The student must sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in the evaluation. If the student has been suspended, the student may remain suspended until the most recent evaluation finds that the student is capable of reentering the college and complying with the college's expectations for conduct.

(c) Restrictions on activities. A student may be subjected to the following restrictions:

(i) Ineligible to hold any college office or position or any office in any student organization;

(ii) Ineligible to participate in any college activity(ies); and/or

(iii) Ineligible to represent the college outside the college community, including at any event or in any form of competition.

(d) Required activities. Assignment of appropriate tasks or responsibilities, or required attendance at an appropriate program, instructional course, or other educational activity, which may be at the student's expense.

(e) Protective or no contact order. An order directing a student to have limited or no contact with any specified student(s), college employee(s), member(s) of the college community, or college facility.

(f) Loss of state funding. A student found to have committed hazing shall forfeit any entitlement to state-funded grants, scholarships, or awards, pursuant to RCW 28B.10.902.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-060, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-070 Faculty/administrator authority regarding classroom disruption. (1) Faculty members and instructional administrators are authorized to take appropriate action to maintain order and proper conduct in the classroom and the cooperation of students in fulfilling course objectives.

(2) If a faculty member or instructional administrator determines that a student has created a disruption which makes it unreasonably difficult to maintain the learning and teaching environment or the decorum of a class or activity, he/she may suspend that student from the class or activity for up to a total of one day per day of disruption. The faculty member or administrator shall report this suspension to the student conduct officer, who shall have the option, depending on the severity, to treat the suspension as insufficient and also initiate further discipline under this chapter.

(3) The suspension of up to one day per day of disruption shall not be subject to any further appeal or review. However, any further discipline imposed by the student conduct officer shall be processed in accordance with this chapter.

(4) Any suspension initiated by a faculty member or instructional administrator under this section will not affect any student grading that is based directly on attendance.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-070, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-080 Disciplinary records. (1) Records of a disciplinary proceeding under this chapter are disciplinary records which must be maintained by the office of the vice-president of student services separately from student academic records and in accordance with applicable state records retention requirements.

(2) Disciplinary records are confidential to the extent required by applicable laws, including the Family Educational Rights and Privacy Act. To the extent permitted by such laws, the respondent, or if a minor, the student's parent, may review his/her disciplinary records, obtain a copy of such records upon payment of any lawful charges for duplication, and/or authorize disclosure of such records.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-080, filed 5/19/14, effective 6/19/14.]

PART 2

DISCIPLINARY PROCEDURES

WAC 495C-121-100 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate possible disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the specific apparent misconduct under WAC 495C-121-050, and the range of possible disciplinary sanctions, and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may impose disciplinary sanction(s) and conditions based upon the available information.

(3) Within ten days of the scheduled initial disciplinary meeting, and after considering the information obtained by investigation and any information presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, the consequences if a student fails to satisfy any disciplinary condition(s) which are being imposed, and a notice of the respondent's appeal rights, if any, with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following actions:

(a) Terminate the proceeding, with any appropriate exoneration of the respondent or counseling or advice to the respondent. The respondent cannot appeal a termination of the proceedings;

(b) Specify misconduct under WAC 495C-121-050 which he/she finds to have occurred and impose disciplinary sanction and/or condition(s), as described in WAC 495C-121-060; or

(c) Refer the matter directly to the student conduct committee for a hearing and imposition of such disciplinary sanction and/or condition(s) as the committee deems appropriate. Such referral shall be to the attention of the chair of the committee with a copy served on the respondent.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-100, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-110 Appeals and referrals—Routing.

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to file a timely notice of appeal

constitutes a waiver of the right to appeal, and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) Except as provided in WAC 495C-121-230 or elsewhere in these rules, the parties to an appeal shall be the respondent and the student conduct officer.

(4) On appeal, the student conduct officer bears the burden of establishing the factual elements of the alleged misconduct by a preponderance of the evidence, i.e., that it is more likely than not that the respondent engaged in the alleged misconduct.

(5) Imposition of a disciplinary sanction and conditions shall be stayed during an appeal, except for a summary suspension that has been imposed under WAC 495C-121-190.

