

Chapter 132E-122 WAC
STUDENT RIGHTS AND RESPONSIBILITIES

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WAC

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WAC 132E-122-010 Authority. (1) The Everett Community College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of instruction and student services or their designee(s). The conduct officer shall serve as the principal investigator and/or administrator for alleged violations of this code.

(2) The Title IX coordinator shall serve as the principal investigator and/or administrator for alleged violations of this code as it pertains to sexual misconduct and discrimination. The Title IX coordinator:

(a) Will accept all complaints of sexual misconduct and discrimination.

(b) May conduct investigations or assign investigators.

(c) May impose interim remedial measures to protect parties during investigation proceedings.

(d) Will make findings of fact on completed sexual misconduct or discrimination investigations.

(e) Will identify and address any patterns of systemic problems revealed by reports and/or complaints of sexual misconduct or discrimination.

(3) The college shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-010, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-020 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;

(b) At or in connection with college sponsored activities; or

(c) Off-campus or in noncollege electronic environment when such conduct is deemed to threaten the safety or security or otherwise adversely impacts the college community.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official Everett Community College (college) activities including, but not limited to, residence halls, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of acceptance at the college 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.

(4) Student organizations affiliated with the college may also be sanctioned under this code for the conduct of their student members.

(5) These standards shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending. The conduct officer or, in matters involving sexual misconduct, the Title IX coordinator has sole discretion, on a case-by-case basis, to determine whether the conduct code will be applied to conduct that occurs off campus.

(6) Nothing in this subsection shall be construed as being intended to protect any person or class of persons from injury or harm.

(7) Under this conduct code, the college shall not be required to stay disciplinary action pending any criminal or civil proceeding arising from the same conduct. The disposition of any such criminal or civil proceeding shall not control the outcome of any student disciplinary proceeding.

(8) Nothing in this conduct code will be construed to deny students their legally and/or constitutionally protected rights.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-020, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-030 Preamble. Everett Community College is a public institution responsible for providing instruction in higher education, for advancing knowledge through scholarship and research, and

for providing related services to the community. As a center of learning, the college also has the obligation to maintain conditions conducive to the freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the college is governed by rules, regulations, policies, procedures, and standards of conduct, including this conduct code, that safeguard its functions and protect the rights and freedoms of all members of the college community.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-030, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-040 Civility statement. (1) Background.

(a) As members of the EvCC community, we acknowledge our collective intention to create and maintain an environment in which everyone can flourish. This statement on civility and community serves as a reflection on shared values that inform our daily interactions as a college. It provides a structure for responding to others with respect and without judgment and at the same time gives us all a context for teaching and learning. Students, faculty, administrators, and staff members may differ widely in their specific interests, in the degrees and kinds of experiences they bring to EvCC, and in the functions which they have agreed to perform. The statement is relevant to all EvCC community members, regardless of their professional functions or the setting in which they work, teach, or learn.

(b) The statement on civility and community is not a set of rules that prescribe how we should act in all situations. Conflict and differences of opinion exist within all communities, and values find expression in individual ways. The statement provides community members with a tool to address these differences with respect while informing and enhancing dialogue.

(c) This statement on civility and community is not intended to limit freedom of speech, intellectual or academic freedom.

(d) We honor the right of expression as a hallmark of learning, and we treasure intellectual freedom even when individual or group points of view are controversial or out of favor with prevailing perspectives. Individuals should not feel intimidated, nor be subject to reprisal for, voicing their concerns or for participating in governance or policy making.

(2) Values.

(a)(i) Respect, civility, integrity, honesty.

(ii) Respect, civility, integrity and honesty are not just words; they are intentions that must be present in our interactions with one another. Each member of the EvCC community must feel free and safe to exercise the rights accorded them to voice their opinions in a civil way, as well as to respectfully challenge the uncivil acts of others.

(b)(i) Accountability.

(ii) We value our accountability to one another within our civic, communal and environmental context. Each member of the community shall respect the fundamental rights of others, the rights and obligations of Everett Community College as an institution established by the state of Washington, and individual rights to fair and equitable procedures when the institution acts to protect the safety of its members.

(c) Inclusion. We value diversity in all its forms by engaging in inclusive assessment of, and action in, our workforce selection, in

our policies and practices, in our curricular offerings, and in the scope of our services and programs. We actively seek and serve a diverse population of students. As a community, we are made richer by the variety of experiences and influences that individuals and groups contribute to our institution.

(3) **Collaboration.** We value the struggle to find and create meaningful human connection in our communication by embracing collaboration, respectful disagreement, free and open exchange of diverse ideas, perspectives, opinions and attitudes, and the resolving of differences through due process and a shared commitment to collaboration.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-040, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-050 Nondiscrimination statement. (1) Discrimination based on identity in Everett Community College programs, activities, admissions, or hiring is strictly prohibited.

(2) Everett Community College does not discriminate based on, but not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information.

(3) Any student, employee, applicant, or visitor who believes that they have been the subject of discrimination should report the incident(s) to the Title IX coordinator identified below. If the complaint is against the Title IX coordinator, the incident(s) should be reported to the vice president of administrative services.

Title IX coordinator
425-388-9271
TitleIXcoordinator@everettcc.edu
Olympus Hall Room 207
2000 Tower Street
Everett, WA 98201

Vice President of Administrative Services
425-388-9232
vpadmin@everettcc.edu
Olympus Hall Room 116
2000 Tower Street
Everett, WA 98201

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-050, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-060 Definitions. For the purposes of this conduct code, the following definitions apply.

(1) **"Advisor"** is a person selected by a complainant or a respondent to provide support and guidance in hearings under this conduct code.

(2) **"Allegation of misconduct"** is any report of an alleged violation of this conduct code, which may include, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal report or written statement from a complainant or a third party.

(3) "**Attorney**" is a person permitted to practice law in the state of Washington.

(4) "**Business day**" means a weekday, including during the summer, and excludes weekends and college holidays, and/or college closures.

(5) "**College community**" includes all college students and employees. It also includes guests of and visitors to the college during the time they are present on college premises.

(6) "**College official**" is an employee of the college performing their assigned administrative, professional, or paraprofessional duties.

(7) "**College premises**" includes all campuses and electronic presences of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, websites, and other property owned, used, or controlled by the college.

(8) "**Complaint**" is a description of facts that allege violation of the conduct code.

(9) "**Complainant**" is any person who is the alleged victim of prohibited conduct, whether or not such person has made an actual complaint.

(10) "**Conduct officer**" or "**student conduct officer**" is the college official designated by the college to be responsible for initiating disciplinary action for alleged violations of this code.

(11) "**Disciplinary action**" means the decision of the designated college official regarding alleged violations of the student code of conduct and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include summary suspension.

(12) "**FERPA**" refers to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).

(13) "**Filing and services.**"

(a) "**Filing**" means the delivery to the designated college official of any document that is required to be filed under this code. A document is filed by hand delivering it or mailing it to the college official (or the official's assistant) at the official's office address. Filing is completed upon actual receipt during office hours at the office of the designated official.

(b) "**Service**" means the delivery to a party of any document that is required to be served under this code. A document is served by hand delivering it to the party or by mailing it to the party's address of record. Service is complete when the document is hand delivered or actually deposited in the mail.

(c) "**Electronic filing and services.**" Unless otherwise provided, filing or services may be accomplished by electronic mail.

(14) "**Hostile environment**" may occur when another's unwelcome conduct of a sexual nature is sufficiently serious such that it substantially limits or denies one's ability to participate in or benefit from educational programs, activities, or employment.

(15) "**Investigation**" is the process through which the college collects information and otherwise reviews the complaint. As it pertains to reports of sexual misconduct under Title IX, this process includes equal opportunity for all complainants, respondents, and witnesses to participate in the Title IX proceedings, including the opportunity to provide information and/or evidence on their own behalf.

(16) "**Party**" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct.

(17) "**Policy violation**" means the violation of any applicable law or college policy governing the conduct of students as members of the college community.

(18) "**Preponderance of evidence**" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

(19) "**Proceedings**" means all processes related to the investigation and adjudication of a disciplinary matter under this conduct code including, but not limited to, investigations, informal and formal hearings, administrative review, and requests for reconsideration of a final order.

