

WSR 24-15-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-120—Filed July 3, 2024, 2:17 p.m., effective July 3, 2024, 2:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule:

(1) Closes Subarea 1A and Catch Area 25A, excluding the Discovery Bay Shrimp District, to commercial spot shrimp harvest one hour after official sunrise on Friday, July 5, 2024.

(2) Designates the commercial spot shrimp catch accounting periods and catch limits.

(3) Designates the commercial nonspot shrimp catch accounting periods and biweekly catch limit for harvest from Subregions 1B and 1C and Region 2E.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000T; and amending WAC 220-340-520.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require the adoption of harvest seasons contained in this emergency rule. This emergency rule is necessary to prosecute state commercial shrimp pot fisheries in Puget Sound. This rule closes a quota area to commercial harvest following the projected attainment of the available harvest. This rule allows harvesters to respond to dynamic changes in market conditions and promotes full utilization of both the commercial spot and nonspot shares. These rules are in congruence with comanager agreements. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 3, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000U Commercial shrimp pot fishery—Puget Sound.

Notwithstanding the provisions of WAC 220-340-520, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes using pot gear in Puget Sound except as provided for in this section:

(1) Spot Shrimp Pot Harvest:

(a) Spot shrimp harvest is permitted as indicated in the following table opening one hour before official sunrise on the first day of the open period. Any closures take effect one hour after official sunset on the closing day of the open period.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Immediately, through July 5, 2024.
Subregion 1B	Closed.
Subregion 1C	Immediately, until further notice.
Region 2E	Closed.
Region 2W	Closed
Subarea 23A-E	Closed.
Subarea 23A-W	Immediately, until further notice.
Subarea 23A-C and MSFS Catch Area 23B	Immediately, until further notice.
Subarea 23A-S and MSFS Catch Area 23D	Immediately, until further notice.
MFSF Catch Area 23C	Immediately, until further notice.
MFSF Catch Area 25A, excluding the Discovery Bay Shrimp District	Immediately, through July 5, 2024.
Discovery Bay Shrimp District	Closed.
MFSF 29 (Straits - Neah Bay)	Immediately, until further notice.
Subarea 26B-1 and MFSF Catch Area 26C	Closed.
Subarea 26B-2	Closed.
Region 5	Closed.
MFSF Catch Area 26D	Closed.
MFSF Catch Areas 28A, 28B, 28C, and 28D	Closed.

(b) The first spot shrimp catch accounting period starts one hour before official sunrise on May 1, 2024, through one hour after official sunset on July 30, 2024.

(c) It is unlawful for the combined total harvest during the first spot shrimp accounting period to have exceeded 4,800 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(d) The second spot shrimp catch accounting period will start one hour before official sunrise on July 31, 2024, through one hour after official sunset on August 20, 2024.

(e) It is lawful to possess deactivated non-spot shrimp pots on-board a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for spot shrimp.

A deactivated pot is un-baited, has the drawstring or door fastened open, and/or is unable to be readily fished.

(2) Non-spot shrimp pot harvests:

(a) Non-spot shrimp pot harvest is permitted as indicated in the following table opening one hour before official sunrise on the first

day of the open period. Any closures take effect one hour after official sunset on the closing day of the open period.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Immediately, until further notice.
Subregion 1B	Immediately, until further notice.
Subregion 1C	Immediately, until further notice.
Region 2E	Immediately, until further notice.
Region 2W	Immediately, until further notice.
Region 3, not including Discovery Bay Shrimp District	Immediately, until further notice.
Discovery Bay Shrimp District	Immediately, until further notice.
Region 4	Closed
Region 5	Closed
Region 6	Closed

(b) The non-spot shrimp catch accounting periods begin one hour before official sunrise and end one hour after official sunset on the date listed in the following table:

Period Number	Start Date	End Date
1	5/1/2024	5/14/2024
2	5/15/2024	5/28/2024
3	5/29/2024	6/11/2024
4	6/12/2024	6/25/2024
5	6/26/2024	7/9/2024
6	7/10/2024	7/23/2024
7	7/24/2024	8/6/2024
8	8/7/2024	8/20/2024
9	8/21/2024	9/3/2024
10	9/4/2024	9/17/2024
11	9/18/2024	10/1/2024
12	10/2/2024	10/15/2024

(c) It is unlawful for total harvest of non-spot shrimp to exceed 1,400 pounds per non-spot shrimp catch accounting period from subregions 1B, 1C, and Region 2E combined during catch accounting periods 1 through 12.

(d) There is no weekly harvest limit of non-spot shrimp from subregion 1A, Region 2W, Region 3, or the Discovery Bay Shrimp District.

(e) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Catch Area 23A and all of its subareas (23AE, 23AW, 23AC, 23AS).

(f) Harvest of non-spot shrimp is not permitted deeper than 175 feet in subregion 1A.

(g) It is unlawful to harvest non-spot shrimp in more than one geographical management unit listed in subsection 3(a) in a single day with the following exceptions:

(i) Non-spot shrimp may be harvested from more than one subregion of Region 1 on the same day.

(ii) Non-spot shrimp may be harvested from Discovery Bay Shrimp District and Region 3 on the same day.

(h) It is lawful to possess deactivated spot shrimp pots on-board of a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for non-spot shrimp.

A deactivated pot is un-baited, has the drawstring or door fastened open, and/or is unable to be readily fished.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of Washington Administrative Code are repealed, effective immediately:

WAC 220-340-52000T Commercial shrimp pot fishery—Puget
Sound. (24-91)

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 24-15-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-119—Filed July 3, 2024, 3:58 p.m., effective July 4, 2024]

Effective Date of Rule: July 4, 2024.

Purpose: The purpose of this emergency rule is to return Cowlitz River to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000U; and amending WAC 220-312-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to return Cowlitz River to permanent rules beginning July 2, 2024.

The adult salmon daily limit on the Cowlitz River was reduced earlier in the year to help ensure that the Cowlitz spring Chinook broodstock collection goal was achieved. Hatchery broodstock collection goals are now expected to be met; a reduced daily limit is no longer needed.

Klickitat River and Lewis River rules remain in place, previously announced in WSR 24-14-048.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 3, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000V Freshwater exceptions to statewide rules—Southwest. Effective July 4, 2024, until further notice, the provisions of WAC 220-312-030 regarding Klickitat River, and Lewis River salmon seasons shall be modified during times and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) Klickitat River (Klickitat Co.): Effective immediately, through July 31, 2024:

From 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon hatchery: Salmon: Closed.

(2) Lewis River (Clark/Cowlitz Co.): Effective immediately, through July 31, 2024:

From mouth to Colvin Creek: Salmon: Daily limit 6 including no more than 1 adult. Release all salmon other than hatchery Chinook.

REPEALER

The following section of Washington Administrative Code is repealed, effective July 4, 2024:

WAC 220-312-03000U Freshwater exceptions to statewide rules—Southwest. (24-111)

WSR 24-15-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-121—Filed July 3, 2024, 4:01 p.m., effective July 8, 2024]

Effective Date of Rule: July 8, 2024.

Purpose: The purpose of this emergency rule is to close recreational fishing in the Skagit River, from Hwy. 9 in Sedro Woolley to the Baker River July 8-10.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000N; and amending WAC 220-312-040.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to close Skagit River, from Hwy. 9 in Sedro Woolley to the mouth of the Baker River to all fishing, July 8 through 10, 2024.

A fishing closure in Skagit River, from Hwy. 9 in Sedro Woolley to the Baker River is necessary to avoid gear conflicts during scheduled treaty fisheries.

This rule carries forward spring Chinook and sockeye seasons for Skagit River, previously announced in WSR 24-13-054.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 3, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000P Freshwater exceptions to statewide rules—Puget Sound. Effective July 8 through July 15, 2024, the following provisions of WAC 220-312-040 and WAC 220-220-160 regarding salmon seasons and two-pole fishing for the Skagit River and salmon seasons for Cascade River, shall be as described below. All other provisions of

WAC 220-312-040 and WAC 220-220-160 not addressed herein, or unless otherwise amended, remain in effect:

(1) Cascade River (Skagit Co.); from mouth to Rockport-Cascade Rd. Bridge:

Salmon, effective immediately, through July 15, 2024:

(a) Open daily.

(b) Daily limit 4 including no more than 2 adults. Release all salmon other than hatchery Chinook.

(c) Night closure and Anti-snagging rule in effect.

(2) Skagit River (Skagit Co.):

(a) From the Hwy. 536 (Memorial Hwy. Bridge) in Mt. Vernon to the Hwy. 9 Bridge in Sedro Woolley:

Salmon, effective immediately, through July 15, 2024:

(i) Daily limit 4. Release all salmon other than sockeye.

(ii) Night Closure in effect.

(iii) Selective gear rules are not in effect for salmon.

(b) From Hwy. 9 Bridge in Sedro Woolley to the Dalles Bridge at Concrete:

(i) All species: effective July 8 through July 10, 2024: Closed

(ii) Salmon, effective July 11 through July 15, 2024:

(A) Daily limit 4. Release all salmon other than sockeye.

(B) Night Closure in effect.

(C) Selective gear rules are not in effect for salmon.

(c) From the Dalles Bridge at Concrete to the mouth of the Baker River:

All species, effective July 8 through July 10, 2024: Closed.

(d) From Hwy. 530 Bridge at Rockport to Cascade River Rd. (Marblemount Bridge):

Salmon, effective immediately, through July 15, 2024:

(i) Daily limit 4 including no more than 2 adults. Release all salmon other than hatchery Chinook.

(ii) Night Closure and Anti-snagging rule in effect.

REPEALER

The following section of Washington Administrative Code is repealed, effective July 8, 2024:

WAC 220-312-04000N Puget Sound salmon—Saltwater seasons and daily limits. (24-114)

WSR 24-15-007

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed July 5, 2024, 9:13 a.m., effective July 5, 2024, 9:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule-making order amends chapter 16-470 WAC, Quarantine—Agricultural pests, to expand the boundaries of the internal quarantine for Japanese beetle within Washington state. The quarantine prohibits the movement of regulated articles located inside the quarantine area from moving outside of it. The quarantine prevents potentially infested host material from being transported to other parts of the state, thereby limiting the spread of Japanese beetle and protecting noninfested areas from infestation.

Additionally, this rule-making order adds soil samples as a regulated article and specifies conditions governing the movement of soil samples from internal quarantined areas. It also adds a requirement that any business located in the internal quarantine area that is selling regulated articles under WAC 16-470-710 (4) or (7) must post signage developed by the department of agriculture (department) clearly stating that regulated articles purchased cannot be transported outside of the quarantine area. The rule amendment clarifies that under WAC 16-470-710(7), "cut flowers for decorative purposes" includes those flowers that are exposed to open air environments during their harvest, transportation, or trade. Lastly, the amendment adds a condition for the transport of cut flowers grown in the quarantined area to areas outside the quarantined area.

Citation of Rules Affected by this Order: New WAC 16-470-711; and amending WAC 16-470-705, 16-470-710, and 16-470-717.

Statutory Authority for Adoption: RCW 17.24.011 and 17.24.041.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Immediate amendment of the rule is necessary for the general welfare of the public and is necessary to protect the forest, agricultural, horticultural, floricultural, beekeeping, and environmental interests of this state. Japanese beetle (*Po- pillia japonica* Newman) is a highly invasive plant pest native to Japan. It has been known to cause severe damage to more than 300 species of ornamental and agricultural plants, including roses, grapes, and hops. Adult beetles damage plants by skeletonizing foliage and feeding on buds, flowers, and fruit. The larvae also damage the roots of plants, such as turf grass. Although this feeding does not always kill the plant, it weakens it and may reduce the plant's overall yield.

In 2021, the department caught 24,048 Japanese beetles in the current internal quarantine area. Throughout 2021, 2022, and 2023, the department took extensive measures to reduce the spread of the beetle, with an ultimate goal of eradicating it. Measures that have been taken include treating residential and public properties with pesticide, trapping, and establishing an internal quarantine. Despite these efforts, by the end of the 2022 trapping season, numerous Japanese beetles, which indicate a reproducing population, were caught outside of the currently established internal quarantine area. This occurred again in 2023, with beetles being caught even further outside of the

internal quarantine area than in 2022. Due to this, immediate action is needed to expand the internal Japanese beetle quarantine to reflect the area of infestation more accurately and strengthen the quarantine's protections. Further, the department believes that adding soil samples as a regulated article, requiring signage be posted for businesses selling certain regulated articles, and clarifying the requirement around cut flowers is necessary to prevent the beetles' further dissemination within this state and to protect the state's forest, agricultural, horticultural, floricultural, beekeeping, and environmental interests.

If Japanese beetle becomes permanently established throughout the state, it could severely threaten several of Washington's agricultural industries. The threat this pest poses is particularly concerning due to the area in which the detections have occurred. There are a number of farms and nurseries in close proximity to the detection sites growing plant species known to be targeted by Japanese beetle. Not only do these beetles pose a threat to the plants themselves but, if established, they have the potential to impact the availability of export markets for agricultural commodities grown in the area. Expanding the Japanese beetle internal quarantine and other proposed quarantine amendments will help prevent the spread of this invasive pest and protect Washington's agricultural industries, as well as maintain access to national and international markets.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 5, 2024.

Derek I. Sandison
Director

OTS-5250.1

AMENDATORY SECTION (Amending WSR 22-17-068, filed 8/15/22, effective 9/15/22)

WAC 16-470-705 Areas under quarantine. (1) Exterior: The entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, the District of Columbia, the Provin-

ces of Ontario and Quebec, and any other state, province, parish, or county where infestations of Japanese beetle are detected are declared to be under quarantine for Japanese beetle.

(a) The director may exempt individual counties of the states under quarantine from meeting the conditions in WAC 16-470-715 if the director determines that:

(i) The state has adopted and is enforcing restrictions on the interstate and intrastate movement of regulated articles that are equivalent to or exceed the restrictions placed on the movement of regulated articles as provided in WAC 16-470-715; and

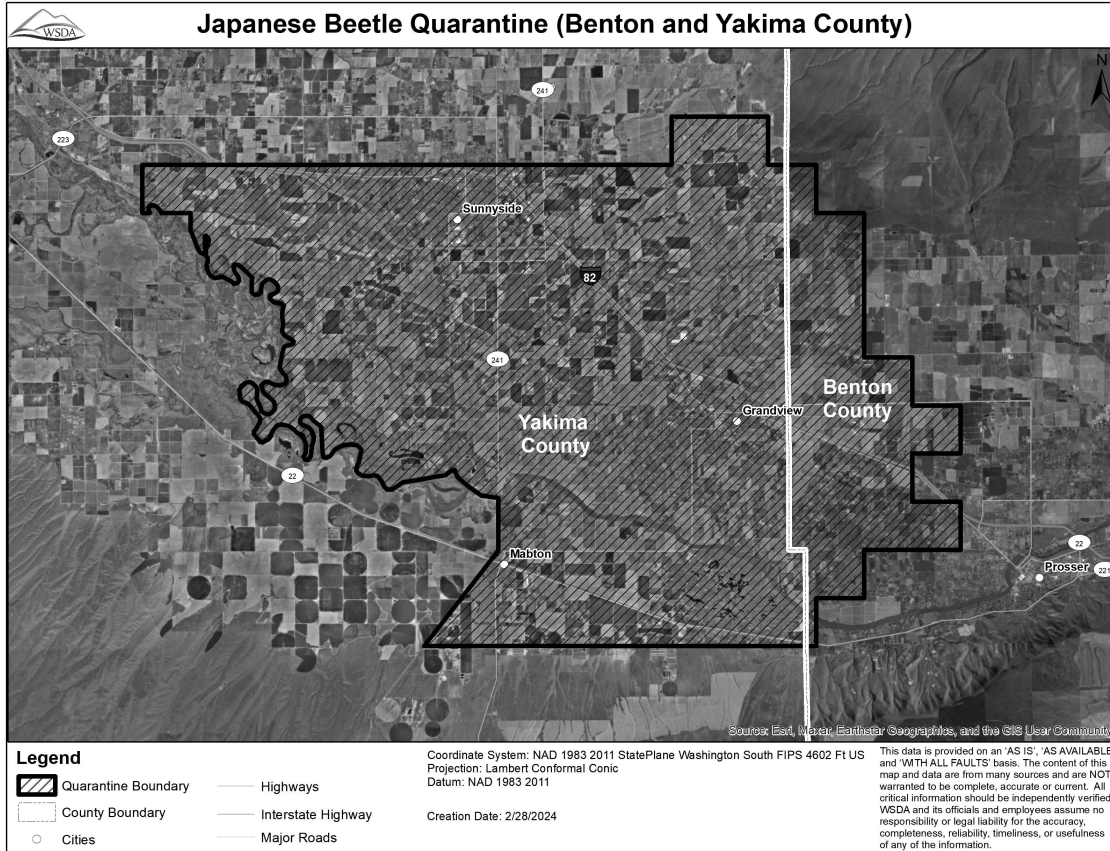
(ii) Annual surveys are conducted in such counties and the results of these surveys are negative for Japanese beetle; and

(iii) One or more neighboring counties are not subject to an unacceptable heavy Japanese beetle infestation.

(b) A plant health official of any state may request exemption of one or more counties under this subsection. The request must be in writing, and it must state the area surveyed, the survey method, personnel conducting the survey, and dates of any previous Japanese beetle infestations in that county.

(2) Interior: Within the state of Washington, those areas where infestations of Japanese beetle exist are declared to be under quarantine. These areas include the portion of Yakima and Benton counties designated as follows: Beginning within Yakima County at latitude (~~(N46°18'8" and longitude W120°0'26"; thence easterly across the Yakima-Benton County line to latitude N46°18'5" and longitude W119°51'39"; thence southerly to latitude N46°16'21" and longitude W119°51'40"; thence easterly to longitude W119°50'25"; thence southerly to latitude N46°13'44" and longitude W119°50'27"; thence westerly to latitude N46°13'44" and longitude W119°51'42"; thence southerly to latitude N46°12'00" and longitude W119°51'42"; thence westerly across the Yakima-Benton County line to latitude N46°12'3" and longitude W119°59'14"; thence northerly to latitude N46°14'39" and longitude W119°59'12"; thence westerly to longitude W120°0'28")~~) N46°19'54" and longitude W120°09'12"; thence easterly to latitude N46°19'51" and longitude W119°55'24"; thence northerly to latitude N46°20'43" and longitude W119°55'23"; thence easterly to latitude N46°20'42" and longitude W119°52'53"; thence southerly to N46°19'50" and longitude W119°52'53"; thence easterly across the Yakima-Benton County line to latitude N46°19'50"; and longitude W119°51'38" southerly to latitude N46°18'57" and longitude W119°51'39"; thence easterly to latitude N46°18'57" and longitude W119°50'24"; thence southerly to latitude N46°16'21" and longitude W119°50'25"; thence easterly to latitude N46°16'20" and longitude W119°49'10"; thence southerly to latitude N46°15'28" and longitude W119°47'56"; thence southerly to latitude N46°14'35" and longitude W119°47'56"; thence westerly to latitude N46°14'36" and longitude W119°49'12"; thence southerly to latitude N46°13'44" and longitude W119°49'12"; thence easterly to N46°13'43" and longitude W119°47'57"; thence southerly to latitude N46°12'51" and longitude W119°47'58"; thence westerly to latitude N46°12'52" and longitude W119°50'28"; thence southerly to latitude N46°11'60" and longitude W119°50'29"; thence westerly to latitude N46°12'00" and longitude W119°51'44"; thence southerly to latitude N46°11'08" and longitude W119°51'44"; thence westerly to latitude N46°11'11" and longitude W120°01'55"; thence northerly and easterly along the Yakama Nation Reservation boundary line; thence northerly and turning westerly along the Yakama Nation Reservation boundary to latitude N46°18'42" and longitude

W120°07'57"; then northerly to latitude N46°19'02" and longitude W120°07'57"; then westerly to latitude N46°19'02" and longitude W120°08'42"; thence northerly and westerly and turning southerly along the Yakama Nation Reservation boundary to latitude N46°19'02" and longitude W120°09'00"; thence westerly to latitude N46°19'02" and longitude W120°09'12"; thence northerly to the point of beginning.



AMENDATORY SECTION (Amending WSR 22-17-068, filed 8/15/22, effective 9/15/22)

WAC 16-470-710 Regulated articles. The following are declared to be hosts or possible carriers of Japanese beetle and are regulated articles under the Japanese beetle quarantine:

- (1) The upper eight inches of topsoil containing vegetative material from all properties including, but not limited to, residential, agricultural, and commercial properties (including construction sites);
- (2) Humus and compost (except when produced commercially), ((and)) growing media (except when commercially packaged), and soil samples;
- (3) Yard debris, meaning plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping, or similar activities. Yard debris includes, but is not limited to, grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris;

- (4) Plants for planting and propagation, except when dormant and bareroot and free from soil or growing media, including:
- (a) All plants with roots;
 - (b) Plant crowns or roots;
 - (c) Bulbs;
 - (d) Corms;
 - (e) Tubers; and
 - (f) Rhizomes;
- (5) Turfgrass (sod);
- (6) Hop bines and unshucked corn ears harvested during the Japanese beetle adult flight season (May 15th through October 15th);
- (7) Cut flowers for decorative purposes, including those exposed to open air environments during their harvest, transportation, or trade; and
- (8) Any other plant, plant part, article, or means of conveyance when it is determined by the director to present a hazard of spreading live Japanese beetle due to either infestation, or exposure to infestation.

NEW SECTION

WAC 16-470-711 Signage requirements. Any business selling regulated articles under WAC 16-470-710 (4) or (7) which is located within the interior quarantine area (see WAC 16-470-705(2)) must post signage which is clearly visible at all business entrances, as well as points of sale and aisles in areas where these regulated articles are being sold. Businesses must use signage developed by or approved by the department, which must clearly state that regulated articles purchased cannot be transported outside of the quarantine area. Signs may be found on the department's website at <http://agr.wa.gov/beetles> and must be a minimum of 8.5" x 11" in size.