(6) The student conduct committee shall hear:

(a) Appeals from disciplinary suspensions in excess of ten instructional days, and any related disciplinary condition(s);

(b) Appeals from dismissals, and any related disciplinary condition(s); and

(c) Cases referred by the student conduct officer, the conduct review officer, or the president.

(7) Appeals from the following disciplinary sanctions and related disciplinary conditions shall be reviewed through a brief adjudicative proceeding:

(a) Written disciplinary reprimands, and any related disciplinary condition(s);

(b) Disciplinary probation, and any related disciplinary condition(s); and

(c) Disciplinary suspensions of ten instructional days or less, and any related disciplinary condition(s).

(8) Except as provided elsewhere in these rules, disciplinary warnings and terminations of proceedings are final actions and are not subject to appeal.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-110, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-120 Brief adjudicative proceedings—Initial hearing and decision.

(1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he/she is a witness, has direct or personal interest, prejudice, or bias, or has previously provided significant advice or direction to the student conduct officer.

(2) Before making a decision, the conduct review officer shall schedule an informal hearing to provide each party an opportunity (a) to be informed of the agency's view of the matter, and (b) to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the parties within ten days of the scheduled hearing. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek review under WAC 495C-121-130.

(4) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or a dismissal, he/she shall refer the matter to the student conduct committee for a disciplinary hearing.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-120, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-130 Brief adjudicative proceedings

—**Review of initial decision.** (1) A party may obtain review of an initial decision by the president, by filing a written request for review with the conduct review officer within twenty-one days of service of the initial decision. That officer shall promptly forward the request to the president. If no timely request for review is filed, the initial decision shall become the final decision.

(2) The president shall not participate in any case in which he/she is a witness, has direct or personal interest, prejudice, or bias, or has previously provided significant advice or direction.

(3) During the review, the president shall give each party an opportunity to file a written statement explaining their view of the matter and shall make any inquiries to the parties which are necessary to ascertain whether the discipline should be modified or whether the proceedings should be referred to the student conduct committee for a hearing.

(4) The president shall serve a written decision on review on all parties within twenty days of the later of the filing of the request for review or any deadline for parties' explanatory statements. A request for review may be deemed to have been denied if the president does not serve a decision within those twenty days. The decision shall include a brief statement of its reasoning. The president's decision shall be the final college action in the matter, and shall include notice of any right to request reconsideration and of the right to seek judicial review under chapter 34.05 RCW.

(5) If the president, upon review, determines that the respondent's conduct may warrant imposition of a dismissal or a disciplinary suspension of more than ten instructional days, he/she shall refer the matter to the student conduct committee for a disciplinary hearing.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-130, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-140 Student conduct committee—

Formation. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between this chapter and chapter 10-08 WAC, this chapter shall control.

(2) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government to terms of up to one academic year;

(b) Two faculty members appointed by the president to terms of up to two academic years, beginning in alternating years;

(c) One faculty member or administrator, other than an administrator serving as a student conduct or conduct review officer, appointed as chair by the president for a term of up to two academic years.

Members may be reappointed for subsequent terms. Any member may be replaced by the appointing authority for the remainder of the term for good cause shown.

(3) The faculty member or administrator appointed as chair may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual

(5/19/14)

training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(4) A member of the student conduct committee shall not participate in any case in which he/she is a party, complainant, or witness, has direct or personal interest, prejudice, or bias, or has previously provided significant advice or direction. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

(5) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-140, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-150 Student conduct committee—

Prehearing proceedings. (1) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(2) The chair may conduct prehearing conferences and/or make prehearing decisions concerning the simplification of issues, the extent and form of any discovery, issuance of protective orders, and similar procedural matters.

(3) Discovery will be available as determined by the chair and in accordance with RCW 34.05.446. Upon request, the chair shall provide reasonable assistance to a party in obtaining relevant and admissible evidence that is within the college's control.

(4) The chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline or referral to the committee, and (b) the notice of appeal. If doing so, however, the chair should remind the members that these documents are not evidence of any facts they may allege.