(20) "**Resolution**" is the means by which the complaint is finally addressed. This may be accomplished by using methods which may include counseling, supporting, disciplinary action, or otherwise facilitating the resolution of the complaint. No Title IX complainant will be required to have face-to-face interaction with the respondent in any resolution proceedings.

(21) "**Respondent**" is any student accused of misconduct under this conduct code.

(22) "**Service.**" See "**Filing and service.**"

(23) "**Student**" is 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. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.

(24) "**Student organization**" is a group of students that has complied with the requirements for college recognition or who otherwise are granted any rights or privileges by the college as a college affiliate. Student organizations include, but are not limited to, athletic teams or clubs, registered student organizations, and college service clubs.

(25) "**Title IX coordinator**" is the college official designated by the college to be responsible for initiating disciplinary action for allegations of sexual misconduct and discrimination.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-060, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-070 Statement of student rights. (1) As members of the Everett Community College 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 freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

(2) The following rights are guaranteed to each student within the limitations of statutory law and college policies necessary to achieve the educational goals of the college.

(a) **Academic freedom.**

(i) 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.

(ii) 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).

(iii) 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.

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

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

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

(iii) A student accused of violating this conduct code is entitled, upon request, to procedural due process as set forth in the proceedings as outlined in this student code of conduct.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-070, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-080 Academic affairs. Students' scholastic performance shall be evaluated on the basis of educational performance, not on opinions or conduct in matters unrelated to scholastic standards.

(1) **Protection of freedom of expression.** Students shall be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course for which they are enrolled.

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

(3) **Protection against improper academic evaluation.** Students shall have protection, through orderly procedures, against prejudice or capricious academic evaluation. At the same time, they are responsible for maintaining the standards of academic performance established for each course in which they are enrolled (see academic grievance procedure in student hand book, WAC 132E-122-090).

(4) **Rights and responsibilities regarding final examinations.** Students have the right to have course comprehensive final examinations scheduled per the college's final exam schedule and are expected to take these examinations as scheduled by the final exam schedule. A comprehensive final examination is that which includes materials covered throughout the entire course. The exception to this rule applies during summer quarter when there is not a scheduled final examination week.

(5) **Right to attend classes as regularly scheduled.** Students have the right to expect classes to be held as regularly scheduled and are

expected to attend such classes per the class instructor's attendance expectations as stated in the syllabus for the course.

(6) **Rights and responsibilities regarding course syllabi.** Students have the right to expect the class instructor to follow their course syllabus and if any changes are made to the grading system and/or course requirements during the quarter, the students must be promptly notified. If a different instructor is assigned to the class during the quarter, the original course syllabus shall be followed; however, if the new instructor determines a need to modify the syllabus for the portion of the class they are teaching, the students must be promptly notified. The students are responsible for reading and understanding the information provided in the course syllabus and any changes made to it during the quarter.

(7) **Protection against improper disclosure.** Information about student views, beliefs, and political associations acquired by faculty members in the course of their work as instructors, advisors, and counselors will be considered as privileged and confidential.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-080, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-090 Academic affairs grievance procedures. (1)

Definition of an academic grievance. If a student has evidence that they have been: Unfairly treated in matters related to grading, course policies or expectation; falsely accused of cheating; or inappropriately penalized for alleged cheating, they may be said to have an academic grievance. Students who feel that such unfair treatment has transpired should feel free to raise the question of how such a grievance may be resolved with the office of the chief academic affairs officer or designee which will provide information (without judgment) regarding the procedure for filing an academic grievance. Students should also feel free to contact any member of the campus community who they trust who may assist the student and/or refer the student to the appropriate resource. In addition to the office of the chief academic affairs officer, the offices/centers that can generally be of the most assistance in terms of advice, support, and referral regarding these matters are the office of the chief student affairs officer, the offices of the academic deans, the office of the chief human resources officer, the chief diversity and equity officer, counseling services, center for disability services, Bridges learning center, student LIFE office, and campus safety and security.

(2) **Informal procedure resolution.** Informal complaints should be made to the appropriate division dean or supervising administrator. Upon receipt of a student complaint by the division dean, the following steps may be taken:

(a) The student will be encouraged to discuss the alleged problem with the involved instructor; or if the complaint involves a program, the student will be encouraged to speak to the director/dean of the involved program.

(b) If the student is not satisfied as a result of such discussion, they should then meet with the director/dean or supervising administrator.

(c) If the complaint is not resolved at this level, the student, the instructor and the director/dean should meet with the chief academic officer or designee to attempt resolution.

(d) If the complaint is not resolved at this level, the student may institute formal grievance procedures.

(e) During any meetings that occur in (a) through (c) of this subsection, the student may invite another person or two to be with them in the meeting. The other person(s) are present to assist and advise the student although an accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the director/dean of supervising administrator facilitating the meeting.

(3) **Formal grievance procedure.** Formal grievance procedure - To assure an atmosphere free from unfair treatment in academic matters, the following procedures are established to respond to an unresolved academic complaint registered by a student. It is understood, however, that this procedure should be employed only after efforts have been made by the student to resolve the issue through the previously described informal procedure. A student who feels an academic grievance has not been resolved through the informal resolution process may file a formal grievance with the chief academic officer or designee prior to the last day of the quarter (not including summer) following the alleged grievance. Within ten business days of the receipt of the signed written grievance, the chief academic officer or designee will appoint a grievance committee for the purpose of reviewing that complaint and recommending a resolution.

(4) The grievance committee will be comprised of seven voting members including:

(a) An administrator who will serve as the chair but will only vote in the event of a tie vote.

(b) Three faculty members, including one from the division of the involved faculty member.

(c) Three students to be selected as provided for in the associated student constitution and bylaws.

(d) A quorum of the grievance shall be four members.

(e) All matters shall be discussed in closed meetings and shall be treated with strict confidence by the committee members.

(5) **Formal resolution.**

(a) Parties affected by the grievance will provide the grievance committee with all requested information in order to bring about full understanding and a speedy resolution to the grievance.

(b) In order to ensure due process, the aggrieved student shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(c) The instructor against whom the grievance is filed shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any members of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(d) Once the aggrieved student and the faculty member have had sufficient opportunity to present their points of view, the grievance committee will deliberate and reach decision by a simple majority vote. The committee will provide the chief academic officer or designee its written recommendation within ten business days of its organizational meeting. The chief academic officer or designee will notify the parties in the grievance of their decision, and the resolution within forty-eight hours of having received the committee recommendation.

(e) If the grievance committee establishes that an aggrieved student has been treated unfairly, the committee will recommend corrective steps to the chief academic officer or designee.

(f) Either party shall have the right to present a written appeal of the decision to the chief academic officer or designee to the president of the college. Within one week of having received the appeal, the president shall review the case and render a decision which will be transmitted to both parties.

(g) An accommodation of a spokesperson (a person who would address the grievance committee, or assist the person in addressing the grievance committee) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the administrator chairing the committee.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-090, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-100 Students as research subjects. (1) Permission may be granted for conduct of research involving students for such purposes as the pursuit of advanced degrees, classroom research, independent student research, and research for off-campus individuals and agencies. Participation therein is the choice of the individual student. Persons planning research on human subjects must secure permission in advance of the project from the institutional review board (IRB). Minimally such approval will entail:

(a) Assurance that the project does not conflict with examinations or require a major loss of classroom time;

(b) Assurance that students know they have the alternative of choosing to participate or not;

(c) Explanation of the purpose of the research and disclosure of all possible risks to which students might be exposed in the research and a thorough explanation of effects that will be employed to reduce those risks;

(d) Provision for students to have the opportunity to see the results of the research;

(e) Evidence that the research method is appropriate for the subject to be studied;

(f) Guarantee of confidentiality of student records and responses.

(2) Prior to the initiation of such a project, the researcher shall complete the IRB application and submit it to the institutional review board. Written permission may be given with or without college endorsement of the project. In such instances where the institutional review board deems appropriate, assistance may be sought from others with related knowledge before permission to proceed is granted or denied.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-100, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-110 Student affairs. (1) Freedom of association.

Students are free to organize and join associations to promote their common interests, provided such organizations or associations do not disrupt or interfere with the mission of the college.