AMENDATORY SECTION (Amending WSR 22-17-068, filed 8/15/22, effective 9/15/22)

WAC 16-470-717 Conditions governing the movement of regulated articles from internal quarantined areas. Regulated articles within the state of Washington quarantined areas are prohibited from moving outside the quarantined area (from all properties, including commercial and private properties), except as provided for below:

(1) The upper eight inches of topsoil containing vegetative material from all properties; humus and compost (except when produced commercially), ~~((and))~~ growing media (except when commercially packaged), and soil samples, may be allowed to move from the quarantine area if they are first treated by one of the following methods. Treatments must be monitored by the department for compliance.

(a) Steam heated to a temperature of 140 degrees Fahrenheit for one hour, to kill all life stages of Japanese beetle;

(b) Soil samples may be transported to a laboratory for testing outside of the quarantine area if they are securely double bagged and clearly labeled with the following statement, "This soil sample originates from a Japanese beetle quarantine area. Sample must either be securely double bagged prior to disposal or incinerated." Laboratories

located within Washington state that are receiving soil samples originating from the quarantine area must either securely double bag the samples prior to disposal or incinerate the samples.

(c) Other treatments determined to be effective at eradicating Japanese beetle and approved in writing by the director.

(2) Yard debris may be allowed to move from the quarantine area if it is first treated by one of the following methods. Treatments must be monitored by the department for compliance.

(a) Steam heated to a temperature of 140 degrees Fahrenheit for one hour, to kill all life stages of Japanese beetle;

(b) When consisting solely of woody materials containing no soil, yard debris may be chipped to a screen size of one inch in two dimensions or smaller during the Japanese beetle adult flight season (May 15th through October 15th). Woody material containing no soil can be moved outside of the Japanese beetle adult flight season without chipping;

(c) Another treatment determined to be effective at eradicating Japanese beetle and approved in writing by the director.

(3) Plants for planting and propagation (except when dormant and bareroot and free from soil or growing media), all plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turf-grass (sod) may be allowed to move from the quarantine area if each shipment complies with one of the treatment or inspection requirements detailed under (a) through (f) of this subsection. Before the shipment moves outside the quarantined area, the shipment must be approved by the department. Approval will be documented by the issuance of a certificate of treatment or inspection when the department determines that the shipment is in compliance with the treatment or inspection requirements. The certificate must accompany the shipment while the shipment is in transit. Treated plants must be safeguarded from reinfestation prior to shipping. Plants shipped dormant and bareroot with no soil or growing media attached are exempt from these requirements, and should be identified as bareroot on shipping documents.

(a) Production in an approved Japanese beetle free greenhouse/screenhouse. All the following criteria apply to be approved as a Japanese beetle free greenhouse/screenhouse. All media must be sterilized and free of soil. All planting stock must be free of soil (bareroot) before planting into the approved medium. The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period (May 15th through October 15th). During the adult flight period, the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot enter. Such security measures must be approved by the department. No Japanese beetle contaminated material shall be allowed into the secured area at any time. The greenhouse/screenhouse will be officially inspected by the department for the presence of all life stages of Japanese beetle and must be specifically approved as a secure area. The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed, and shipped. Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation. Each greenhouse/screenhouse operation must be approved by the department as having met and maintained the above criteria. The certificate accompanying the plants shall bear the following additional declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse and were grown in sterile, soilless media."

(b) Production during a pest free window. The entire rooted plant production cycle (planting, growth, harvest, and shipping) will be completed within a pest free window (October 16th through May 14th), in clean containers with sterilized and soilless growing medium, and shipment will occur outside the adult Japanese beetle flight period (May 15th through October 15th). The accompanying phytosanitary certificate shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season and were grown in sterile, soilless media."

(c) Application of approved regulatory treatments. All treatments will be performed under direct supervision of the department or under a compliance agreement. Treatments and procedures under a compliance agreement will be monitored throughout the season. State phytosanitary certificates listing and verifying the treatment used must accompany the shipment. Note that not all treatments or methods approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for use within Washington state. The phytosanitary certificate shall bear the following additional declaration: "The rooted plants are in soilless media and were treated to control *Popillia japonica* according to the criteria for shipment to Category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Washington state's Japanese beetle quarantine."

(d) Dip treatment - Not an approved treatment.

(e) Drench treatments - Container plants only. Not approved for ornamental grasses or sedges. Not approved for field potted plants. Potting media used must be sterile and soilless, containers must be clean. Only containerized nursery stock with rootballs 12 inches in diameter or smaller and free from field soil are eligible. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season, they must be retreated with an approved insecticide. Chemicals approved for drench treatments of container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a Category 1 state, and must be labeled for use in Washington state.

(f) Media (granule) incorporation - Container plants only. Not approved for ornamental grasses or sedges. Only containerized nursery stock with rootballs 12 inches in diameter or smaller, planted in approved growing media, and free from field soil are eligible. Plants grown in field soil and then potted into soilless container substrates are not eligible for certification using this protocol, unless all field soil is removed from the roots so plants are bareroot at the time of potting. All pesticides used for media incorporation must be mixed thoroughly into the media before potting and plants should be watered at least two times following media incorporation before shipment can begin. Approved growing media used must be free from soil and consist of synthetic or other substances (other than soil) used singly or in combinations. Examples of approved growing media include conifer bark, hardwood bark, expanded or baked clay pellets, expanded polystyrene beads, floral foam, ground coconut husk, ground cocoa pods, ground coffee hulls, ground rice husk, peat, perlite, pumice, recycled paper, rock wool, sawdust, sphagnum, styrofoam, synthetic sponge, vermiculite, and volcanic ash or cinder. The media shall contain only substances that were not used previously for growing plants or other agricultural purposes. It must be free of plant pests, sand, and related matter, and safeguarded in such a manner as to prevent the introduction of all life stages of Japanese beetle to the media. The granules must be incorporated into the media before potting. Plants being

stepped up into treated potting media must first have undergone an approved drench treatment to eliminate any untreated volume of potting medium. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season, they must be repotted with a granular incorporated mix or retreated using one of the approved drench treatments. Chemicals approved for media (granule) incorporation for container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a Category 1 state, and must be labeled for use in Washington state.

(4) Hop vines and unshucked corn ears: Fields where hops or corn (intended to be shipped unshucked) are planted must be trapped and monitored by the department and found free of Japanese beetle for the entire adult flight period (May 15th through October 15th), or from the date of planting up to the date of harvest if both dates are within the flight period. Fields that are not sufficiently trapped will not be considered free from Japanese beetle. If the field is found free of Japanese beetle by the department, vines and unshucked corn ears may be moved outside the quarantined area. If the department determines there is evidence of Japanese beetle presence, vines and unshucked corn ears must be treated prior to harvest or movement by a method approved by the director in advance. All shipments of hop vines and unshucked corn ears to areas outside the quarantined area must be accompanied by a compliance document issued by the department stating the field of origin and destination addresses. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.

(5) Cut flowers for decorative purposes: All shipments of cut flowers grown in the quarantined area, to areas outside the quarantined area must be accompanied by a compliance document issued by the department stating the field of origin and destination address. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.

WSR 24-15-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-121—Filed July 5, 2024, 2:50 p.m., effective July 6, 2024]

Effective Date of Rule: July 6, 2024.

Purpose: Updates Puget Sound recreational shrimping rules.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000Z; and amending WAC 220-330-070.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable amounts of spot shrimp are available in Marine Areas 8-1, 8-2, and the portion of 10 east of a line from West Point to Alki Point, but recreational shares will only support a limited number of open days in the marine areas listed in this section. As an addition to recreational seasons previously scheduled in WSR 24-09-024 (filed April 9, 2024), 24-12-030 (filed May 28, 2024), 24-13-035 (filed June 10, 2024), and 24-14-021 (filed June 14, 2024), this emergency rule opens nonspot shrimp seasons in Marine Area 6 outside Discovery Bay and Marine Areas 8-1, 8-2, and 9 with depth restrictions. It also cancels the previously announced July 12-14 opening for all shrimp species (including spot shrimp) in Marine Area 6 outside Discovery Bay and Marine Area 7 West. These two recreational "all shrimp" seasons are now closed for the year. This rule is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and meet conservation objectives. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 5, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000A Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective July 6, 2024, until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5: Open daily, from 1 hour before official sunrise to 1 hour after official sunset, until further notice for all shrimp species.

(2) Marine Area 6 (excluding the Discovery Bay Shrimp District): Open daily through October 15 for shrimp species other than spot shrimp with a 175-foot maximum fishing depth restriction. During this time, it is unlawful to set or pull shrimp gear in waters greater than 175 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(3) Marine Area 7 East: Open daily through October 15 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time, it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(4) Marine Areas 8-1 and 8-2:

(a) Open July 10 from 9:00 a.m. through 3:00 p.m. for all shrimp species.

(b) Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on July 10 in Marine Area 8-2.

(c) Open July 11 daily through October 15 for shrimp species other than spot shrimp with a 175-foot maximum fishing depth restriction. During this time, it is unlawful to set or pull shrimp gear in waters greater than 175 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(5) Marine Area 9: Open daily through October 15 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time, it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(6) Marine Area 10 east of a line from West Point to Alki Point (inside Elliott Bay): Open July 10 from 9:00 a.m. through 3:00 p.m. for all shrimp species.

(7) Marine Area 11: Open daily through October 15 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time, it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(8) Marine Area 13: Open daily through October 15 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time, it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

REPEALER

The following section of the Washington Administrative Code is repealed, effective July 6, 2024:

WAC 220-330-07000Z Shrimp—Areas and seasons. (24-106)

WSR 24-15-010
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed July 8, 2024, 8:12 a.m., effective July 11, 2024]

Effective Date of Rule: July 11, 2024.

Purpose: The development disabilities administration (DDA) is adopting new sections of rule on an emergency basis to implement E2SSB 5440 (2023), which directs the department of social and health services to develop a process for connecting individuals who have been found not competent to stand trial due to an intellectual or developmental disability to available wraparound services and supports in community-based settings. Additional subsections were added to the chapter between the initial emergency filing and this subsequent emergency filing.

Citation of Rules Affected by this Order: New WAC 388-848-0010, 388-848-0020, 388-848-0030, 388-848-0040, 388-848-0050, 388-848-0060, 388-848-0090, 388-848-0100, 388-848-0110, 388-848-0120, 388-848-0130, 388-848-0150, 388-848-0160, 388-848-0170, and 388-848-0180.

Statutory Authority for Adoption: RCW 34.05.350 (1)(a) and 71A.12.030.

Other Authority: RCW 10.77.060 (See ESSSB [E2SSB] 5440).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Enacting these rules on an emergency basis is necessary in order to implement the program established under ESSSB [E2SSB] 5440, which is intended for people in need of immediate support after being deemed incompetent or nonreformable in order to inform those individuals of services available and ensure preservation of their health and safety by providing necessary services as quickly as possible. This is the second emergency filing on these sections and is necessary to keep the rules enacted until DDA can complete the permanent rule-making process. DDA is progressing through the permanent process, see WSR 24-07-045. The draft rules are currently at external review for comment.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 15, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 15, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 15, Amended 0, Repealed 0.

Date Adopted: July 8, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5019.5

**Chapter 388-848 WAC
CIVIL TRANSITIONS PROGRAM**

PURPOSE

NEW SECTION

WAC 388-848-0010 What is the civil transitions program? The civil transitions program is a voluntary program for people referred to the developmental disabilities administration by the behavioral health administration as a result of a determination that the person is not competent to stand trial under RCW 10.77.084 and not likely restorable due to a diagnosis of intellectual or developmental disability.

DEFINITIONS

NEW SECTION

WAC 388-848-0020 What definitions apply to this chapter? The following definitions apply to this chapter:

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020 and who has been determined eligible by DDA to receive services under chapter 388-823 WAC.

"Community first choice" or "CFC" is a Medicaid state plan program as defined in chapter 388-106 WAC.

"Conditional services" means supportive housing services and community first choice services that may be available to a participant on an interim basis while awaiting a DDA-eligibility determination. Conditional services are limited to funds allocated for the program's purpose.

"Conditionally eligible" means a status assigned to a civil transitions program participant while the person awaits a DDA eligibility determination.

"Developmental disability" is defined in RCW 71A.10.020.

"DDA" means the developmental disabilities administration within the department of social and health services.

"Participant" means a person receiving services through the civil transitions program.

"Supportive housing" means a combination of rental assistance and wraparound services administered by DDA and intended to stabilize and support participants to live successfully in the community.

"Supportive housing agreement" means a contract between the participant and the supportive housing provider that sets rules and expectations for living in the home.

"Termination" means an action taken by DDA that ends DDA eligibility, DDA services, or both.

"Wraparound services" means support that helps a participant by:

- (1) Preparing for and transitioning to housing;
- (2) Providing guidance to help the participant maintain tenancy once housing is secured; and
- (3) Navigating community resources.

PROGRAM ELIGIBILITY AND REFERRAL

NEW SECTION

WAC 388-848-0030 Who is eligible to enroll in the civil transitions program? To be eligible for enrollment in the civil transitions program, a person must:

- (1) Be determined not competent to stand trial and not likely restorable under RCW 10.77.084 due to an intellectual or developmental disability;
- (2) Be referred to the developmental disabilities administration by the behavioral health administration; and
- (3) Be one of the following:
 - (a) Not a current DDA client and apply for a DDA eligibility determination under chapter 388-823 WAC no more than 30 days after enrolling in the civil transitions program;
 - (b) A current DDA client who is not eligible for residential habilitation services under chapter 388-845 WAC; or
 - (c) A current DDA client who is eligible for residential habilitation services under chapter 388-845 WAC or residential services from an adult family home but is awaiting a service provider.

NEW SECTION

WAC 388-848-0040 How does a supportive housing provider determine if they can safely meet a participant's needs? To determine whether they can safely meet a participant's needs, the supportive housing provider reviews participant information, such as:

- (1) The participant's referral packet;
- (2) Information gathered from the participant, collateral contacts, or case manager; and

(3) Composition of participants currently supported in the provider's shared housing.

NEW SECTION

WAC 388-848-0050 Is a single-person housing option available for a participant? (1) If a participant requests supportive housing, a single-person housing option may be available when the original charge that made the participant eligible for the civil transitions program involved:

- (a) Arson;
- (b) A sexualized crime;
- (c) Felony assault; or
- (d) Murder.

(2) If the charge is sexual in nature or for a crime that resulted in the death of another person, DDA will review the charge to determine if it is safe for the person to share a home with other vulnerable adults or if a single-person housing option is appropriate and available.

NEW SECTION

WAC 388-848-0060 How long after DDA receives a referral may a person enroll in the civil transitions program? (1) After DDA contacts a person referred to the civil transitions program, the person has up to 90 days to enroll. For the purpose of this section, enrollment occurs on the earlier of:

- (a) Submission of an eligibility application; or
- (b) Authorization of a conditional service.

(2) If DDA is unable to contact the person, DDA will keep the referral active for 90 days.

(3) If the person declines DDA services, DDA will keep the referral active for 90 days.

NEW SECTION

WAC 388-848-0090 What services are available to a civil transitions program participant? (1) A participant who is not a DDA client upon program enrollment may request supportive housing services while awaiting an eligibility determination under chapter 388-823 WAC and is considered conditionally eligible.

(2) A participant who is not a DDA client upon program enrollment may request community first choice services under chapter 388-106 WAC while awaiting an eligibility determination under chapter 388-823 WAC.

(3) A participant who is a DDA client will be referred to DDA services for which the client may be eligible. If the client is unable to access residential habilitation services, the client may request supportive housing.

NEW SECTION

WAC 388-848-0100 Are supportive housing services available everywhere in Washington state? Supportive housing services are limited to areas of Washington state with contracted providers and support services available. A participant does not have a right to supportive housing services through the civil transitions program in any area of their choosing.

NEW SECTION

WAC 388-848-0110 Must a participant sign a supportive housing agreement? To receive supportive housing services, an eligible participant must sign a supportive housing agreement.

NEW SECTION

WAC 388-848-0120 Are there limits to how long a participant may receive conditional services? (1) If a participant is found ineligible for DDA services, the participant may continue to receive conditional services up to 90 days after the date the participant is found ineligible.

(a) If the participant has not acquired housing during the 90 days under subsection (1) of this section, DDA may approve up to 90 additional days of conditional services.

(b) If the participant is found ineligible for DDA services, the participant may receive conditional services for a maximum of six months after the start date of services.

(2) A participant who is a DDA client may receive:

(a) Supportive housing services through the civil transitions program for up to one year if appropriated funds are available; and

(b) Community first choice services as long as the client meets eligibility criteria under WAC 388-106-0277.

(3) DDA may extend supportive housing services beyond one year for a participant who is a DDA client if:

(a) The participant is in the process of transitioning to residential habilitation services or CFC residential services; and

(b) Appropriated funds are available.

SERVICE TERMINATION

NEW SECTION

WAC 388-848-0130 When may DDA terminate a participant's supportive housing services? DDA may terminate a participant's supportive housing services if:

- (1) The participant has acquired housing or is receiving residential habilitation services through DDA;
- (2) The participant no longer needs the service;
- (3) The participant does not follow conditions of the supportive housing agreement;
- (4) The participant fails to follow applicable rules, laws, or court orders; or
- (5) Legislative funding for the civil transitions program is no longer available.

NEW SECTION

WAC 388-848-0150 When may DDA terminate a participant's community first choice services? DDA may terminate a participant's community first choice services if the participant is determined not DDA-eligible. The termination is effective the date supportive housing services end under WAC 388-848-0120.

PROVIDER REQUIREMENTSNEW SECTION

WAC 388-848-0160 Who can apply to become a wraparound services provider? To apply to become a wraparound services provider, a person or entity must be one of the following DDA-contracted providers in good standing:

- (1) An alternative living provider under chapter 388-829A WAC;
- (2) A community engagement provider under WAC 388-845-0655;
- (3) A foundational community supports provider under chapter 182-559 WAC; or
- (4) A supported living, group home, or group training home provider under chapters 388-101 and 388-101D WAC.

NEW SECTION

WAC 388-848-0170 Is a provider a mandatory reporter? (1) A provider supporting a participant in the civil transitions program is a mandatory reporter under chapter 74.34 RCW.

- (2) In addition to mandatory reports to agents under chapter 74.34 RCW, the provider must also report to DDA an incident involving

a participant that includes an allegation of abuse, improper use of restraint, neglect, personal or financial exploitation, or abandonment.

ADMINISTRATIVE HEARING RIGHTS

NEW SECTION

WAC 388-848-0180 Does a participant have a right to an administrative hearing? A participant has a right to an administrative hearing in accordance with chapter 388-02 WAC and WAC 388-825-120 through 388-825-165.

WSR 24-15-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-124—Filed July 9, 2024, 3:05 p.m., effective July 9, 2024, 3:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule:

(1) Opens Regions 2W and 5 to commercial spot shrimp harvest effective immediately.

(2) Implements a reduced pot limit in Region 5, congruent with RCW 77.50.100.

(3) Designates the commercial spot shrimp catch accounting periods and catch limits.

(4) Designates the commercial nonspot shrimp catch accounting periods and biweekly catch limit for harvest from Subregions 1B and 1C and Region 2E.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000U; and amending WAC 220-340-520.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require the adoption of harvest seasons contained in this emergency rule. This emergency rule is necessary to prosecute state commercial shrimp pot fisheries in Puget Sound. This rule allows harvesters to respond to dynamic changes in market conditions and promotes full utilization of both the commercial spot and nonspot shares. These rules are in congruence with comanager agreements. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 9, 2024.

Kelly Susewind
Director

NEW SECTION**WAC 220-340-52000V Commercial shrimp pot fishery—Puget Sound.**

Notwithstanding the provisions of WAC 220-340-520, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes using pot gear in Puget Sound except as provided for in this section:

(1) Spot Shrimp Pot Harvest:

(a) Spot shrimp harvest is permitted as indicated in the following table opening one hour before official sunrise on the first day of the open period. Any closures take effect one hour after official sunset on the closing day of the open period.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Closed.
Subregion 1B	Closed.
Subregion 1C	Immediately, until further notice.
Region 2E	Closed.
Region 2W	Immediately, until further notice.
Subarea 23A-E	Closed.
Subarea 23A-W	Immediately, until further notice.
Subarea 23A-C and MSFS Catch Area 23B	Immediately, until further notice.
Subarea 23A-S and MSFS Catch Area 23D	Immediately, until further notice.
MFSF Catch Area 23C	Immediately, until further notice.
MFSF Catch Area 25A, excluding the Discovery Bay Shrimp District	Closed.
Discovery Bay Shrimp District	Closed.
MFSF 29 (Straits - Neah Bay)	Immediately, until further notice.
Subarea 26B-1 and MFSF Catch Area 26C	Closed.
Subarea 26B-2	Closed.
Region 5	Immediately, until further notice.
MFSF Catch Area 26D	Closed.
MFSF Catch Areas 28A, 28B, 28C, and 28D	Closed.

(b) The first spot shrimp catch accounting period starts one hour before official sunrise on May 1, 2024, through one hour after official sunset on July 30, 2024.

(c) It is unlawful for the combined total harvest during the first spot shrimp accounting period to have exceeded 4,800 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(d) The second spot shrimp catch accounting period will start one hour before official sunrise on July 31, 2024, through one hour after official sunset on August 20, 2024.

(e) Harvesters may deploy no more than 50 spot shrimp pots per license in Shrimp Management Region 5.

(f) It is lawful to possess deactivated non-spot shrimp pots on-board a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for spot shrimp.

A deactivated pot is un-baited, has the drawstring or door fastened open, and/or is unable to be readily fished.