(5) Upon request filed at least five business days before the hearing by any party, or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) Communications between a committee member and any other nonmember hearing participant regarding any issue in the proceeding, other than communications necessary to procedural aspects of maintaining an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-150, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-160 Student conduct committee—Hearings. (1) Upon the failure of any party to attend or participate in a hearing, the chair may either:

(a) Proceed with the hearing; or
 (b) Serve a default order in accordance with RCW 34.05.440.

(2) The committee will ordinarily be advised by an assistant attorney general.

(3) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A party other than the student conduct officer may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the chair, with a copy to the student conduct officer. If such a party is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened, assistant attorney general.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee. Evidence shall be admitted or excluded in accordance with RCW 34.05.452. All testimony shall be given under oath or affirmation.

(5) The hearing will ordinarily be closed to the public, in light of the Family Educational Rights and Privacy Act. However, if all parties agree on the record to open some or all of the proceedings, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(6) The chair shall afford opportunity to all parties to present their cases, and shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(7) The chair shall assure maintenance of the record of the proceeding which is required by RCW 34.05.476. This record shall be available upon request by any party for inspection and copying, except as limited by FERPA.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-160, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-170 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration. Only evidence presented at the hearing will be considered by the committee.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial order shall include:

(a) Findings on all material issues of fact and conclusions on all material issues of law, including which, if any,

provisions of WAC 495C-121-050 were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(b) A determination on appropriate disciplinary sanction and/or disciplinary conditions, if any. The committee may affirm, reverse, modify, or supplement any disciplinary sanction and/or disciplinary condition(s) imposed by the student conduct officer.

(c) A statement that the initial order will become final unless a party seeks review of that decision in accordance with WAC 495C-121-180.

(3) The chair shall cause copies of the initial decision to be served on the parties, including any legal counsel of record. The committee chair shall also promptly transmit the record of the committee's proceedings and a copy of its decision to the president.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-170, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-180 Student conduct committee—Review of initial decision. (1) A party who is aggrieved by the committee's initial decision may obtain review of that decision by filing a notice of appeal with the president within twenty-one days after it was served on that party. If no timely notice of appeal is filed, the initial decision shall become the final decision.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged, and must contain an argument why the appeal should be granted.

(3) The president may ask for additional argument from the parties on the issues raised in the notice of appeal. The president's review will ordinarily be limited to those issues, and shall be restricted to the committee hearing record. The president shall not engage in ex parte communication with any of the parties regarding the appeal.

(4) The president shall serve a written decision on review on all parties within forty-five days after receipt of the notice of appeal. The decision shall include appropriate findings and conclusions. Unless it remands the case to the committee for further proceedings or gives a right to request reconsideration, the president's decision shall be the final college action in the matter and shall include notice of the right to seek judicial review under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-180, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-190 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college facilities and denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation, disciplinary procedures, and/or an appeal are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe, i.e., there are reasonable grounds for believing, that the respondent has committed misconduct under WAC 495C-121-050 and that either:

(a) The situation involves an immediate danger to the public health, safety, or welfare which requires immediate college action; or

(b) The student's behavior poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) A summary suspension shall be effective when the respondent receives written or oral notice of that suspension. If oral notice is given, a written notification must be served on the respondent within two business days of the oral notice. The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the misconduct and specification of the provisions of WAC 495C-121-050 allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access college facilities or communicate with members of the college community. If the respondent is prohibited from entering college facilities, he/she may be given a notice against trespass which warns that his/her privilege to enter college facilities has been withdrawn, subject to any specified exceptions such as an invitation to meet with the student conduct officer or conduct review officer or to attend a scheduled disciplinary hearing, and that he/she shall be considered to be trespassing and subject to arrest for criminal trespass for any violation.

(4) The hearing before the conduct review officer shall be scheduled as soon as practicable after service of the notice of summary suspension. If the respondent fails to appear at the scheduled time, the conduct review officer may order that the summary suspension remain in place. During the summary suspension hearing, the issues shall be:

(a) Whether the requirements under subsection (2) of this section are satisfied; and

(b) Whether the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or should be less restrictive in scope.