(a) The membership, policies, and actions of a student organization will be determined by vote of only those persons who hold bona fide membership in the student body as determined by current enrollment in the college.

(b) Affiliation with an external organization shall not of itself disqualify a student organization from institutional recognition.

(c) An organization is free to nominate its own advisor from the campus faculty and staff. Campus advisors shall advise organizations in the exercise of the rights and responsibilities as an organization, but they will not have authority to control the policies of such organizations.

(d) Student organizations shall be required to submit a constitution to the office of student activities which includes a statement of purpose, criteria for membership, rules or procedures, and a current list of officers to the student government recognized by the college.

(e) Campus organizations, including those affiliated with an extramural organization shall be open to all students.

(2) Right of assembly.

(a) Students have the right to conduct or may participate in any assembly on facilities that are generally available to the public provided that such assemblies:

(i) Are conducted in an orderly manner;

(ii) Do not unreasonably interfere with classes, scheduled meetings or ceremonies, or regular functions of the college;

(iii) Do not unreasonably interfere with pedestrian or vehicular travel; or

(iv) Do not cause destruction or damage to college property.

(b) Any student group or student organization/club which wishes to schedule an assembly must reserve the college facilities per the appropriate procedures.

(c) Assemblies which violate these rules and other college policies and rules may be ordered to disperse by the college.

(d) A nonstudent who violates any provision of the rule will be referred to civilian authorities.

(3) Student participation in institutional government. Student participation in institutional government - As constituents of the educational community, students shall be free, individually and collectively, to express their views on issues of institutional policy and matters of general interest to the student body. The student body shall have a clearly defined means to participate in the formulation and application of institutional policy affecting academic and student affairs. The role of student government will be made explicit. The actions of the student government within the areas of jurisdiction shall be reviewed by the director of student LIFE and by the chief student affairs officer through orderly procedures.

(4) Right of ownership of works.

(5) Editorial independence of student publications policy. The college recognizes and affirms the editorial independence and press

freedom of all student-edited campus media. The *Clipper* student newspaper and other student-provided media are therefore designated as public forums.

(6) **Right to be interviewed.**

(a) Every student has the right to be interviewed on campus by any legal organization desired to recruit at the college.

(b) Any student, student group, or student organization/club may assemble in protest against any such organization provided that such protest does not interfere with any other student's right to have such an interview, and provided that such protests are in accordance with subsection (2) of this section.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-110, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-120 Student affairs grievance procedures. (1) **Definition of a student affairs grievance.** If a student has evidence that they have been unfairly treated in matters related to student services/student auxiliary services, policies, procedures, or expectations, they may be said to have a student affairs grievance. Students who feel that such unfair treatment has transpired should feel free to raise the question of how such a grievance may be resolved with the associated student executive council which will provide information (without judgment) regarding the procedure for filing a grievance. Students should also feel free to contact any member of the campus community who they trust that may assist the student and/or refer the student to the appropriate resources. In addition to the chief student affairs officer, the offices/centers that can generally be of the most assistance in terms of advice, support, and referral regarding these matters are the office of the chief academic affairs officer, the offices of the academic deans, and the office of the chief human resources officer, outreach, diversity and equity center, counseling and career center, center for disability services, Rainier learning center, student activities office, and campus safety and security.

(2) **Informal procedure for resolution.** Informal complaints should be made to the appropriate administrator. Upon receipt of a student complaint by the administrator, the following steps will be taken:

(a) The student will be encouraged to discuss the alleged problem with the party concerned; or if the complaint involves a program, the student will be encouraged to speak to the appropriate supervisor.

(b) If the student is not satisfied as a result of such discussion, they should then meet with the immediate administrator to resolve the complaint.

(c) If the complaint is not resolved at this level, the student, the respondent and the administrator should meet with the chief student affairs officer or the vice president under which the program/service is administratively aligned.

(d) If the complaint is not resolved at this level, the student may institute formal grievance procedures.

(3) **Formal grievance procedure.** To assure an atmosphere free from unfair treatment, the following procedures are established to respond to an unresolved complaint registered by a student. It is understood, however, that this procedure should be employed only after efforts have been made by the student to resolve the issue through the previously described informal procedure. A student who feels a grievance has not been resolved through the informal resolution process may file

a formal grievance with the appropriate vice president or designee prior to the last instructional day of the quarter (not including summer) following the date of the alleged grievance. Within ten business days of receipt of the signed written grievance, the appropriate vice president or designee will appoint a grievance committee for the purpose of reviewing the complaint and recommending a resolution.

(4) The grievance committee will be composed of seven voting members including:

(a) An administrator (other than the appropriate vice president) who shall serve as the chair and vote only in the case of a tie;

(b) One faculty and two from classified staff;

(c) Three students to be selected randomly and not active members of student activities or the involved program;

(d) A quorum consists of four members of the grievance committee;

(e) All matters shall be discussed in closed meetings and shall be treated with strict confidence by the committee members.

(5) Formal resolution.

(a) Parties affected by the grievance will provide the grievance committee with all requested information in order to bring about full understanding and a speedy resolution to the grievance.

(b) In order to ensure due process, the aggrieved student shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved;

(iii) The harasser either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the victim; and

(iv) In fact renders the college environment (including the environment for employee students, and patrons) hostile, intimidation, or demeaning for the victim.

(c) The party against whom the grievance is filed shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(d) Once the aggrieved student and the respondent have had sufficient opportunity to present their points of view, the grievance committee will deliberate and reach a decision by a simple majority vote. The committee will provide the appropriate vice president or designee its written recommendation within ten business days of its meeting.

(e) The appropriate vice president or designee will notify the parties in the grievance of the resolution within two business days of having received the committee recommendation. If the grievance committee establishes that aggrieved student has been treated unfairly, the committee will recommend corrective steps to the appropriate vice president or designee.

(f) Either party shall have the right to present a written appeal of the decision to the president of the college. Within one week of having received the appeal, the president shall review the case and render a decision which will be transmitted to both parties.

(g) During any meetings that occur in (a) through (f) of this subsection, the student may invite another person or two to be with them in the meeting. The other person(s) are present to assist and advise the student although an accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the director/dean or supervising administrator facilitating the meeting.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-120, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-130 Disclosure of student information. (1) Unless the student has provided the office of enrollment services with written notice which specifically requests otherwise, designated officials of the college may routinely respond to requests for the following directory information about a student:

- (a) Student's name;
- (b) Major field of study;
- (c) Extracurricular activities;
- (d) Height and weight of athletic team members;
- (e) Quarters of attendance;
- (f) Degrees and awards received;
- (g) The most recent previous educational agency or institutions attended;
- (h) Date of birth;
- (i) Email address;
- (j) Student enrollment status.

(2) Recognized college student organizations, such as scholastic and service clubs, may obtain information relating to a student's academic record and status; requests of this nature are handled on an individual basis and only through the organization's appointed advisor. Pursuant to the National Defense Authorization Act for Fiscal Year 1995, the college must release directory information to military recruiters unless the student specifically denies permission. The college shares selected records with organizations with which the college has contractual agreements for services. The college may also release enrollment data for loan processing, enrollment and degree verification, and records archiving purposes through contractual agreements, and to other schools in which a student seeks or intends to enroll. The college releases Social Security and enrollment data to the Federal Government for Financial Aid and Veterans' eligibility evaluation and for Hope Scholarship/Lifetime Learning tax credit programs. The college may release records following a receipt of a lawfully issued subpoena, attempting to notify the student beforehand. The college does not disclose records to family members without student consent.

(3) No other information is to be given without the prior consent of the student or parent/guardian as appropriate. The college registrar or their designee will be responsible for reviewing unusual requests for information and assistance in the interpretation of the provisions of the Federal Family Educational Rights and Privacy Act (Buckley Amendment). See Family Educational Rights and Privacy Act of 1974 in the student handbook for more information on confidentiality of student information and records.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-130, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-140 College distribution of literature procedures.

In order to ensure an atmosphere in which the discussion of diverse points of view and ideas may exist, the following policy with regard to the distribution of printed matter will be implemented.

