

Chapter 174-123 WAC STUDENT CONDUCT CODE

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WAC

STUDENT CONDUCT CODE PROCEDURES

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

174-123-010 The Evergreen State College student conduct code. [Statutory Authority: RCW 28B.40.120. WSR 12-03-040, § 174-123-010, filed 1/10/12, effective 2/10/12.] Repealed by WSR 18-17-102, filed 8/15/18, effective 9/15/18. Statutory Authority: RCW 28B.40.120.

174-123-020 Purpose. [Statutory Authority: RCW 28B.40.120. WSR 12-03-040, § 174-123-020, filed 1/10/12, effective 2/10/12.] Repealed by WSR 18-17-102, filed 8/15/18, effective 9/15/18. Statutory Authority: RCW 28B.40.120.

174-123-030 Student rights and responsibilities. [Statutory Authority: RCW 28B.40.120. WSR 12-03-040, § 174-123-030, filed 1/10/12, effective 2/10/12.] Repealed by WSR 18-17-102, filed 8/15/18, effective 9/15/18. Statutory Authority: RCW 28B.40.120.

174-123-040 Definitions. [Statutory Authority: RCW 28B.40.120. WSR 12-03-040, § 174-123-040, filed 1/10/12, effective 2/10/12.] Repealed by WSR 18-17-102, filed 8/15/18, effective 9/15/18. Statutory Authority: RCW 28B.40.120.

174-123-050 Jurisdiction. [Statutory Authority: RCW 28B.40.120. WSR 12-03-040, § 174-123-050, filed 1/10/12, effective 2/10/12.] Repealed by WSR 18-17-102, filed 8/15/18, effective 9/15/18. Statutory Authority: RCW 28B.40.120.

174-123-060 Computation of time. [Statutory Authority: RCW 28B.40.120. WSR 12-03-040, § 174-123-060, filed 1/10/12, effective 2/10/12.] Repealed by WSR 18-17-102, filed 8/15/18, effective 9/15/18. Statutory Authority: RCW 28B.40.120.

174-123-070 Prohibited conduct. [Statutory Authority: RCW 28B.40.120. WSR 12-03-040, § 174-123-070, filed 1/10/12, effective 2/10/12.] Repealed by WSR 18-17-102, filed 8/15/18, effective 9/15/18. Statutory Authority: RCW 28B.40.120.

- 174-123-080 Emergency suspension. [Statutory Authority: RCW 28B.40.120. WSR 12-03-040, § 174-123-080, filed 1/10/12, effective 2/10/12.] Repealed by WSR 18-17-102, filed 8/15/18, effective 9/15/18. Statutory Authority: RCW 28B.40.120.
- 174-123-090 Purpose. [Statutory Authority: RCW 28B.40.120. WSR 12-03-040, § 174-123-090, filed 1/10/12, effective 2/10/12.] Repealed by WSR 18-17-102, filed 8/15/18, effective 9/15/18. Statutory Authority: RCW 28B.40.120.
- 174-123-100 Submitting a complaint. [Statutory Authority: RCW 28B.40.120. WSR 12-03-040, § 174-123-100, filed 1/10/12, effective 2/10/12.] Repealed by WSR 18-17-102, filed 8/15/18, effective 9/15/18. Statutory Authority: RCW 28B.40.120.
- 174-123-350 Code review. [Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-350, filed 8/15/18, effective 9/15/18.] Decodified by WSR 21-10-022, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120(12). Recodified as § 174-123-450

STUDENT CONDUCT CODE PROCEDURES

WAC 174-123-110 The Evergreen State College code of student rights and responsibilities. This chapter will be known as the code of student rights and responsibilities (code) for The Evergreen State College.

A community exists on the basis of shared values and principles. At The Evergreen State College, student members of the community are expected to uphold and abide by certain standards of conduct that form the basis of the code of student rights and responsibilities. These standards are embodied within a set of core values reflected in the college mission that include integrity, social justice, respect, community, and responsibility.

This document is to be understood in connection with WAC 174-121-010 Social contract, which is an aspirational document about how we wish to uphold our community, and to ensure an optimal experience for everyone involved in the college community.

The Evergreen State College can thrive only when all members of the community participate in the social contract, which prizes academic and interpersonal honesty, conveys our commitment to resolving differences with a strong will toward collaboration, and protects community values and individual rights. The code of student rights and responsibilities states specific procedures and standards for upholding the values and aspirations expressed in the social contract. Specifically, the code strives to afford opportunities for informal resolution, restorative practices, and education.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-110, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-110, filed 1/10/12, effective 2/10/12.]

BACKGROUND

WAC 174-123-120 Purpose. The purpose of this code is to provide students with necessary information about their rights and responsibilities, and to inform students of the due process afforded in student conduct proceedings.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-120, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-120, filed 1/10/12, effective 2/10/12.]

WAC 174-123-130 Student rights and responsibilities. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students, faculty, and staff create these opportunities and conditions. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following due process rights are guaranteed to each student within the limitations of statutory law and college policy:

(1) To be secure in their persons, housing, papers, and effects against unreasonable searches and seizures;

(2) No conduct sanction may be imposed on any student without notice to the accused of the alleged violations; and

(3) A student accused of violating this code is entitled, upon request, to procedural due process as set forth in this chapter.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-130, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-130, filed 1/10/12, effective 2/10/12.]

WAC 174-123-140 Definitions. Agreement of accountability means a written mutual agreement between the respondent and student conduct official which states the violations of the code and the resolution and sanction(s).

Business day means any calendar day, exclusive of weekends and federal and school holidays, in which the college is open to the public for business.

Calendar day means any day of the month including weekends and state holidays.

College means The Evergreen State College.

College official means any person employed by the college performing assigned teaching, administrative, or professional responsibilities.

College premises means all campuses including all land, buildings, facilities, and other property in the possession of or owned, used, leased, or controlled by the college including adjacent streets and sidewalks.

College-sponsored event or activity means activities or events involving planning or funding, or other authorized participation by the college.

Complainant means any person, group, or entity that submits a complaint alleging that a student or recognized organization violated the code and/or a person who believes they have been harmed by another student's behavior.

Complaint means a report that alleges a student or recognized organization violated the code.

Conduct appeal is the process by which a student or recognized organization can appeal their determination of responsibility and/or required resolutions and sanctions.

Conduct hold is a measure restricting release of a student's transcript, diploma(s), or other records; and access to registration prohibiting registration for any program or course.

Consent is affirmative, conscious, voluntary, and clear permission by word(s) or action(s) for specific activity. See the section on sexual misconduct for additional information.

Determination of responsibility means a decision of the student conduct official regarding whether or not the respondent is responsible for the alleged violation(s) of the code, including a required resolution and sanctions if appropriate.

Faculty member means any person employed by the college to conduct teaching activities or who is otherwise considered by the college to be a member of the faculty.

Filing is the process by which a document is officially delivered to a college official responsible for facilitating processes as outlined in the code. Filing will be considered completed upon actual receipt during office hours at the senior college official's office by:

(a) Hand delivery of the document to the senior college official's office; or

(b) Sending the document by email or first class mail to the senior college official's office or college email address.

Final determination means the college's final action with regard to a complaint. A final determination occurs when a conduct official, conduct review officer, senior college official, or student conduct appeal panel determines whether a respondent is responsible for the alleged violation(s) of the code; and

(a) No appeal or request for reconsideration is filed by the applicable deadline set forth in the code; or

(b) No appeal or request for reconsideration is allowed under the code.

Guest means any person who is not a member of the college community and is on college premises or at a college-sponsored event at the invitation and/or hosting of a student.

Informal resolution is the outcome of a conduct conference when a student and a student conduct official enter into an agreement of accountability.

Member of the college community means any person who is a student, faculty, staff, or volunteer. A volunteer is any person who is not receiving compensation for services or work for and/or at the college. A person's status in a particular situation will be determined by the senior conduct official or designee.