(2) Non-spot shrimp pot harvests:

(a) Non-spot shrimp pot harvest is permitted as indicated in the following table opening one hour before official sunrise on the first day of the open period. Any closures take effect one hour after official sunset on the closing day of the open period.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Immediately, until further notice.
Subregion 1B	Immediately, until further notice.
Subregion 1C	Immediately, until further notice.
Region 2E	Immediately, until further notice.
Region 2W	Immediately, until further notice.
Region 3, not including Discovery Bay Shrimp District	Immediately, until further notice.
Discovery Bay Shrimp District	Immediately, until further notice.
Region 4	Closed
Region 5	Closed
Region 6	Closed

(b) The non-spot shrimp catch accounting periods begin one hour before official sunrise and end one hour after official sunset on the date listed in the following table:

Period Number	Start Date	End Date
1	5/1/2024	5/14/2024
2	5/15/2024	5/28/2024
3	5/29/2024	6/11/2024
4	6/12/2024	6/25/2024
5	6/26/2024	7/9/2024
6	7/10/2024	7/23/2024
7	7/24/2024	8/6/2024
8	8/7/2024	8/20/2024
9	8/21/2024	9/3/2024
10	9/4/2024	9/17/2024
11	9/18/2024	10/1/2024
12	10/2/2024	10/15/2024

(c) It is unlawful for total harvest of non-spot shrimp to exceed 1,400 pounds per non-spot shrimp catch accounting period from subregions 1B, 1C, and Region 2E combined during catch accounting periods 1 through 12.

(d) There is no weekly harvest limit of non-spot shrimp from subregion 1A, Region 2W, Region 3, or the Discovery Bay Shrimp District.

(e) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Catch Area 23A and all of its subareas (23AE, 23AW, 23AC, 23AS).

(f) Harvest of non-spot shrimp is not permitted deeper than 175 feet in subregion 1A.

(g) It is unlawful to harvest non-spot shrimp in more than one geographical management unit listed in subsection 3(a) in a single day with the following exceptions:

(i) Non-spot shrimp may be harvested from more than one subregion of Region 1 on the same day.

(ii) Non-spot shrimp may be harvested from Discovery Bay Shrimp District and Region 3 on the same day.

(h) It is lawful to possess deactivated spot shrimp pots on-board of a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for non-spot shrimp.

A deactivated pot is un-baited, has the drawstring or door fastened open, and/or is unable to be readily fished.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of Washington Administrative Code are repealed, effective immediately:

WAC 220-340-52000U Commercial shrimp pot fishery—Puget
Sound. (24-120)

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 24-15-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-126—Filed July 10, 2024, 3:04 p.m., effective July 10, 2024, 3:04 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000C; and amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule sets the Columbia River treaty summer season commercial fisheries for nontreaty buyers. This rule is consistent with actions of the Columbia River Compact on June 5, June 27, and July 10, 2024. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions

change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 10, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000D Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately through 11:59 PM July 31, 2024.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon (any species), steelhead caught after 6:00 AM on June 17 may be sold or kept for subsistence. Shad, yellow perch, bass, walleye, catfish and carp may also be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1E (area defined in tribal/state MOUs/MOAs)

(a) Season: Immediately through 11:59 PM July 31, 2024. Only during days and times opened under tribal rule.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp caught after 6:00 AM on June 17 may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes.

(3) Open Areas: Wind River, Drano Lake, and Klickitat River.

(a) Season: Immediately, until further notice, and only during those days and hours when the areas are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and reel with hook and Line. Gillnets may only be used in Drano Lake.

Allowable sales: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

(4) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season:

(i) Immediately through 6:00 PM July 10, 2024

(ii) 6:00 AM July 15 through 6:00 PM July 17, 2024

(b) Gear: Set and Drift Gill nets with mesh size restrictions consistent with tribal regulations.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

(d) Standard river mouth and dam closed areas applicable to gill-net gear, except the Spring Creek Hatchery sanctuary is not in effect during the summer management period.

(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Fish caught during the open period may be sold after the period concludes.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of Washington Administrative Code is repealed, effective immediately:

WAC 220-359-02000C Columbia River salmon seasons above Bonneville Dam. (24-116)

WSR 24-15-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-122—Filed July 10, 2024, 4:06 p.m., effective July 10, 2024, 4:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Washington department of fish and wildlife (department) seeks to increase the total number of special hunt permits allowed under WAC 220-415-030, 220-415-060, 220-415-070, 220-415-120, and 220-415-130 by 738 for the 2024-2025 hunting season in order to align with the number of special hunt permits that were drawn in error through the department's electronic licensing system. In addition, the department seeks to reduce the mountain goat raffle permit authorized under WAC 220-412-070 to zero for the 2024-2025 hunting season to help mitigate this issue.

Citation of Rules Affected by this Order: Amending WAC 220-412-070, 220-415-030, 220-415-060, 220-415-070, 220-415-120, and 220-415-130.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: A recent error with the department's drawing system incorrectly awarded 738 additional special hunt permits that were authorized under WAC 220-415-030, 220-415-060, 220-415-070, 220-415-120, and 220-415-130 for the 2024-2025 hunting season. To mitigate this error, the department needs to add the incorrectly awarded 738 permits among these regulations. The department also needs to remove the 2024-2025 hunting season mountain goat raffle permit, authorized in WAC 220-412-070, to accommodate permit level changes in WAC 220-415-130 Mountain goat seasons, permit quotas, and areas. Hunt dates in the foregoing regulations start as early as July 1, which leaves the department insufficient time to engage in permanent rule making. The issuance of these additional permits is not anticipated to have a population level impact on current deer, elk, bighorn sheep, mountain goat, and moose populations. By issuing this emergency rule, the department seeks to accommodate a large number of hunters who have drawn in error for these limited hunting opportunities that have been planned since June 12, 2024, when the results of the draw were publicly announced.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 10, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-412-07000A Big game and wild turkey auction, raffle, and special incentive permits. (1) Notwithstanding the provisions of WAC 220-412-070, effective immediately, until further notice, shall be modified to include the additional information set forth below while other provisions of WAC 220-412-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

(17)(e) MOUNTAIN GOAT RAFFLE PERMIT
Number of permit hunters selected: 0

[NEW SECTION]

WAC 220-415-03000A 2024 Deer special permits. (1) The table in WAC 220-415-030, effective immediately, until further notice, shall be modified to include the additional information set forth below while other provisions of WAC 220-415-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

ANTLERLESS DEER

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Whitcomb	Deer Area 3071	AR	Oct. 17-29	10	11
Whitcomb	Deer Area 3071	MZ	Nov. 29 - Dec. 5	10	11
Paterson	Deer Area 3072	AR	Oct. 17-29	10	11
Washtucna	GMUs 139, 142, 284, 381	MZ	Nov. 25 - Dec. 8	200	201
Prescott	GMU 149	MZ	Sept. 28 - Oct. 6	10	11
Blue Creek	GMU 154	MZ	Sept. 28 - Oct. 6	10	11
Marengo	GMU 163	MF	Nov. 1-12	5	6
Marengo	GMU 163	MZ	Sept. 28 - Oct. 6	5	6
Beezley	GMU 272	AR	Nov. 20- Dec. 8	40	43
Wahluke	GMU 278	AR	Nov. 20- Dec. 8	40	48
Mossyrock	GMU 505	MF	Oct. 12-31	30	32
Winston	GMU 520	MF	Oct. 12-31	20	21
Coweeman	GMU 550	MZ	Sept. 28 - Oct. 6	10	14
Olympic	GMU 621	MF	Oct. 12-31	15	16
Kitsap	GMU 627	MF	Oct. 12-31	25	26
Mason	GMU 633	MF	Oct. 12-31	20	21
Wynoochee	GMU 648	MF	Oct. 12-31	30	33
Satsop	GMU 651	MF	Oct. 12-31	15	18

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Satsop	GMU 651	MZ	Nov. 27 - Dec. 15	30	32
Mashel	GMU 654	AR	Oct. 12-31	10	11
North River	GMU 658	MF	Oct. 12-31	10	11
North River	GMU 658	MZ	Sept. 28 - Oct. 6	8	13
Minot Peak	GMU 660	MF	Oct. 12-31	20	21
Minot Peak	GMU 660	MZ	Sept. 28 - Oct. 6	5	8
Capitol Peak	GMU 663	MF	Oct. 12-31	5	7
Capitol Peak	GMU 663	MZ	Sept. 28 - Oct. 6	5	7
Skookumchuck	GMU 667	MF	Oct. 12-31	20	23
Williams Creek	GMU 673	MF	Oct. 12-31	5	8

BUCK DEER

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Dayton	GMU 162	MZ	Sept. 28 - Oct. 6	15	16
Marengo	GMU 163	MZ	Sept. 28 - Oct. 6	10	15
Tucannon	GMU 166	MZ	Sept. 28 - Oct. 6	5	6
Mountain View	GMU 172	MZ	Sept. 28 - Oct. 6	15	18
East Okanogan	GMU 204	MF	Nov. 1-20	20	21
Sinlahekin	GMU 215	MF	Nov. 1-20	20	21
Gardner	GMU 231	MF	Nov. 1-20	10	11
Chiliwist	GMU 239	MF	Nov. 1-20	10	11
Alta	GMU 242	MF	Nov. 1-20	10	14
St. Andrews	GMU 254	MF	Nov. 1-20	4	6
Moses Coulee	GMU 269	MZ	Nov. 25 - Dec. 3	3	4
Ritzville	GMU 284	MF	Nov. 1-20	11	15
Whitcomb	Deer Area 3071	AR	Sept. 29 - Oct. 11	10	12
Whitcomb	Deer Area 3071	MZ	Nov. 18-26	5	6
West Klickitat	GMU 578	MZ	Dec. 1-8	20	23
Skokomish	GMU 636	AR	Nov. 1-13	5	6
North River	GMU 658	MF	Nov. 1-13	4	5

DEER 65+

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Roosevelt Mule Deer	GMU 133	Modern	Oct. 12-22	15	16
Harrington	GMU 136	Modern	Oct. 12-22	10	11
Washtucna	GMUs 139,142,284,381	Modern	Oct. 12-22	20	21
Blue Mtns. Foothills	GMUs 145, 149, 154, 163, Deer Area 1010, 178, 181	Modern	Oct. 12-22	15	21
Sinlahekin	GMU 215	Modern	Oct. 12-22	5	7
Chewuch	GMU 218	Modern	Oct. 12-22	5	6
Pearrygin	GMU 224	Modern	Oct. 12-22	5	6
Entiat	GMU 247	Modern	Oct. 12-22	3	5
Rattlesnake Hills	GMU 372	Modern	Oct. 12-22	10	12
Horse Heaven Hills	GMU 373	Modern	Oct. 12-22	10	11
Toutle	GMU 556	Modern	Oct. 12-31	5	6
Mason	GMU 633	Modern	Oct. 12-31	20	21

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Wynoochee	GMU 648	Modern	Oct. 12-31	20	21
Satsop	GMU 651	Modern	Oct. 12-31	10	11
North River	GMU 658	Modern	Oct. 12-31	5	6
Capitol Peak	GMU 663	Modern	Oct. 12-31	5	9
Palisades	GMUs 266, 269	Modern	Oct. 12-22	5	7

DEER DISABLED HUNTERS

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Palisades	GMUs 266, 269	Modern	Oct. 12-22	5	7
Bridgeport	GMUs 248, 260	Modern	Oct. 12-22	5	7
Washtucna	GMUs 139, 142, 284, 381	Modern	Oct. 12-22	20	21
Capitol Peak	GMU 663	Modern	Oct. 12-31	5	7
Washougal	GMU 568	Modern	Oct. 12-31	2	4
Kahlotus	GMU 381	Modern	Nov. 1-14	10	13
Beezley	GMU 272	Modern	Oct. 12-22	10	13
Mission	GMU 251	Modern	Oct. 12-22	2	3
Entiat	GMU 247	Modern	Oct. 12-22	2	3
Entiat	GMU 247	Muzzleloader	Sept. 28 - Oct. 6	3	4
Alta	GMU 242	Modern	Oct. 12-22	5	6
Chiliwist	GMU 239	Modern	Oct. 12-22	5	6
Pearrygin	GMU 224	Modern	Oct. 12-22	5	6

DEER MASTER HUNTER

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Region 6	Designated Areas in Region 6	Any	July 1, 2024 - March 31, 2025	10	15
Region 3	Designated Areas in Region 3	Any	Aug. 1, 2024 - March 31, 2025	40	43

DEER YOUTH

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Skookumchuck	GMU 667	Modern	Oct. 5-31	20	25
Capitol Peak	GMU 663	Modern	Oct. 7-31	5	6
Minot Peak	GMU 660	Modern	Oct. 7-31	5	7
Minot Peak	GMU 660	Modern	Nov. 1-13	4	7
North River	GMU 658	Modern	Oct. 5-31	5	9
Mashel	GMU 654	Modern	Oct. 5-31	15	17
Satsop	GMU 651	Modern	Oct. 7-31	20	25
Wynoochee	GMU 648	Modern	Oct. 7-31	20	21
Mason	GMU 633	Modern	Nov. 1-17	25	26
Pysht	GMU 603	Modern	Nov. 1-13	5	6
West Klickitat	GMU 578	Modern	Oct. 12-31	5	8
West Klickitat	GMU 578	Modern	Oct. 12-31	5	7
Wind River	GMU 574	Modern	Oct. 12-31	5	6
Siouxon	GMU 572	Modern	Oct. 12-31	5	6
Toutle	GMU 556	Modern	Oct. 12-31	15	22

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Coweeman	GMU 550	Modern	Oct. 12-31	10	11
Packwood	GMU 516	Modern	Oct. 12-31	5	6
Grayback	GMU 388	Modern	Oct. 12-22	5	6
Horse Heaven Hills	GMU 373	Modern	Oct. 12-22	10	11
Desert	GMU 290	Modern	Dec. 7-29	12	20
Beezley	GMU 272	Modern	Oct. 12-22	40	45
Mission	GMU 251	Modern	Oct. 12-22	3	4
Mission	GMU 251	Muzzleloader	Sept. 28 - Oct. 6	2	4
Swakane	GMU 250	Modern	Oct. 12-22	2	3
Entiat	GMU 247	Modern	Oct. 12-22	2	4
Chiliwist	GMU 239	Modern	Oct. 12-22	5	6
Chewuch	GMU 218	Modern	Oct. 12-22	5	6
Sinlahekin	GMU 215	Modern	Oct. 12-22	5	6
Couse	GMU 181	Modern	Oct. 12-22	10	12
Dayton	GMU 162	Modern	Oct. 12-22	5	6
Prescott	GMU 149	Modern	Oct. 12-22	20	24
Washtucna	GMU 139, 142, 284, 381	Modern	Oct. 12-22	100	102
Paterson	Deer Area 3072	Muzzleloader	Nov. 1-13	5	6

SECOND DEER

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Benge	Deer Area 2010	Any	Dec. 17-24	5	6
Central Okanogan	Deer Area 2014	Any	Sept. 3 - Oct. 6	5	7
Conconully	Deer Area 2016	Any	Sept. 3 - Oct. 6	5	7
Mt. Spokane	GMU 124	Modern	Oct. 12-25 and Nov. 9-19	5	7
Mica Peak	GMU 127	Archery	Sept. 1-27 and Nov. 25 - Dec. 15	5	6
Roosevelt White-tailed Deer	GMU 133	Archery	Sept. 1-27	5	6
Harrington	GMU 136	Modern	Oct. 12-22	90	102
Harrington	GMU 136	Archery	Sept. 1-27	30	34
Harrington	GMU 136	Muzzleloader	Sept. 28 - Oct. 6	10	15
Steptoe	GMU 139	Archery	Sept. 1-27	5	7
Steptoe	GMU 139	Muzzleloader	Sept. 28 - Oct. 6 and Nov. 25 - Dec. 8	5	6
Washtucna	GMU 139, 142, 284, 381	Modern	Oct. 12-22	350	362
Almota	GMU 142	Modern	Oct. 12-22	5	6
Almota	GMU 142	Archery	Sept. 1-27	5	7
Sinlahekin	GMU 215	Modern	Oct. 12-22	5	7
Pearygin	GMU 224	Modern	Oct. 12-22	5	7
Gardner	GMU 231	Modern	Oct. 12-22	5	6
Alta	GMU 242	Modern	Oct. 12-22	5	6
Foster Creek	GMU 260	Modern	Oct. 12-22	8	9
Foster Creek	GMU 260	Muzzleloader	Sept. 30 - Oct. 8	5	6

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Badger	GMU 266	Modern	Oct. 12-22	8	12
Moses Coulee	GMU 269	Muzzleloader	Sept. 30 - Oct. 8	5	8
Desert	GMU 290	Modern	Dec. 7-22	25	33
Kahlotus	GMU 381	Modern	Dec. 9-17	10	18
Cypress	GMU 417	Modern	Oct. 12-31 and Nov. 14-17	30	31
Whidbey	GMU 420	Any	Aug 1. - Dec. 31	275	282
Camano	GMU 421	Archery	Sept. 1-27 and Nov. 27 - Dec. 31	25	28
Anderson	GMU 655	Archery	Sept. 1-27 and Nov. 27 - Dec. 31	10	12
Deschutes	GMU 666	Modern	Oct. 12-31 and Nov. 14-17	40	42

QUALITY DEER

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Huckleberry White-tailed Buck	GMU 121	Modern	Nov. 20-24	5	6
Mt. Spokane	GMU 124	Modern	Nov. 1-24	5	6
Harrington	GMU 136	Modern	Nov. 1-24	5	7
Steptoe	GMU 139	Modern	Nov. 1-24	5	8
Pearrygin	GMU 224	Modern	Nov. 1-20	15	19
Pogue	GMU 233	Modern	Nov. 1-20	15	16
Alta	GMU 242	Modern	Nov. 1-20	15	17
Manson	GMU 243	Modern	Nov. 1-20	7	8
Entiat	GMU 247	Modern	Nov. 1-20	15	16
Entiat	GMU 247	Archery	Nov. 21-30	30	32
Mission	GMU 251	Modern	Nov. 1-20	7	9
Mission	GMU 251	Muzzleloader	Nov. 25-30	9	10
Desert	GMU 290	Modern	Nov. 2-10	5	7
Desert	GMU 290	Archery	Sept. 1-29	10	13
Desert	GMU 290	Archery	Nov. 16 - Dec. 1	17	21
Desert	GMU 290	Muzzleloader	Oct. 5-13	2	3
Cowiche	GMU 368	Modern	Nov. 4-17	10	12
Alkali	GMU 371	Modern	Oct. 26 - Nov. 10	10	16
Grayback	GMU 388	Modern	Nov. 4-24	20	22
Sauk	GMU 437	Modern	Nov. 1-12	25	29
Stillaguamish	GMU 448	Modern	Nov. 1-17	12	14
Coweeman	GMU 550	Modern	Nov. 1-13	4	5
Toutle	GMU 556	Modern	Nov. 1-13	1	2
Wind River	GMU 574	Modern	Nov. 14-21	20	21
West Klickitat	GMU 578	Modern	Nov. 14-21	15	18
Satsop	GMU 651	Modern	Nov. 1-13	10	13
Capitol Peak	GMU 663	Modern	Nov. 1-13	8	9
Skookumchuck	GMU 667	Modern	Nov. 1-13	10	12

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 220-415-06000A 2024 Elk special permits. (1) The table in WAC 220-415-060, effective immediately, until further notice, shall be modified to include the additional information set forth below while other provisions of WAC 220-415-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

ANTLERLESS ELK

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Mayview-Peola	GMUs 145, 178	EM	Oct. 5-11	5	6
Mountain View	Elk Area 1013	EF	Oct. 26 - Nov. 3	5	6
Cowiche	Elk Area 3681	EA	Nov. 27 - Dec. 8	100	128
49 Degrees North	GMU 117	EF	Oct. 26 - Nov. 3 and Dec. 16-31	10	14
49 Degrees North	GMU 117	EM	Oct. 5-11 and Dec. 16-31	20	22
Huckleberry	GMU 121	EF	Oct. 26 - Nov. 3 and Dec. 16-31	10	11
Marengo	GMU 163	EF	Oct. 26 - Nov. 3	5	6
Colockum	GMUs 328, 329	EF	Oct. 30 - Nov. 3	50	52
Colockum	GMUs 328, 329	EA	Sept. 7-19	75	77
Colockum	GMUs 328, 329	EM	Oct. 5-11	35	43
West Bar	GMU 330	EF	Oct. 30 - Nov. 3	5	7
Manastash	GMU 340	EF	Oct. 30 - Nov. 3	130	135
Manastash	GMU 340	EM	Oct. 5-11	100	106
Umtanum	GMU 342	EM	Oct. 5-11	85	98
Umtanum	GMU 342, 346	EF	Oct. 30 - Nov. 3	125	127
Little Naches	GMU 346	EF	Oct. 30 - Nov. 3	125	139
Nile	GMU 352	EF	Oct. 30 - Nov. 3	10	13
Nile	GMU 352	EM	Oct. 5-11	10	11
Nile Early	GMU 352	EA	Sept. 7-19	30	32
Nile Late	GMU 352	EA	Nov. 27 - Dec. 8	30	37
Bumping	GMU 356	EF	Oct. 30 - Nov. 3	15	18
Bumping	GMU 356	EA	Sept. 7-19	50	60
Bumping	GMU 356	EM	Oct. 5-11	10	13
Bethel	GMU 360	EF	Oct. 30 - Nov. 3	10	22
Bethel	GMU 360	EM	Oct. 5-11	10	14
Rimrock	GMU 364	EF	Oct. 30 - Nov. 3	145	155
Rimrock	GMU 364	EA	Sept. 7-19	100	121
Cowiche	GMU 368	EF	Oct. 30 - Nov. 3	80	98
Cowiche	GMU 368	EM	Oct. 5-11	60	69
Alkali	GMU 371	EM	Sept. 22 - Oct. 11	45	55
Alkali A	GMU 371	EF	Oct.12-29	45	48

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Alkali B	GMU 371	EF	Oct. 30 - Nov. 22	45	57
Mossyrock	GMU 505	WF	Nov. 2-13	20	21
Ryderwood	GMU 530	WA	Nov. 27 - Dec. 15	50	52
Washougal	GMU 568	WF	Nov. 2-13	5	6
Washougal	GMU 568	WM	Nov. 27 - Dec. 15	5	6
Wind River	GMU 574	WF	Nov. 2-13	5	6
North River	GMU 658	WM	Nov. 27 - Dec. 15	25	31
Williams Creek	GMU 673	WF	Nov. 2-13	25	32
Long Beach	GMU 684	WF	Nov. 2-13	4	6
Puyallup	Elk Area 6014	WF	Jan. 1 - 20, 2025	10	11
Mashel	Elk Area 6054	WM	Jan. 1 - 15, 2025	20	21
Forks	Elk Area 6612	WA, WF, WM	Jan. 1 - 31, 2025	20	27