(5) As soon as practicable following the hearing, the conduct review officer shall issue, and serve on the respondent and student conduct officer, a written decision which addresses the issues at the hearing. The conduct review officer shall also provide information about the decision, to the extent legally permissible under FERPA, to all persons and offices who may be bound or protected by it.

(6) The respondent may request a de novo review of the summary suspension hearing decision by the student conduct committee. The review will be scheduled promptly. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-190, filed 5/19/14, effective 6/19/14.]

PART 3

SUPPLEMENTAL PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

WAC 495C-121-200 Supplemental definitions. The following supplemental definitions apply in student disci-

(5/19/14)

plinary matters involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct.

(2) "Sexual misconduct" has the meaning ascribed to this term in WAC 495C-121-050.

(3) "Title IX compliance officer" is the college position designated by the president as having the primary direct responsibilities related to Title IX, 20 U.S.C. §§ 1681-88.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-200, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-210 Supplemental sexual misconduct procedures. In student discipline matters involving allegations of sexual misconduct by a student:

(1) Both the respondent and the complainant shall be provided the same, or substantially equivalent, procedural rights to participate. For the complainant, this includes the rights to meet with the student conduct officer during the initial disciplinary process under WAC 495C-121-100 and to appeal as provided in WAC 495C-121-230.

(2) These rules shall supplement the foregoing student disciplinary rules in WAC 495C-121-010 through 495C-121-190. In the event of conflict between these supplemental sexual misconduct rules and the foregoing rules, these supplemental rules shall prevail.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-210, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-220 Supplemental complaint process. With respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX compliance officer shall investigate, or assure investigation of, complaints or other reports of alleged sexual misconduct by a student. The investigation will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for possible disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue the mediation at any time. Mediation shall not be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process such complaints.

(4) The student conduct officer, prior to serving a disciplinary decision under WAC 495C-121-100, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or disciplinary conditions that may be imposed.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent under WAC 495C-121-100, will serve a written notice, in compliance with FERPA, informing the complainant whether the allegations of sexual misconduct were found to have merit and

[Ch. 495C-121 WAC p. 9]

describing any disciplinary sanctions and/or conditions which are being imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of her/his rights to appeal as stated in WAC 495C-121-230. If protective disciplinary sanctions and/or conditions are imposed, the student conduct officer shall also make a reasonable effort to have the notice served upon the complainant prior to service upon the respondent.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-220, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-230 Supplemental appeal rights. In student discipline matters involving allegations of sexual misconduct by a student:

(1) The following actions by the student conduct officer may be appealed by the complainant:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 495C-121-220(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Termination of the proceedings;
- (b) A disciplinary warning;
- (c) A written disciplinary reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee

chair, and with copies to the respondent and the student conduct officer.

(8) The complainant and respondent shall not directly question or cross-examine one another in either brief adjudicative proceedings or proceedings before the committee. In proceedings before the committee, all questions shall be directed to the chair, who will act as an intermediary and pose questions on the party's behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student conduct committee.

(10) On the same date as the initial decision is served on the respondent under WAC 495C-121-120 or 495C-121-170, the conduct review officer or committee chair, as appropriate, will serve complainant with a written notice consistent with FERPA which states whether the allegations of sexual misconduct were found in the initial decision to have merit and describing any disciplinary sanction(s) and/or disciplinary condition(s) imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of his/her appeal rights.

(11) Complainant, as a party, may appeal the initial decision to the president, under either WAC 495C-121-130, after a brief adjudicative proceeding, or WAC 495C-121-180, after a committee proceeding.

(12) On the same date that the president serves his/her decision on review on the other parties, under WAC 495C-121-130 or 495C-121-180, he/she shall serve complainant either with that decision, if allowed under FERPA, or with a written notice consistent with FERPA which both states whether the allegations of sexual misconduct were found to have merit and describes any disciplinary sanction(s) and/or disciplinary condition(s) imposed upon the respondent for the complainant's protection. This notice shall communicate the final college action in the matter and shall include notice of the right to seek judicial review under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-230, filed 5/19/14, effective 6/19/14.]