(1) Printed matter by students and student organizations may be distributed in an orderly and nonforceful manner in only such areas as may be designated by the chief student affairs officer or designee except that:

(a) Noninstructional printed matter shall not be distributed in the classroom during regularly scheduled class time unless otherwise approved by the class instructor. Exceptions to this procedure may be made for special educational purposes and/or emergencies by the president, chief student affairs officer, or designee. If and when this occurs, the class instructor, appropriate academic dean, and students in the class shall be notified in a timely fashion;

(b) Printed matter shall not be distributed in college buildings other than in specifically designated areas or in any area where the distribution of printed matter would restrict the physical passage of students or interfere with the instructional program and administrative and student support functions unless otherwise approved on a temporary basis for a specific informational purpose by the chief student affairs officer or designee;

(c) Printed matter shall not be placed on any vehicle parked on the campus;

(d) Posters and advertising bulletins must be approved before they may be posted on campus, and they shall be posted only informational display boards/areas designated for this purpose. In general, students have the right to display posters and advertising bulletins and are expected to do so per the campus posting procedures. Class projects by students to be displayed outside of the classroom must be on designated boards or areas designated for this purpose and approved by the class instructor. Posters and advertising generated for student activity related events and programs must be approved for posting by the office of student activities. Posting rules and guidelines may change periodically and in some cases be specific to a building and/or area of the campus. In general, material concerning off-campus activities will not be approved unless it is determined to be special services to EvCC students;

(e) In addition, designated points of distribution will be made available on campus.

(2) As to content of printed matter, the college will be guided by state and federal laws and principles regarding free speech.

(3) A system of prior censorship is to be avoided if at all possible. Therefore, maximum cooperation of students, faculty and administration will be necessary. Matters of interpretation regarding these procedures and questions as to content of any displayed material will be handled by the chief of student affairs officers.

(4) Printed matter originating with an off-campus individual(s) or organization must be registered with the director of student activities before distribution will be permitted.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-140, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-150 Authority to request identification. In situations of suspected misconduct or suspected unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from a properly identified college personnel is a violation of this chapter and may result in disciplinary action if the person is found to be a student. In emergency situations or in cases of serious misconduct where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by the college personnel that the person questioned is not a student and may result in direct civil or criminal action.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-150, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-160 Prohibited student conduct. Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this sections means "without limitation."

(1) **Abuse of others.** Assault, battery, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health and safety of another person or another person's property.

(2) **Abuse of the student conduct process.** Abuse of the student conduct process includes:

(a) Knowingly making false allegations of misconduct under this conduct code;

(b) Attempting to coerce a person not to make a report or to participate in proceedings under this conduct code;

(c) Attempting to influence the impartiality or participation of a campus official or party of a campus disciplinary proceeding; or

(d) Influencing or attempting to influence another person to commit an abuse of the student conduct process.

(3) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to:

(a) **Cheating** including, but not limited to, intentional use or attempted use of unauthorized material, information, or study aids, misrepresentation of invention or any information such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.

(b) **Plagiarism** including, but not limited to, presenting or submitting another person's, entities', and/or sources' ideas, words, or other works in an instructional course without assigning proper credit.

(c) **Unauthorized collaboration** including, but not limited to, intentionally sharing or working together in an academic exercise when such actions are not approved by the course instructor.

(d) **Academic dishonesty** including, but not limited to, presenting or submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(4) **Aiding, solicitation, and attempt.** The following conduct is prohibited:

(a) Aiding or abetting another student or student organization in the commission of any misconduct prohibited by this conduct code;

(b) Requesting, hiring, or encouraging another person to commit any act of misconduct prohibited by this conduct code, either intending that the other person commit the misconduct or with the knowledge that the other person intends to commit the misconduct; or

(c) Attempting to commit any act of misconduct prohibited by this conduct code.

(5) **Alcohol, other drug, and tobacco violations.** The unlawful possession, use, distribution, or manufacture of alcohol is prohibited. The conduct officer may elect not to initiate disciplinary action under this subsection against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of alcohol. Generally, no disciplinary action under this subsection will be initiated against a complainant or another reporting student, who admits to the possession or use of alcohol (in violation of this subsection) in connection with an incident of sexual misconduct.

(6) **Alcohol, other drugs, and tobacco violations.**

(a) **Alcohol.** An alcohol violation includes using, possessing, delivering, selling, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** A marijuana violation includes using, possessing, delivering, selling, or being under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits any possession or use of marijuana on college premises or in connection with college activities.

(c) **Other drugs.** A drug violation includes using, possessing, delivering, selling, or being 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. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** A tobacco violation means smoking or using tobacco products, electronic smoking devices (including e-cigarettes or vape pens), or other smoking devices in any area of college premises where smoking or tobacco use is prohibited in accordance with public law and college policy.

(7) **Computer abuses.** Computer abuses include, but are not limited to:

(a) Unauthorized use of college computer resources;

(b) Use of another person's college user name and/or password;

(c) Use of college computing facilities and resources to interfere with the work of another student, an instructor, or other college official;

(d) Use of college computing facilities or resources to send intimidating, harassing, or threatening messages;

(e) Use of a computer or software to interfere with normal operations of the college's computing systems;

(f) Use of the college's computing facilities or resources in violation of any law, including copyright laws; and

(g) Any violation of the college's computer use policies.

(8) **Creating a public nuisance in neighboring communities.** In furtherance of the college's interest in maintaining positive relationships with its surrounding communities, the college shall have the authority to hold students accountable under this conduct code for misconduct within any residential or commercial communities adjacent to a college campus as follows:

(a) A student or a student organization may be subject to disciplinary proceedings if the college is made aware that the student or student organization has been contacted by a law enforcement agency regarding, and is determined to have engaged in, conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses including, but not limited to: Creating a public nuisance due to noise, residential disturbance, intentional destruction of property, urinating in public, or criminal trespass.

(b) A first minor violation under (a) of this subsection will not subject the student or student organization to disciplinary sanctions under this conduct code; however, the student or student organization may receive a letter regarding the expectations of college community members as residents in the area. This letter shall constitute a warning that repeated misconduct under this subsection may result in the imposition of disciplinary sanctions.

(c) A second violation of this subsection will result in the initiation of disciplinary proceedings under this conduct code.

(9) **Discrimination.** Discrimination is unfavorable treatment of a person based on that person's identity as described in the nondiscrimination policy (WAC 132E-122-050). **Sex discrimination** is conduct which harms or adversely affects any member of the college community because of their sex, actual or perceived sexual orientation, gender identity or expression, parental, family or marital status, or pregnancy.

(10) **Discriminatory harassment.** Discriminatory harassment is language or conduct directed at a person because of the person's identity that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or the person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(11) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the college. The term includes disorderly conduct, breach of the peace, violation of local or college noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election pro-

cesses, or interfering with the orderly conduct of college investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.

(12) **Domestic violence.** Domestic violence includes:

(a) The infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a family or household member. Family or household members include:

- (i) A current or former spouse or intimate partner;
- (ii) A person with whom the person shares a child in common;
- (iii) A person with whom one is cohabitating or has cohabitated;

or

(iv) A person with whom one resides including a roommate, suitemate, or housemate.

(b) Sexual assault of one family or household member by another family or household member; or

(c) Stalking, as defined under sexual misconduct below, of one family or household member by another family or household member.

(13) **Ethics violations.** An ethics violation includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or college policy relating to the ethical use of college resources.

(14) **Failure to comply.** Failure to comply means refusing to obey the lawful directive of a college official or authorized college body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

(15) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of college records, furnishing false or misleading information to the college, falsely claiming an academic credential, or falsely accusing any person of misconduct.

(16) **Gender-based harassment.** Gender-based harassment is a form of sex-based harassment and refers to unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature.

(17) **Harassment.**

(a) Harassment means unwelcome and offensive conduct including verbal, nonverbal, or physical conduct that is directed at a person because of their membership of a protected identity under this student code of conduct. Unwelcome and offensive conduct is considered harassment when:

(i) It is sufficiently serious as to deny or limit the ability of a student to participate in or benefit from the college's educational program; or

(ii) That creates an intimidating, hostile, or offensive environment for any campus community members.

(b) Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of harassment include, but are not limited to, the following:

(i) Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership of a protected identity.