BULL ELK

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Peshastin	Elk Area 2033	EF	Feb. 8-17, 2025	4	5
Mission	GMU 251	EF	Oct. 21 - Nov. 3	2	3
Observatory	GMUs 334, 340, 342	EF	Oct. 21 - Nov. 3	16	17
Bethel	GMU 360	EF	Oct. 21 - Nov. 3	9	11
Rimrock	GMU 364	EF	Oct. 21 - Nov. 3	29	30
Cowiche	GMU 368	EF	Oct. 21 - Nov. 3	5	6
Upper Smith Creek	Elk Area 5064	WA	Oct. 1-7	2	3
Norway Pass	Elk Area 5066	WM	Oct. 9-15	3	4
Olympic	GMU 621, EXCEPT Elk Area 6071	WA	Sept. 1-19 and Dec. 1-15	4	6
Olympic	GMU 621, EXCEPT Elk Area 6071	WM	Sept. 28 - Oct. 11	3	4
Skokomish	GMU 636	WF	Nov. 1-17	6	8
Skokomish	GMU 636	WA	Sept. 1-19 and Dec. 1-15	5	6
White River	GMU 653	WM	Sept. 28 - Oct. 11	9	11

QUALITY ELK

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Wenaha West	Elk Area 1008	EA	Sept. 2-19	3	4
Tucannon	GMU 166	EF	Oct. 21 - Nov. 3	2	3
Lick Creek	GMU 175	EF	Oct. 21 - Nov. 3	1	2
Lick Creek	GMU 175	EM	Sept. 30 - Oct. 11	1	2
Colockum	GMUs 328, 329, 334	EM	Sept. 28 - Oct. 4	10	11
Alkali	GMUs 334, 371	EF	Oct. 12-29	36	37

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Peaches Ridge	GMUs 336, 346	EF	Sept. 23-27	2	3
Goose Prairie	GMUs 352, 356	EF	Sept. 23-27	2	3
Goose Prairie	GMUs 352, 356	EA	Sept. 7-19	4	5
Bethel	GMU 360	EM	Sept. 28 - Oct. 4	2	3
Rimrock	GMU 364	EF	Sept. 23-27	2	3
Rimrock	GMU 364	EA	Sept. 7-19	14	15
Cowiche	GMU 368	EA	Sept. 7-19	3	4
Toutle	GMU 556	WF	Sept. 23-27 and Nov. 2-13	2	3
White River	GMU 653	WF	Sept. 21-25	2	3
White River	GMU 653	WA	Sept. 7-19 and Nov. 27 - Dec. 15	20	23
Mudflow	Elk Area 5099	WF	Nov. 2-13	7	9
Mudflow	Elk Area 5099	WA	Sept. 7-13 and Nov. 16-19	7	9
Mudflow	Elk Area 5099	W M	Oct. 5-15	7	11
Peninsula	GMUs 602, 603, 607, 612, 615	WA	Sept. 1-19	2	3

65 AND OLDER

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Yakima South	GMUs 364, 368	EF	Oct. 30 - Nov. 10	5	7
Yakima Central	GMUs 352, 356, 360	EF	Oct. 30 - Nov. 10	5	6
Yakima Late	GMUs 336, 342, 368	EA	Nov. 27 - Dec. 8	10	12
Alkali	GMU 371	EF	Oct. 12-29	10	11
Ryderwood	GMU 530	WF	Nov. 2-13	5	6
Willapa Hills	GMU 506	WF	Nov. 2-13	5	6

ELK DISABLED HUNTER

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Yakima South	GMUs 364, 368	EF, EM, EA	Oct. 30 - Nov. 9	5	8

MASTER HUNTER

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Region 1	Region 1	EF, EA, EM	Aug. 1, 2024 - Mar. 31, 2025	20	21
Region 6 Willapa Hills-Hoof Disease	GMUs 658, 660, 663, 672, 673, 681	Any elk tag	Dec. 1, 2024 - Feb. 28, 2025	15	16
Region 5 Northwest-Hoof Disease	GMUs 501, 503, 504, 505, 506, 520, 524, (except CLOSED in Elk Area 5066), 530, 550	Any elk tag	Dec. 1, 2024 - Feb. 28, 2025	15	19
Region 6	Designated Areas in Region 6	WF, WA, WM	July 1, 2024 - Mar. 31, 2025	20	23
Region 5	Designated areas in Region 5	Any elk tag	Aug. 1, 2024 - Mar. 31, 2025	30	31

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Region 3	Designated Areas in Region 3	Any elk tag	Aug. 1, 2024 - Mar. 31, 2025	20	21
Region 2	Designated Areas in Region 2	Any elk tag	Aug. 1, 2024 - Mar. 31, 2025	10	11
Region 4 South	Designated Areas in King and Snohomish counties	Any elk tag	July 1, 2024 - Mar. 31, 2025	10	12

ELK YOUTH

Hunt Name	Boundary	Tag	Dates	Original Permits	Adjusted Permits
Malaga	Elk Area 2032	EF	Nov. 1-12	10	11
Forks	Elk Area 6612	WF, WM, WA	Dec. 16, 2024 - Jan 31, 2025	10	12
49 Degrees North	GMU 117	EF	Oct. 26 - Nov. 3 and Dec. 16-31	5	7
Alkali	GMU 371	EF	Dec. 16, 2024 - Jan. 21, 2025	20	23
Alkali	GMU 371	EM	Nov. 23 - Dec.15	10	11
West Klickitat	GMU 578	WF	Nov. 2-13	10	12
Williams Creek	GMU 673	WF	Nov. 2-13	10	11
Yakima North	GMUs 336, 340, 342, 346	EF	Oct. 30 - Nov. 10	35	36
Yakima Central	GMUs 352, 356, 360	EF	Oct. 30 - Nov. 10	5	7
Yakima South	GMUs 364, 368	EF	Oct. 30 - Nov. 10	25	28
Yakima South	GMUs 364, 368	EM	Sept. 28 - Oct. 11	15	18
Region 6	Designated Areas in Region 6	WF	Aug. 1, 2024 - Mar. 31, 2025	7	9

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 220-415-07000A 2024 Moose seasons, permit quotas, and areas.

(1) The table in WAC 220-415-070, effective immediately, until further notice, shall be modified to include the additional information set forth below while other provisions of WAC 220-415-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

Category	Hunt Name	Boundary	Hunt Dates	Original Permits	Adjusted Permits
Antlerless Moose	Cheney B	GMU 130, 139	Oct 1 - Nov 30	2	4
Antlerless Moose	Douglas 108 B	GMU 108	Oct 1 - Nov 30	2	3
Any Antlered Bull Moose	Hangman	GMU 127, 130, 139	Oct. 1 - Nov. 30	4	7
Any Antlered Bull Moose	Selkirk 113	GMU 113	Oct. 1 - Nov. 30	15	17
Any Antlered Bull Moose	Huckleberry A - Early	GMU 121	Oct. 1-31	10	13

Category	Hunt Name	Boundary	Hunt Dates	Original Permits	Adjusted Permits
Any Antlered Bull Moose	Huckleberry A - Late	GMU 121	Nov. 1-30	10	12
Any Antlered Bull Moose	Spokane West A	GMU 124 (W of Hwy 395)	Oct. 1 - Nov. 30	2	3
Any Antlered Bull Moose	Mt Spokane South A	Moose Area 1 (within 124)	Oct. 1 - Nov. 30	8	9

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 220-415-12000A 2024 Bighorn sheep seasons, permit quotas, and areas. (1) The table in WAC 220-415-120, effective immediately, until further notice, shall be modified to include the additional information set forth below while other provisions of WAC 220-415-120 not addressed herein remain in effect unless otherwise amended by emergency rule:

Category	Hunt Name	Boundary	Dates	Original Permits	Adjusted Permits
Sheep Any Ram	Chelan Butte A	Sheep Unit 18	Sept. 15 - Oct. 10	2	3
Sheep Ewe	Swakane	Sheep Unit 14	Oct. 11-31	2	3

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 220-415-13000A 2024 Mountain goat seasons, permit quotas, and areas. (1) Notwithstanding the provisions of WAC 220-415-130, effective immediately, until further notice, shall be modified as set forth below while other provisions of WAC 220-415-130 not addressed herein remain in effect unless otherwise amended by emergency rule:

Hunt Name	Hunt Dates	Original Permits	Adjusted Permits
Lincoln Peak (4-4)	Sept. 1 - Nov. 30	2	3
Goat Rocks West (5-4)	Sept. 1 - Nov. 30	1	2

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 24-15-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-125—Filed July 11, 2024, 10:42 a.m., effective July 13, 2024]

Effective Date of Rule: July 13, 2024.

Purpose: The purpose of this emergency rule is to adjust the Chinook portion of the daily limit in Areas 3 and 4 to allow up to two Chinook to be retained daily.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500W; and amending WAC 220-313-075.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The purpose of this rule is to allow retention of up to two Chinook in Areas 3 and 4. Sufficient Chinook guideline remains in these areas to expand Chinook retention without risking early fishery closure. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 10, 2024.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-313-07500X Pacific Ocean salmon—Seasons—Closed areas.

Effective July 13 through September 30, 2024, the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

- (1) **Catch Record Card Area 1:** Open July 13 through September 30, 2024:
- (a) Daily limit of 2 salmon including no more than one Chinook.
 - (b) Release wild coho.
 - (c) Chinook minimum length 22 inches.
 - (d) Coho minimum length 16 inches.
- (2) **Catch Record Card Area 2:**
- (a) Closed July 13. It is unlawful to possess salmon onboard a vessel, including in transit.
 - (b) Open July 14 through August 11, 2024:
 - (i) Daily limit of 2 salmon including no more than one Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 22 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) Grays Harbor Control Zone is open. See WAC 220-306-040 for area definition.
 - (c) Open August 12 through September 15, 2024:
 - (i) Daily limit of 2 salmon including no more than one Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 22 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) Grays Harbor Control Zone is closed. See WAC 220-306-040 for area definition.
- (3) **Catch Record Card Area 3:**
- (a) Open July 13 through July 31, 2024
 - (i) Daily limit of 2 salmon.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
 - (b) Open August 1 through September 15, 2024
 - (i) Daily limit of 2 salmon.
 - (ii) Release chum and wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
- (4) **Catch Record Card Area 4:**
- (a) Open July 13 through July 31, 2024:
 - (i) Daily limit of 2 salmon.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) Waters east of a true north-south line through Sail Rock are closed.
 - (b) Open August 1 through September 15, 2024:
 - (i) Daily limit of 2 salmon.
 - (ii) Release chum and wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) No chinook retention allowed in waters east of the Bonilla-Tatoosh line.

REPEALER

The following section of Washington Administrative Code is repealed, effective July 13, 2024:

WAC 220-313-07500W Pacific Ocean salmon—Seasons—Closed
areas. (24-96)

WSR 24-15-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-127—Filed July 11, 2024, 3:27 p.m., effective July 16, 2024]

Effective Date of Rule: July 16, 2024.

Purpose: The purpose of this emergency rule is to extend sockeye seasons in the Skagit River.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to extend sockeye seasons in Skagit River, from the Hwy. 536 bridge in Mt. Vernon to the Dalles Bridge at Concrete.

Current data indicate that minimal incidental Chinook encounters and available harvestable sockeye in the area are sufficient to provide an extension of the in-river sockeye season.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 11, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Q Freshwater exceptions to statewide rules—Puget Sound. Effective July 16 through July 24, 2024, the following provisions of WAC 220-312-040 regarding Skagit River salmon seasons, shall be modified described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Skagit River (Skagit Co.): From the Hwy. 536 (Memorial Hwy. Bridge) in Mt. Vernon to the Dalles Bridge at Concrete:

Salmon:

- (a) Daily limit 4. Release all salmon other than sockeye.
- (b) Night Closure in effect.
- (c) Selective gear rules are not in effect for salmon.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 24-15-044

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed July 12, 2024, 11:13 a.m., effective August 9, 2024]

This memo serves as notice that effective August 9, 2024, the department of health (department) is rescinding the CR-103E for suspending the requirement for home care aides to complete testing within two years of training, which was filed June 5, 2024, as WSR 24-13-001.

The department is rescinding this CR-103E because permanent rule making is complete, the emergency rule will no longer be needed once the permanent rule becomes effective, and the requirements of the permanent rule supersede this emergency rule.

The permanent rule was filed as WSR 24-15-025 on July 9, 2024, and becomes effective August 9, 2024.

Individuals requiring information on this rule should contact Jennifer Osbun, program manager, at 360-236-3737.

Tami M. Thompson
Regulatory Affairs Manager

WSR 24-15-046
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 15, 2024, 8:22 a.m., effective July 15, 2024, 8:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In alignment with ESSB 5293, passed by the Washington state legislature in 2023, the emergency rules exempt school districts and charter schools for the 2024-2025 and 2025-2026 budget periods from accepting binding conditions when the proceeds of an interfund loan have been used to balance deficit fund balances. The rules allow this exemption in order to address budget destabilization in the aftermath of the COVID-19 pandemic, which is consistent with the purpose described under ESSB 5293 (2023) and RCW 28A.505.130.

This is a renewal of emergency rule filing as the office of superintendent of public instruction (OSPI) continues to conduct permanent rule making concerning district budgeting (binding conditions).

Citation of Rules Affected by this Order: Amending WAC 392-123-060.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.220.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The emergency rules are necessary to allow districts and charter schools to exercise the statutory exemption under ESSB 5293 (2023) and RCW 28A.505.130 from accepting binding conditions when utilizing interfund loan proceeds to address budget destabilization for the 2024-2025 and 2025-2026 budget periods.

OSPI will also conduct permanent rule making concerning the exemption from binding conditions.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 15, 2024.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-5283.1

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-123-060 Petition to budget receivables collectible in future fiscal periods. When a school district or charter school is unable to prepare a budget or a budget extension in which the estimated revenues for the budgeted fiscal period plus the estimated fund balance or actual fund balance in case of a budget extension, at the beginning of the budgeted fiscal period less the ending reserved fund balance for the budgeted fiscal year do not at least equal the estimated expenditures for the budgeted fiscal period, the school district board of directors or charter school board may deliver a petition in writing at least (~~twenty~~) 20 days before the budget or budget extension is scheduled for adoption to the superintendent of public instruction requesting permission to include receivables collectible in future periods beyond the fiscal period being budgeted in order to balance the budget or budget extension for the fiscal period being budgeted. Said petition shall include a resolution of the school board requesting permission to budget receivables collectible in future fiscal periods and other such information as the superintendent of public instruction shall deem as necessary.

If such permission is granted, it shall be in writing, and it shall contain conditions, binding on the district or charter school, designed to improve the district's or charter school's financial condition.

For the 2024-2025 and 2025-2026 budget periods, accepting binding conditions due to a negative fund balance position is not required for school districts or charter schools that have an interfund loan for more than the amount of the negative position in the receiving fund. This timebound exception is provided in RCW 28A.505.130 so long as the transaction date on the loan occurs on or before June 30, 2024.

WSR 24-15-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-128—Filed July 15, 2024, 9:39 a.m., effective July 22, 2024]

Effective Date of Rule: July 22, 2024.

Purpose: The purpose of this emergency rule is to open sockeye retention in Lake Wenatchee.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to open sockeye salmon seasons in Lake Wenatchee. Based on current sockeye passage analysis at Tumwater Dam and mainstem Columbia River Dams, the Washington department of fish and wildlife projects a surplus of harvestable sockeye destined for Lake Wenatchee, well above the natural spawning escapement goal of 23,000 fish. This fishery will be monitored closely and may close on short notice depending upon angler participation and harvest rates.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 15, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000S Exceptions to statewide rules—Eastside. The following provisions of WAC 220-312-050 regarding Lake Wenatchee (Chelan County) recreational salmon seasons shall be modified as described below. All other provisions of WAC 220-312-050 not addressed herein, and unless otherwise amended by emergency rule, remain in effect:

Lake Wenatchee (Chelan County): Effective July 22 through August 31, 2024:

- (a) Daily limit 4 salmon.
- (b) Release all salmon other than sockeye.
- (c) Selective gear rules in effect.
- (d) Night closure in effect.

WSR 24-15-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-130—Filed July 16, 2024, 5:01 p.m., effective July 20, 2024]

Effective Date of Rule: July 20, 2024.

Purpose: The purpose of this emergency rule is to close Chinook retention in the Columbia River from Rock Island Dam to Rocky Reach Dam.

Citation of Rules Affected by this Order: Amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to close Chinook retention from Rock Island Dam to 400 feet downstream of Rocky Reach fish ladders.

This Chinook retention closure is needed to ensure broodstock and escapement objectives are met. The current and projected hatchery and natural-origin summer Chinook return to the Wenatchee River are below what is needed to meet minimum spawning escapement and broodstock objectives for the Wenatchee River.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 16, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000R Freshwater exceptions to statewide rules—Columbia River. Effective July 20 through October 15, 2024, the provisions of WAC 220-312-060 regarding recreational salmon seasons from the Rock Island Dam to 400 feet downstream of Rocky Reach fish ladders, shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All

other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

Rock Island Dam to the boundary markers 400 feet downstream of the Rocky Reach Dam fish ladders:

Effective July 20 through October 15, 2024: Salmon: Daily limit 4. Release all salmon other than sockeye.

WSR 24-15-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-131—Filed July 16, 2024, 5:04 p.m., effective July 18, 2024]

Effective Date of Rule: July 18, 2024.

Purpose: The purpose of this emergency rule is to open commercial razor clam seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-340-12000N; and amending WAC 220-340-120.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Based on historical catches and on-site inspection, there are adequate clams to support a 10-day extension of the commercial razor clam season. Washington department of health has confirmed biotoxin levels currently fall below the regulatory threshold. This emergency rule is needed to extend the commercial razor clam season in Razor Clam Area 2. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 16, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-12000N Commercial razor clams. Notwithstanding the provisions of WAC 220-340-120, effective July 18 through July 28, 2024, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 2 lying south of the Willapa Bay Ship Channel, west of Ellen Sands, and north of the tip of Leadbetter Point. Digging is prohibited on the west side of Leadbetter Point south of 46°39.855'N. Access to Razor Clam Area 2 is by boat only.

REPEALER

The following section of the Washington Administrative Code is repealed, effective July 29, 2024:

WAC 220-340-12000N Commercial razor clams.

WSR 24-15-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-132—Filed July 17, 2024, 3:32 p.m., effective July 17, 2024, 3:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule:

- (1) Designates the commercial spot shrimp catch accounting periods and catch limits.
- (2) Implements a reduced pot limit in Region 5 congruent with RCW 77.50.100.
- (3) Closes Subregion 1C to commercial nonspot shrimp harvest effective one hour after official sunset on July 19, 2024.
- (4) Designates the commercial nonspot shrimp catch accounting periods and biweekly catch limit for harvest from Subregions 1B and 1C and Region 2E.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000V; and amending WAC 220-340-520.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require the adoption of harvest seasons contained in this emergency rule. This emergency rule is necessary to prosecute state commercial shrimp pot fisheries in Puget Sound. This rule closes a quota area to commercial harvest following the projected attainment of the available harvest. This rule allows harvesters to respond to dynamic changes in market conditions and promotes full utilization of both the commercial spot and nonspot shares. These rules are in congruence with comanager agreements. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 17, 2024.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION**WAC 220-340-52000W Commercial shrimp pot fishery—Puget Sound.**

Notwithstanding the provisions of WAC 220-340-520, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes using pot gear in Puget Sound except as provided for in this section:

(1) Spot Shrimp Pot Harvest:

(a) Spot shrimp harvest is permitted as indicated in the following table opening one hour before official sunrise on the first day of the open period. Any closures take effect one hour after official sunset on the closing day of the open period.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Closed.
Subregion 1B	Closed.
Subregion 1C	Immediately, until further notice.
Region 2E	Closed.
Region 2W	Immediately, until further notice.
Subarea 23A-E	Closed.
Subarea 23A-W	Immediately, until further notice.
Subarea 23A-C and MSFS Catch Area 23B	Immediately, until further notice.
Subarea 23A-S and MSFS Catch Area 23D	Immediately, until further notice.
MFSF Catch Area 23C	Immediately, until further notice.
MFSF Catch Area 25A, excluding the Discovery Bay Shrimp District	Closed.
Discovery Bay Shrimp District	Closed.
MFSF 29 (Straits - Neah Bay)	Immediately, until further notice.
Subarea 26B-1 and MFSF Catch Area 26C	Closed.
Subarea 26B-2	Closed.
Region 5	Immediately, until further notice.
MFSF Catch Area 26D	Closed.
MFSF Catch Areas 28A, 28B, 28C, and 28D	Closed.

(b) The first spot shrimp catch accounting period starts one hour before official sunrise on May 1, 2024, through one hour after official sunset on July 30, 2024.

(c) It is unlawful for the combined total harvest during the first spot shrimp accounting period to have exceeded 4,800 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(d) The second spot shrimp catch accounting period will start one hour before official sunrise on July 31, 2024, through one hour after official sunset on August 20, 2024.

(e) It is unlawful for the combined total harvest during the first and second spot shrimp accounting periods to have exceeded 5,300 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(f) Harvesters may deploy no more than 50 spot shrimp pots per license in Shrimp Management Region 5.

(g) It is lawful to possess deactivated non-spot shrimp pots on-board a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for spot shrimp.

A deactivated pot is un-baited, has the drawstring or door fastened open, and/or is unable to be readily fished.

