

Chapter 495A-121 WAC
STUDENT RIGHTS AND RESPONSIBILITIES
(Formerly chapter 495A-120 WAC)

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

495A-121-021	Academic freedom. [Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-021, filed 5/24/00, effective 6/24/00.] Repealed by WSR 19-14-073, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 34.05.250 and 28B.50.140(13).
495A-121-022	Nondiscrimination. [Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-022, filed 5/24/00, effective 6/24/00.] Repealed by WSR 19-14-073, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 34.05.250 and 28B.50.140(13).
495A-121-023	Due process. [Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-023, filed 5/24/00, effective 6/24/00.] Repealed by WSR 19-14-073, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 34.05.250 and 28B.50.140(13).
495A-121-025	Right to assembly. [Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-025, filed 5/24/00, effective 6/24/00.] Repealed by WSR 19-14-073, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 34.05.250 and 28B.50.140(13).
495A-121-026	Distribution of materials. [Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-026, filed 5/24/00, effective 6/24/00.] Repealed by WSR 19-14-073, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 34.05.250 and 28B.50.140(13).
495A-121-027	Grievances. [Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-027, filed 5/24/00, effective 6/24/00.] Repealed by WSR 19-14-073, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 34.05.250 and 28B.50.140(13).
495A-121-028	Commercial activities. [Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-028, filed 5/24/00, effective 6/24/00.] Repealed by WSR 19-14-073, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 34.05.250 and 28B.50.140(13).
495A-121-029	Student responsibilities. [Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-029, filed 5/24/00, effective 6/24/00.] Repealed by WSR 19-14-073, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 34.05.250 and 28B.50.140(13).
495A-121-045	Hazing sanctions. [Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-045, filed 5/24/00, effective 6/24/00.] Repealed by WSR 19-14-073, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 34.05.250 and 28B.50.140(13).
495A-121-060	Discipline. [Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-060, filed 5/24/00, effective 6/24/00.] Repealed by WSR 19-14-073, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 34.05.250 and 28B.50.140(13).

WAC 495A-121-010 Preamble. Bates Technical College is a two-year public institution of higher education. The college is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Broadly stated, the purpose of the college is to provide opportunities for all who desire to pursue educational goals. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. To implement this objective, it is necessary to ensure that an environment is cre-

ated wherein all students may progress in accordance with their capability and intensity of interest. The responsibility to create and maintain such an environment is shared by all members of the college community.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-010, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-010, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-011 Definitions. The definitions set forth in this section shall apply throughout this chapter. The following words and phrases shall mean:

(1) "Assembly" means any activity engaged in by two or more persons, and the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any persons or group of persons.

(2) "Board of trustees" shall mean the five-member governance board appointed by the governor of the state of Washington for Bates Technical College, District No. 28.

(3) "Calendar day" means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the timeline runs until the next date on which the college is open for business.

(4) "College" shall mean Bates Technical College, District No. 28.

(5) "College community" means students, employees, trustees, and volunteers.

(6) "College facilities" and "college facility" mean and include any real and personal property owned, rented, leased, or operated by the college, all buildings and appurtenances attached thereto, and all parking lots and other grounds. College facilities extend to distance education classroom environments and agencies or institutions that have educational agreements with the college.

(7) "College official" includes any person employed by the college performing assigned duties.

(8) "College premises" includes all campuses of the college where located and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(9) "College president" shall mean the chief executive officer of the college appointed by the board of trustees.

(10) "Complainant" is any person who submits a complaint alleging that a student violated the student conduct code, or in matters of sexual misconduct, a complainant is an alleged victim of sexual misconduct.

(11) "Conduct review officer" is the college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(12) "Consent" means a person gives knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the sexual activity. For consent to be valid there must be at the time of the act of sexual intercourse or sexual contact actual words or action indicating freely given agreement to have sexual intercourse or sexual contact.

A person may be incapable of giving consent by reason of age, threat, intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause. A person cannot consent if they are unable to understand what is happening, are disoriented, helpless, asleep, or unconscious for any reason including due to alcohol or other drugs.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity. An individual has engaged in nonconsensual sexual activity when the individual knows, or should know, that the other person is physically, emotionally, or mentally incapacitated.