(ii) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership of a protected identity.

(iii) Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to the person's membership of a protected identity.

(c) Protected identities under this student code of conduct (as cited in the nondiscrimination policy, WAC 132E-122-050) include, but are not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information.

(18) Hazing.

(a) Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person. Hazing activities may include, but are not limited to, encouraging or promoting the abuse of alcohol; striking another person whether by use of any object or any part of one's body; causing someone to experience excessive fatigue or physical and/or psychological shock; and causing someone to engage in degrading or humiliating games or activities that create a risk of serious mental, emotional, and/or physical harm.

(b) Consent of a victim or victims is not a defense to an allegation of hazing.

(c) Hazing does not include generally accepted practice, training, and conditioning activities, or activities reasonably designed to test a participant's ability to meet eligibility requirements for established athletic events such as intramural or club sports, intercollegiate athletics, or other similar contests or competitions.

(19) Personal offenses. The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

(20) Property violations. The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(21) Retaliation. The term "retaliation" means harming, threatening, intimidating, coercing or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(22) **Safety violations.** The term "safety violation" includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(23) **Sexual misconduct.** Sexual misconduct includes committing, or aiding, soliciting, or attempting the commission of, the following prohibited conduct: Sexual harassment, sexual intimidation, sexual violence and quid pro quo.

(24) **Sexual harassment.** Sexual harassment includes, but is not limited to, 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, based on sex:

(a) The ability of a student to participate in or benefit from the college's educational program; or

(b) That creates an intimidating, hostile, or offensive environment for any campus community member(s).

Examples of behaviors that may rise to the level of sexual harassment include, but are not limited to:

(i) Physical assault.

(ii) A pattern of behaviors that is unwelcome and severe, persistent, or pervasive, resulting in unreasonable interference with the work or educational environment, and may include, but is not limited to, the following:

(A) Comments of a sexual nature;

(B) Sexually explicit statements, questions, jokes, or anecdotes;

(C) Unnecessary or undesirable touching, patting, hugging, kissing, or brushing against an individual's body;

(D) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences;

(E) Persistent, unwanted attempts to change a professional relationship to an amorous relationship;

(F) Subtle propositions for sexual activity or direct propositions of a sexual nature;

(G) Uninvited letters, emails, telephone calls, or other correspondence referring to or depicting sexual activities.

(25) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or to suffer substantial emotional distress.

(26) **Sexual violence.** Sexual violence incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including dating violence, domestic violence, nonconsensual intercourse (rape), nonconsensual sexual contact (sexual assault), and stalking. 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, unconsciousness, or other cause.

(a) **"Consent"** is 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 con-

sented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(b) "**Dating violence**" means violence by a person who has been in a romantic or intimate relationship with that person. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

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

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

(e) "**Nonconsensual sexual contact (sexual assault)**" is any intentional sexual contact, however slight, with any object, by a person upon another person that is without consent and/or by force. "Sexual contact" includes any touching of another person for the purposes of sexual gratification, or any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ, of another person.

(f) "**Stalking**" means intentional and repeated harassment, following of, or otherwise surveilling 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.

(i) The person being harassed or followed is placed in **reasonable fear** that the stalker intends to injure the person, another person, or property of the person or of another person.

(ii) "**Reasonable fear**" is a fear that a reasonable person in the same situation would experience under most circumstances.

(27) **Quid pro quo**. Quid pro quo occurs when an individual in a position of real or perceived authority conditions the recipient of a benefit upon granting sexual favors. Examples of conduct that may qualify include:

(a) Persistent comments or questions of a sexual nature.

(b) A supervisor who gives an employee a promotion or special privileges in exchange for sexual favors.

(c) Sexually explicit statements, questions, jokes, or anecdotes.

(d) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.

(e) Remarks of a sexual nature about an individual's clothing, body, or speculation about previous sexual experiences.

(f) Persistent, unwanted attempts to change a professional relationship to a romantic relationship.

(g) Direct or indirect propositions for sexual activity.

(h) Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(28) **Sexual exploitation.** Sexual exploitation includes:

(a) Taking nonconsensual or abusive advantage of another for one's own sexual benefit, or for the sexual benefit of anyone other than the one being exploited;

(b) Compelling another by threat or force to engage in sexual conduct or activity;

(c) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings of a private and sexual nature where such transmission, publication, or distribution is without the consent of the subject(s) and is likely to cause emotional distress to the subject(s);

(d) Taking or making photographs, films, or digital images of the private body parts of another person without that person's consent;

(e) Causing or attempting to cause the impairment of another person to gain nonconsensual sexual advantage over that person;

(f) Prostituting another person;

(g) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity; or

(h) Taking, making, or directly transmitting nonconsensual video or audio recordings of sexual activity.

(29) **Theft.** Theft is the taking of property or services without express permission of the owner. This includes, but is not limited to, taking, possessing, or aiding another to take university property or services, or property belonging to members of the university community.

(30) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the college or the property of another person, including any facility, computer system, email account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

(31) **Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy.

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

(32) **Vandalism.** Vandalism includes maliciously damaging or misusing university property, or the property of any member of the university community.

(33) **Violation of disciplinary sanctions.** The violation of any term or condition of any final disciplinary order issued under this conduct code, or the failure to complete a disciplinary sanction in the specified time frame, may be grounds for additional disciplinary action.

(34) **Violation of law.** Any conduct that would constitute a violation of any federal, state, or local criminal law may be the subject of disciplinary proceedings under this conduct code.

(35) **Weapons violations.** A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily

harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on college premises of any firearm or other dangerous weapon in violation of public law or college policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160. Examples include, but are not limited to:

(a) Firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities are not permitted on campus premises, except for authorized campus purposes, or unless prior written approval has been obtained from the director of campus safety and security, or any other college official designated by the president.

(b) Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instrument used in the propulsion of shot, shell, bullets, or other harmful objects by:

(i) The action of gunpowder or other explosives;

(ii) The action of compressed air; or

(iii) The power of springs or other forms of propulsion.

(c) The exhibition or display of a replica or a dangerous weapon prohibited under this subsection is also prohibited if done in a manner, and at a time or place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-160, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-170 Reporting—Sexual misconduct and discrimination. (1) Persons who believe that a sexual misconduct or discrimination violation has been committed may contact and make a report to the Title IX coordinator directly.

Title IX Coordinator
425-388-9271
TitleIXcoordinator@everettcc.edu
Olympus Hall 114
2000 Tower Street
Everett, WA 98201

(2) The person filing the report will be asked to write a brief statement of allegation(s), including dates, names, a description of the incident, and the remedy sought.

(3) **Sexual misconduct responsible employee reporting.** Any employee who receives a report, formally or informally, of an alleged Title IX violation is required to report such information to the Title IX coordinator. The employee may contact the Title IX coordinator directly at TitleIXcoordinator@everettcc.edu or 425-388-9271.

(4) **Campus counselors.** If information regarding a possible sexual misconduct violation is disclosed during a confidential counseling session with a campus counselor, the counselor is not required to report this information to the Title IX coordinator.

(5) If the complaint is against the conduct officer or Title IX coordinator, the matter is to be reported to the vice president of human resources.

Vice President of
Human Resources
hr@everettcc.edu
425-388-9232
2000 Tower Street
Everett, WA 98201

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-170, filed 3/23/21, effective 4/23/21. Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-170, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-180 Confidentiality and right to privacy. (1) Everett Community College will seek to protect the privacy of the involved parties to the full extent possible, consistent with the legal obligation to investigate, take appropriate remediate action, and comply with the federal and state law, as well as other college policies and procedures.

(2) Confidentiality request and sexual violence complaints.

(a) The Title IX coordinator will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

(i) The seriousness of the alleged sexual violence.

(ii) The age of the complainant.

(iii) Whether the sexual violence was perpetrated with a weapon.

(iv) Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints.

(v) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others.

(vi) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

(b) Although the college will attempt to honor any complainants' request for confidentiality (i.e., for their name not to be revealed to the respondent or that the college not investigate the allegation), the college cannot guarantee complete confidentiality.