Mental safety is a state of mind characterized by the absence of fear or anxiety that substantially limits one's ability to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in their work duties.

No contact order means an order directing a student to have no contact with a specified member(s) of the college community, visitor(s), or particular college facilities. The order may include, but is not limited to, directives with regard to path of travel, parking, arrival on campus, or specified times for use of campus resources.

Policy means the official written policies and procedures of the college published on the college's website or in the college catalog, or posted anywhere on college premises or at college-sponsored events or activities; or the individual requirements of a department or office, or course syllabi or covenant.

Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; sex; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

Recognized organization means any group which has complied with the formal requirements for college recognition and is an officially recognized college organization. A group's status in a particular situation will be determined by the senior conduct official or designee.

Required resolution and sanction means the decision of the student conduct official regarding the resolution and sanction(s) appropriate to the level of responsibility for violating the code as conveyed in the determination of responsibility.

Respondent means any student or recognized organization alleged to have violated the code.

Restorative practice process means a process to involve those who have a stake in a specific violation of the code, to the extent possible and with their consent, to collectively identify and address harms, needs, and obligations. It may be part of a decision of the student conduct official regarding resolutions and sanctions in cases where the student or recognized organization has taken responsibility for their actions and a violation of the code.

Senior college official is the person designated by the college president to oversee the administration of the code, and for performing the other duties and obligations of the position.

Senior student conduct official means the primary college official authorized by the senior college official responsible for administration and implementation of the code.

Served notice is the process by which a document is officially delivered to a party. Unless otherwise provided in this code, service upon a party will be accomplished by:

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

(b) By sending the document by email or certified mail or first class mail to the party's last known address. A student's last known address will be the current address on file with the registrar unless a student has provided written notice of a different address to the office of the senior college official.

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

Sexual misconduct has the meaning ascribed to this term in WAC 174-123-170 Prohibited conduct.

Staff member means any person employed by the college in a nonfaculty role.

Student means:

(a) Any applicant who becomes enrolled, when an applicant commits violations of the code as part of the application process or commits violations of the code following their submittal of the application through official enrollment;

(b) Any applicant accepted for admission or readmission to the college;

(c) Any person currently enrolled at the college;

(d) Any person enrolled at the college in a prior quarter or summer session, and eligible to continue enrollment in the quarter or summer session that immediately follows; or

(e) Any person who was enrolled at the time of alleged violations of the code; or

(f) Any person not employed by the college on a permanent basis who resides in college housing.

Student conduct official means a college official authorized by the senior student conduct official to administer the code in response to a complaint.

Written notice means written communication personally provided to the student or registered organization or delivered via the student's or registered organization leaders' assigned college account electronic mail address.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-140, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-140, filed 1/10/12, effective 2/10/12.]

WAC 174-123-150 Jurisdiction. (1) The code of student rights and responsibilities will apply to conduct by a student or a recognized organization that occurs:

- (a) On college premises; or
- (b) At or in connection with a college-sponsored activity or program; or
- (c) At an off-campus location and, based on a reasonable person's standard, adversely affects a college community member's ability to participate in or benefit from the college's educational opportunities, programs, or activities, an employee's ability to engage in their work duties, or adversely affects the college's pursuit of its objectives.

(2) Jurisdiction extends to locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by student fees, the recognized student government, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social events or recognized organization's activities.

(3) Students are responsible for their conduct as long as they meet the definition of student as defined in this code.

(4) These standards will apply to a student's conduct even if the student withdraws from the college while a complaint is pending.

(5) The senior college official or their designee has sole discretion, on a case-by-case basis, to determine whether the code will be applied to conduct that occurs off campus.

(6) The senior college official or their designee has sole discretion, on a case-by-case basis, to determine whether the code of student rights and responsibilities, or the college's student activities policies, or both will be applied to conduct by a recognized organization.

(7) Nothing in this code will be construed as being intended to create a legal obligation on the part of the college to protect any person or class of persons from injury or harm, or to deny students their legal and/or constitutionally protected rights.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-150, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-150, filed 1/10/12, effective 2/10/12.]

WAC 174-123-160 Computation of time. In computing any period of time in these rules, the day from which the designated period begins to run will not be included. The last day of the period will be included unless it is a Saturday, Sunday, holiday, or campus closure, in which event the period runs until the end of the next day which is not a Saturday, Sunday, holiday, or campus closure. All college personnel

responsible for administering the code will carry out their responsibilities promptly. Promptly means as soon as reasonably practicable under the facts and circumstances at the time, and pursuant to guidelines that may be adopted by the senior college official or their designee.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-160, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-160, filed 1/10/12, effective 2/10/12.]

WAC 174-123-170 Prohibited conduct. The code of student rights and responsibilities recognizes two types of prohibited conduct: Conduct related to community, and conduct related to persons. The subsections below outline the basic structures of community that the code seeks to uphold, and the basic rights and expectations of students that the code seeks to support. Conduct prohibited under Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, and associated procedures are set out in WAC 174-123-355 to 174-123-440 (supplemental Title IX student conduct procedures).

(1) Conduct related to community.

The Evergreen State College community is a vibrant and engaged collective of individuals who have committed to the mission of the college. The college's mission statement reads as follows: "As an innovative public liberal arts college, Evergreen emphasizes collaborative, interdisciplinary learning across significant differences. Our academic community engages students in defining and thinking critically about their learning. Evergreen supports and benefits from local and global commitments to social justice, diversity, environmental stewardship and service in the public interest." Students are encouraged to continue to grow individualistically while contributing to and shaping the Evergreen community as each person brings new ideas, new perspectives, and renewed focus that is invaluable at a liberal arts college.

Students in the college community are expected to practice academic integrity: To author their own ideas and critique and evaluate others' ideas in their own voices. The greater learning community of the college can thrive only if each person works with a genuine commitment to make their own authentic intellectual discoveries. To that end it is a community expectation that students and recognized organizations will not engage in the following prohibited conduct, which constitute violations of this code:

(a) **Academic dishonesty** which includes, but is not limited to, the following:

(i) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment;

(ii) Plagiarism includes taking and using as one's own without proper attribution the ideas, writings, or work of another person in completing an academic assignment. Plagiarism may also include the unauthorized submission of academic work for credit that has been submitted for credit in another course;

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

(iv) Using assistance or materials that are expressly forbidden to complete an academic product or assignment;

(v) The unauthorized collaboration with any other person during the completion of independent academic work;

(vi) Knowingly falsifying or assisting in falsifying in whole, or in part, the contents of one's academic work;

(vii) Permitting any other person to substitute oneself to complete academic work; or

(viii) Engaging in any academic behavior specifically prohibited by a faculty member in the course covenant, syllabus, or individual or class discussion.

(b) **Damaging, defacing, destroying, or tampering** with college property or other personal or public property. This includes, but is not limited to, graffiti and vandalism.

(c) **Disorderly conduct** which includes any individual or group behavior which is abusive, obscene, violent, excessively noisy, or which unreasonably disturbs institutional functions, operations, classrooms, other groups or individuals. These behaviors include, but are not limited to, those which obstruct or interfere with institutional activities, programs, events, or facilities, such as:

(i) Any unauthorized occupancy of facilities owned or controlled by the college, or blockage of access to or from such facilities, or the occupation of college property after being given notice to depart;

(ii) Interference with the ability of any authorized person to gain access to any activity, program, event, or facility sponsored or controlled by the college;

(iii) Any obstruction or delay of a public safety officer, police officer, firefighter, EMT, or any official of the college;

(iv) The use of force or violence (actual or threatened) to deny, impede, obstruct, impair, or interfere with the freedom of movement of any person, or the performance of duties of any college employee;

(v) Participation in a disruptive or coercive demonstration. A demonstration is considered disruptive or coercive if it substantially impedes college operations, interferes with the rights of others, or takes place on premises or at times where students are not authorized to be;

(vi) Obstruction of the free flow of pedestrian or vehicular traffic on college property or at college sponsored/supervised functions; or

(vii) Public urination or defecation.