(13) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(14) "Day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.

(15) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. Disciplinary action does not include instructional decisions and actions that are under the authority of faculty members and instructional administrators, such as determination of academic credit and grading. These determinations and any review or appeal of these are outside the scope of this chapter.

(16) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten days or a dismissal are heard by the student/faculty disciplinary committee. Appeals of all other disciplinary action that can be appealed is reviewed through brief adjudicative proceedings.

(17) "Employee" means any classified, faculty, administrator, exempt, student worker or volunteer person.

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

(19) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email to the specified college official's email address.

Paper required to be filed is deemed filed upon actual receipt during office hours at the office of the specified college official.

(20) "Instructor" and "faculty" mean any employee of Bates Technical College, District No. 28 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian.

(21) "RCW" means Revised Code of Washington and can be accessed at <http://apps.leg.wa.gov/rcw/>.

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

(23) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party is accomplished by:

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

(b) By sending the document by email to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed.

(24) "Sexual misconduct" is the definition ascribed to this term in WAC 495A-121-041(14).

(25) "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, continuing education, or contract courses. Persons meeting the following criteria are considered students:

(a) Who withdraw after allegedly violating the code;

(b) Who are not officially enrolled for a particular term but have a continuing relationship with the college; or

(c) Who have been notified of their acceptance for admission.

(26) "Student conduct officer" is a college administrator designated by the president to be responsible for investigating allegations of student misconduct and taking disciplinary action based on the prohibited conduct listed in WAC 495A-121-041. The president may reassign any of the student conduct officer's responsibilities under this chapter as deemed appropriate.

(27) "Student organization" means any number of students who meet the college's formal requirements to form a club or organization.

(28) "Visitors" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

(29) "WAC" means the Washington Administrative Code and can be accessed at <http://app.leg.wa.gov/wac/>.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-011, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140. WSR 04-11-043, § 495A-121-011, filed 5/13/04, effective 6/13/04. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-011, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-012 Jurisdiction. (1) The student conduct code 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:

(a) Foreign or domestic travel;

(b) Activities funded or sponsored by the associated students;

(c) Athletic or recreational events;

(d) Training internships or cooperative education;

(e) Distance education or online education;

(f) Practicums or supervised work experiences;

(g) Apprenticeship sites; or

(h) 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 or certificate, including conduct that may occur before classes begin, after classes end, during the academic year, or during periods between terms of actual enrollment. This chapter shall apply to a student's conduct even

if the student withdraws from the 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 applies to conduct that occurs off campus.

(5) In addition to initiating disciplinary 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 continue with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-012, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-012, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-020 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. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. 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 assured to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are assured 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 that are subject to the limitations of RCW 28B.50.090 (3) (b).

(c) The college protects students from academic evaluation that is arbitrary, prejudiced, or capricious. Students are responsible for meeting the standards of academic performance established by each instructor.

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

(2) Due process.

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

(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 violating this student conduct code is entitled, upon request, to procedural due process as set forth in this chapter.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-020, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-020, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-024 Campus speakers. Recognized student organizations shall have the right to invite outside speakers to speak on campus subject to the availability of campus facilities, funding and compliance with college procedures.

[Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-024, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-040 Code of conduct. The college has special regulations regarding the conduct of the various participants in the college. Admission to the college carries with it the expectation that students will conduct themselves as responsible members of the college community.

[Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-040, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-041 Prohibited conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act(s) of misconduct that includes, but is not limited to, the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes using or any attempt to use, give, or obtain unauthorized assistance related to the completion of an academic assignment.

(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. Plagiarism also may include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) Other dishonesty. Any other acts of dishonesty that include, but are not limited to:

(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 information in response to the request or requirement of a college officer or employee.

(3) Obstruction or disruption. Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property.

(4) Assault, intimidation, and harassment. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct that harms, threatens, or is reasonably

perceived as threatening the health or safety of another person or another person's property.

(5) Bullying is severe or pervasive physical or verbal (written or oral) abuse.