(c) Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(d) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision prior to proceeding and will ensure that the complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

(e) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence, and implement such measures if reasonably feasible.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-180, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-190 Retaliation is prohibited. (1) Retaliation by, for, or against any participant (i.e., complainant, respondent, witness, Title IX coordinator, investigator) is expressly prohibited and is conduct subject to discipline. Retaliatory action of any kind taken against individuals as a result of participation in proceedings under this conduct code including, but not limited to, serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline.

(2) If you are retaliated against, contact the conduct officer awilliams@everettcc.edu or 425-388-9282 or Title IX coordinator at TitleIXcoordinator@everettcc.edu or 425-388-9271. If you believe the conduct officer or Title IX coordinator has retaliated against you, contact the vice president of administrative services at vadmin@everettcc.edu or 425-388-9232.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-190, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-200 Disciplinary sanctions. Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the student code of conduct hearing procedures.

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

(2) **Reprimand.** Notice in writing that the student has violated one or more terms of the college's conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance and/or enrollment, and/or participation in college programs or activities, depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student is subject to a deferred disciplinary sanction and is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such 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 and/or enrollment at the college.

(4) **Suspension.** Dismissal from the college and from the student status for a stated period of time. There may be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the sanction is taken.

(6) **Other sanctions.** The following additional sanctions for conduct code violations may be imposed as required or permitted by law or college policy.

(a) **Athletic eligibility.** A student athlete found in violation of WAC 132E-122-160, relating to drug violations, shall be ineligible to participate in college athletics pursuant to RCW 69.41.340.

(b) **Parental notification.** The college reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-200, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-210 Terms and conditions. Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a sanction(s) include, but are not limited to, the following:

(1) **Restitution.** Reimbursement for damage to or misappropriation of property, or 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, or other compensation.

(2) **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 approved by the college. The student will 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 such a professional evaluation. A student may not return to campus if the evaluation indicates that the student is not capable of functioning within the college community, or if the evaluation lacks information for the college to make reasonable accommodations, or until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(3) **No contact/trespass order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility for a stated period of time.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-210, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-220 Loss of eligibility—Student athletic participation. Grounds for ineligibility. Any student found by the college to have violated chapter 69.41 RCW by virtue of a criminal conviction or otherwise insofar as it prohibits the possession, use or sale of

legend drugs, including anabolic steroids, will be disqualified from participation in any school-sponsored athletic event or activity.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-220, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-230 Standard of burden of proof. The applicable standard of proof in all disciplinary hearings (including those involving sexual misconduct and appeals) is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for a violation of this conduct code, the conduct officer, Title IX coordinator, conduct review officer, student conduct committee, or vice president of instruction and student services must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of misconduct.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-230, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-240 Initiation of disciplinary action—Non-Title

IX. (1) Written notice. The conduct officer will initiate disciplinary action by serving the respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations, the specific conduct code provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violation(s), and specify the time and location of the meeting.

(2) **Disciplinary meeting.** At the disciplinary meeting, the conduct officer will review the allegations with the respondent and, consistent with "Brief Adjudicative Proceedings" under RCW 34.05.482, will afford the respondent an opportunity to respond and provide any other information or evidence. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.

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

(4) Following written notice and a disciplinary or investigation meeting, the conduct officer will take any of the following actions:

(a) Dismiss the proceeding upon finding the allegation(s) to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review.

(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 132E-122-200. Such sanction(s) shall be subject to review on appeal as provided in this student code.

(c) Refer the matter for disciplinary action by the student conduct committee. Such referral shall be in writing, to the attention of

the committee chair, with a copy served to the respondent. The decision to refer shall not be subject to appeal or further review.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-240, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-250 Initiation of Title IX proceedings. Title IX includes, but is not limited to, the following prohibited student conduct: Domestic violence, gender-based harassment, sex discrimination, sexual harassment, sexual intimidation, sexual violence including dating violence, nonconsensual sexual intercourse (rape), nonconsensual sexual contact (sexual assault), and stalking, quid pro quo, and sexual exploitation.

(1) **Written notice.** In matters involving alleged sexual misconduct, the Title IX coordinator will initiate investigation proceedings by serving the respondent with a written notice of the factual allegations, the specific conduct code provision(s) the respondent is alleged to have violated, and the range of possible sanctions for such violation(s). The Title IX coordinator will include notification that an investigation is taking place and, if applicable, identify the designated Title IX investigator(s) assigned to the case.

(2) **Investigation meeting.** For matters involving sexual misconduct, the complainant, respondent, and, as applicable, witnesses will be asked to attend an investigation meeting. At the investigation meeting, the Title IX coordinator or designated Title IX investigator(s), will review the investigation proceedings, ask each party questions regarding the allegations, and consistent with "Brief Adjudicative Proceedings" under RCW 34.05.482, afford each party the opportunity to provide any other information or evidence.

If the respondent fails to attend or participate in the meeting, the Title IX coordinator or designated Title IX investigator(s), may proceed with the investigation, including making findings regarding the alleged policy violations, based on the available information.

(3) Following written notice and an investigation meeting, the Title IX coordinator may take any of the following actions:

(a) Dismiss the proceeding upon finding the allegation(s) to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review.

(b) Refer the matter for disciplinary action by the student conduct committee. Such referral shall be in writing, to the attention of the committee chair, with a copy served to the complainant and respondent. The decision to refer shall not be subject to appeal or further review.

(c) If the allegations are found to be substantiated, the Title IX coordinator may provide the complainant and respondent with a copy of the investigation report with the option to review the report and provide a response.

(4) **Findings.** If the allegations are found to be substantiated, the Title IX coordinator will review all of the information gathered throughout the investigation proceedings and make findings of fact for each alleged policy violation. The Title IX coordinator will notify the complainant and the respondent of these findings in writing and that the matter is being referred to the conduct officer, for matters involving only students, or the vice president of administrative serv-

ices, for matters involving one or more employees, for initiation of disciplinary action.

(5) On the same date that a disciplinary decision is served on the respondent, the conduct officer or vice president of administrative services will serve a written notice informing the complainant describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the conduct officer or vice president shall make a reasonable effort to contact the complainant to ensure the prompt notice of the protective disciplinary sanctions and/or conditions.

(6) Each party involved in sexual misconduct proceedings may appear alone or with another to advise and assist them during any conduct proceeding as outlined in WAC 132E-122-260.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-250, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-260 Interim measures. (1) After receiving a report of alleged sexual misconduct or other serious misconduct, the college may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with a complainant, a respondent, a reporting student, or other specified persons, and/or a specific student organization;

(b) Reassignment of on-campus housing; or

(c) Changes to class schedules, assignments, or test schedules.

(2) Interim measures will remain in place until lifted or modified by the campus official who implemented the interim measures.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this conduct code.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-260, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-270 Appeals—All cases. The following general rules apply to appeals of disciplinary action at any stage of the student disciplinary proceeding.

(1) **Parties.** The parties to an appeal shall be the respondent, and complainant in a proceeding involving sexual misconduct allegations, and the designated appeal authority.

(2) **Filing appeals.**

(a) **Appeal periods.** The respondent may appeal a disciplinary action by filing a written notice of appeal with the designated college official within ten business days of services of the conduct officer's decision.

(b) **Contents of appeal.** A party's written notice of appeal must clearly state the reason(s) for the appeal or request for review and provide any relevant information to support the appeal.

(c) **Issues that may be raised on an appeal.** The issues that may be raised on an appeal include: New information, contradictory infor-

mation, and information indicating that the party was not afforded due process.

(d) **Failure to appeal.** The failure of a party to file a timely appeal at any stage of the proceeding waives that party's right to appeal.

(e) **Cases involving allegations of sexual misconduct.** The complainant and respondent have equal appeal rights in cases involving allegations of sexual misconduct, including filing an appeal, notice of appeal, participation in any appeal proceedings, and notification of appeal outcome.

(3) **Notification of appeal.** In proceedings involving allegations of sexual misconduct, if any party appeals, the designated appeal authority will notify the other party(ies) of such. Each party shall be afforded the opportunity to participate in the appeal proceedings.

(4) **Effect of appeal - Stay.** The implementation of disciplinary action imposing a suspension of any length or imposing expulsion shall be stayed pending the time for filing an appeal and the conclusion of disciplinary proceedings. Other disciplinary sanctions shall not be stayed.