(d) **Disruptive behavior in the classroom** may be defined as, but not limited to, behavior that unreasonably obstructs or disrupts the learning environment (e.g., outbursts which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining the learning community as defined in the course syllabus or covenant, and the continued use, after being given notice to stop, of any electronic or other noise or light emitting device which disturbs others, unless use of such technologies are an authorized accommodation for a documented disability for that program).

The faculty member has responsibility for maintaining a productive classroom and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive behavior or behavior that violates the general rules and regulations of the college for each class session during which the behavior occurs. Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred, or further conduct action can be effected only through appropriate procedures of the college. The faculty member may also report incidents of classroom misconduct to the student conduct office.

(e) **Forgery, alteration, or the misuse** of college documents, records or identification cards.

(f) **Failure to comply** with the direction of or failure to identify yourself to a college official or other public official acting in the performance of their duties.

(g) **Unauthorized entry** into or onto, or the unauthorized remaining in, or upon, any college premises; or the unauthorized possession, duplication, or use of a college key or other access device.

(h) **Sounding of a false alarm** which includes, but is not limited to, initiating or causing to be initiated any false report, warning or threat, such as that of fire, explosion or emergency that intentionally causes a false emergency response; and the improper use or disabling of safety equipment and signs.

(2) Conduct related to persons.

Students of The Evergreen State College are to practice good citizenship in the campus community and beyond. Our collective efforts include implementation of the education, experiential learning, and skills gained through engagement with the faculty, staff, and students of the college. Engagement can be through civil discussions, a free exchange of ideas, participation in events and programs, or through other interactions where the desire to create spaces for learning are present. Students are encouraged to pursue new opportunities to engage and expand their intellectual curiosities and develop an understanding of the global society in which we live.

Students in the college community participate with fellow community members (faculty, staff, students, and members of the community beyond The Evergreen State College) in dialogue, educational activities, social events, and more with a focus on civil engagement and being one's best self. To that end it is a community expectation that students or recognized organizations will not engage in the following prohibited conduct, which constitute violations of this code:

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

(i) Alcohol. The use, possession, delivery, sale, manufacture, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(ii) Cannabis. The use, possession, delivery, or sale of cannabis or the psychoactive compounds found in cannabis, regardless of form, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis. Cannabis use and possession is illegal under federal law and the college is required to prohibit the possession, use and distribution of illicit drugs, including cannabis, as a condition of receiving federal funding.

(iii) Drugs. The use, possession, delivery, sale, manufacture, or being observably under the influence of any mood altering drug, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(iv) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products is prohibited except as allowed by college policy in designated smoking areas. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(b) **Assault.** Unwanted touching, physical harm or abuse, or threats of physical harm or abuse which threaten the health or safety of another person.

(c) **Cyber misconduct.** The term "cyber misconduct" includes, but is not limited to, behavior involving the use of a computer, computer

network, the internet, or use of electronic communications including, but not limited to, electronic mail, instant messaging, list serves, electronic bulletin boards/discussion boards, ad forums and social media sites or platforms, to disrupt college function, adversely affect the pursuit of the college's objectives, or to stalk, harm or harass, or engage in other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person, or which is sufficiently severe, persistent, or pervasive that it interferes with or diminishes the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(d) **Failure to be truthful to the college or a college official.** This includes, but is not limited to, knowingly making false charges against another member of the college community; and providing false or misleading information in an application for admission or to gain employment.

(e) **Failure to follow fire safety regulations.** Failure to evacuate during a fire alarm; the improper use or damaging of fire prevention or safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations, or emergency exits; or the unauthorized setting of fires.

(f) **Harm.** Behavior directed at an individual that based on a reasonable person's standard is sufficiently severe, pervasive, or persistent such that it diminishes or interferes with the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college or an employee to engage in their work duties. This includes, but is not limited to, intimidation, verbal abuse, threat(s), bullying, or other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person. Bullying is repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates another person.

(g) **Harassment.** Conduct against a person on the basis of protected status that is sufficiently severe, pervasive, or persistent as to interfere with or diminishes the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(h) **Hazing.** Conduct that includes any activity or method of initiation into a recognized organization or student social, living, learning, or athletic group that causes, or is likely to cause, bodily danger or physical or mental harm to any member of the college community.

(i) **Knowingly assisting another person to violate the code** or failing to report to a college official conduct that constitutes significant damage to property or a serious danger to the health or physical safety of an individual.

(j) **Lewd conduct.** Behavior which is sexualized or obscene that is not otherwise protected under the law including, but not limited to, exposing genitalia, and engaging in sexual intercourse or sexual activity in public.

(k) **Obstructive behavior in conduct conferences or hearings.** Any conduct at any stage of a process or investigation that is threatening or disorderly, including:

(i) Failure to abide by the directives of a student conduct official or college official(s) in the performance of their duties;

(ii) Knowing falsification, distortion, or misrepresentation of information before a student conduct official or hearing panel;

(iii) Deliberate disruption or interference with the orderly conduct of a making conference or hearing proceeding;

(iv) Making false statements to any student conduct officials or hearing panel;

(v) Attempting to influence the impartiality of a member of a hearing panel or a student conduct official prior to, or during the course of, a proceeding; or

(vi) Harassment or intimidation of any participant in the college conduct process.

(l) **Recording.** The recording of any private conversation, by any device, without the voluntary permission of all persons engaged in the conversation except as permitted by state law, chapter 9.73 RCW. For purposes of this section, the term "permission" will be considered obtained only when one party has announced to all other parties engaged in the communication or conversation that such communication or conversation will be recorded or transmitted; and the announcement itself is recorded as part of the conversation or communication.

(m) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of the code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or conduct proceeding.

(n) **Theft** (attempted or actual) of property, services, or identity. This includes, but is not limited to, using, taking, attempting to take, possessing, or aiding another to take college property or services, or property belonging to any person, without express permission. Identity theft is the use of another person's name and personal information including, but not limited to, private identifying information, without their permission in order to gain a financial advantage or obtain credit or other benefits in the other person's name.

(o) **Viewing,** distributing, photographing, or filming another person without that person's knowledge and voluntary permission, while the person being photographed, viewed, or filmed is in a place where they would have a reasonable expectation of privacy. The term "permission" will be considered obtained if there are signed waivers, written permission, or verbal agreement recorded with specificity to the content.

(p) **Violation of any college policy** including, but not limited to, residential and dining services policies, appropriate use of information technology resources policies, and WAC 174-136-043 regarding weapons.

(q) **Violation of federal, state, or local law** including being charged by law enforcement, or convicted of a felony or misdemeanor, under circumstances where it is reasonable to conclude that the presence of the person on college premises would constitute a danger to the physical or mental safety of a member(s) of the college community.

(r) **Stalking** is a course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

(s) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual exploitation, sexual violence, relationship vi-

olence, domestic violence, and stalking. Sexual harassment as prohibited by Title IX is defined in the supplemental Title IX student conduct procedures. See WAC 174-123-355.

(3) Sexual misconduct and consent.

In order to understand the definitions of prohibited conduct in this section, and to adjudicate complaints of sexual misconduct, it is necessary to provide a further definition of consent. This section provides information about consent related to sexual misconduct.

Consent means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the 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 they are unable to understand what is happening or are 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.

Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (words or actions that cause an individual to submit to or comply with sexual contact or intercourse due to fear for their safety and/or implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual contact or sexual intercourse. When someone makes clear to another person by word or action that they do not want to engage in sexual contact or intercourse, that they want to stop, or that they do not want to go past a certain point of sexual contact or intercourse, continued pressure beyond that point is coercive.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, pervasive, or persistent as to:

(i) Deny or limit the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college; or

(ii) Alter the terms or conditions of employment for a college employee or employees; and/or

(iii) Create an intimidating, hostile, or offensive environment for other community members.