(6) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, email, instant messaging, online bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

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

(a) The college or state;

(b) Any student, college officer, or employee;

(c) Any other member of the college community or visitors; or

(d) Possession of such property or money after it has been stolen.

(8) Failure to comply with a directive from a college officer or employee who is acting in the legitimate performance of their duties or failure to properly identify oneself to said person when requested to do so.

(9) Weapons. The possession, transportation, and use of firearms or other dangerous weapons on campus apparently capable of producing bodily harm is prohibited on the college campus subject to the following exceptions:

(a) Certified law enforcement officers acting within the scope of their employment;

(b) Private contracted security with expressed prior written permission from the college to possess firearms or dangerous weapons while employed by the college or for a permitted or contracted event;

(c) Knives, tools, and other objects that are being used for a legitimate educational purpose as part of a college instructional program;

(d) A student with a valid concealed weapons permit may store a firearm in the student's vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(e) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written document.

(10) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or involvement in any pastime or amusement with said organization that causes or is likely to cause a student bodily danger, physical harm, and serious mental or emotional harm.

(11) Alcohol, drug, and tobacco violations.

(a) Alcohol. The 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. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana regardless of form including edibles. While state law permits the recreational use of marijuana, federal law prohibits the use on all college premises and in connection with all 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 practitioner.

(d) Tobacco, electronic cigarettes, and related products. Use of tobacco, electronic cigarettes, smoking devices, and related products on or in any college facility is prohibited. Exceptions include in a designated smoking area or in a closed private vehicle when in compliance with applicable Washington state laws and college policies. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(12) Disorderly conduct. Conduct that:

(a) Disrupts campus operations or the educational, social, or housing programs; or

(b) Assisting or encouraging another person to engage in said disruptive behavior.

(13) Discriminatory conduct. Discriminatory conduct that harms or adversely affects any member of the college community or visitor. The misconduct includes, but is not limited to, race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification as defined by the college's nondiscrimination statement.

(14) Sexual misconduct. The term sexual misconduct includes sexual harassment, sexual intimidation, and sexual violence.

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

(b) Sexual intimidation. The term sexual intimidation means threatening or emotionally distressing conduct based on sex and including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. Sexual violence is a type of sexual discrimination and sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, that is without consent or by force by a person upon another person or with any object. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object and also defined as oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, by a person upon another person or with an object that is without consent or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Intimate partner violence is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.

(v) Stalking is intentional and repeated harassment or following 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 intent.

(15) Harassment. Unwelcome and offensive verbal, nonverbal, or physical conduct that is directed at a person because of said person's protected status and that is sufficiently serious:

(a) As to deny or limit or that does deny or limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(b) That creates an intimidating, hostile, or offensive environment for other community college members or visitors.

Harassing conduct may include, but is not limited to, physical, verbal, written, social media, and electronic communications. 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; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See subsection (14)(a) of this section for the definition of sexual harassment.

(16) Retaliation. Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(17) Theft or misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college includes, but is not limited to:

(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 said computer time or resources to interfere with someone else's work;

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

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

(g) Use of said computer time and resources in violation of applicable copyright or other laws;

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

(i) Failure to comply with the student computing resources policy.

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

(19) Safety violations. Safety violations include any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the college community or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(20) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation, or college policies or rules, including college traffic and parking rules.

(21) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or program.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-041, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140. WSR 04-11-043, § 495A-121-041, filed 5/13/04, effective 6/13/04. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-041, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-042 Performance dishonesty. (1) Honest assessment of student performance is of crucial importance to all members of the college community. It is the responsibility of the college administration and teaching faculty to provide reasonable and prudent security measures designed to minimize opportunities for acts of performance dishonesty which occur at the college.

(2) The student code of conduct shall not be construed as preventing an instructor from taking immediate disciplinary action when the instructor is required to act upon such breach of performance dishonesty in order to preserve order and prevent disruptive conduct in the classroom. This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for performance dishonesty. Acts of performance dishonesty shall be cause for disciplinary action. Acts of dishonesty shall consist of, but not be limited to, the following:

(a) Any student who, for the purpose of fulfilling any assignment or task required by a faculty member as part of the student's program of instruction, shall knowingly tender any work product that the stu-

dent fraudulently represents to the faculty member as their own work, shall be deemed to have committed an act of performance dishonesty.