(5)(a) **Appeal authorities.** Appeals of disciplinary action taken by the conduct officer shall be submitted to and heard by the student conduct committee (EMAIL, 2000 Tower Street, Everett, WA 98201).

(b) Appeals of disciplinary action taken by the student conduct committee shall be submitted to and heard by the vice president of instruction and student services (gmiulli@everettcc.edu, 2000 Tower Street, Everett, WA 98201).

(6) **Ex parte communications.** Appeal authorities may not communicate with any of the parties regarding an appeal without first providing notice of the filed appeal and an equal opportunity for all parties to participate.

(7) **Disqualification.** Appeal authorities may not participate in a proceeding in which they:

(a) Are a respondent, complainant, or witness.

(b) Have a direct or personal interest, prejudice, or bias; or

(c) Have acted previously in another capacity.

(8) The student conduct committee shall conduct full adjudicative hearings arising from appeals from:

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

(b) Dismissals; and

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

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

(a) Suspension of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimand; and

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

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

(11) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the 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 disciplinary warning.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-270, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-280 Participation of advisors and attorneys. (1)

Each party involved in sexual misconduct proceedings may appear alone or with another to advise and assist them during any conduct proceeding.

(2) Any advisor who accompanies the complainant, respondent, or witness may provide support or guidance but may not speak, represent, or advocate on their behalf during sexual misconduct proceedings with the exception of full adjudication proceedings (WAC 132E-122-290 through 132E-122-350).

(3) An advisor may not delay, disrupt, or otherwise interfere with proceedings.

(4) An accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's documented disability warrants such an accommodation.

(5) **Notice of attorney advisor.** Anyone who plans to have an attorney present during a conduct proceeding must notify the conduct officer (awilliams@everettcc.edu or 425-388-9282) Title IX coordinator (TitleIXcoordinator@everettcc.edu or 425-388-9271), or chair of the student conduct committee (email address or phone number) of this intent four business days in advance of the scheduled sexual misconduct proceeding.

(6) When scheduling procedural meetings and/or interviews, the college will make reasonable efforts to accommodate an advisor. However, the availability of individuals directly involved in the proceedings, including the personnel assigned to the matter, as well as the expectation to promptly complete the proceedings may, in the campus' constituent discretion, take priority when determining the date and time for the proceedings.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-280, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-290 Brief adjudicative proceeding—Initial hearing.

(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 or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

- (a) An opportunity to be informed of the agency's view of the matter; and
- (b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the conduct officer within ten business days of consideration of the appeal. The initial decision shall contain 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 business days of service of the initial decision, the initial decision shall be deemed the final decision.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-290, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-300 Brief adjudicative proceedings—Review of initial decision. (1) An initial decision is subject to review by the vice president of instruction and student services, provided a party files a written request for review with the conduct review officer within ten business days of service of the initial decision.

(2) The vice president of instruction and student services shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the vice president of instruction and student services shall give each party an opportunity to file written responses explaining their view of the matter and shall 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.

(4) The decision review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty business 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. A request for review may be deemed to have been denied if the vice president of instruction and student services does not make a disposition of the matter within twenty business days after the request is submitted.

(5) If the vice president of instruction and student services upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the vice president of instruction and student services, on the same date as the final 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 any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-300, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-310 Full adjudicative process—Student conduct committee. (1) The student conduct committee shall consist of three members appointed by the president in consultation with student and faculty leadership:

(a) A full-time student;

(b) A full-time faculty member; and

(c) A full-time exempt administrative staff member who shall serve as chair of the committee.

(2) The student conduct committee will hear appeals of disciplinary action imposing a conduct suspension in excess of ten days or a conduct dismissal.

(3) The committee will hear such other matters as may be referred to the committee by the conduct officer, Title IX coordinator, conduct review officer, or vice president of instruction and student services. The committee shall have the authority to recommend dismissing a proceeding or to recommend imposing any of the disciplinary sanctions under WAC 132E-122-200.

(4) 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), as supplemented by these rules.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-310, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-320 Full adjudicative process—Prehearing procedure. (1) The student conduct committee chair shall serve all parties with written notice of the hearing date, time, and location not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 132E-122-270.

The chair may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown.

(2) The student conduct committee chair is authorized to conduct prehearing conferences and to make prehearing decisions concerning the forms and extent of any discovery, issuance of protective orders, and similar procedural matters.

(3) The student conduct committee chair may direct the parties prior to the hearing to submit to the chair a list of witnesses and copies of exhibits that the parties reasonably expect to present to the committee.

(a) The student conduct committee chair shall then provide copies of the submitted list of witnesses and of exhibits to the other party(ies), concurrently.

(b) Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.

(4) The student conduct committee chair in advance of the hearing may provide committee members with copies of:

(a) Any notice of disciplinary action or referral to the committee; and

(b) Any notice of appeal filed by the respondent or any complainant.

However, such "pleadings" shall not be regarded as evidence of any facts they may allege.

(5) Consistent with WAC 132E-122-260, any party may be accompanied at the hearing by an advisor or attorney of the party's choice.

(6) A respondent or any complainant may be represented by an attorney at such party's own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, the attorney files and serves a notice of appearance to the student conduct committee chair (EMAIL, 2000 Tower Street, Everett, WA 98201).

(7) If the respondent or complainant is represented by an attorney, the conduct officer may be represented by the college's assistant attorney general.

(8) The student conduct committee may itself be advised in any proceeding by an independently assigned assistant attorney general who shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-320, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-330 Full adjudicative process—Hearing procedure.

(1) Should a party fail to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing; or

(b) Serve an order of default in accordance with RCW 34.05.440.

(2) The student conduct committee chair shall cause the hearing to be recorded pursuant to RCW 34.05.449 by a method the chair selects.

(3) The student conduct committee chair shall maintain the official record of the proceeding that is required by RCW 34.05.476.

Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.

(4) The student conduct committee chair shall preside at the hearing and shall decide procedural questions that arise during the hearing, except as overridden by a majority vote of the committee.

(5) The student conduct officer shall present the case for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation.

(7) All evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(8) In proceedings involving allegations of sexual misconduct, the respondent and complainant, or their advisor or attorney representatives, shall not directly question or cross-examine one another.

All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on behalf of the parties.

(9) In proceedings involving allegations of sexual misconduct, the respondent and complainant shall not be required to be in the same room at the same time (i.e., through use of closed circuit TV or use of other similar technology).

(10) In proceedings involving allegations of sexual misconduct, college officials shall make arrangements to reasonably assure that respondents and complainants will not be in the same room at the same time when arriving to, departing from, and during any breaks of the student conduct committee proceedings.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-330, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-340 Full adjudicative process—Decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form the committee wishes to receive them.

The committee may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the conclusion of the hearing or the receipt of closing arguments, the student conduct committee shall issue a decision in accordance with RCW 34.05.461 and WAC 132E-122-160 and 132E-122-200.

(a) The decision shall contain findings on:

(i) All material issues of fact, except for cases involving sexual misconduct;

(ii) Conclusions concerning which, if any, provisions of the conduct code were found to be violated; and

(iii) Any sanction(s).

(b) Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The student conduct committee chair shall, within twenty days of the conclusion of the hearing, serve the decision to the respondent, the student conduct officer, and any complainant in a proceeding involving allegations of sexual misconduct, concurrently.

The recommended decision letter shall include notification that the review will be limited to reviewing the specific issues raised by the parties during the full adjudication proceedings.

(4) In a proceeding involving allegations of sexual misconduct, the review decision letter will explain the reasons for modifying any recommended disciplinary action with respect to such allegations.

(5) The decision will state whether the alleged misconduct was substantiated and will describe any sanctions or conditions imposed.

The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential information not relating to sexual misconduct allegations.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-340, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-350 Full adjudicative proceedings—Student conduct committee appeal. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the vice president of instruction and student services by filing a notice of appeal to the vice president of instruction and student services within ten business days of services of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(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 argument why the appeal should be granted. If necessary to aid review, the vice president may ask for additional

briefing from the parties on issues raised on appeal. The vice president of instruction and student services' review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The vice president of instruction and student services shall provide a written decision to the respondent and the student conduct officer within twenty days after receipt of the notice of appeal. The vice president of instruction and student services' decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the vice president of instruction and student services, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) In cases involving allegations of sexual misconduct, the complainant will have the same appeal rights as the respondent.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-350, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-360 Summary suspension—Purpose and proceeding.