(2) Non-spot shrimp pot harvests:

(a) Non-spot shrimp pot harvest is permitted as indicated in the following table opening one hour before official sunrise on the first day of the open period. Any closures take effect one hour after official sunset on the closing day of the open period.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Immediately, until further notice.
Subregion 1B	Immediately, until further notice.
Subregion 1C	Immediately, through July 19, 2024.
Region 2E	Immediately, until further notice.
Region 2W	Immediately, until further notice.
Region 3, not including Discovery Bay Shrimp District	Immediately, until further notice.
Discovery Bay Shrimp District	Immediately, until further notice.
Region 4	Closed
Region 5	Closed
Region 6	Closed

(b) The non-spot shrimp catch accounting periods begin one hour before official sunrise and end one hour after official sunset on the date listed in the following table:

Period Number	Start Date	End Date
1	5/1/2024	5/14/2024
2	5/15/2024	5/28/2024
3	5/29/2024	6/11/2024
4	6/12/2024	6/25/2024
5	6/26/2024	7/9/2024
6	7/10/2024	7/23/2024
7	7/24/2024	8/6/2024
8	8/7/2024	8/20/2024
9	8/21/2024	9/3/2024
10	9/4/2024	9/17/2024
11	9/18/2024	10/1/2024
12	10/2/2024	10/15/2024

(c) It is unlawful for total harvest of non-spot shrimp to exceed 1,400 pounds per non-spot shrimp catch accounting period from subregions 1B, 1C, and Region 2E combined during catch accounting periods 1 through 12.

(d) There is no weekly harvest limit of non-spot shrimp from subregion 1A, Region 2W, Region 3, or the Discovery Bay Shrimp District.

(e) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Catch Area 23A and all of its subareas (23AE, 23AW, 23AC, 23AS).

(f) Harvest of non-spot shrimp is not permitted deeper than 175 feet in subregion 1A.

(g) It is unlawful to harvest non-spot shrimp in more than one geographical management unit listed in subsection 3(a) in a single day with the following exceptions:

(i) Non-spot shrimp may be harvested from more than one subregion of Region 1 on the same day.

(ii) Non-spot shrimp may be harvested from Discovery Bay Shrimp District and Region 3 on the same day.

(h) It is lawful to possess deactivated spot shrimp pots on-board of a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for non-spot shrimp.

A deactivated pot is un-baited, has the drawstring or door fastened open, and/or is unable to be readily fished.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of Washington Administrative Code are repealed, effective immediately:

WAC 220-340-52000V Commercial shrimp pot fishery—Puget Sound. (24-124)

WSR 24-15-077

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed July 18, 2024, 7:38 a.m., effective July 18, 2024, 7:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amending the definition of mental health professional and creating certified agency affiliated counselor (C-AAC) and licensed agency affiliated counselor (L-AAC) credentials.

Amending WAC 246-341-0200 and 246-341-0515 in chapter 246-341 WAC, Behavioral health agency licensing and certification requirements, and WAC 246-810-010, 246-810-015, and 246-810-990 in chapter 246-810 WAC, Counselors.

2SHB 1724 (chapter 425, Laws of 2023) made several immediate changes impacting behavioral health agencies, including amending the definition of mental health professional (MHP) and creating two new agency affiliated counselor (AAC) credentials. Because 2SHB 1724's amendments to the MHP definition and AAC credentials went into effect immediately and were designated as necessary for the immediate preservation of the public health, safety, or general welfare, the department of health (department) implemented these changes by emergency rule under WSR 23-16-031, filed on July 21, 2023, and continued them under WSR 23-23-136, filed November 17, 2023; WSR 24-07-062, filed March 15, 2024; and WSR 24-07-100, filed March 20, 2024.

This emergency rule continues without changes the original emergency rule package. The emergency rule:

- Amends chapter 246-341 WAC to address language that conflicts with 2SHB 1724, deleting an outdated definition of MHP requirements and updating an incorrect cross-reference.
- Amends chapter 246-810 WAC to expand existing language to establish two new credentials, C-AAC and L-AAC. The amendments align rule language with statute and revise the registered AAC fees to apply to all AAC types.

The emergency rules will be continued while permanent rule making is in progress under:

- WSR 23-16-044, filed on July 25, 2023, which will create the new agency affiliated counselor credentials; and
- WSR 24-10-095, filed on April 30, 2024, which proposes behavioral health agency regulations for 23-hour crisis relief centers in Washington state.

Citation of Rules Affected by this Order: Amending WAC 246-341-0200, 246-341-0515, 246-810-010, 246-810-015, and 246-810-990.

Statutory Authority for Adoption: RCW 18.19.050 and 71.24.037.

Other Authority: 2SHB 1724 (chapter 425, Laws of 2023).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The legislature established in 2SHB 1724, Section 33 that many sections of the bill are "necessary for the immediate preservation of the public peace, health, or support of the state government and its existing public institutions and take effect immediately." Sections 13 through 20, which create the new AAC creden-

tials and amend the definition of MHP, are among the sections that became effective immediately.

Under 2SHB 1724, RCW 71.05.020 was amended to define an MHP as an individual practicing within their credential's scope of practice. Qualifying credentials include the certified and licensed AAC credential, but not the current AAC registration. Prior to the passage of 2SHB 1724, many MHPs performed assessments and made diagnoses with only a registration. However, after 2SHB 1724 became effective, they were required to obtain an AAC certification, AAC license, or other qualifying credential in order to continue providing these services. Establishing the new AAC credentials immediately by emergency rule and continuing these emergency rules allows MHPs to transition into the new credentials and continue providing essential behavioral health services while permanent rules are in progress.

If the department had waited to make these amendments through standard rule making, MHPs with an AAC registration would be both unable to continue assessing and diagnosing due to the changed MHP definition and unable to obtain a higher AAC credential that would allow them to continue that work. Continuing these emergency rules will allow MHPs who are AACs to continue serving Washington residents with behavioral health needs.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: July 18, 2024.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4676.1

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0200 Behavioral health—Definitions. The definitions in this section and RCW 71.05.020, 71.24.025, and 71.34.020 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the designated person responsible for the day-to-day operation of either the licensed behavioral health agency, or certified treatment service, or both.

(2) "Adult" means an individual 18 years of age or older. For purposes of the medicaid program, adult means an individual 21 years of age or older.

(3) "ASAM criteria" means admission, continued service, transfer, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

(4) "Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

(5) "Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: Substance use disorders, mental health disorders, co-occurring disorders, or problem gambling and gambling disorders.

(6) "Behavioral health agency," "licensed behavioral health agency," or "agency" means an entity licensed by the department to provide behavioral health services under chapter 71.24, 71.05, or 71.34 RCW.

(7) "Behavioral health service" means the specific service(s) that may be provided under an approved certification.

(8) "Branch site" means a physically separate licensed site, governed by the same parent organization as the main site, where qualified staff provides certified treatment services.

(9) "Campus" means an area where all of the agency's buildings are located on contiguous properties undivided by:

(a) Public streets, not including alleyways used primarily for delivery services or parking; or

(b) Other land that is not owned and maintained by the owners of the property on which the agency is located.

(10) "Care coordination" or "coordination of care" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

(11) "Certified" or "certification" means the status given by the department that authorizes the agency to provide specific types of behavioral health services included under the certification category.

(12) "Child," "minor," and "youth" mean:

(a) An individual under the age of 18 years; or

(b) An individual age 18 to 21 years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age 18 to 21 years who receives EPSDT services is not considered a "child" for any other purpose.

(13) "Clinical supervision" means regular and periodic activities performed by a mental health professional, co-occurring disorder specialist, or substance use disorder professional licensed, certified, or registered under Title 18 RCW. Clinical supervision may include review of assessment, diagnostic formulation, individual service plan development, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care. In the context of this chapter, clinical supervision is separate from clinical supervision required for purposes of obtaining supervised hours toward

fulfilling requirements related to professional licensure under Title 18 RCW.

(14) "Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

(15) "Consent" means agreement given by an individual after being provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment, that must be provided in a terminology that the individual can reasonably be expected to understand. Consent can be obtained from an individual's parent or legal representative, when applicable.

(16) "Consultation" means the clinical review and development of recommendations by persons with appropriate knowledge and experience regarding activities or decisions of clinical staff, contracted employees, volunteers, or students.

(17) "Co-occurring disorder" means the coexistence of both a mental health and a substance use disorder. Co-occurring treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

(18) "Cultural competence" or "culturally competent" means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

(19) "Deemed" means a status that is given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with the department.

(20) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

(a) Has a record of such an impairment; or

(b) Is regarded as having such impairment.

(21) "Face-to-face" means either in person or by way of synchronous video conferencing.

(22) "Individual service record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent behavioral health, medical, and clinical information for each individual served.

(23) "Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem gambling and gambling disorder treatment programs under RCW 43.70.080(5) and 41.05.750.

(24) "Medical practitioner" means a physician licensed under chapter 18.57 or 18.71 RCW, advance registered nurse practitioner

(ARNP) licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW.

(25) "Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

(26) "Mental health professional" or "MHP" means a person who meets the (~~qualifications in WAC 246-341-0515 (4)~~) definition in RCW 71.05.020.

(27) "Peer counselor" means the same as defined in WAC 182-538D-0200.

(28) "Peer support" means services provided by peer counselors to individuals under the supervision of a mental health professional or individual appropriately credentialed to provide substance use disorder treatment. Peer support provides scheduled activities that promote recovery, self-advocacy, development of natural supports, and maintenance of community living skills.

(29) "Problem gambling and gambling disorder" means one or more of the following disorders:

(a) "Gambling disorder" means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of gambling disorder that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

(30) "Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment or support services, progress in recovery, and progress toward intended outcomes.

(31) "Secretary" means the secretary of the department of health.

(32) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement chapters 71.05, 71.24, and 71.34 RCW for delivery of behavioral health services.

(33) "Substance use disorder professional" or "SUDP" means a person credentialed by the department as a substance use disorder professional (SUDP) under chapter 18.205 RCW.

(34) "Substance use disorder professional trainee" or "SUDPT" means a person credentialed by the department as a substance use disorder professional trainee (SUDPT) under chapter 18.205 RCW.

(35) "Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

(36) "Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

(37) "Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0515 Personnel—Agency staff requirements. Each behavioral health agency must ensure that all of the following staff requirements are met:

(1) All staff providing clinical services are appropriately credentialed for the services they provide, which may include a co-occurring disorder specialist enhancement.

(2) All staff providing clinical services receive clinical supervision.

(3) An agency providing group counseling or group therapy must have a staff ratio of at least one staff member to every 16 individuals during group counseling or therapy sessions.

(4) ~~((A mental health professional is:~~

~~(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;~~

~~(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate; or~~

~~(c) An agency staff member with a designation given by the department or an attestation by the licensed behavioral health agency that the person meets the following:~~

~~(i) Holds a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department or attested to by the licensed behavioral health agency;~~

~~(ii) Who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or~~

~~(iii) Who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001.~~

~~(5))~~ An agency providing problem gambling and gambling disorder treatment services must ensure staffing in accordance with WAC 246-341-1200.

OTS-4679.2

AMENDATORY SECTION (Amending WSR 11-22-087, filed 11/1/11, effective 12/2/11)

WAC 246-810-010 Definitions. The definitions in this section apply throughout this chapter unless the content clearly requires otherwise.

(1) "Agency" means:

(a) An agency or facility operated, licensed, or certified by the state of Washington to provide a specific counseling service or services;

(b) A federally recognized Indian tribe located within the state; or

(c) A county as listed in chapter 36.04 RCW.

(2) "Agency affiliated counselor" means a person registered, certified, or licensed under chapter 18.19 RCW, and this chapter, who is engaged in counseling and employed by an agency listed in WAC 246-810-016 or an agency recognized under WAC 246-810-017 to provide a specific counseling service or services.

(3) "Certified adviser" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-021.

(4) "Certified counselor" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-0201.

(5) "Client" means an individual who receives or participates in counseling or group counseling.

(6) "Consultation" means the professional assistance and practice guidance that a certified counselor receives from a counseling-related professional credentialed under chapter 18.130 RCW. This may include:

(a) Helping the certified counselor focus on counseling practice objectives;

(b) Refining counseling modalities;

(c) Providing support to progress in difficult or sensitive cases;

(d) Expanding the available decision-making resources; and

(e) Assisting in discovering alternative approaches.

(7) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist, or attempt to assist, an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purpose of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

(8) "Counselor" means an individual who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, agency affiliated counselors, certified counselors, certified advisers, hypnotherapists, and until July 1, 2010, registered counselors.

(9) "Department" means the Washington state department of health.

(10) "Fee" as referred to in RCW 18.19.030 means compensation received by the counselor for counseling services provided, regardless of the source.

(11) "Hypnotherapist" means a person registered under chapter 18.19 RCW, and this chapter, who is practicing hypnosis as a modality.

(12) "Licensed health care practitioner" means a licensed practitioner under the following chapters:

(a) Physician licensed under chapter 18.71 RCW.

(b) Osteopathic physician licensed under chapter 18.57 RCW.

(c) Psychiatric registered nurse practitioner licensed under chapter 18.79 RCW.

(d) Naturopathic physician licensed under chapter 18.36A RCW.

(e) Psychologist licensed under chapter 18.83 RCW.

(f) Independent clinical social worker, marriage and family therapist, or advanced social worker licensed under chapter 18.225 RCW.

(13) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in WAC 246-810-0201 or 246-810-021.

(14) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

(15) "Recognized" means acknowledged or formally accepted by the secretary.

(16) "Recognized agency or facility" means an agency or facility that has requested and been recognized under WAC 246-810-017 to employ agency affiliated counselors to perform a specific counseling service, or services for those purposes only.

(17) "Secretary" means the secretary of the department of health or the secretary's designee.

(18) "Supervision" means the oversight that a counseling-related professional credentialed under chapter 18.130 RCW provides.

(19) "Unprofessional conduct" means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-810-015 Agency affiliated counselor: Scope of practice and credentialing requirements. (1) ~~((An))~~ (a) A registered agency affiliated counselor may only provide counseling services as part of ~~((his or her))~~ their employment ~~((as an agency affiliated counselor))~~ for a recognized agency.

(b) A certified agency affiliated counselor may provide counseling services and may provide provisional mental health assessment and diagnosis services under supervision as required by chapter 18.19 RCW, and as part of their employment for a recognized agency.

(c) A licensed agency affiliated counselor may provide counseling services, independently conduct mental health assessments, and make mental health diagnoses as part of their employment for a recognized agency.

(2) An applicant for ~~((an))~~ any agency affiliated counselor credential must be employed by, or have an offer of employment from, an agency or facility identified in WAC 246-810-016.

(3) (a) An applicant for a certified agency affiliated counselor credential must meet the education and experience requirements of RCW 18.19.090(3).

(b) An applicant for a licensed agency affiliated counselor credential must meet the education and experience requirements of RCW 18.19.090(4).

(4) (a) Applicants must submit an application to the department within the first ~~((thirty))~~ 30 days of employment at an agency in order to continue working while the application is processed.

(b) Applicants must complete any outstanding deficiencies within ~~((ninety))~~ 90 days of the date the department issues a deficiency let-

ter. If the applicant does not satisfy the outstanding licensure requirements within ~~((ninety))~~ 90 days, the applicant must stop working.

AMENDATORY SECTION (Amending WSR 23-07-057, filed 3/9/23, effective 6/1/23)

WAC 246-810-990 Counselors fees and renewal cycle. (1) Under chapter 246-12 WAC, a counselor must renew their credential every year on the practitioner's birthday.

(2) Examination and reexamination fees are the responsibility of the applicant and are paid directly to the testing company.

(3) The following nonrefundable fees will be charged:

Title	Fee
Registered hypnotherapist:	
Application and registration	\$155.00
Renewal	\$80.00
Late renewal penalty	\$75.00
Expired registration reissuance	\$75.00
Duplicate registration	\$10.00
Verification of registration	\$25.00
Certified counselor:	
Application and certification	\$680.00
Examination or reexamination	\$85.00
Renewal	\$800.00
Late renewal penalty	\$300.00
Expired credential reissuance	\$100.00
Duplicate credential	\$10.00
Verification of credential	\$25.00
Certified adviser:	
Application and certification	\$620.00
Examination or reexamination	\$85.00
Renewal	\$745.00
Late renewal penalty	\$300.00
Expired credential reissuance	\$100.00
Duplicate credential	\$10.00
Verification of credential	\$25.00
((Registered)) <u>Agency affiliated counselor:</u>	
Application and ((registration)) <u>credentialing</u>	\$175.00
Renewal	\$185.00
Late renewal penalty	\$95.00
Expired ((registration)) <u>credential</u> reissuance	\$50.00
Duplicate ((registration)) <u>credential</u>	\$10.00
Verification of ((registration)) <u>credential</u>	\$25.00

WSR 24-15-083
EMERGENCY RULES
WASHINGTON STATE
SCHOOL FOR THE BLIND

[Filed July 18, 2024, 3:04 p.m., effective August 1, 2024]

Effective Date of Rule: August 1, 2024.

Purpose: To bring the Washington State School for the Blind's student conduct code (the code) into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: New WAC 72-120-400, 72-120-405, 72-120-410, 72-120-415, 72-120-420, 72-120-425, 72-120-430, and 72-120-435.

Statutory Authority for Adoption: RCW 72.40.022.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires recipients of federal financial assistance, which operate an education program or activity, to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 8, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 18, 2024

Scott McCallum
Superintendent

OTS-5631.1

SUPPLEMENTAL STUDENT CONDUCT PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF VIOLATION OF TITLE IX

NEW SECTION

WAC 72-120-400 Order of precedence. These supplemental procedures apply 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 procedures conflict with the Washington state school for the blind's standard disciplinary procedures, WAC 72-120-001 through 72-120-315, or any provisions set forth in student handbooks, and other school or agency policies and procedures, these supplemental procedures will take precedence.

NEW SECTION

WAC 72-120-405 Prohibited conduct under Title IX. (1) Pursuant to chapter 392-400 WAC and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Washington state school for the blind may impose disciplinary sanctions up to and including expulsion against a student who has been found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging or assisting another person to commit or engage in acts of sex discrimination, which include sex-based harassment.

(2) For the purposes of this supplemental procedure, the following conduct is prohibited:

- (a) Sex discrimination;
- (b) Sex-based harassment;
- (c) Sexual violence;
- (d) Stalking; and
- (e) Retaliation.

NEW SECTION

WAC 72-120-410 Definitions. For the purposes of this supplemental procedure, the following definitions apply:

(1) "Agency" means the Washington state school for the blind.

(2) "Complaint" means a written or oral request that can be objectively understood as a request for the agency to investigate and make a determination about alleged sex discrimination.

(3) "Complainant" means the following individuals who have been subjected to alleged conduct that would constitute sex discrimination:

- (a) A student or employee; or
- (b) A person other than a student or employee who was participating or attempting to participate in the agency's education program or activity at the time of the alleged discrimination.

(4) "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 they know, or reasonably 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.

(5) "Decision maker" means the school's associate director of campus programs, superintendent, or designee.

(6) "Disciplinary sanction" means consequences imposed on a respondent following a determination that the respondent violated the agency's policy prohibiting sex discrimination or the school's conduct code.

(7) "Impermissible evidence" means privileged communications, unless the privilege has been effectively waived by the holder, and irrelevant evidence about a complainant's prior sexual behavior.

(a) Privileged communications include:

(i) Spousal/domestic partner privilege;

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

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

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

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

(vi) Other legal privileges identified in RCW 5.60.060.

(b) Prior sexual behavior. 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:

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

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

(8) "Investigation procedure" is the process the school uses to initiate, informally resolve, and/or investigate allegations that a student has violated school policies prohibiting sex discrimination or sex-based harassment.

(9) "Peer retaliation" means retaliation by a student against another student.

(10) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(11) "Program" or "programs and activities" means all operations of the school.

(12) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evi-

dence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(13) "Remedies" means measures provided to a complainant or other person whose equal access to the school's educational programs or activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(14) "Respondent" means an individual who has been alleged to have violated the school's policy prohibiting sex discrimination.

(15) "Retaliation" means intimidation, threats, coercion, or discrimination against any person by the school, a student, or an employee or other person authorized by the school to provide aid, benefit, or service under the school's education program or activity, for the purpose of interfering with any right or privilege secured by school policies and procedures prohibiting sex discrimination, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for sex discrimination. Nothing in this definition precludes the school from requiring an employee to provide aid, benefit, or service under the school's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

(16) "School" means the Washington state school for the blind.

(17) "Sex discrimination" occurs when a respondent causes a complainant more than de minimis (insignificant) harm by treating the complainant differently from other similarly situated individual(s) based on:

- (a) Sex stereotypes;
- (b) Sex characteristics;
- (c) Pregnancy or related conditions;
- (d) Sexual orientation; or
- (e) Gender identity.

Preventing a person from participating in an education program or activity consistent with their gender identity constitutes more than de minimis harm and is prohibited.

(18) "Sex-based harassment." For purposes of this supplemental procedure, sex-based harassment is a type of sex discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(a) Quid pro quo harassment. An employee, agent, or other person authorized by the agency to provide an aid, benefit, or service under the agency's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(b) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within the agency's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in the recipient's education program or activity.

(c) Sexual violence. Sexual violence includes the following conduct:

(i) 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.

(ii) Nonconsensual sexual contact (fondling). 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.

(iii) 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 18.

(iv) Statutory rape (rape of a child). Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, 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.

(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

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

(d) 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.

(19) "Title IX coordinator" is responsible for processing Title IX complaints and conducting or overseeing formal investigations and any informal resolution processes under this procedure.

NEW SECTION

WAC 72-120-415 Rights of parties. The provisions of these supplemental procedures shall apply equally to the respondent and the complainant.

The school bears the burden of offering and presenting sufficient evidence to establish that the respondent is responsible for engaging in sex discrimination, sex-based harassment, or retaliation related to or arising from such allegations by a preponderance of the evidence.

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

NEW SECTION

WAC 72-120-420 Determination. (1) Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the decision maker:

(a) May question parties and witnesses to adequately assess a party's or witness's creditability to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. This process involves:

(i) The decision maker will request the party or witness to attend an interview;

(ii) During the interview, the decision maker may ask questions that do not seek irrelevant or impermissible evidence;

(b) Will use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decision maker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decision maker is not persuaded under this standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decision maker will not determine that sex discrimination occurred;

(c) Will notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal;

(d) Will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination;

(e) Will comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and

(f) Will not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

(2) If there is a determination that sex discrimination occurred, the Title IX coordinator will, as appropriate:

(a) Coordinate the provision and implementation of remedies to a complainant and other people the agency identifies as having had equal access to the agency's education program or activity limited or denied by sex discrimination;

(b) Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and

(c) Take other appropriate prompt and effective steps to ensure that sex discrimination does not recur within the agency's education program or activity.