(b) Any student who aids or abets the accomplishment of an act of performance dishonesty as described in (a) of this subsection.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-042, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-042, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-043 Classroom conduct. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard without the expressed approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) from a single class or related activity for the remainder of that day if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct officer may set conditions for the student that must be followed upon returning to the class or activity.

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

(5) 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 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-043, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-043, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-044 Disciplinary sanctions. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. Depending upon the misconduct, more than one sanction may be imposed. Other than college dismissal or revocation or withholding of a degree or certificate, disciplinary sanctions are not made a part of the student's academic record but are part of the student's disciplinary record. Violation of any term or condition of a disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(1) Disciplinary warning. A verbal statement to a student that there is a violation and that continued violations may be cause for further disciplinary action.

(2) Written reprimand. Notice in writing that the student has violated one or more terms of this code of conduct and that continua-

tion of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction may include, but is not limited to, a suspension or a dismissal from the college that shall take effect immediately. If the deferred sanction is a suspension in excess of ten days or a dismissal, the student shall have a right to appeal to the student/faulty disciplinary committee. Other deferred sanctions shall be subject to brief administrative proceedings as described in this chapter.

Any sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action was taken.

(5) Dismissal. The revocation of all rights and privileges of being a student at Bates Technical College and exclusion from all college campuses and college owned or controlled facilities without any possibility of returning. There is no refund of tuition or fees for the quarter in which the action is taken.

Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(6) Educational sanction. The college may require the student to complete an educational activity or experience directly related to the violation committed at the student's expense.

(7) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to the evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student remains suspended until further evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(8) Not in good standing. If a student is deemed not in good standing with the college, the student is subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college;

(b) Ineligible to hold an elected or appointed office of the college; and

(c) Ineligible to represent the college to anyone outside the college community in any capacity including representing the college at any official function or any forms of intercollegiate competition or representation.

(9) Restitution or monetary fine. Reimbursement for damage to or misappropriation of property, for injury to persons, or for reasonable

costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, monetary fine, or other compensation.

(10) Hold on transcript or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold will be released.

(11) Revocation of admission, degree, or certificate. Admission to or the award of a degree or certificate from the college may be revoked for fraud, misrepresentation, violation of standards of conduct for students in obtaining the degree or certificate, or other serious violations committed by a student prior to graduation.

(12) Withholding degree or certificate. The college may withhold awarding a degree or certificate otherwise earned until the completion of the process set forth in this chapter and including the completion of all sanctions imposed.

(13) No trespass order. A student may be restricted from college property based on misconduct.

(14) No contact order. An order directing a student to have no contact with a specified member of the college community, visitor, or a particular college facility.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-044, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140. WSR 04-11-043, § 495A-121-044, filed 5/13/04, effective 6/13/04. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-044, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-046 Groups and organizations. (1) Recognized student groups and organizations may be charged with violations of this code. Such a group or organization and its officers may be held collectively or individually responsible when violations of this code by those associated with the group or organization have received the tacit or overt consent or encouragement of the organization, its leaders, officers or spokespersons.

(2) Sanctions for group or organization misconduct may include revocation of the use of college facilities for a specified period of time or denial of recognition or funds as well as other appropriate sanctions permitted under this code. Sanctions of groups or organizations are subject to the appeal process upon request.

[Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-046, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-047 Refunds and access. (1) Refund of fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund policy.

(2) A student suspended on the basis of conduct which disrupted the orderly operation of the campus or any facility of the college, may be denied access to all or any part of the campus or other facility.

[Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-047, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-048 Readmission after suspension or expulsion. (1)

Any student suspended from the college for disciplinary reasons will normally be readmitted upon expiration of the time period for which the suspension was issued.