(b) **Sexual exploitation.** The term "sexual exploitation" means conduct that takes nonconsensual or abusive sexual advantage of another for their own or another's benefit. Sexual exploitation includes, but is not limited to, nonconsensual recording of sexual activity or the nonconsensual distribution of a consensual or nonconsensual recording or image; going beyond the boundaries of consent; forcing another person to engage in sexual activity for payment; or knowingly exposing someone to or transmitting a sexually transmitted infection.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. The term "sexual violence" means an act or acts of a sexual nature against a person without their consent. Non-

consensual sexual intercourse, nonconsensual sexual contact, domestic violence, relationship violence, and stalking are all types of sexual violence.

(i) **Nonconsensual sexual intercourse** is any 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 another body part or object, or oral copulation by mouth to genital contact. Nonconsensual sexual intercourse also includes forcing a person to engage in vaginal or anal penetration by a penis, object, tongue or finger, or oral copulation by mouth to genital contact.

(ii) **Nonconsensual sexual contact** is any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual contact includes intentional contact with the lips, breasts, buttock, groin, or genitals, or clothing covering any of those areas, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts, or any other intentional bodily contact in a sexual manner.

(d) **Domestic violence.** The term "domestic violence" means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury, or assault committed against a current or former spouse or intimate partner, current or former cohabitant, a person with whom the person shares a child in common, or a person with whom one resides.

(e) **Relationship violence.** The term "relationship violence," also known as dating violence, means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be presumed based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(f) **Stalking.** The term "stalking" means a course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-170, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-170, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-170, filed 1/10/12, effective 2/10/12.]

CODE PROCEDURES

WAC 174-123-180 Purpose. The student conduct process provides due process, educates students about their rights and responsibilities.

ties, and holds students accountable for their actions. If students believe that a student conduct official is not handling complaints according to these procedures, students should report their concern immediately. Students may report concerns to the senior college official or designee using the procedural review process outlined in WAC 174-123-250.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-180, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-180, filed 1/10/12, effective 2/10/12.]

WAC 174-123-190 Submitting a complaint. (1) Any person may submit a complaint alleging a violation of the code. A complaint may be submitted through the online report form, or to a college official who is able to take action. This includes, but is not limited to, the student conduct officials, the Title IX officials, residential life staff, police services, or to the senior college official. Individuals may choose not to submit a report to police services alleging a violation of the code. A complaint should be submitted as soon as possible after the event has taken place. A group of people may make an initial complaint collectively.

(2) The senior student conduct official, or designee, will be responsible for addressing alleged violations of the code. If there is a question about who should be responsible for addressing a complaint, the senior college official, or designee, will assign responsibility for handling the complaint and if necessary, serve as a student conduct official.

(3) A complainant or respondent may request, in writing to the senior college official or designee, to have a complaint addressed by an alternate student conduct official if a bias, prejudice, or conflict of interest is identified. The senior college official or designee will have the final authority to determine the appropriate student conduct official to assign in this case.

(4) Based on the complaint, the senior student conduct official or designee will conduct an initial review of the complaint to determine jurisdiction and if there is clear information to indicate a possible violation of the code in order to determine next steps. The senior student conduct official or designee may elect to initiate a conduct conference, attempt to gather additional information to make a determination, or close the complaint without any further action. If the complaint is closed without any further action by the senior student conduct official or designee, the parties may be referred for additional resources.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-190, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-190, filed 1/10/12, effective 2/10/12.]

WAC 174-123-200 Interim measures. (1) **Interim restrictions.** The student conduct official or designee may institute interim restrictions prior to, or at any stage during, a student conduct proceeding when the physical or mental safety of any member of the college community is deemed at risk. The interim restriction may include a no contact order and/or loss of privileges.

(a) A student issued an interim restriction that includes loss of privileges will receive written notice of the interim restriction, the reason for instituting an interim restriction, and advised of the date, time, and place for a hearing regarding the interim restriction before the student conduct official, or their designee. The hearing will take place no later than five business days from the effective date of the interim restriction.

(b) The interim restriction has immediate effect and will remain in place during any procedural review process, until an agreement of accountability exists, a student conduct official issues a determination of responsibility, an appeal panel issues a final determination, or the student conduct official notifies the respondent in writing that the interim restriction has been modified or is no longer in effect.

(2) **Interim suspension.** This is a temporary exclusion from enrollment, including exclusion from college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation or student conduct proceeding is pending. The senior college official or their designee may impose an interim suspension, which has immediate effect, if there is probable cause to believe that the respondent has violated any provision of the code and presents a substantial or ongoing danger to the physical or mental safety of any member of the college community; or poses an ongoing threat of substantial disruption of, or interference with, teaching, learning, or the operations of the college.

(a) Any student assigned an interim suspension will be provided oral or written notice of the interim suspension. If oral notice is given, a written notification will be served on the respondent within two business days of the oral notice.

(b) The written notice will be entitled "Notice of Interim Suspension" and will include:

(i) The reasons for imposing the interim suspension, including a description of the conduct giving rise to the interim suspension and reference to the provisions of the code allegedly violated;

(ii) The date, time, and location when the respondent must appear before the senior college official or their designee for a hearing on the interim suspension; and

(iii) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been barred from the campus, a notice will be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent will be considered trespassing if the respondent enters the college campus other than as approved by the senior college official or their designee.

(c) The senior college official or their designee will conduct a hearing on the interim suspension within five business days after imposition of the interim suspension.

(d) During the interim suspension hearing, the issue before the senior college official or their designee is whether there are reasonable grounds to believe that the interim suspension should be continued pending the conclusion of student conduct proceedings and/or whether the interim suspension should be less restrictive in scope.

(e) The student will be afforded an opportunity to explain why interim suspension should not be continued while conduct proceedings are pending or why the interim suspension should be less restrictive in scope.

(f) If the student fails to appear at the designated hearing time, the senior college official or their designee may order that the interim suspension remain in place pending the conclusion of the investigation and conduct or Title IX proceedings.

(g) As soon as practicable following the hearing, the senior college official or their designee will issue a written decision which will include a brief explanation for any decision continuing and/or modifying the interim suspension.

(h) To the extent permissible under applicable law, the senior college official or their designee will provide a copy of the decision to all persons or offices who may be bound or protected by it.

(i) In cases involving allegations of assault, non-Title IX sexual misconduct, or Title IX sexual harassment, the complainant will be notified that an interim suspension has been imposed on the same day that the interim suspension notice is served on the student. The college will also provide the complainant with same day notice of any subsequent changes to the interim suspension order.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-200, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-200, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-200, filed 1/10/12, effective 2/10/12.]

WAC 174-123-210 Initiating a conduct conference. A conduct conference is a meeting or a series of meetings, held between a respondent and a student conduct official. The student conduct official will explain to the respondent the process for addressing complaints under the code, advise the respondent of their rights and responsibilities, and review with the respondent the complaint and alleged violation(s) of the code.

(1) The respondent will meet with the student conduct official for a conduct conference as directed in a written notice. The notice will briefly describe the allegations and the provision(s) of the code the respondent is alleged to have violated. The notice will direct the respondent to schedule a conduct conference or direct the respondent to attend a conduct conference at a specific time and location. At the conduct conference, the student conduct official will present the allegations to the respondent and the respondent will be afforded an opportunity to explain what occurred. If the respondent fails to attend the conduct conference, a determination of responsibility and required resolution and sanction(s) may be determined in the respondent's absence.

(2) If there is more than one respondent involved in the complaint, the student conduct official, at their discretion, may conduct the conferences concerning each respondent either separately or jointly.

(3) In addition to information sought from the respondent regarding the allegations, the student conduct official may seek additional information from other persons with information relevant to the investigation of the complaint.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-210, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-210, filed 1/10/12, effective 2/10/12.]

WAC 174-123-220 Informal resolution and agreement of accountability. The student conduct official will attempt to resolve a complaint informally using an agreement of accountability. If a complaint is not resolved using an agreement of accountability, the student conduct official will resolve the complaint by issuing a determination of responsibility and required resolution and sanction(s) as described in WAC 174-123-230.