(1) Summary suspension is exclusion from classes or other privileges, services and activities. A student shall be summarily suspended if the chief student affairs officer or designee has cause to believe that the student:

(a) Has violated any provision of this chapter; and/or

(b) Presents an imminent danger either to themselves, other persons on the campus, or to the educational process.

(2) Summary suspension is appropriate only where subsection (1)(b) of this section can be shown, either alone or in conjunction with subsection (1)(a) of this section. The chief student affairs officer or designee shall enter an order served by certified and regular mail at the student's last known address, or shall be personally served on the student.

(3) The procedures for a summary suspension hearing shall be considered an emergency adjudicative proceeding and shall be conducted as soon as possible and, if feasible, within five business days. It is the student's responsibility to schedule the hearing. The chief student affairs officer or designee may, upon the request of the student, schedule the hearing at a time later than five business days. The chief student affairs officer or designee shall preside over the meeting. The student may appear alone or with another to advise and assist them as they appear before the appropriate college official(s). Any person who accompanies the student may provide support or guidance to the student, but may not speak, represent, or advocate for the student before the college official. An accommodation of a spokesperson (a person who would address the college official(s)) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the chief student affairs officer or designee.

The chief student affairs officer or designee shall, at the summary suspension proceeding, determine whether there is probable cause to believe that continued suspension is necessary and/or whether other disciplinary action is appropriate.

(4) The chief student affairs officer or designee may continue to enforce the suspension of the student from the college and/or may impose other disciplinary action if, after the summary suspension hearing, the chief student affairs officer or designee finds that the student against whom the specific violations are alleged has in fact committed one or more of said violations and:

(a) Summary suspension is necessary for the safety of the student, other campus community members, or to restore order to the campus; and

(b) The violation(s) by the student are grounds for disciplinary action per the provisions of this code.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-360, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-370 Summary suspension—Notice. (1) If, after the summary suspension hearing a student's summary suspension is upheld or if the student is disciplined in another way, the chief student affairs officer or designee will provide to the student written findings of fact and conclusions which lead the chief student affairs officer or designee to conclude that the summary suspension of the student should be affirmed.

(2) The student shall be served a copy, if applicable, of the findings and conclusions by certified and regular mail to the student's last known address or by personal services within ten business days following the summary suspension hearing. The notice shall state the terms for which the student is suspended and any conditions imposed on the student's return.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-370, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-380 Summary suspension—For failure to appear. The chief student affairs officer or designee has the authority to enforce the suspension of a student if the student fails to appear at the time designated for the summary suspension hearing.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-380, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-390 Summary suspension—Appeal. (1) A student has the right to appeal a summary suspension to the student conduct committee and may do so if:

(a) The student has been officially notified in writing of the outcome of the summary suspension hearing;

(b) Summary suspension or other disciplinary action has been upheld; and

(c) The student's appeal conforms to the procedures prescribed in this chapter.

(2) The student conduct committee shall conduct a formal hearing as expeditiously as possible and appropriate.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-390, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-400 Readmission after dismissal. (1) Any student expelled from the college may submit a written petition to the chief student affairs officer or designee requesting readmission. Such petition must include how any conditions imposed by the chief student affairs officer or designee or student conduct committee have been met. Decisions by the chief student affairs officer or designee regarding a petition for readmission shall be reviewed by the president.

(2) If the chief student affairs officer or designee suspends or expels a student from a college program that has a readmission policy and procedure, the program's readmission policy and procedures will be followed and the readmission committee will review, as part of their deliberations, the chief student affairs officer's or designee's recommendation/conditions of readmission concerning the student's readmission to the program.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-400, filed 12/19/17, effective 1/19/18.]

WAC 132E-122-410 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Everett Community College's standard disciplinary procedures, WAC 132E-122-010 through 132E-122-490, these supplemental procedures shall take precedence.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-410, filed 3/23/21, effective 4/23/21.]

WAC 132E-122-420 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Everett Community College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) **Quid pro quo harassment.** An Everett Community College employee conditioning the provision of an aid, benefit, or service of Everett Community College on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Everett Community College's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

(a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) **Statutory rape.** Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

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

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-420, filed 3/23/21, effective 4/23/21.]

WAC 132E-122-430 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during an Everett Community College educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Everett Community College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Everett Community College.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Everett Community College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Everett Community College's student conduct code, WAC 132E-122-010 through 132E-122-490.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-430, filed 3/23/21, effective 4/23/21.]

WAC 132E-122-440 Initiation of Title IX proceedings. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);

(e) Explain that the parties are entitled to be accompanied by their chosen advisor(s) during the hearing and that:

(i) The advisor(s) will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) Everett Community College will appoint the party an advisor of the Everett Community College's choosing at no cost to the party, if the party fails to do so.

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-440, filed 3/23/21, effective 4/23/21.]

WAC 132E-122-450 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132E-122-440. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Everett Community College intends to offer the evidence at the hearing.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-450, filed 3/23/21, effective 4/23/21.]

WAC 132E-122-460 Rights of parties. (1) Everett Community College's student conduct procedures and this supplemental procedure shall apply equally to all parties.

(2) Everett Community College bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of Everett Community College's choosing on the party's behalf at no expense to the party.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-460, filed 3/23/21, effective 4/23/21.]

WAC 132E-122-470 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-470, filed 3/23/21, effective 4/23/21.]

WAC 132E-122-480 Initial order. The student conduct committee will be responsible for conferring and drafting an initial order that:

(1) Identifies the allegations of sexual harassment;

(2) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(3) Makes findings of fact supporting the determination of responsibility;

(4) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(5) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(6) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(7) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Everett Community College's education programs or activities; and

(8) Describes the process for appealing the initial order to Everett Community College's president.

(9) The committee chair will serve the initial order on the parties simultaneously.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-480, filed 3/23/21, effective 4/23/21.]

WAC 132E-122-490 Title IX appeals. (1) The parties have the right to appeal from the determination of responsibility and/or from a Title IX dismissal, in whole or part, of a formal complaint, as set forth in the initial order.

(2) The president or the president's delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(3) If a request for reconsideration is received, the Title IX coordinator shall respond within seven business days. The Title IX coordinator shall either deny the request or, if the Title IX coordinator determines that the request for reconsideration has merit, issue amended findings.

(4) If any of the grounds in the request for appeal do not meet the grounds in this policy, that request will be denied and the parties and their advisors will be notified in writing of the denial and the rationale.

(5) If any of the grounds in the request for appeal meet the grounds in this policy, then the other party(ies) and their advisors, and, when appropriate, the investigators and/or the original decision-maker(s) will be notified of the decision.

(6) The other party(ies) and their advisors, and, when appropriate, the investigators and/or the original decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and be provided seven business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the appeal decision-maker(s) to all parties for review and comment.

(7) The nonappealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the appeal decision-maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the investigator(s) and/or original decision-maker(s), as necessary, who will submit their responses in seven business days, which will be circulated for review and comment by all parties.

(8) Neither party may submit any new requests for appeal after this time period. The appeal decision-maker(s) will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than seven business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

(9) A notice of appeal outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The notice of appeal outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the recipient is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the recipient is permitted to share under state or federal law.

(10) Notification will be made in writing and may be delivered by one or more of the following methods: In person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' recipient-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

(11) The grounds for appeal are as follows:

(a) Procedural irregularity that affected the outcome of the matter;

(b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(c) The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter.

(12) All decisions reached through this process are final. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

(13) If no request for reconsideration is received within seven days, the findings become final.

(14) Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

(15) Appeals are not intended to provide for a full rehearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

(16) An appeal is not an opportunity for appeal decision-maker(s) to substitute their judgment for that of the original decision-maker(s) merely because they disagree with the finding and/or sanction(s).

(17) Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand except in the case of a new hearing.

(18) Any amended findings are final and no further reconsideration is available.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-07-110, § 132E-122-490, filed 3/23/21, effective 4/23/21.]