NEW SECTION

WAC 72-120-425 Disciplinary process for sex-based harassment.

(1) Following a determination that sex-based harassment occurred, the associate director of campus programs or designee will make a disciplinary decision and may impose disciplinary sanctions, which may include detention, behavior contracts, restrictions of privileges, reprimand, restitution, suspensions, or expulsion.

(2) Any discipline imposed under the section is subject to the requirements in WAC 72-120-201 and 392-172A-05140 through 392-172A-05175.

(3) Following a determination that sex-based harassment occurred, the Title IX coordinator or designee may provide remedies, which may include alternative class schedules, counseling, or residential assignment.

NEW SECTION

WAC 72-120-430 Appeals. (1) If the complainant or respondent disagrees with the decision maker's determination, the disagreeing party may appeal the determination by filing a written notice of appeal with the school's superintendent or designee within 21 calendar days following the date upon which the complainant received the determination.

(2) The school will implement appeal procedures equally for both parties and provide written notice to the other party when an appeal is filed.

(3) The school will ensure that the decision maker for the appeal is not the same decision maker who reached the determination regarding responsibility or dismissal, the investigator, or the Title IX coordinator.

(4) The hearing will commence by the 20th calendar day following the filing of the written notice of appeal, unless otherwise agreed to by the complainant and the superintendent for good cause.

(5) Both parties will be allowed a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome of the initial determination.

(6) Unless otherwise agreed to by the parties, the decision maker on appeal will render a written decision within 20 calendar days following the filing of the notice of appeal and provide the parties with a copy of the decision.

(7) The written decision will describe the result of the appeal and the rationale for the result.

NEW SECTION

WAC 72-120-435 Extension of time frames. The time frames in these supplemental procedures may be extended on a case-by-case basis for good cause and with notice to the parties that includes the reason for the delay.

(1) The Title IX coordinator, decision maker, or superintendent, may send written notice to the parties stating the extension of the time frame for a major stage and the reason for the extension; or

(2) A party may submit a written request to the Title IX coordinator asking for an extension of the time frame for a major stage and the reason for requesting the extension.

WSR 24-15-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-129—Filed July 19, 2024, 10:09 a.m., effective July 19, 2024, 10:09 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open late season recreational halibut fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000S; and amending WAC 220-314-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule revises state rules to conform to proposed federal regulations. Halibut catch will continue to be closely monitored by the Washington department of fish and wildlife staff; seasons may close earlier if quotas are achieved. Halibut seasons are open only by emergency rule (see WAC 220-314-040(1)).

Additionally, this rule is necessary to allow halibut legally retained in Catch Record Card Area 5 to be landed into port within Catch Record Card Area 4 on days when halibut fishing is closed in Area 4; and set retention rules for lingcod, Pacific cod, and sable fish in waters seaward of 120' in Marine Areas 5 and 6 on days open for halibut. This will support an orderly fishery by avoiding unnecessary enforcement action. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 19, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000T Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, and 220-314-010, effective immediately, through September 30, 2024, it is unlawful to fish for or possess halibut taken for personal use, except as provided

in this section. All other provisions of WAC 220-314-030, and WAC 220-314-010, including Yelloweye Rockfish Conservation Areas (YRCA), not addressed herein, remain in effect unless otherwise amended by emergency rule:

(1) Marine Area 1 All Depth Fishery, including Southern Near Shore Fishery area described in section (2):

Open August 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; September 1, 2, 3, 5, 8, 10, 12, 15, 17, 19, 22, 24, 26, and 29, 2024.

(2) Marine Area 1 Southern Near Shore Fishery; Those waters shoreward of a lined from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40-fathom depth contour in Oregon):

(a) Open during dates listed for Marine Area 1 All Depth Fishery in section (1), and open Mondays, Tuesdays, and Wednesdays, each week, immediately, until further notice.

(b) Bottomfish, otherwise legal to retain, may be retained and landed when a vessel has landed or brought halibut into port on days when only the Southern Near Shore Fishery is open for halibut retention, but not on days when the All Depth halibut fishery is open as listed in section (1).

(3) Marine Area 2 All Depth Fishery, including Northern Near Shore Fishery area:

Open August 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; September 1, 2, 3, 5, 8, 10, 12, 15, 17, 19, 22, 24, 26, and 29, 2024.

(4) Marine Areas 3 and 4:

(a) Open August 16 through September 30, 2024.

(b) It is lawful to retain sablefish caught while in angling in MA 4 east of the Bonilla-Tatoosh line in waters seaward of the Bottomfish closure as defined in WAC 220-314-010 (2)(a) on days open for halibut.

(5) Marine Areas 5 through 10:

(a) Open August 16 through September 30, 2024.

(b) It is lawful to retain Pacific cod in Marine Area 5 in waters seaward of the Bottomfish closure as defined in WAC 220-314-010 (2)(a) on days open for halibut.

(c) It is unlawful to retain lingcod in Marine Area 5.

(d) It is lawful to retain Sablefish caught while angling in Marine Area 5 in waters seaward of the Bottomfish closure as defined in WAC 220-313-101 (2)(a) on days open for halibut. The Sablefish daily limit in Marine Area 5 is 2.

(6) Marine Areas 11, 12 and 13: Closed.

(7) It is unlawful to fish for, retain, possess, or land halibut into a port located within an area that is closed to halibut fishing, except it is lawful to land halibut into a port within Marine Area 4, that were lawfully retained in Marine Area 5.

(8) Halibut caught in Canadian waters may be landed into a port located within a marine area that is closed to halibut fishing. See WAC 220-310-210 for rules on Canadian-origin halibut possession.

(9) The annual limit is six halibut taken from state or offshore waters. This does not include Canadian waters; see WAC 220-310-210 for limits on Canadian-origin halibut.

(10) A violation of this section is punishable under RCW 77.15.370 or RCW 77.15.380, depending on the violation.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of Washington Administrative Code is repealed, effective immediately:

WAC 220-314-03000S Halibut—Seasons—Daily and possession
limits. (24-46)

WSR 24-15-090
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-133—Filed July 19, 2024, 11:11 a.m., effective July 19, 2024, 11:11 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000D; and amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule extends summer season and sets the Columbia River treaty fall season commercial fisheries for nontreaty buyers. This rule is consistent with actions of the Columbia River Compact on June 5, June 27, July 10, and July 18, 2024. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 19, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000E Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately, until further notice.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon (any species), steelhead may be sold or kept for subsistence. Shad, yellow perch, bass, walleye, catfish and carp may also be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1E (area defined in tribal/state MOUs/MOAs)

(a) Season: Immediately, until further notice. Only during days and times opened under tribal rule.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale.

(3) Open Areas: Wind River, Drano Lake, and Klickitat River.

(a) Season: Immediately, until further notice, and only during those days and hours when the areas are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and reel with hook and Line. Gillnets may only be used in Drano Lake.

(c) Allowable sale: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

(4) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: 6:00 AM July 22 through 6:00 PM July 24, 2024

(b) Gear: Set and Drift Gill nets with mesh size restrictions consistent with tribal regulations.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

(d) Standard river mouth and dam closed areas applicable to gill-net gear, except the Spring Creek Hatchery sanctuary is not in effect during the summer management period.

(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Fish caught during the open period may be sold after the period concludes.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of Washington Administrative Code is repealed, effective immediately:

WAC 220-359-02000D Columbia River salmon seasons above Bonneville Dam. (24-126)

WSR 24-15-094
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-134—Filed July 19, 2024, 3:09 p.m., effective August 7, 2024]

Effective Date of Rule: August 7, 2024.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Amending WAC 220-358-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule sets nontreaty commercial fisheries for fall 2024 in the mainstem and select areas. The 2024 nontreaty fall fisheries plan was developed in conjunction with the annual North of Falcon management process. Impacts to nonlocal stocks are expected to be minimal in off channel select areas. This rule implements an emerging commercial fishery with limited participants using purse and beach seine gear in the mainstem Columbia River. These fisheries are consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 18, 2024. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these

species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 19, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000E Columbia River seasons below Bonneville.

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Mainstem Gillnet:

Open Dates	Open Days	Open Time	Open Duration
August 7 - August 8	Wednesday (night)	9:00 pm - 6:00 am	9 hrs
August 12 - August 13	Monday (night)	9:00 pm - 6:00 am	9 hrs
August 14 - August 15	Wednesday (night)	9:00 pm - 6:00 am	9 hrs
August 18 - August 19	Sunday (night)	9:00 pm - 6:00 am	9 hrs
August 20 - August 21	Tuesday (night)	9:00 pm - 6:00 am	9 hrs
August 22 - August 23	Thursday (night)	9:00 pm - 6:00 am	9 hrs
August 25 - August 26	Sunday (night)	9:00 pm - 6:00 am	9 hrs
August 27 - August 28	Tuesday (night)	9:00 pm - 6:00 am	9 hrs
August 29 - August 30	Thursday (night)	9:00 pm - 6:00 am	9 hrs

(a) **Area:** Catch Reporting Areas 1E and 1D (Zones 4-5). The deadline at the lower end of Area 1E (Zone 4) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy River.

(b) **Gear:** Drift gillnets only. 9-inch minimum mesh size restriction. Multiple net rule NOT in effect, which means nets not authorized for this fishery may not be onboard. Lighted buoys required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(2) Emerging Commercial Fishery - Mainstem Seine:

Open Dates	Open Days	Open Time	Open Duration
August 8 - August 30	Monday - Friday	6:00 am - 4:00 pm	10 hrs
September 3 - September 6	Tuesday - Friday	6:00 am - 4:00 pm	10 hrs
September 9 - October 31	Monday - Friday	7:00 am - 5:00 pm	10 hrs

(a) **Area:** Catch Reporting Areas 1A, 1B, and 1C (Zones 1-3). The deadline at the upper end of Area 1C (Zone 3) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Elokomina-B, Cowlitz, Kalama-B, Lewis-B and Select Area commercial fishing sites.

(b) **Gear:** Beach seines or purse seines only. Only one seine net per primary vessel. Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure). Net material to consist of 3-strand nylon; twine size ≥#12. Seines may include a bunt of 1.0-2.0 inch knotless mesh. Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet). Seine and lead lines may not be connected. Lead nets must be retrieved daily. No restrictions on corkline, leadline or use of stringers and slackers. A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline. Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net. Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size ≥#12, ≤3.5-inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size ≥14-inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

(c) **Allowable Possession and Sales:** Subject to IFQs as defined on individual permits. Except as noted below, allowable sales limited to adipose fin-clipped Chinook, adipose fin-clipped Coho, sockeye, and pink salmon and shad. All legal adult Chinook and legal adult Coho caught must be kept and sold. Adult salmon defined in WAC 220 300-010. Retained Chinook and Coho must have a healed scar at the location of the adipose-clipped fin.

(d) **Handling of Catch:** Hand sorting or use of a knotless dip net is required when sorting fish. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.

(e) **Sort time not to exceed 75 minutes.**

(i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.

(ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(f) **Observer Program:** Agency observers must be present during all fishing operations.

(3) Tongue Point/South Channel Select Area:

Open Dates	Open Days	Open Time	Open Duration
August 26 - August 30	Monday, Thursday (night)	7:00 pm - 7:00 am	12 hrs
September 2 - October 31	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

(ii) The South Channel Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or

plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(4) Blind Slough/Knappa Slough Select Area:

Open Dates	Open Days	Open Time	Open Duration
August 26 - August 30	Monday, Thursday (night)	7:00 pm - 7:00 am	12 hrs
September 2 - October 31	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 10:00 am	16 hrs

(a) **Area:** The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge. The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be on-board a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(5) Deep River Select Area:

Open Dates	Open Days	Open Time	Open Duration
September 16 - October 11	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
October 14 - October 31	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs
November 4 - November 28	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

(a) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(b) **Gear:** Gillnets with a maximum mesh size restriction of 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer

than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. Nets not specifically authorized for use may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted_buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(6) **24-hour quick reporting** is in effect for Washington buyers WAC 220-352-315. Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210.

(7) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

(8) **Lighted Buoys:** Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 24-15-099

EMERGENCY RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed July 22, 2024, 8:02 a.m., effective August 1, 2024]

Effective Date of Rule: August 1, 2024.

Purpose: To bring the college's student conduct code, chapter 485B-121 WAC, into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education, and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: Repealing WAC 495B-121-350, 495B-121-355, 495B-121-360, 495B-121-365, 495B-121-370, 495B-121-375, 495B-121-380, 495B-121-385 and 495B-121-390, and amending WAC 495B-121-235, 495B-121-245, 495B-121-265, 495B-121-280, 495B-121-285, 495B-121-300, 495B-121-315, 495B-121-320, 495B-121-325, 495B-121-330, and 495B-121-335.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 11, Repealed 9; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11, Repealed 9.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 22, 2024.

Ronda Laughlin
Executive Assistant to the President

OTS-5611.2

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

WAC 495B-121-235 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On ~~((Bellingham Technical))~~ college premises ~~((and facilities))~~;

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

(c) ~~((To off-campus conduct that in the judgment of the college, adversely affects))~~ Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community ~~((or)),~~ the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to ~~((, but is not limited to,))~~ locations in which students ~~((or student groups))~~ are engaged in ~~((official))~~ college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the ~~((associated))~~ students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from ~~((notification of))~~ the time they gain admission ~~((at))~~ to the college through the ~~((actual receipt of a))~~ last day of enrollment or award of any degree certificate ~~((or degree))~~, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct ~~((by students or student groups))~~ that occurs off campus.

(5) The student conduct officer has sole discretion, on a case-by-case basis, to bring a student conduct proceeding under this code for academic dishonesty. Nothing in this code precludes instructors and/or academic divisions or departments from imposing an academic sanction, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violation of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

WAC 495B-121-245 Definitions. The following definitions shall apply for the purpose of this student conduct code.

(1) "Board" means the board of trustees of Bellingham Technical College.

~~(2) ("College" means Bellingham Technical College.~~

~~(3) "Student conduct officer" is a Bellingham Technical College employee designated by the president to be responsible for implementing and enforcing the student conduct code. The president or vice president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(4) "Student group" for purposes of this code is a student organization or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, and student performance groups.~~

~~(5) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(6) "The president" is the president of Bellingham Technical College. The president is authorized to:~~

~~(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and~~

~~(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(7)) "Business day" means a weekday, excluding weekends and college holidays.~~

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

(4) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination.

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(5) "Conduct review officer" is a college administrator designated by the president and is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(6) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not a disciplinary action.

~~((8))~~ (7) "Disciplinary appeal" is the process by which an aggrieved ((student)) party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of ((ten)) 10 instructional days or ((an expulsion)) a dismissal from the college are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall

be reviewed by a conduct review officer through brief adjudicative proceedings.

~~((9) "Respondent" is the student against whom disciplinary action is initiated.~~

~~(10) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:~~

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

~~(b) By sending the document by email and by certified mail, or first-class mail, to the party's last known address.~~

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

~~((11)) (8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:~~

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

~~(b) By sending the document by email and first-class mail to the specified college official's office and college email address.~~

~~Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.~~

~~((12) "College premises" includes all campuses of Bellingham Technical College, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.~~

~~(13) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, and persons who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.~~

~~(14) "Day" means a calendar day, except when a "business day" is specified. "Business day" means a weekday, excluding weekends and college holidays.~~

~~(15) A "complainant" is an alleged victim of sexual misconduct.~~

~~(16) "Sexual misconduct" has the meaning ascribed to this term in WAC 495B-121-265(13).) (9) "Pregnancy or related conditions" means:~~

~~(a) Pregnancy, childbirth, termination of pregnancy, or lactation;~~

~~(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or~~

~~(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related conditions.~~

~~(10) "President" is the president of the college. The president is authorized to:~~

~~(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and~~

~~(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(11) "Program" or "programs and activities" means all operations of the college.~~

~~(12) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evi-~~

dence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(13) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(14) "Respondent" is a student who is alleged to have violated the student conduct code.

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

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

(b) By sending the document by email and by certified mail or first-class mail to the party's last known address.

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

(16) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered a "student" for purposes of this chapter.

(17) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(18) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(19) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(20) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-

curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(21) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, and overseeing investigations and informal resolution processes in accordance with college policy.

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

WAC 495B-121-265 Prohibited student conduct. The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team, or living group who commits, attempts to commit, aids, abets, incites, encourages(~~(,)~~) or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, (~~any of~~) the following:

(1) Abuse of others. Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) Abuse in later life.

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

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

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

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

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

(d) Deliberate damage - Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

(e) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course or dismissal from an academic program. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

~~((2) Other))~~ (4) Acts of dishonesty. ~~((Any other))~~ Acts of dishonesty ~~((Such acts))~~ include, but are not limited to:

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

~~(b) ((Tampering with an election by or for college students; or~~
~~(e))~~ Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

~~((3) Obstruction or disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:~~

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

~~(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.~~

~~(4) Assault, intimidation, harassment. Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law, that intentionally humiliates, harms, or intimidates the victim.~~

~~(5) Cyber misconduct. Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.~~

~~(6) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.~~

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

~~(8) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:~~

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

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

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

~~(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.~~

~~(9) Hazing.~~

~~(a) Hazing is any act committed as part of:~~

~~(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or~~

~~(ii) Any pastime or amusement engaged in with respect to such a student group; and~~

~~(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.~~

~~(b) Examples of hazing include, but are not limited to:~~

~~(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;~~

~~(ii) Humiliation by ritual act;~~

~~(iii) Striking another person with an object or body part;~~

~~(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or~~

~~(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.~~

~~(c) "Hazing" does not include customary athletic events or other similar contests or competitions.~~

~~(d) Consent is not a valid defense against hazing.~~

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

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

~~(b) Marijuana. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

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

~~(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove~~

cigarettes, waterpipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems, and snuff.

~~(11) Lewd conduct. Conduct which is lewd or obscene that is not otherwise protected under the law.~~

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

~~(13) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495B-121-355 (supplemental Title IX student conduct procedures).~~

~~(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, persistent, or pervasive as to:~~

~~(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs;~~

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

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

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

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

~~(i) 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.~~

~~(ii) 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 bodily contact in a sexual manner.~~

~~(iii) 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 18.~~

~~(iv) Statutory rape. Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.~~

~~(v) 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 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.

(vi) 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.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For the purposes of this code, "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.

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

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

(16)) (c) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(5) Alcohol. Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(6) Cannabis, drug, and tobacco violations.

(a) Cannabis. The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

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

(c) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

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

(8) Disruption or obstruction. Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) Discriminatory harassment.

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

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

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

(12) Harassment or bullying. Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(13) Hazing. Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college-sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:

(a) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(b) Humiliation by ritual act;

(c) Striking another person with an object or body part;

(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(14) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

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

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

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

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

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

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

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

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

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

(i) Failure to comply with the college's electronic use policy.

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

~~(18) Procedural interference. Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:~~

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

~~(b) Interfering with someone else's proper participation in a proceeding;~~

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

~~(d) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member.~~

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

(17) Retaliation. Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.

(18) Safety violations. Nonaccidental reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment, triggering false alarms or other emergency response systems (~~(, or operating a motor vehicle on college property in a manner which is reasonably perceived as threatening the health or safety of another person.~~

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

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

~~In addition to initiating discipline proceedings for violations of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution).~~

(19) Sex discrimination. The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) Sexual violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

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

(B) Nonconsensual sexual contact (fondling) is 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 is 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 18.

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, 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.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and 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.

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) Consent. For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) 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.

(iii) 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.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) Title IX retaliation means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

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

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

(22) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, and during college programming and activities, subject to the following exceptions:

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

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

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

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-280 Initiation of disciplinary action. (1) ~~((All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.))~~ Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) Sex discrimination, including sex-based harassment. The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) Hazing by student groups. A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complaint and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sex discrimination complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another

person to fulfill any such disciplinary responsibilities relative to the complainant.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

~~((3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.~~

~~(4))~~ (10) Within ~~((ten))~~ 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed ~~((7))~~ (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

~~((5))~~ (11) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 495B-121-265; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

~~((6))~~ (12) In cases involving allegations of ~~((sexual misconduct))~~ sex discrimination, the student conduct officer, ~~((on the same date that the disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.))~~ shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s)

and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complaint's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of five business days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-285 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex-based harassment, as

set forth in WAC 495B-121-280, the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~ten business~~) 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent, complainant if any, and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

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

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

(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation; and

(c) Written reprimands; and

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

(8) The student conduct committee shall hear appeals from:

(a) (~~The imposition of~~) Disciplinary suspensions in excess of (~~ten~~) 10 instructional days;

(b) Dismissals; (~~and~~)

(c) Sex discrimination, including sex-based harassment cases; and

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

~~((8) Student conduct appeals from the imposition of disciplinary sanctions shall be reviewed through a brief adjudicative proceeding subject to the procedures outlined in WAC 495B-121-290 through 495B-121-305.~~

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

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

~~(a) The dismissal of a sexual misconduct complaint; or~~

~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.~~

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

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

~~(13) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final actions and are not subject to appeal.)~~)

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-295 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent ~~((7)) and the student conduct officer(7, and in cases involving sexual misconduct, the complainant))~~. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

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

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

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ~~((ten))~~ 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((ten))~~ 10 business days of service of the initial decision, the initial decision shall be deemed the final decision.

~~(4) ((In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.~~

~~(5))~~ If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension ~~((of more than ten))~~ in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-300 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within ~~((ten))~~ 10 business days of service of the initial decision.

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

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

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decisions and must be served on the parties within ~~((twenty business))~~ 20 calendar days of the initial decision or of the request for review, whichever is later. ~~((The decision on review will contain a notice that committee review may be available.))~~ A request for review may be deemed to have been denied if the president does not make a disposition of the matter within ~~((twenty business))~~ 20 calendar days after the request is submitted.