(1) The student conduct official may work with any respondent who acknowledges responsibility for engaging in prohibited conduct to identify the resolution and sanction(s). If an agreement is reached, the resolution and sanction(s) will be contained in a written agreement of accountability signed by both the respondent and the student conduct official.

(2) A respondent who enters into an agreement of accountability will comply with the resolution and sanction(s) set forth in the agreement and will have no further right of appeal under the code. A respondent's failure to comply with an agreement of accountability may be the basis for a separate violation of misconduct under the code. A separate violation will be addressed using a conduct hold and/or initiating a conduct conference as described in WAC 172-123-210. The conduct hold will remain in effect until such time that the student satisfactorily completes all of the requirements of the agreement of accountability. If a complaint alleges non-Title IX sexual misconduct or assault, the informal resolution and agreement of accountability will not be used and a notice of determination of responsibility and required resolution and sanctions process (WAC 174-123-230) is used.

(3) A restorative practice process may be a component of an agreement of accountability in cases where the student has taken responsibility for their actions and a violation of the code. An agreement may be entered into as part of an agreement of accountability that the student is choosing to voluntarily participate in a restorative practice process. A restorative practice is intended to provide resolution and restoration for those negatively impacted by the code violation, as well as, give the respondent an opportunity to make the situation as right as possible.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-220, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-220, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-220, filed 1/10/12, effective 2/10/12.]

WAC 174-123-230 Notice of determination of responsibility and required resolution and sanctions. (1) If a complaint is not resolved by entering into an agreement of accountability, the student conduct official will issue a determination of responsibility based on a preponderance of the evidence standard. Preponderance of the evidence standard means it is more likely than not that the information and evidence shows that an alleged policy violation did or did not occur.

(2) The student conduct official may take any of the following actions:

(a) Determine the respondent is not responsible for violating the code and end the conduct proceedings.

(b) Determine the available information is inconclusive at this time. The student conduct official may revisit the determination if additional relevant information becomes available.

(c) Determine the respondent is responsible for violating the code and issue required resolution(s) and sanction(s) as described in WAC 174-123-240.

(3) The determination of responsibility will identify the specific conduct that has violated the code. The required resolution and sanction(s) will state the tasks or actions, and associated deadlines, the respondent must execute to address violations of the code.

(4) The student conduct official's determination of responsibility and required resolution and sanction(s) will be final unless the respondent files a timely appeal to the senior college official. If a complaint alleges assault, non-Title IX sexual misconduct, or Title IX sexual harassment, the complainant is to be informed of the final determination and any required resolution and sanction imposed against the respondent and may file a timely appeal to the senior college official.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-230, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-230, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-230, filed 1/10/12, effective 2/10/12.]

WAC 174-123-240 Resolution and sanctions. The following resolution and sanctions may be agreed to by, or required of, a respondent found to have violated the code. More than one resolution and sanction may be imposed for any single violation. Resolution and sanctions are based on the unique aspects of each situation and take into consideration the context and seriousness of the violation. In determining the resolution and sanctions, the student conduct official, the student conduct officer, or any appeal officer or panel, will consider history, patterns, and frequency of misconduct; severity and level of impact on the community; and a student's motivation and response to the allegations.

(1) **Written warning:** This is a written notice that the student has violated one or more terms of this code and that continuation of the same or similar behavior may result in further sanctions.

(2) **Probation:** A student will be on special status with conditions imposed for a defined period of time and includes the probability of more severe required resolution and sanctions if the student is found to violate the code during the probationary period.

(3) **Suspension:** Separation of the student from the college for a specified period of time, after which the student is eligible to return, provided that the student has complied with all conditions imposed as part of the suspension and the student is otherwise qualified for enrollment.

(4) **Expulsion:** Permanent separation of the student from the college with a notation on the student's transcript. This includes revocation of all rights and privileges of membership in the college community and exclusion from college activities, classes, and programs and college-owned or controlled facilities and property without any possibility of return. There will be no refund of tuition or fees for the quarter in which the sanction takes effect.

(5) **Deferred action:** Deferred action is most commonly applied to college suspension or expulsion, and college housing suspension or eviction. Deferred action may be applied to other sanctions with conditions stated that outline when the sanction will no longer be in a

deferred status. Deferred action is a special status issued for a defined period of time in which the student must complete required resolutions and sanctions that are not included in the deferred status. If the student does not complete the required resolutions and sanctions or is found in violation of the code during the time period, the deferred action will take effect immediately without further review. This deferred action will be in addition to any required resolutions or sanctions arising from the new violation.

(6) **Educational actions:** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense. This includes, but is not limited to, work assignments, essays, completion of a workshop or training, restorative practice, or service to the college community.

(7) **Emergency contact or parental notification:** In cases of suspension, expulsion, or significant health and safety concerns, the parent or emergency contact may be contacted to inform them of the suspension, expulsion, or health and safety concern.

(8) **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 having the professional credentials specified by the college. The student will sign all necessary releases: (a) To allow the college to provide the evaluator with all educational and other records in the student's college files; and (b) to allow the evaluator to provide the college with the evaluator's notes and file materials, including the results of tests, assessments, and report. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(9) **Loss of privileges:** This may include, but is not limited to, the following restrictions:

- (a) Attend college-sponsored activities or events;
- (b) Hold an office or leadership position in any recognized organization or hold any elected or appointed office of the college;
- (c) Limited access or restriction from college premises;
- (d) Participate in cocurricular activities;
- (e) Participate in study abroad programs or field work;
- (f) Represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation;
- (g) Student employment;
- (h) Reside or be present in college housing;
- (i) Use of college equipment.

(10) **No contact order:** An order directing a student to have no contact with a specified member of the college community, visitor, or particular college facility. The order may include, but is not limited to, directives with regard to path of travel, parking, arrival on campus, or specified times for use of campus resources.

(11) **College housing suspension:** Separation of the student from the residence halls for a defined period of time that includes being barred from college housing, after which the student is eligible to return. Conditions allowing for a student to return to college housing may be specified in the suspension.

(12) **College housing eviction:** Permanent separation of the student from college housing that includes being barred from college housing.

(13) **Restitution:** Reimbursement for loss or damage, to property or for injury to persons. This may take the form of appropriate service, monetary or material replacement, or a combination of both.

(14) **Conduct hold:** A measure restricting release of a student's transcript, diploma(s), or other records; and access to registration prohibiting registration for any program or course.

(15) **Withholding admission or degree:** The withholding of admission to, or the withholding of a degree awarded from, the college for a specified amount of time. Withholding of a degree will be noted on the student's academic record.

(16) **Revocation of admission:** The revocation of admission to the college. The denial of admission to the college may occur after admission and prior to initial enrollment.

(17) **Revocation of degree:** The revocation of a degree from the college may be a sanction in those cases in which egregious academic dishonesty is discovered subsequent to a student's graduation. Degree revocation must be approved by the board of trustees and will be noted on the student's academic record.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-240, filed 8/15/18, effective 9/15/18; WSR 12-03-040, § 174-123-240, filed 1/10/12, effective 2/10/12.]

WAC 174-123-250 Procedural review complaint. A procedural review complaint may be used to resolve any student complaint related to a current process in which a determination has not been issued regarding the alleged violations of the code.

A procedural review complaint is a student's formal complaint concerning the application of policy, a procedural concern, or a condition in which a student believes the current process has been impacted. This complaint may include, but is not limited to, the inappropriate application of a policy, the process, or procedures not followed appropriately in the process, or other concerns related to the process.

It is recommended that a student first discuss their concerns with the student conduct official responsible for the process prior to filing a complaint.

No disciplinary or other unfavorable action may be taken against any student or anyone who may support or advise a student using these procedures. A student wishing to report the actions of another student cannot use this process and is to be referred to the submitting a complaint section of WAC 174-123-190.