(2) If the student has been expelled or feels that circumstances warrant reconsideration of a temporary suspension prior to its expiration, or if the student was suspended with conditions imposed for re-admission, the student may be readmitted following approval of a written petition submitted to the vice president for student services. Such petition must state reasons, which support a reconsideration of the matter. Before readmission may be granted, such petition must be reviewed and approved by the college president or designee.

[Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-048, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-049 Reestablishment of performance standing. Stu-

dents who have been suspended pursuant to disciplinary procedures set forth in these provisions and whose suspension, upon appeal, is found to have been unwarranted, shall be provided the opportunity to reestablish their performance and student standing to the extent possible within the abilities of the college, including an opportunity to re-take examinations or otherwise complete course offerings missed by reason of such action.

[Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-049, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-061 Initiation of disciplinary action. (1) All

disciplinary actions are initiated by the student conduct officer. If the respondent has submitted an active complaint against the student conduct officer, the president shall, upon request, designate another person to fulfill any disciplinary responsibilities relative to the complaint.

(2) The student conduct officer initiates disciplinary action by serving the respondent with written notice directing the student to attend a disciplinary meeting. The notice briefly describes the factual allegations, the provision(s) of the student conduct code that the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specifies the time and location of the meeting. At the meeting the student conduct officer presents the allegations to the respondent, and the respondent is 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 take disciplinary action based upon the available information.

(3) Prior to taking disciplinary action in a case involving sexual misconduct, the student conduct officer will make a reasonable effort to contact the complainant(s):

(a) To discuss the results of the investigation; and

(b) If the allegations of sexual misconduct are found to have merit, to discuss the possible disciplinary sanctions or conditions that may be imposed upon the respondent and are for the complainant's protection.

(4) Within ten days of the initial disciplinary meeting and after considering the evidence in the case including any facts or argument presented by the respondent, the student conduct officer will serve the respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of appeal rights with an explanation of the consequences of failing to file a timely appeal.

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

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s) as described in WAC 495A-121-044; or

(c) Refer the matter directly to the student/faculty disciplinary committee for disciplinary action as the committee deems appropriate. This referral is in writing, to the attention of the chair of the student/faculty disciplinary committee, and with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, both the respondent and the complainant will be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal the disciplinary decision. On the same date that a disciplinary decision is served on the respondent, the student conduct officer will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describe any disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice also informs the complainant of their appeal rights. If protective sanctions or conditions are imposed, the student conduct officer will make a reasonable effort to contact the complainant and ensure prompt notice of the protective disciplinary sanctions or conditions.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-061, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-061, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-062 Summary suspension procedures. Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation or formal disciplinary procedure is pending.

(1) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the student conduct code and presents an immediate danger to the health, safety, or welfare of members of the college community or visitors; or

(b) Poses an ongoing threat of substantial disruption of or interference with the operations of the college.

(2) Notice. Any respondent who has been summarily suspended will be served with oral or written notice of the summary suspension. If oral notice is given, a written notification will be served on the respondent within two days of the oral notice.

(3) The written notification is entitled "notice of summary suspension" and includes:

(a) The reasons for imposing the summary suspension including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law 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 the college premises or communicate with members of the college community and visitors. If the respondent has been trespassed from the college premises, a notice against trespass will be included that warns the respondent that the privilege to enter into or remain on college premises has been withdrawn and that the respondent is considered trespassing and subject to arrest for criminal trespass. The respondent may only enter the college premises for a scheduled meeting with the student conduct officer or conduct review officer or to attend a disciplinary hearing.

(4) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that summary suspension should be continued pending the conclusion of disciplinary proceedings and whether the summary suspension should be less restrictive in scope.

(b) The respondent is afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision that includes a brief explanation for any decision continuing or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(5) In cases involving allegations of sexual misconduct, the complainant will be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college also will provide the complainant with timely notice of any subsequent changes to the summary suspension order.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-062, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-062, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-063 Appeals of disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service

of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal, and the student conduct officer's decision is deemed final.

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

(3) The parties to an appeal are the respondent and the conduct review officer.