(5) If the president ~~((7))~~ upon review ~~((7))~~ determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ~~((ten))~~ 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

~~((6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.))~~

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-310 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;
 (b) Two faculty members appointed by the president;
 (c) One administrative employee (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative employee appointed on a yearly basis shall serve as the chair of the committee and may act on preliminary hearing matters prior to convening the committee. ~~((The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.))~~

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

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness; in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity. Any party

may petition for disqualification of a committee member (~~(pursuant to RCW 34.05.425(4))~~).

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, a voiding prejudgment of facts at issue, conflicts of interest, bias. The chair shall receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person(s), to act as presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-315 Student conduct committee—(~~Procedure and evidence~~) Prehearing. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and may also continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

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

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

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

- (a) The conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" 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 committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent (~~((in obtaining relevant and admissible evidence that is within the college's control))~~) and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witness to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(8) Communications between committee 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, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by (~~(a nonattorney assistant)~~) an advisor of their choice (~~(. A respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer))~~), which may be an attorney retained at the student's expense.

(10) For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing. The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or complainant is represented by an attorney, the student conduct officer may also be represented by ((a second, appropriately screened)) an assistant attorney general.

~~((10) At the option of the college president, the college may appoint an administrative law judge as a hearing officer responsible for handling procedural matters otherwise assigned to the chair and to conduct the hearing on behalf of the student conduct committee.))~~ (11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals.

(a) Notice. The college must provide a notice that includes all information required in subsection (2) of this section, and a state-

ment that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer, or designee, shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) That the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial student conduct committee;

(iii) That they may have an advisor of their choice, who may be an attorney, assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant has not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-320 Student conduct committee (~~hearing procedures~~)—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing (~~location~~) room.

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

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

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case (~~for imposing disciplinary sanctions~~).

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of (~~sexual misconduct, no party shall directly question or cross-examine the other. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this~~)

~~exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.)~~ sex-based harassment, the complainant and respondent may not directly question one another. In such circumstances, the chair will determine whether the questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witness by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) The chair must determine whether any proposed question is relevant and not otherwise impermissible prior to the question being posed; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such questions or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion in all cases to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-325 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the ~~((student conduct))~~ committee chair shall permit the parties to make closing arguments in whatever form ~~((it))~~, written or verbal, the committee wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within ~~((ten business))~~ 20 calendar days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue ~~((an initial))~~ a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall so be identified.

(3) The committee's initial order shall also include a determination on appropriate ~~((discipline))~~ sanctions, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions ~~((r))~~ (if any), as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction ~~((s))~~ and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their ~~((legal counsel of record))~~ attorney, if any. The notice will inform the parties of their appeal rights. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of ~~((sexual misconduct, the chair of the student conduct committee, on the same date as))~~ sex-based harassment, the initial decision ~~((is))~~ shall be served on ~~((the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to the respondent. The notice will also inform the complainant of their appeal rights))~~ all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-330 ~~((Appeal from student conduct committee initial decision.))~~ Student conduct committee—Review of initial decision.

(1) ~~((A party who is aggrieved by the findings or conclusions issued by the student conduct committee))~~ Any party, including a complainant

in sex-based harassment cases, may appeal the committee's ((initial)) decision to the president by filing a ((notice of)) written appeal with the president's office within ((ten business)) 21 calendar days of service of the committee's ((initial)) decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The ((notice of)) written appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker; or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary((r)) to aid review((r)) the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the ((notice of)) appeal.

((+3)) (5) The president shall provide a written decision to all parties and their attorneys, if any, within ((twenty-one business)) 20 calendar days after receipt of the notice of appeal. The president's decision shall be final and ((shall include a notice of any rights to request reconsideration and/or)) subject to judicial review pursuant to chapter 34.05 RCW, Part V.

((+4)) (6) In cases involving allegations of ((sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

((5)) sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(7) The president shall not engage in any "ex parte" communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-335 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises ((and/)) or denial of access to all activities or privileges for which a respondent

might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

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

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

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

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

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

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included (~~(that warns)~~) warning the student that their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) (a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. (~~(At the hearing the review officer will:~~

~~(a) Determine)~~

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

~~(b) Provide).~~

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

~~((6))~~ (d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

~~((7))~~ (e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

~~((8))~~ (f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

~~((9))~~ (6) In cases involving allegations of ~~((sexual-misconduct))~~ sex-based harassment, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495B-121-350	Order of precedence.
WAC 495B-121-355	Prohibited conduct under Title IX.
WAC 495B-121-360	Title IX jurisdiction.
WAC 495B-121-365	Initiation of discipline.
WAC 495B-121-370	Prehearing procedure.
WAC 495B-121-375	Rights of parties.
WAC 495B-121-380	Evidence.
WAC 495B-121-385	Initial order.
WAC 495B-121-390	Appeals.

WSR 24-15-101
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 22, 2024, 8:30 a.m., effective July 22, 2024, 8:30 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In alignment with SHB [2SHB] 1550, passed by the Washington state legislature in 2023, the emergency rules establish the transition to kindergarten program. The rules provide for the administration of, the allocation of state funding for, and minimum standards and requirements for the transition to kindergarten program for the 2023-24 school year.

This is a renewal of emergency rule filing as the office of superintendent of public instruction continues to conduct permanent rule making concerning transition to kindergarten programs. The permanent rules are anticipated to be effective by the 2024-25 school year.

Citation of Rules Affected by this Order: New chapter 392-425 WAC; and amending WAC 392-121-106, 392-121-107, 392-121-122, 392-121-137, 392-121-182, 392-122-430, 392-122-435, 392-122-440, 392-122-450, 392-122-500, 392-122-505, 392-122-510, 392-122-515, 392-122-520, 392-122-605, 392-122-805, and 392-122-810.

Statutory Authority for Adoption: 2SHB 1550 (chapter 420, Laws of 2023); and RCW 28A.150.290.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The emergency rules are necessary to establish the transition to kindergarten program for the 2023-24 school year, as directed by SHB [2SHB] 1550, passed by the Washington state legislature in 2023. The emergency rules establish expectations and requirements for local education agencies in implementing and administering transition to kindergarten programs for the 2023-24 school year.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 17, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 22, 2024.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-4751.1

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-106 Definition—Enrolled student. As used in this chapter, "enrolled student" means a person residing in Washington state who:

(1) Is eligible to enroll in the school district's education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28A.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250);

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.260; or

(g) Will be attending a public charter school, as defined by RCW 28A.710.010, located within Washington state.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's or charter school's appropriate official to be entered on the school district's or charter school's rolls for the purpose of attending school in grades kindergarten through ~~((twelve))~~ 12 and transition to kindergarten program;

(3) Is under ~~((twenty-one))~~ 21 years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year on or prior to the date being counted, in a course of study offered by the school district or charter school as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

AMENDATORY SECTION (Amending WSR 16-11-104 [23-16-093], filed 5/18/16 [7/31/23], effective 6/18/16 [8/31/23])

WAC 392-121-107 Definition—Course of study. As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-51, 392-169, 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - Teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, or teaching/learning experiences conducted by charter school staff as directed by the charter school administration and charter school board, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district or charter school for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - Alternative learning experience provided by the school district or charter school in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - Instruction provided by a contractor in conformance with WAC 392-121-188 or 392-121-1885.

(d) National guard - Participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.300.165 and WAC 392-410-320.

(e) Ancillary service - Any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district or charter school staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district or charter school, certificated contact time pursuant to RCW 28A.225.010 (4) (a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts and charter schools report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) Work based learning - Training provided pursuant to WAC 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - Attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.400, chapter 392-169 WAC.

(h) Transition school - Participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district or charter school.

(i) Technical college direct funding - Enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the school district agree to have the school district report such enrollment.

(j) Dropout reengagement program - Enrollment in a state approved dropout reengagement program pursuant to RCW 28A.175.100 and chapter 392-700 WAC.

(k) Paid work experience - Training provided in accordance with WAC 392-410-316 and reported as provided in WAC 392-121-139.

(1) Transition to kindergarten under Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023) and chapter 392-425 WAC.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, county and city adult jails, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188 or 392-121-1885;

(h) Enrollment for residents of the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

WAC 392-121-122 Definition—Full-time equivalent student. As used in this chapter, "full-time equivalent student" means each enrolled student in the school district or charter school as of one of the enrollment count dates for at least the minimum number of hours set forth in subsection (1) of this section, inclusive of class periods and normal class change passing time, but exclusive of meal intermissions: Provided, That each hour counted shall contain at least 50 minutes of instruction or supervised study provided by appropriate instructional staff. The purpose of recognizing "50 minute hours" is to provide flexibility to school districts and charter schools which utilize block periods of instruction so long as students are ultimately under the jurisdiction of school staff for the equivalent of 60 minute hours: Provided further, That the hours set forth below shall be construed as annual average hours for the purposes of compliance with this chapter.

(1)(a) Prior to the 2018-19 school year, the minimum hours for each grade are as follows:

(i) Kindergarten: 20 hours each week, or 4 hours (240 minutes) for each scheduled school day;

(ii) Primary (grades 1 through 3): 20 hours each week, or 4 hours (240 minutes) each scheduled school day;

(iii) Elementary (grades 4 through 6): 25 hours each week, or 5 hours (300 minutes) each scheduled school day;

(iv) Secondary (grades 7 through 12): 25 hours each week, or 5 hours (300 minutes) each scheduled school day.

(b) Beginning with the 2018-19 school year, the minimum hours for all grades and transition to kindergarten programs are 27 hours and 45 minutes each week (1,665 weekly minutes), or 5 hours and 33 minutes (333 minutes) for each scheduled school day.

(2) Except as limited by WAC 392-121-136, a student enrolled for less than the minimum hours shown in subsection (1) of this section shall be counted as a partial full-time equivalent student.

(a) Prior to the 2018-19 school year, a student's partial full-time equivalent is the student's weekly enrolled hours divided by the minimum hours for the student's grade level set forth in subsection (1)(a) of this section.

(b) Beginning with the 2018-19 school year, a student's partial full-time equivalent is the student's weekly enrolled minutes divided by 1,665.

(3) The full-time equivalent of a student's running start enrollment pursuant to RCW 28A.600.300 through 28A.600.400 shall be determined pursuant to chapter 392-169 WAC. If a running start student is enrolled both in high school courses provided by the school district or charter school and in running start courses provided by the college, the high school full-time equivalent and the running start full-time equivalent shall be determined separately.

(4) The full-time equivalent of University of Washington transition school students shall be determined pursuant to chapter 392-120 WAC.

(5) The full-time equivalent of a student's alternative learning experience shall be determined pursuant to WAC 392-121-182.

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

WAC 392-121-137 Full-time equivalent enrollment of students with a disability. In determining the full-time equivalent enrollment of students reported as students with a disability pursuant to chapter 392-172A WAC, the following rules apply:

(1) If the student is enrolled exclusively in an ungraded special education program, the student's grade level shall be based on the typical grade level of students of the same age (e.g., a student who is six years old at the beginning of the school year shall be counted as a first grader).

(2) If the student is enrolled in a grade level below the typical grade level of students of the same age, the school district or charter school shall have the option of counting the student in the grade enrolled or the typical grade level of students of the same age.

(3) A student with a disability who is five years old at the beginning of the school year may be counted as a kindergarten student only if the student is enrolled in a kindergarten program and is provided special education services in addition to the kindergarten program.

(4) A student with a disability and enrolled in a transition to kindergarten program may be counted for transition to kindergarten funding.

AMENDATORY SECTION (Amending WSR 20-15-062, filed 7/10/20, effective 8/10/20)

WAC 392-121-182 Alternative learning experience requirements.

(1) **Scope.** This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience.

(2) **Requirements.** A school district or charter school must meet the requirements of this section and chapter 392-550 WAC to count an alternative learning experience as a course of study pursuant to WAC 392-121-107.

(3) **Student eligibility.** A student enrolled in an alternative learning experience course must meet the following conditions:

(a) The student must meet the definition of an enrolled student under WAC 392-121-106;

(b) The student is enrolled in grades K-12;

(c) The student must not meet any of the enrollment exclusions in WAC 392-121-108;

~~((e))~~ (d) The student's residence must be in Washington state as provided in WAC 392-137-115; and

~~((d))~~ (e) For students whose residence is not located in the school district providing an alternative learning experience course (nonresident student), the district must:

(i) Document the school district in which the nonresident student's residence is located;

(ii) Establish procedures that address, at a minimum, the coordination of student counting for state funding so that no enrolled student is counted for more than one full-time equivalent in the aggregate. The procedure must include, but not be limited to, the following:

(A) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts must execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(B) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC, the district may not claim funding for the student until after a release transfer is completed by the resident district and the nonresident serving district.

(4) **Enrollment count dates.**

(a) Alternative learning experience enrollment is claimed based on the monthly count dates as defined in WAC 392-121-119.

(b) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan pursuant to WAC 392-550-025(1) has an ending date that is the last school day in May.

(c) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May; and

(ii) The student's written student learning plan pursuant to WAC 392-550-025(1) includes an end date that is the last day of school for graduating students in May.

(5) **Reporting of student enrollment.**

(a) For the first time a student's alternative learning experience enrollment is claimed for state funding, the following requirements must be met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place with a start date that is before the monthly count day; and

(ii) There is documented evidence of student participation as required by WAC 392-121-106(4).

(b) On subsequent monthly count dates, a student's alternative learning experience course(s) can be claimed for state funding if the following requirements are met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place on the monthly count date;

(ii) The contact requirement pursuant to WAC 392-550-025(2) was met in the prior month;

(iii) The monthly progress evaluation requirement pursuant to WAC 392-550-025(3) was met in the prior month; and

(iv) If the monthly progress evaluation showed unsatisfactory progress, the intervention plan requirement pursuant to WAC 392-550-025(4) is met.

(c) Students must be excluded from the monthly count including students who have not had contact with a certificated teacher for (~~twenty~~) 20 consecutive school days. Any such student must be excluded from the monthly count until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107.

(d) The student count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date.

(6) **Student full-time equivalency.**

(a) The full-time equivalency of students enrolled in alternative learning experiences is based on the estimated average weekly hours of learning activity described in the written student learning plan.

(b) Pursuant to WAC 392-121-122, (~~twenty-seven~~) 27 hours and (~~forty-five~~) 45 minutes each week (~~((one thousand six hundred sixty-five))~~ 1,665 weekly minutes) equal one full-time equivalent.

(c) Enrollment of part-time alternative learning experience students is subject to the provisions of chapter 392-134 WAC and generates a pro rata share of full-time funding based on the estimated average weekly minutes of learning activity described in the written student learning plan divided by (~~((one thousand six hundred sixty-five))~~ 1,665 weekly minutes).

(d) Kindergarten students claimed for more than a 0.50 full-time equivalent must meet the state-funded full-day kindergarten requirements, as provided for in RCW 28A.150.315.

(e) The full-time equivalent limitations outlined in WAC 392-121-136 and the nonstandard school year limitations outlined in WAC 392-121-123 apply to alternative learning enrollment.

OTS-4752.1

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-430 Physical, social, and emotional support (PSES) staff—Apportionment of state moneys. (1) State moneys for PSES staff shall be allocated as provided in this chapter.

(2) PSES staff allocations based on the prototypical school formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for PSES staff will be based upon budgeted assumptions as provided in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated PSES staffing penalty units, if applicable, for purposes of funding from September through December.

(4) Enrollment will only include student full-time equivalent (FTE) enrolled in the general education program 01 as defined in RCW 28A.150.260 and transition to kindergarten program 09 as defined in Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023) and chapter 392-425 WAC.

(5) Funded ratios starting with January apportionment will be based on actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of PSES staffing to generate the full allotment.

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-435 Physical, social, and emotional support (PSES)—Student enrollment. (1) Grade level and transition to kindergarten enrollment reported on the P-223 will be considered in the compliance calculations for January, March, and June.

(2) Only students in program 01 - Basic education and program 09 - Transition to kindergarten will be included in the calculation. Enrollment in career and technical education, skill center, alternative learning experience, open doors, and running start programs will be excluded from the calculation.

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-440 Physical, social, and emotional support (PSES)—Staff. (1) The superintendent of public instruction will include in the calculation of PSES compliance of those staff that are coded in programs 01, 09, or 97 to one of the following duty root and activity code combinations:

- Duty root 39 - All activities - Orientation and mobility specialist;
- Duty root 42 - All activities - Counselor;

- Duty root 43 - All activities - Occupational therapist;
 - Duty root 44 - All activities - Social worker;
 - Duty root 45 - All activities - Speech, language pathology/
audio;
 - Duty root 46 - All activities - Psychologists;
 - Duty root 47 - All activities - Nurse;
 - Duty root 48 - All activities - Physical therapist;
 - Duty root 49 - All activities - Behavior therapist;
 - Duty root 64 - All activities - Contractor ESA;
 - Duty root 96 - Activity 24 - Family engagement coordinator;
 - Duty roots 91 - 99 - Activity 25 - Pupil management and safety;
 - Duty roots 91 - 99 - Activity 26 - Health/related services.
- (2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.
- (3) Districts must prioritize funding allocated for PSES staff to staff who hold a valid ESA certificate appropriate for that role.
- (4) Staff coded to the above duty roots and activity codes in program 21 will be multiplied by the annual percentage of students receiving special education instruction used in the determination of 3121 revenue for inclusion in the compliance calculation.

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-450 Physical, social, and emotional support (PSES) compliance—Calculations. (1) Funded staffing units will be calculated using each grade level and transition to kindergarten funding formula calculations.

(2) Staffing units will be combined at the district level and compared to the staffing units generated using the prototypical funding model.

(3) Penalty units are determined by subtracting the prototypical funded staff units from the district's actual funded units.

(4) Staff in the S-275 or the supplemental tool not assigned to a valid grade grouping will be included into the high school funding formula.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-500 K-3 class size—Apportionment of state moneys. (1) State moneys for K-3 class size including transition to kindergarten program 09 as defined in Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023) and chapter 392-425 WAC shall be allocated as provided in this chapter.

(2) Elementary teacher allocations based on the prototypical schools formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for grades K-3 and transition to kindergarten program (grade T) will be based upon budgeted grades K-3 and grade T enrollment as stated in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated grades K-3 and grade T class size for purposes of funding from September through December.

(4) K-3 enrollment will not include student full-time equivalent (FTE) enrolled in alternative learning experience programs that meet the requirements of WAC 392-121-182.

(5) Funded class size starting with January apportionment will be based on the actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of K-3 class size funding in order to generate the full allotment.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-505 K-3 class size—Student enrollment. (1) Grade level K-3 and transition to kindergarten program enrollment reported on the P-223 will be considered in the compliance calculations for the months of January, March, and June.

(2) All students in alternative learning experience programs that meet the requirements of WAC 392-121-182 will be excluded from the compliance calculation.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-510 K-3 class size—Teachers. (1) The superintendent of public instruction will include in the calculation of K-3 class size compliance those teachers reported on the S-275 that are coded in programs 01 to grade group K, 1, 2, or 3, and program 09 for transition to kindergarten (grade T), and are reported in one of the following duty roots:

- Duty root 31 - Elementary homeroom teacher;
- Duty root 33 - Other teacher;
- Duty root 34 - Elementary specialist teacher;
- Duty root 52 - Substitute teacher;
- Duty root 63 - Contractor teacher.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Program 21 special education teachers coded to grade K, 1, 2, or 3, and grade T multiplied by the annual percentage of students receiving special education instruction used in determination of a district's, tribal compact school's, or charter school's 3121 revenue will be included.

(4) Teachers coded to program 02 alternative learning experience will be excluded.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-515 K-3 class size compliance—Supplemental FTE teachers. (1) Supplemental teacher full-time equivalent (FTE) teachers must be reported to the superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered. Supplemental teacher FTE must be reported by individual grade level K, 1, 2, ~~((and))~~ 3, and transition to kindergarten (grade T).

(2) Supplemental FTE teacher reporting shows the net change in full-time equivalent teachers after October 1st of the school year not reflected in report S-275 under WAC 392-122-510. Supplemental full-time equivalent teachers are determined as follows:

(a) Determine the teacher FTE that would be reported for each employee for the school year on report S-275 if the current data were submitted for the October 1st snapshot as required in the S-275 instructions and subtract the teacher FTE as of October 1st actually reported for the employee on the most current report S-275.

(b) Include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-520 K-3 class size—Calculation. Funded class size will be calculated by dividing the total teachers and supplemental teacher FTE across all grades K-3 and transition to kindergarten (grade T) collectively as provided in WAC 392-122-510 into the calculated combined total enrollment in grade levels of T, K, 1, 2, or 3.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-605 Apportionment of state moneys for the state learning assistance program. (1)(a) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due.

(b) The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, charter school, or tribal compact school if the school district, charter school, or tribal compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

(2) Learning assistance program moneys include a district learning assistance program base allocation and a learning assistance program high-poverty based school allocation for eligible schools.

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in grades K-12 and transition to kindergarten program for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system as of March 31st of the prior school year.

(b) (i) A school is eligible for the learning assistance program high-poverty based school allocation if it is funded through the prototypical model and has at least (~~fifty~~) 50 percent of its students eligible for free and reduced-price meals in the prior school year. The percentage is determined by the school's percentage of October headcount enrollment in grades K-12 for free and reduced-price lunch as reported in the comprehensive education data and research system as of March 31st of the prior school year.

(ii) An eligible school's funded students for the learning assistance high-poverty based allocation shall be the sum of the school's annual average full-time enrollment in grades K-12 and transition to kindergarten program for the prior year.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-805 Formula for distribution of state moneys for the state highly capable students education program. A school district's or charter school's entitlement for state moneys for the state highly capable students education program shall be calculated as follows:

(1) Multiplying the reporting district's or charter school's average annual full-time equivalent students, as defined in WAC 392-121-133, excluding enrollment reported for transition to kindergarten program by the per pupil allocation established in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(2) The product is the district's or charter school's entitlement subject to WAC 392-122-810 and its provision for enrollment adjustment.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-810 Distribution of state moneys for the state highly capable students education program. The superintendent of public instruction shall apportion to districts and charter schools for the state highly capable student education program the amount calculated per district or charter school in WAC 392-122-805 according to the apportionment schedule provided in RCW 28A.510.250. The amount apportioned may be adjusted intermittently to reflect changes in the district's or charter school's average annual full-time equivalent students as reported on the P223, monthly report of school district en-

rollment form, excluding enrollment reported for transition to kindergarten program.