(1) Making a procedural review complaint:

(a) A student with a procedural review complaint will report their concern in writing to the senior college official. While only one complaint may be made in the course of a proceeding, a complaint may address multiple concerns. A designated staff member will be assigned as the procedural review coordinator (coordinator) and the current code process that is the subject of the procedural review complaint will be put on administrative hold until the resolution of the complaint, except that the filing of a procedural review complaint will not cause any interim measures to be put on hold or halt the implementation of any interim measures.

(b) The coordinator will discuss the concern with the student. If the student has not already discussed the concern with the student conduct official, the coordinator may refer the student to the student conduct official.

(c) If the student elects to not discuss their concern with the student conduct official, or the procedural review complaint is not referred to or resolved by the student conduct official, the student will submit their concern as a written complaint to the coordinator. The written complaint should contain a complete and specific account of the student's complaint, including the policies, practices, procedures, or the condition complained of, with written evidence attached, and stating the remedy the student seeks.

(2) Resolution of procedural review complaint:

(a) The coordinator will investigate the student's written complaint by gathering information from the involved people named by the student as well as from others as necessary. The coordinator may ask those named to respond to the student's complaint in writing.

(b) The coordinator will make recommendations based on information presented in an effort to resolve the procedural review complaint. The student will be notified of the recommendations within five business days of the close of the investigation.

(c) Any recommendations by the coordinator will be instituted by the senior student conduct official or designee at the resumption of the process.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-250, filed 8/15/18, effective 9/15/18.]

APPEALS

WAC 174-123-260 Filing of appeal. (1) A respondent may appeal a student conduct official's determination of responsibility and required resolution and sanction(s) by filing a written notice of appeal to the senior college official within ten calendar days of service of the student conduct official's determination. Failure to file a notice of appeal within the time period constitutes the waiver of the right to appeal and the student conduct official's determination of responsibility and required resolution and sanction(s) will be final.

(2) The student filing the notice of appeal must include a brief statement explaining why they are seeking review of the determination of responsibility and/or required resolution and sanction(s).

(3) Except in cases of interim measures, including interim suspension and/or interim restriction(s), the required resolutions and sanction(s) will be on hold pending the outcome of an appeal. Interim measures will remain in place pending the outcome of the appeal.

(4) The parties to an appeal will be the appellant and the student conduct official.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the determination of responsibility and required resolution by a preponderance of the evidence.

(6) The appellant has a right to a prompt and fair hearing as provided for in these procedures.

(7) Student conduct appeal to determinations in which the required resolution and sanction(s) include the following will be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten days or less;
(b) College housing suspension or eviction;
(c) Deferred action;
(d) Probation; and
(e) Any conditions or terms imposed in conjunction with one of the foregoing resolution and sanctions.

(8) Student conduct appeal to determinations in which the required resolution and sanction(s) include the following will be reviewed by the student conduct appeal panel:

(a) Suspensions in excess of ten days;
(b) College expulsions; and
(c) Complaints referred to the panel by the student conduct review officer or senior college official, or designee.

(9) Except as provided elsewhere in this code, warnings and findings of no responsibility are final and are not subject to appeal.

(10) In cases involving allegations of assault or non-Title IX sexual misconduct, the complainant has the right to appeal the following outcomes using the same procedures as set forth above for the respondent:

(a) The determination of responsibility; or
(b) Any required resolutions and sanction(s) imposed including a disciplinary warning.

(11) If the respondent appeals a decision imposing discipline for an assault or non-Title IX sexual misconduct violation, the college will notify the complainant of the appeal and provide the complainant an opportunity to participate in the appeal.

(12) Except as otherwise specified in the code, a complainant who appeals a determination of responsibility and required resolution and sanction(s) within ten calendar days of notice of the determination, or who participates as a party to a respondent's appeal of a determination of responsibility and required resolution and sanction(s) will be afforded the same procedural rights as are afforded the respondent.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-260, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-260, filed 8/15/18, effective 9/15/18.]

WAC 174-123-270 Brief adjudicative appeal proceedings—Initial hearing. Brief adjudicative proceedings will be conducted by a conduct review officer. Conduct review officers shall be designated by the senior college official. The conduct review officer will not participate in any case in which they are or have been involved; or in which there is direct or personal interest, prejudice, or bias.

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

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

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

(2) The conduct review officer will schedule an informal hearing and serve written notice of the hearing to the parties at least seven

calendar days in advance of the hearing. The notice of informal hearing will include the following:

- (a) The date, time, location, and nature of the hearing;
- (b) A date by which the parties must identify advisors as well as requests for reasonable accommodations, if any;
- (c) A date on which the parties may review documents held by the student conduct official; and
- (d) A date by which the parties must provide a list of witnesses and copies of any documents to other parties and to the conduct review officer.

(3) The conduct review officer will serve an initial decision upon the parties within ten calendar days of the completion of the informal hearing. The initial decision will 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 will be deemed the final decision.

(4) If the conduct review officer determines that the respondent's conduct may warrant imposition of a college or college housing suspension of more than ten days or college expulsion or college housing eviction, the matter will be referred to the student conduct appeal panel for a new hearing.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-270, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-270, filed 8/15/18, effective 9/15/18.]

WAC 174-123-280 Brief adjudicative appeal proceedings—Administrative review of initial decision.

(1) An initial decision may be appealed to the senior college official or designee, provided a party files a written request including the grounds for appeal for review with the conduct review officer within ten calendar days of service of the initial decision. The grounds for appeal are limited to new information not available at the time of the initial process, procedural error that impacted the outcome of the process, and/or bias of the student conduct official, or the conduct review officer.

(2) The senior college official or designee will not participate in any case in which they are or have been involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias.

(3) During the appeal, the senior college official or designee will give each party an opportunity to file written responses explaining their view of the matter and will make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct appeal panel for a hearing.

(4) The decision on appeal must be in writing and must include a brief statement of the reason for the decision and must be served on the parties within twenty calendar days of the request for appeal. The decision will contain a notice whether appeal to Thurston County superior court is available.

(5) If the senior college official or designee determines that the respondent's conduct may warrant imposition of a college suspen-

sion of more than ten days or college expulsion, the matter will be referred to the student conduct appeal panel for a hearing.

(6) In cases involving allegations of assault or non-Title IX sexual misconduct, the senior college official or designee, 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 assault or non-Title IX sexual misconduct were found to have merit and describing any resolution and sanctions and/or conditions imposed upon the respondent, including suspension or expulsion of the respondent. The decision will contain a notice whether appeal to Thurston County superior court is available.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-280, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-280, filed 8/15/18, effective 9/15/18.]

WAC 174-123-290 Appeal panel proceedings—Hearing procedures.

(1) If not addressed in the code, the proceedings of the student conduct appeal panel will be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The senior college official, or designee, will schedule a hearing before the student conduct appeal panel and serve written notice of the hearing to the parties at least ten calendar days in advance of the hearing. The notice period may be shortened by the senior college official, or designee, with the parties' permission; and the senior college official may reschedule a hearing to a later time for good cause.

(3) The notice of hearing will include the following:

(a) The date, time, location, and nature of the hearing;

(b) A date by which the parties must identify advisors as well as requests for reasonable accommodations, if any;

(c) A date by which the parties must provide a list of witnesses and copies of any documents to be provided to the appeal panel. The date for providing documents must be at least five business days prior to the hearing date. Documents and witness names submitted after the deadline stated in the hearing notice will be admitted at the discretion of the appeal panel. Documents and witness names submitted after the deadline may be excluded from the hearing absent a showing of good cause;

(d) A date on which the parties to the appeal may review documents and witness lists submitted to the panel, which must be no less than three business days prior to the hearing.

(4) The panel chair is authorized to make determinations regarding requests for postponement, release of information, or other procedural requests, provided that good cause for the request is shown. Requests for reasonable accommodations based on disability will be determined by the college's disability compliance officer.