(4) A respondent who appeals a disciplinary action within the ten days of service or whose case is referred to the student/faculty disciplinary committee has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code will be delayed pending appeal, unless the respondent has been summarily suspended.

(7) The student/faculty disciplinary committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(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.

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

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

(13) Brief adjudicative proceedings and the initial hearing shall be conducted by a conduct review officer. The conduct review officer will not participate in any case in which:

(a) The individual is involved as a complainant or witness;

(b) There is direct or personal interest, prejudice, or bias; or

(c) The conduct review officer has taken previous actions in an advisory capacity.

(14) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. Before taking action, the conduct review officer will conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(15) The conduct review officer will service an initial decision upon both the respondent and the student conduct officer within ten days of the completion of the informal hearing. The initial decision contains a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the initial decision, the initial decision is deemed the final decision.

(16) In cases involving allegations of sexual misconduct, the conduct review officer on the same date as the initial decision is served on the respondent will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing the disciplinary sanctions and conditions imposed upon the respondent for the complainant's protection. The notice also will inform the complainant of their appeal rights.

(17) If upon review the conduct review officer determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten days or dismissal, the matter will be referred to the student/faculty disciplinary committee for a disciplinary hearing.

(18) An initial decision from the brief adjudicative proceeding is subject to review by the president provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

(19) The president will not participate in any case in which:

(a) They were involved as a complainant or witness;

(b) There is direct or personal interest, prejudice or bias; or

(c) Previous actions have been taken in an advisory capacity.

(20) During the review, the president will give each party an opportunity to file written responses explaining their view of the matter and will make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(21) The decision on review must be in writing, must include a brief statement of the reason for the decision, and must be served on the parties within twenty calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. If the president does not make a disposition of the matter within twenty calendar days after the request is submitted, a request for review is deemed denied.

(22) If upon review the president determines that the imposed sanctions are insufficient and that the respondent's conduct may warrant imposition of a heightened disciplinary suspension of more than ten days or dismissal, the matter will be referred to the student/faculty disciplinary committee for a disciplinary hearing.

(23) In cases involving allegations of sexual misconduct, the president on the same date as the final decision is served on the respondent will serve written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing the disciplinary sanctions and conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice also will inform the complainant of their appeal rights.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-063, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-063, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-064 Student/faculty disciplinary committee. (1)

Proceedings of the student/faculty disciplinary committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by chapter 10-08 WAC, Model rules of procedure. To the extent there is a conflict between this chapter and chapter 10-08 WAC, this chapter shall control. The student/faculty disciplinary committee will consist of five members:

(a) Two full-time students appointed by the student government.

(b) Two faculty members appointed by the president.

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

(d) 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.

(2) The faculty member or administrator appointed as the chair of the committee may take action on preliminary hearing matters prior to convening the committee. The chair will receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a hearing panel consisting of a quorum of three members of the committee provided 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.

(4) Members of the student/faculty disciplinary committee will not participate in any case in which:

(a) They are a party, complainant, or witness;

(b) They have direct or personal interest, prejudice, or bias; or

(c) They have acted previously in an advisory capacity.

(5) A party may petition for disqualification of a committee member.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-064, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-064, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-065 Procedural guidelines of the student/faculty disciplinary committee. (1) Proceedings of the student/faculty disci-

plinary committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student/faculty disciplinary committee chair will serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. 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.

(3) The committee chair is authorized to conduct prehearing conferences or to make prehearing decisions concerning the extent and form of the discovery, issuance of protective decisions, and similar procedural matters.

(4) A request filed at least five days before the hearing by a party or at the direction of the committee chair will result in the parties exchanging no later than the third day prior to the hearing the 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 the requested exchange may be cause for exclusion from the hearing of the witness or exhibit not disclosed, absent a showing of good cause for the failure.

(5) In advance of the hearing the committee chair may provide to the committee copies of:

(a) The conduct officer's notification of the imposition of discipline or referral to the committee; and

(b) The notice of appeal or response to the referral by the respondent. If doing so, the chair should remind the members that these pleadings are not evidence of any facts they may allege.

(6) Before the hearing the parties may agree to designate specific exhibits as admissible without objection and whether the committee chair may provide copies of these admissible exhibits to the committee members in advance of the hearing.

(7) Upon request the student conduct officer will provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) With the exception of procedural communications that are necessary to maintain an orderly process, communications between committee members and other hearing participants regarding issues in the proceeding are generally prohibited without notice and opportunity for all parties to participate, and improper "ex parte" communication will be placed on the record as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. A respondent or complainant may elect to be represented by an attorney at their own cost and will be deemed to have waived that right unless at least four days before the hearing written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee is ordinarily advised by an assistant attorney general. If the respondent or the complainant is represented by an attorney, the student conduct officer also may be represented by a second assistant attorney general.

(10) Upon the failure of any party to attend or participate in a hearing the student/faculty disciplinary committee may:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(11) The hearing ordinarily is closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair will determine the extent to which the hearing is

open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(12) The chair shall cause the hearing to be recorded by a method the chair selects in accordance with RCW 34.05.449. The recording or a copy will be made available to the party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476 that also shall be available upon request for inspection and copying by the party. Other recording also shall be permitted in accordance with WAC 10-08-190.

(13) 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.

(14) The student conduct officer will present the case for imposing disciplinary sanctions unless represented by an assistant attorney general.

(15) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(16) In cases involving allegations of sexual misconduct no party can directly question or cross-examine one another. Attorneys for the parties also are prohibited from questioning the opposing party absent expressed permission from the committee chair. Subject to this exception, all cross-examination questions will be directed to the committee chair who in their discretion will pose the questions on the party's behalf.

(17) At the conclusion of the hearing the student/faculty disciplinary committee shall permit the parties to make closing argument, and the committee will determine the form to be used. The committee also may permit each party to propose findings, conclusions, or a proposed decision for its consideration.

(18) Within thirty calendar 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 decision will include findings on all material issues of fact, conclusions on all material issues of law, and provisions of the student conduct code that were violated. Those findings based substantially on the credibility of evidence or the demeanor of witnesses will be identified.

(19) The committee's initial decision will include a determination on appropriate discipline, if deemed appropriate. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or condition(s), as authorized in the student conduct code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction(s) or condition(s) imposed by the student conduct officer or impose additional disciplinary sanction(s) or condition(s) as authorized herein.

(20) The committee's initial decision also will include a statement of the available procedures and time frames for seeking reconsideration or appeal.

(21) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair also will promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(22) In cases involving allegations of sexual misconduct, on the same date as the initial decision is served on the respondent the chair of the student/faculty disciplinary committee will serve a written notice upon the complainant informing the complainant whether the

allegations of sexual misconduct were found to have merit and describe the disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student/faculty disciplinary committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice also will inform the complainant of their appeal rights.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-065, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-065, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-066 Appeal of the student/faculty disciplinary committee's decision.

(1) A respondent who is aggrieved by the findings or conclusions issued by the student/faculty disciplinary committee may appeal the committee's initial decision to the president by filing a written notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right, and the initial decision is deemed final.

(2) The written notice of appeal must identify the specific findings of fact and conclusions of law in the initial decision that are challenged and must contain arguments why the appeal should be granted. The president's review is restricted to the hearing record made before the student/faculty disciplinary committee and normally limited to a review of those issues and arguments raised in the notice of appeal. If necessary to aid review, the president may ask for additional briefings from the parties on issues raised on appeal.

(3) The president will provide a written decision to the respondent and the student conduct officer within thirty calendar days after receipt of the notice of appeal. The president's decision is final and includes a notice of the rights to request reconsideration or judicial review.

(4) In cases involving allegations of sexual misconduct, on the same date that the final decision is served on the respondent the president will serve a written notice informing the complainant of the final decision. This notice informs the complainant whether the allegations of sexual misconduct were found to have merit and describe the disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president has discretion to suspend the disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(6) Per RCW 34.05.455 the president shall not engage in improper "ex parte" communication with the parties regarding an appeal.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-066, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-066, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-070 Reporting, recording, and maintaining records.