(5) The panel chair may provide to the panel members in advance of the hearing copies of:

(a) The student conduct official's determination of responsibility and required resolution and sanction(s);

(b) The decision of the conduct review officer, if any;

(c) The review on appeal of the senior college official, if any;

and

(d) The notice of appeal by the respondent or complainant.

If doing so, the chair should remind the members that these documents are not evidence of any facts they may allege.

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

(7) Only those materials and information presented at the hearing will be considered. The chair may exclude or limit ineffectual, irrelevant, or unduly repetitious information.

(8) The student conduct official or designee, upon request, will provide reasonable assistance to the parties in obtaining relevant and admissible evidence that is within the college's control.

(9) Communications between panel members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper communication, as further provided in RCW 34.05.455, is prohibited.

(10) Each party may be accompanied at the hearing by an advisor of the party's choice. A respondent, or complainant in a case involving allegations of non-Title IX sexual misconduct or assault may elect to be represented by an attorney at the their own cost, and will be deemed to have waived that right unless, at least five business days before the hearing, written notice of the attorney's identity and participation is filed with the panel chair with a copy to the student conduct official. The panel will ordinarily be advised by an assistant attorney general. The student conduct official may be represented by an assistant attorney general.

(11) The complainant and the respondent are neither encouraged nor required to be assisted by an advisor of their choosing at their own expense. Both the respondent and the complainant will be provided the option to have a trained procedural advisor provided by the college to assist them prior to and during the hearing in order to understand their rights in the appeal process. A college procedural advisor may not represent an individual in the appeal proceeding. Proceedings will not be automatically delayed due to the scheduling conflicts of any advisor.

(12) Each party is expected to present all information during the proceedings.

(13) In cases where the complaint alleges non-Title IX sexual misconduct or assault, the complainant may present information during the proceedings.

(14) Upon the failure of any party to attend or participate in a hearing, the student conduct appeal panel may either:

(a) Proceed with the hearing and issue a determination; or

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

(15) The hearing is a closed proceeding which includes only members of the panel; the advisor to the panel, if any; the student conduct official and their advisor, if any; the complainant and the respondent and their advisor(s), if any; and persons requested to provide information at the hearing. Admission of any other person to the hearing is at the discretion of the panel chair.

(16) All procedural questions and other decisions are subject to the final decision of the panel chair unless otherwise provided for in these rules. The chair will ensure that the proceeding is held in an

orderly manner such that the rights of all parties to a full, fair, and impartial proceeding that adheres to the code is achieved.

(17) There will be a single verbatim sound recording of the hearing, and the record will be on file with the senior college official and is the property of the college in accordance with RCW 34.05.449.

(18) All testimony will be given under oath or affirmation. Evidence will be admitted or excluded at the discretion of the panel chair.

(19) In cases involving allegations of non-Title IX sexual misconduct or assault, neither party will directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the other party. All cross examination questions will be directed to the panel chair, who has the discretion to pose the questions on the party's behalf.

(20) In cases involving Title IX sexual harassment, non-Title IX sexual misconduct, or assault, the senior college official may designate an external hearing panel chair to preside over the hearing. The external hearing panel chair will perform all of the functions of a presiding officer under the code of student rights and responsibilities and WAC 174-108-910, unless otherwise specified in the appointment letter.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-290, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-290, filed 8/15/18, effective 9/15/18.]

WAC 174-123-300 Appeal panel proceedings—Panel composition.

(1) The student conduct appeal panel will be composed of three members consisting of one faculty member, one staff member, and one student. One member will be designated by the senior college official or designee to serve as the chair of the student conduct appeal panel for a hearing.

(2) The faculty agenda committee will designate faculty members to serve on the student conduct appeal panel as needed.

(3) The senior college official or designee will be responsible for designating the student and staff members serving on the panel. The student members, including the selection of alternate members to serve as necessary, will be done through an open selection process established by the senior college official or designee.

(4) All panel members hearing cases involving sexual misconduct will have received training within the previous twelve months on the issues related to domestic violence, relationship violence, sexual misconduct, and stalking and how to conduct an investigation and hearing process that protects the safety of complainants, ensures fair proceedings, and promotes accountability in cases involving allegations of sexual misconduct.

(5) Members of the student conduct appeal panel will not participate in any case in which they are involved as a complainant or witness; or in which there is direct or personal interest, prejudice, or bias; or in which previous actions have been taken in an advisory capacity.

(6) A party may request removal of a member of the panel at the beginning of the hearing for reasons of bias, prejudice, or conflict of interest. The chair of the panel will be responsible for making de-

cisions regarding removal, unless the student is requesting removal of the chair. When there is a request to remove the chair, and the chair does not voluntarily step down, the remaining members will vote on whether removal is warranted. If the remaining members disagree, the chair will be removed, and the senior college official will appoint an appropriate alternate member (i.e., faculty, student or staff) to serve on the panel for the removed member. The senior college official will also appoint the panel chair to replace the removed chair, the parties can agree in writing to proceed with the hearing with only two members setting aside the replacement measures.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-300, filed 8/15/18, effective 9/15/18.]

WAC 174-123-310 Appeal panel proceedings—Determination. (1) At the conclusion of the hearing, the student conduct appeal panel will permit the parties to make closing statements in whatever form it wishes to receive them. The panel also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Only members of the student conduct appeal panel and the advisor to the panel, if any, will be present for deliberations. Deliberations are not recorded.

(3) Within fifteen calendar days following the conclusion of the hearing, or the panel's receipt of closing arguments, whichever is later, the panel will issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210 or written notice specifying the date by which it will issue a decision. The decision will include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses will be so identified.

(4) The panel's decision will also include a determination on appropriate resolution and sanction(s), if any. The panel may affirm, reverse, or modify the required resolution and sanction(s) issued by the student conduct official and/or issue additional sanction(s) or condition(s) as authorized herein.

(5) The panel's decision will also include a statement of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

(6) The panel chair will serve copies of the decision on the parties through the senior college official's office. It is the responsibility of the student to forward any notice or communication to their advisor. If a student signs a release of information, the chair of the panel will provide the decision to legal counsel representing a student.

(7) In cases involving allegations of assault, non-Title IX sexual misconduct, or Title IX sexual harassment, the chair of the student conduct appeal panel, on the same date as the decision is served to the respondent, will serve a written notice to the complainant informing the complainant of the panel's decision and describing any sanction(s) and/or condition(s) issued to the respondent, including suspension or expulsion of the respondent. The complainant may request reconsideration of the panel's decision subject to the same procedures

and deadlines applicable to other parties. The notice will also inform the complainant of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-310, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-310, filed 8/15/18, effective 9/15/18.]

WAC 174-123-320 Reconsideration. (1) Within five business days of the written notice of the final determination, a party may submit a petition for reconsideration with the senior college official. The petition must state the specific grounds upon which relief is requested. The grounds for reconsideration are limited to new information not available at the time of the hearing, procedural error that impacted the outcome of the process, and/or bias of the student conduct official.

(2) The petition will be deemed submitted on the day of actual receipt by the senior college official's office. Service can be made by one of the following means:

(a) Email received by the office of the senior college official;
or

(b) By deposit in the United States mail, postage prepaid, addressed as follows: The Evergreen State College, Student Conduct Appeal Panel, Office of the Senior College Official, 2700 Evergreen Parkway N.W., Olympia, Washington 98505; or

(c) By personal service which will be deemed accomplished by hand delivering the petition to the office of the senior college official during regular business hours at the address listed in (b) of this subsection.

(d) Within two days of being served, the senior college official will provide notice to all other parties, who have five calendar days to file their opposition to the petition for reconsideration.

(3) All reasonably available members of the panel that heard the original appeal will review the request for reconsideration and determine whether or not to grant the reconsideration. If a reconsideration is granted, the panel will review the submitted materials and make a determination.