(1) The record in a brief adjudicative proceeding shall consist of all documents as required by law and as specified in RCW 34.05.476.

(2) The office of the senior administrator of student services will maintain records of student grievances and disciplinary proceedings for at least six years.

(3) The disciplinary record is confidential.

(4) Students may request a copy of their own disciplinary record at their own reasonable expense by making a written request to the senior administrator of student services. Personally identifiable student information is redacted to protect another student's privacy.

(5) Students may authorize release of their own disciplinary record to a third party in compliance with FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99, by making a written request to the senior administrator of student services.

(6) The college may inform the complainant of the outcome of the disciplinary proceeding involving a crime of violence or nonforcible sex offense as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(7) Only with prior written consent of the student may the college communicate a student's disciplinary record to a person or agency outside the college, except as required or permitted by law. Exceptions include, but are not limited to, the student's parent(s) or legal guardian(s) who may review these records if the student is:

(a) A minor or a dependent;

(b) Is a minor and disciplinary action involves the use or possession of alcohol or controlled substance; or

(c) In connection with a health or safety emergency regardless if the student is a dependent or a minor as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-070, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-070, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-090 Student grievance procedure. The purpose of the grievance procedure is to provide a student with the opportunity to express and resolve any misunderstanding, alleged violation of a college policy, procedure or regulation, retaliation and or inequitable treatment in a fair and equitable manner. Students have the right to receive clear information and fair application of college policies, standards, rules and requirements, and are responsible for complying with them in their relationships with college personnel. The grievance procedure emphasizes an information resolution which promotes constructive dialogue and understanding.

[Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-090, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-091 Student complaints. Complaints should be filed as soon as possible and no more than thirty days after the incident occurs.

(1) Step one. The student shall first schedule an informal meeting with the instructor or staff member to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within ten working days from the time of the informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the area administrator of student services. Within ten working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(2) Step two. If the grievance is not resolved at step one, the student may within ten working days of the receipt of the written response, appeal to the area administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area administrator.

(a) The area administrator shall hear the grievance within ten working days after receipt of the grievance form and shall render a decision in writing within ten working days after such hearing.

(b) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts as they relate to the issues raised by the grievance.

(3) Step three. If the grievance is not resolved at step two, the student may within ten working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the senior administrator of student services.

(a) The senior administrator of student services shall hear the grievance within ten working days after receipt of the written appeal and shall render a decision in writing within ten working days after such hearing concludes.

(b) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts and issues to be addressed in the grievance.

(c) The decision of the senior administrator of student services shall be final and binding on all parties involved in the grievance.

(d) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have binding effect or disposition on any other grievances of similar nature.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-091, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-091, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-092 Records. The senior administrator of student services will keep all written statements or transcripts associated with the complaint as part of the files. The files will be destroyed after six years from the initiation of the complaint.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-092, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-092, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-093 Time limits on filing a complaint. The student must file a complaint within one quarter of the event, which caused the grievance to be filed. The senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness, or a leave of absence. No complaints will be consid-

ered after two quarters of the occurrence of the source of the grievance. When either party to the complaint is no longer present at the college and does not expect to return, the senior administrator of student services will give the absent party reasonable opportunity to reply to the complaint before making a decision.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-093, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-093, filed 5/24/00, effective 6/24/00.]

WAC 495A-121-094 Grievances excluded. (1) The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual discrimination. The college has separate, specific procedures for such complaints. See the senior administrator of human resources for information on those specific procedures.

(2) A student may not use the provisions of these sections as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in earlier sections of this student rights and responsibilities code or for resolution of specific categories of student complaints where other procedures are required.

(3) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community and technical colleges or the board of trustees of Bates Technical College, District No. 28 are excluded from being grieved.

[Statutory Authority: RCW 34.05.250 and 28B.50.140(13). WSR 19-14-073, § 495A-121-094, filed 6/30/19, effective 7/31/19. Statutory Authority: RCW 28B.50.140(10). WSR 00-11-147, § 495A-121-094, filed 5/24/00, effective 6/24/00.]