(4) The final determination issued by the student conduct appeal panel will remain in effect during the time period that a petition for reconsideration is under review by the panel. Within twenty business days from the date of the petition the student conduct appeal panel will provide a determination or written notice specifying the date by which it will act on the petition.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-320, filed 8/15/18, effective 9/15/18.]

MAINTENANCE OF RECORDS

WAC 174-123-330 Retention of records. (1) A student's conduct record may be retained for seven years after the final disposition of the case unless the college is required to retain the record for a

longer period of time under another provision of state or federal law. When the resolution and sanction(s) includes college expulsion, or revocation of a degree the record will be retained in perpetuity. Final disposition is defined as when: A respondent fulfills the agreement of accountability or the required resolution and sanction(s) issued by the student conduct appeal panel.

(2) Other than college expulsion, degree revocation, or withholding of a degree, resolution and sanctions will not be made part of the student's permanent academic record, but will be part of the student's conduct record.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-330, filed 8/15/18, effective 9/15/18.]

SIMULTANEOUS CIVIL OR CRIMINAL PROCEEDINGS

WAC 174-123-340 Simultaneous civil or criminal proceedings. (1) Code of student rights and responsibilities proceedings may be instituted and carried out without regard to any criminal or civil litigation or external processes with which the student may be involved. Issuance of a determination of responsibility or required resolution and sanction(s) by the student conduct official or appeal panel will not be subject to change because criminal charges or civil litigation from the same facts resulting in an allegation of violation of the code were dismissed, reduced, or resolved in favor of or against the respondent.

(2) If a respondent charged with misconduct under this code has been charged with a crime for the same act or closely related acts by federal, state, or local authorities, or if it appears that such criminal charge is under consideration, the respondent may petition the senior college official or designee to postpone action on the complaint until there has been a disposition of the criminal charge or of the consideration of filing such charge. The senior college official or designee has the discretion to grant or deny the request.

(3) When a respondent is charged by federal, state, or local authorities with a violation of law, the college will not request or agree to special consideration for the individual because of their status as a student. If the alleged criminal offense is also being addressed under the code, the college may advise off-campus authorities of the existence of the code and how such matters are typically handled within the college community.

[Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-340, filed 8/15/18, effective 9/15/18.]

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES AND PROHIBITED CONDUCT

WAC 174-123-355 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 Evergreen's standard

disciplinary procedures, WAC 174-123-110 through 174-123-340, these supplemental procedures shall take precedence.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-355, filed 4/26/21, effective 5/27/21.]

WAC 174-123-360 Title IX definitions. For purposes of the supplemental Title IX student conduct procedure, the following terms used have the definitions contained in the Title IX policy and procedure and the terms below are defined as follows:

(1) **Consent** means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the 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 they are unable to understand what is happening or are 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.

Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (words or actions that cause an individual to submit to or comply with sexual contact or intercourse due to fear for their safety and/or implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual contact or sexual intercourse. When someone makes clear to another person by word or action that they do not want to engage in sexual contact or intercourse, that they want to stop, or that they do not want to go past a certain point of sexual contact or intercourse, continued pressure beyond that point is coercive.

(2) **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(3) **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(4) **Formal complaint** means a writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the college conduct an investigation.

(5) **Education program or activity** includes locations, events, or circumstances over which Evergreen exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by the college.

(6) **Determination of responsibility** means a decision of the hearing panel regarding whether the respondent is responsible for the alleged violation(s) of this Title IX policy. If the respondent is found responsible for the alleged violations, the determination of responsibility will include discipline and sanctions, as appropriate.

(7) **Interim suspension** means a temporary exclusion from enrollment, including exclusion from college premises or denial of access to

all activities or privileges for which a respondent might otherwise be eligible, pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 174-123-200(2).

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-360, filed 4/26/21, effective 5/27/21.]

WAC 174-123-370 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, Evergreen 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 Evergreen employee conditioning the provision of an aid, benefit, or service of Evergreen 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 Evergreen's educational programs or activities, or Evergreen 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: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-370, filed 4/26/21, effective 5/27/21.]

WAC 174-123-380 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during an Evergreen 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 procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Evergreen 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 Evergreen.

(3) Proceedings under this procedure must be dismissed if the Title IX coordinator determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Evergreen's code of student rights and responsibilities, WAC 174-123-170.

(4) If the Title IX coordinator and/or the student conduct official 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 official will issue a notice of dismissal in whole or part to the parties explaining why some or all of the Title IX claims have been dismissed.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-380, filed 4/26/21, effective 5/27/21.]

WAC 174-123-390 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct official 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 official determines that there are sufficient grounds to proceed under these procedures, the student conduct official will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the hearing panel. The hearing panel chair will serve 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); and

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

(i) The advisors will be responsible for questioning all witnesses and the other party(ies) on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) Evergreen will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and

(iv) A party may select to have an individual as emotional support with them during Title IX processes. This individual is separate from an advisor, and will serve the purpose of providing care and emotional support for the party, but will not participate during the processes.

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

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-390, filed 4/26/21, effective 5/27/21.]

WAC 174-123-400 Prehearing procedure. (1) Upon receiving the disciplinary notice, the hearing panel chair will send a hearing notice to all parties, in compliance with WAC 174-123-290(3). 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 an advisor to be at the hearing with them. The advisor will be conducting the cross-examination of parties and witnesses. The full names and contact information for all advisors selected by the parties to appear at the hearing must be submitted to the hearing panel chair at least five days before the hearing.

(3) 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 hearing panel chair, with copies to all parties and the student conduct official.

(4) Parties may also select an individual to serve as emotional support during the hearing. This individual will not have a formal role in the hearing, and will serve the purpose of providing care and emotional support for the party.

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

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-400, filed 4/26/21, effective 5/27/21.]

WAC 174-123-410 Rights of parties. (1) The Evergreen State College's code of student rights and responsibilities, this chapter, and this supplemental procedure shall apply equally to all parties.

(2) The college has 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 advisors. The parties are entitled to advisors of their own choosing and the advisor may be an attorney. If a party does not choose a process advisor, then the Title IX coordinator will appoint a process advisor of the college's choosing on the party's behalf at no expense to the party.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-410, filed 4/26/21, effective 5/27/21.]

WAC 174-123-420 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The hearing 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 hearing panel must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) No negative inference: The hearing panel 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 hearing panel 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.

(7) Recording of live hearing: The live hearing will be audio-recorded, and copies may be provided to the parties, upon written request.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-420, filed 4/26/21, effective 5/27/21.]

WAC 174-123-430 Initial order. (1) In addition to complying with WAC 174-123-310, the hearing panel will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) 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;

(c) Makes findings of fact supporting the determination of responsibility for each charge;

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

(e) Contains a statement of, and rationale for, the hearing panel's determination of responsibility for each allegation;

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

(g) Describes to what extent, if any, the complainant is entitled to remedies designed to restore or preserve the complainant's equal access to Evergreen's educational programs or activities; and

(h) Describes the process for appealing the initial order.

(2) The hearing panel chair will serve the initial order on the parties simultaneously.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-430, filed 4/26/21, effective 5/27/21.]

WAC 174-123-440 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The parties may by filing a written notice of appeal with the hearing panel chair within ten calendar days of service of the student conduct official's, or hearing panel's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the decision shall be deemed final.

Either party may appeal based on the following criteria: Procedural irregularity that affected the outcome of the determination; new evidence discovered that was not reasonably available at the time of the determination; a conflict of interest from a Title IX administrator; or severity of sanctioning is not consistent with the violation.

(2) The president or their designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) im-

posed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The president's office shall serve the final decision on the parties simultaneously.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, § 174-123-440, filed 4/26/21, effective 5/27/21.]

WAC 174-123-450 Code review. This code will be reviewed at least once within every five-year period, and such review will include students, faculty and staff. The senior college official or designee will conduct the review.

[Statutory Authority: RCW 28B.40.120(12). WSR 21-10-022, recodified as § 174-123-450, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.40.120. WSR 18-17-102, § 174-123-350, filed 8/15/18, effective 9/15/18.]