OTS-4726.2

**Chapter 392-425 WAC
TRANSITION TO KINDERGARTEN**

NEW SECTION

WAC 392-425-005 Purpose and authority. The purpose of this chapter is to provide minimum standards and requirements for transition to kindergarten programs. The chapter is intended to ensure that transition to kindergarten programs serve eligible students of all abilities who need additional preparation to be successful in kindergarten and who lack access to other early learning group settings. The rules in this chapter establish expectations and requirements for local education agencies in implementing and administering transition to kindergarten programs.

The authority for this chapter is under Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023), which requires the office of superintendent of public instruction to establish rules concerning transition to kindergarten programs.

NEW SECTION

WAC 392-425-010 Applicability. This chapter establishes the minimum administrative requirements and program standards for implementing and administering quality transition to kindergarten programs under Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023) and this chapter.

NEW SECTION

WAC 392-425-015 Eligibility. A transition to kindergarten program may be implemented and administered by the following local education agencies, in accordance with Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023):

(1) Common school districts;
(2) State tribal compact schools authorized under chapter 28A.715 RCW;

(3) For school years 2023-24 and 2024-25, only charter schools authorized under RCW 28A.710.080(2) may implement and administer a transition to kindergarten program.

NEW SECTION

WAC 392-425-020 Definitions. "Eligible local education agency" means a local education agency authorized to administer a transition to kindergarten program under WAC 392-425-015.

"Screening process and tool" means using one or more instruments or methods of assessing and measuring the ability and need of an individual student.

NEW SECTION

WAC 392-425-025 Notification of intent to offer a transition to kindergarten program. For the 2023-24 school year, an eligible local education agency planning to implement and administer a transition to kindergarten program during the 2023-24 school year, must notify the office of superintendent of public instruction. The notice must be provided through a process established by the office of superintendent of public instruction.

NEW SECTION

WAC 392-425-030 Local area early learning coordination. For the 2023-24 school year, an eligible local education agency administering a transition to kindergarten program must make a best effort to coordinate with local childcare and early learning providers.

NEW SECTION

WAC 392-425-035 Staff qualifications. A person serving as a teacher in a transition to kindergarten program must hold a valid teaching certificate in accordance with Title 181 WAC. Certificated educators with an early childhood education endorsement are strongly recommended. Paraeducators for transition to kindergarten programs must have met the minimum hiring requirements and must make progress on the paraeducator certificate program in accordance with Title 179 WAC.

NEW SECTION

WAC 392-425-040 Student eligibility. (1) Children meeting the following criteria are eligible to participate in a transition to kindergarten program offered by an eligible local education agency:

(a) A child who has been determined, by the local education agency, to benefit from additional preparation for kindergarten through a screening process and tool; and

(b) A child who is at least four years old by August 31st of the school year in which they enroll in a transition to kindergarten program.

(2) In determining student eligibility and admitting students to a transition to kindergarten program, local education agencies must:

(a) Give priority to children most in need of additional preparation to be successful in kindergarten, as demonstrated through a screening process and tool.

(b) Give priority to children with the lowest family income not otherwise participating in another local program.

(c) Not exclude, nor establish a policy to prohibit from participation, an eligible child due only to the presence of a disability.

(d) Not charge tuition or other fees from state-funded eligible students for enrollment in a transition to kindergarten program.

NEW SECTION

WAC 392-425-045 Minimum instructional requirements (school year, days, and hours). (1) Eligible local education agencies offering a transition to kindergarten program must offer the program during the local education agency's school year.

(a) The program may begin after the first day of the local education agency's school year.

(b) If a partial-year program is being offered, it must begin by January 31st of the school year.

(c) The program must conclude by the end of the school year.

(2) Transition to kindergarten programs must be offered as an all-day program.

Based on family choice, a child may participate in a transition to kindergarten program as a part-time student (partial day). A part-time student will be counted as a partial full-time equivalent student in accordance with WAC 392-121-122.

NEW SECTION

WAC 392-425-050 Transition to kindergarten apportionment procedures. The local education agency administering a transition to kindergarten program is subject to the apportionment procedures under chapters 392-121 and 392-122 WAC.

NEW SECTION

WAC 392-425-055 Assessment for transition to kindergarten students. For the 2023-24 school year only, the Washington kindergarten inventory of developing skills (WaKIDS) must be administered at the beginning of the program. Additionally, it is recommended that the WaKIDS whole-child assessment be administered at least one more time during the school year. A student's parent or guardian has the option to decline or excuse their student from the assessment.

WSR 24-15-103
EMERGENCY RULES
HIGHLINE COLLEGE

[Filed July 22, 2024, 12:01 p.m., effective July 22, 2024, 12:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: [No information supplied by agency].

Purpose: To update the student conduct code in accordance with the 2024 Title IX regulations. We are reintegrating sexual harassment procedures into the student conduct code, [as] opposed to having supplemental procedures. This revision also updates out-of-date language and makes adjustments to other prohibited conduct charges.

Citation of Rules Affected by this Order: New WAC 132I-126-060, 132I-127-505, 132I-127-515, 132I-127-525, 132I-127-535, 132I-127-545, 132I-127-555, 132I-127-565, 132I-127-575 and 132I-127-585; repealing WAC 132I-126-400, 132I-126-410, 132I-126-420, 132I-126-430, 132I-126-505, 132I-126-515, 132I-126-525, 132I-126-535, 132I-126-545, 132I-126-555, 132I-126-565, 132I-126-575 and 132I-126-585; and amending WAC 132I-126-010, 132I-126-030, 132I-126-040, 132I-126-050, 132I-126-100, 132I-126-125, 132I-126-200, 132I-126-220, 132I-126-230, 132I-126-240, 132I-126-260, 132I-126-270, 132I-126-280, 132I-126-290, 132I-126-300, and 132I-126-350.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, Department of Education April 2024 Title IX Regulations Final Rule, <https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf>.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Highline College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 13, Repealed 13; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 10, Amended 16, Repealed 13; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 22, 2024.

Isabelle Wroblewski
Associate Director of Public Safety

OTS-5575.1

AMENDATORY SECTION (Amending WSR 23-21-054, filed 10/11/23, effective 11/11/23)

WAC 132I-126-010 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises;
 (b) At or in connection with college sponsored activities; ~~((or))~~
 (c) ~~((To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.))~~ Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

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

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

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

(5) The ~~((student conduct officer))~~ college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-030 Authority. The board of trustees, acting pursuant to RCW 28B.50.140 ~~((+13+))~~ (14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student affairs or their designee. ~~((Unless otherwise specified))~~ Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

(1) The administrator or delegate in charge of any college office, department or facility is responsible for student conduct that takes place in that area, but outside a classroom setting. The admin-

istrator or delegate may remove a student from the area within their control if they reasonably believe that the student conduct substantially and materially disrupts college operations and such removal is necessary to protect the learning environment and/or to ensure the safety and well-being of members of the college community and/or to protect property or facilities belonging to the college or members of the college community. Staff directing the removal of a student must report the student's conduct to their administrator in charge at the earliest opportunity. The administrator in charge must report the incident in writing to the student conduct officer at the earliest opportunity.

(2) The instructor or advisor is responsible for student conduct in the classroom or at any college-related activity or event. The instructor or advisor is authorized to remove the student from a single class or college-sponsored event in which the student's conduct materially and substantially disrupts the educational environment. When such behavior results in removal, the instructor or advisor must report the student's conduct in writing to the student conduct officer at the earliest opportunity.

(3) In all cases involving disruption, the student conduct officer or designee will proceed with the investigation and/or disciplinary proceedings at the earliest opportunity consistent with the procedural requirements established in this chapter.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-040 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

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

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

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

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

(2) Due process.

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

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

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

AMENDATORY SECTION (Amending WSR 23-21-054, filed 10/11/23, effective 11/11/23)

WAC 132I-126-050 Definitions. The following definitions shall apply for the purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

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

(3) "Complainant" is a student, employee, or another member of the college community who was participating or attempting to participate in college programs and activities at the time of the alleged violation, and who is directly affected by a claimed violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may file complaints alleging a violation of the student conduct code. In any case involving a report of sex discrimination, a complainant is afforded certain rights as specified in this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a disciplinary decision or dismissal of their sex discrimination complaint; and

(c) The right to be accompanied by an advisor, who may be an attorney retained at complainant's cost.

(4) "Conduct review officer" is the vice president for student services or designee who is responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

~~((4))~~ (5) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

~~((5))~~ (6) "Disciplinary appeal" is the process by which an aggrieved ((student)) party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or from a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action are reviewed through brief adjudicative proceedings, unless the case is referred to the committee by the student conduct officer or the conduct review officer.

~~((6))~~ (7) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

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

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

~~((7))~~ (8) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(9) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(10) "Program" or "programs and activities" means all operations of the college.

(11) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(12) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(13) "Respondent" is ~~((the))~~ a student ~~((against whom disciplinary action is initiated))~~ who is alleged to have violated the student conduct code. All respondents are afforded certain rights including, but not limited to:

(a) The right to be presumed not responsible for the reported misconduct unless or until a determination of responsibility is reached after completion of the disciplinary process; and

(b) The right to be accompanied by an advisor, who may be an attorney retained at respondent's cost.

~~((8))~~ (14) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

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

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

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

~~((9))~~ (15) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been admitted for admission are considered "students."

~~((10))~~ (16) "Student conduct officer" is a college administrator designated by the vice president for student services to be responsible for implementing and enforcing the student conduct code. The vice president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

~~((11))~~ (17) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education; and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(18) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

~~((12) "The president" is the president of the college. The president is authorized to delegate any of his or her responsibilities as set forth in this chapter as may be reasonably necessary.)~~ (19) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(20) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, and overseeing investigations and informal resolution processes in accordance with college policy.

NEW SECTION

WAC 132I-126-060 Amnesty. (1) In situations involving intoxication, alcohol poisoning, or drug-related medical issues, students, or student groups, are encouraged to seek swift medical assistance for

themselves and others without fear of penalty. Students requesting and receiving medical assistance in these situations are not typically subject to the student conduct process. This policy refers to isolated incidents and does not excuse students who repeatedly or flagrantly violate the alcohol or drug policy, nor does it preclude action arising from other violations of the code. The college will consider the positive impact of reporting a situation when determining any course of action. Without imposing sanctions, the college may initiate educational remedies regarding alcohol or drug use.

(2) Complainants and witnesses who in good faith report sexual harassment will not be subject to alcohol or drug violations of the code occurring at or near the time of the sexual harassment unless their own conduct placed another person's health or safety at risk.

AMENDATORY SECTION (Amending WSR 23-21-054, filed 10/11/23, effective 11/11/23)

WAC 132I-126-100 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

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

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

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

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

(d) Collusion includes assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or to increase the score on a test or assignment; taking a test or doing an assignment for someone else; allowing someone to do these things for one's own benefit.

(e) Academic misconduct includes intentionally violating college policies, such as altering grades, misrepresenting one's identity failing to report known incident of academic dishonesty or participating in obtaining or distributing any part of the test or any information about a test.

Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

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

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

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

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

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders.

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

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) ~~((Assault, intimidation, harassment.))~~ **Abuse of others.** Assault, unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, ((harassment, bullying,)) or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law. ~~((For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victims.))~~

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

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

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

(8) **Weapons violation.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

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

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

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

This policy does not apply to the possession and/or use of disabling and/or self-defense sprays when possessed and/or used for self-defense.

(9) **Hazing.**

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group;

(ii) Any pastime or amusement engaged in with respect to such a student group; or

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

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

(a) **Alcohol.** ~~((The)) Use, possession, ((delivery, sale, or being~~ observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies)) manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(b) ~~((**Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana-))~~ **Cannabis.** The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of ((marijuana)) cannabis, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41

RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law. This includes, but is not limited to: Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132I-126-505 through 132I-126-585 (supplemental Title IX student conduct procedures).

(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, persistent, or pervasive as to:

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

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

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

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

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

(i) 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.

(ii) 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.~~

~~(iii) 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 18.~~

~~(iv) Statutory rape. Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.~~

~~(v) 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.~~

~~(vi) 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.~~

~~(vii) 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.~~

~~(d) For purposes of this code, "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.~~

~~(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive~~

environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.) (a) Unwelcome and offensive conduct, including verbal, non-verbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental, or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(13) **Sexual discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly-situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, dating violence, and stalking.

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

(B) **Nonconsensual sexual contact** is any intentional sexual touching, however slight, with any 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 18.

(D) **Statutory rape.** Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.

(E) **Domestic violence** is 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.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and 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.

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) 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.

(iii) 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.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

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

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

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

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

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

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

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

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

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

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

(i) Failure to comply with the college's electronic use policy.

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

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, in-

cluding tampering with fire safety equipment and triggering false alarms or other emergency response systems.

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

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

~~((In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.))~~

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-125 Disciplinary sanctions and terms and conditions. (1) The following corrective actions or disciplinary sanctions may be imposed upon students or upon college sponsored student organizations, athletic teams, or living groups found to have violated the student conduct code.

(a) **((Disciplinary)) Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

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

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

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

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

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. 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.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to 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.

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

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

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-200 Initiation of disciplinary action. (~~((1) All disciplinary action will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the vice president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.~~

~~(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s) and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent~~

~~fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.~~

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

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

~~(a) Exonerate the respondent and terminate the proceedings.~~

~~(b) Impose disciplinary sanction(s) outlined in this chapter.~~

~~(c) Impose disciplinary terms and conditions alone or in conjunction with a disciplinary sanction including, but not limited to, disciplinary terms and conditions identified in WAC 132I-126-125(2).~~

~~(d) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.)~~

(1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Sex discrimination, including sex-based harassment.** For reports of behavior that took place prior to August 1, 2024, refer to and use chapter 132I-127 WAC procedures. The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

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

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(10) Within 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

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

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132I-126-125; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(12) In cases involving allegations of sex-based harassment, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The

time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of five business days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated.

(i) The complainant and respondent will have three business days to notify the Title IX coordinator, in writing, of any objection to the continuation, modification, or termination of any supportive measures. Any objection will be reviewed within three business days by a neutral employee, who will review the investigation report, student conduct officer's recommendation, confer with the Title IX coordinator or their designee, complainant and respondent, as appropriate, and determine whether to continue, modify, or terminate the supportive measures.

(j) If it is determined that a violation of the student conduct code occurred, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-220 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex-based harassment, as set forth in WAC 132I-126-100 (13)(a), the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~(twenty-one)~~) 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent and the (~~(conduct review)~~) student conduct officer.

(4) A respondent who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has the right to a prompt, fair and impartial hearing as provided for in these procedures.

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

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

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of (~~ten~~) 10 instructional days;

(b) Dismissals; and

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

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

(a) Suspensions of (~~ten~~) 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-230 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the

conduct review officer shall conduct an informal hearing and provide each party:

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

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

(3) The conduct review officer shall serve an initial decision upon both the parties within (~~ten~~) 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~twenty-one~~) 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than (~~ten~~) 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-240 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the vice president for student services or designee, provided the respondent files a written request for review with the conduct review officer within (~~twenty-one~~) 21 calendar days of service of the initial decision.

(2) The vice president for student services or designee shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within (~~twenty~~) 10 business days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the vice president for student services or designee does not make a disposition of the matter within (~~twenty~~) 20 business days after the request is submitted.

(5) If the vice president for student services or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than (~~ten~~) 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-260 Student conduct committee. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the faculty senate;
- (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the vice president for ~~((student))~~ administrative services at the beginning of the academic year.

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

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

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-270 ~~((Appeals to the)) Student conduct committee—Prehearing.~~ (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

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

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;

- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

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

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

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

- (a) The conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent.

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

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

(7) The student conduct officer (~~(, upon request,)~~) shall provide reasonable assistance to the respondent (~~(in obtaining relevant and admissible evidence that is within the college's control)~~) and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(8) Communications between committee 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, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by (~~(a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer)~~) an advisor of their choice, which may be an attorney retained at the student's expense.

(10) The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the

student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals.

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) That the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial student conduct committee;

(iii) That they may have an advisor of their choice, who may be an attorney, assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by

the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant has not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(g) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(h) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-280 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

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

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

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The

chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted in accordance with WAC 10-08-190.

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

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

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

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) The chair must determine whether any proposed question is relevant and not otherwise impermissible prior to the question being posed; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) The chair has the discretion in all cases to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-290 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions and/or a proposed decision for its consideration.

(2) Within (~~twenty-one~~) 21 calendar days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

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

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

(5) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-300 Appeal from student conduct committee initial decision. (1) (~~(A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision.)~~) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to

the president by filing a written appeal with the president's office within 10 business days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

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

~~(3) The president shall provide a written decision to all parties within forty five days after receipt of the notice of appeal. The president's decision shall be final.~~

(4)) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 21 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(7) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-350 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation and/or formal disciplinary procedure is pending.

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

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety or welfare of members of the college community; or
- (c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

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

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

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

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

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

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

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

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

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

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

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

(6) In cases involving allegations of sex discrimination, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with

timely notice of any subsequent changes to the summary suspension order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132I-126-400	Supplemental sexual misconduct procedures.
WAC 132I-126-410	Supplemental definitions.
WAC 132I-126-420	Supplemental complaint process.
WAC 132I-126-430	Supplemental appeal rights.
WAC 132I-126-505	Order of precedence.
WAC 132I-126-515	Prohibited conduct under Title IX.
WAC 132I-126-525	Title IX jurisdiction.
WAC 132I-126-535	Initiation of discipline.
WAC 132I-126-545	Prehearing procedure.
WAC 132I-126-555	Rights of parties.
WAC 132I-126-565	Evidence.
WAC 132I-126-575	Initial order.
WAC 132I-126-585	Appeals.

OTS-5576.1

Chapter 132I-127 WAC

SUPPLEMENTAL DISCIPLINE PROCEDURES FOR CASES INVOLVING TITLE IX SEXUAL HARASSMENT FOR INCIDENTS PRIOR TO AUGUST 1, 2024

NEW SECTION

WAC 132I-127-505 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 the college's standard disciplinary procedures, WAC 132I-126-010 through 132I-126-300, these supplemental procedures shall take precedence for behaviors that took place prior to August 1, 2024. Highline College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

NEW SECTION

WAC 132I-127-515 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, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) 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.

(2) 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 26.52.010.

(3) 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 the college's educational programs or activities, or employment.

(4) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(5) 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 18.

(d) Statutory rape. Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

(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.

NEW SECTION

WAC 132I-127-525 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity;
and

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

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, chapter 132I-127 WAC.

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

NEW SECTION

WAC 132I-127-535 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

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

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

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

- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
- (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The college 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
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132I-127-545 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132I-126-270. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

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

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

NEW SECTION

WAC 132I-127-555 Rights of parties. (1) The college's student conduct procedures, WAC 132I-126-200, and this supplemental procedure shall apply equally to all parties.

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

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

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

NEW SECTION

WAC 132I-127-565 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132I-127-575 Initial order. (1) In addition to complying with WAC 132I-126-290, the student conduct committee 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;

(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 committee'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, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's educational programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

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

NEW SECTION

WAC 132I-127-585 Appeals. (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

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

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

**WSR 24-15-105
EMERGENCY RULES**

TACOMA COMMUNITY COLLEGE

[Filed July 22, 2024, 3:46 p.m., effective July 22, 2024, 3:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Washington state legislature passed HB [2SHB] 1751 referred to as "Sam's Law," which took effect June 9, 2022. The law requires colleges to take several actions to prevent hazing, including modifying the code of student conduct.

Citation of Rules Affected by this Order: Repealing WAC 132V-130-020 and 132V-130-030; and amending WAC 132V-130-010.

Statutory Authority for Adoption: RCW 28B.50.140.

Other Authority: HB [2SHB] 1751.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: We are refileing this document to extend the emergency filing pending final rule making. Washington HB [2SHB] 1751 became effective June 9, 2022, and the law requires colleges to modify their student conduct code fall quarter 2022 to implement anti-hazing provisions. The Tacoma Community College board of trustees adopted these emergency rules in an open public meeting on [no date supplied by agency], and approved the emergency rules becoming effective upon filing. This is an extension of the emergency rule filed on April 3, 2024, pending permanent rule making. A CR-101 was filed on April 17, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 11, Repealed 21.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 13, 2024.

Natalie Boes
Rules Coordinator

OTS-5639.1

AMENDATORY SECTION (Amending WSR 96-16-036, filed 8/1/96, effective 9/1/96)

WAC 132V-130-010 Hazing prohibited—~~Sanctions~~. (1) Hazing is prohibited at Tacoma Community College.

~~((2) Hazing means any method of initiation into a student group or any pastime or amusement engaged in with respect to such a group~~

~~that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or postsecondary education. Excluded from this definition are "customary athletic events or other similar contests or competitions.") Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing.~~

~~(2) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.~~

~~(3) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.~~

~~(4) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.~~

~~(5) Student groups found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132V-130-020	Penalties.
WAC 132V-130-030	Sanctions for impermissible conduct not amounting to hazing.

WSR 24-15-113

EMERGENCY RULES

COLUMBIA BASIN COLLEGE

[Filed July 22, 2024, 7:20 p.m., effective August 1, 2024]

Effective Date of Rule: August 1, 2024.

Purpose: To bring the college's Title IX hearing procedure for students into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education, and to update the procedure to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: Amending WAC 132S-110-020 and 132S-110-030.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

In addition to complying with the new final rule, the college is updating its Title IX hearing procedure for students to address jurisdiction and prohibited conduct changes. These new definitions of prohibited behavior and updated procedures are necessary to address conduct that may pose a threat to the general welfare of the college community and/or college operations and to protect the constitutional and procedural rights of individual students.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 1, 2024.

Corey Osborn
Vice President of Human Resources
and Legal Affairs

OTS-5644.1

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-020 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, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "~~((sexual harassment))~~ sex discrimination."

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

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

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

~~(3) **Sexual assault.** Sexual assault includes the following conduct:)) "sex discrimination" which includes sex-based harassment, occurs when a respondent causes more than de minimis harm to an individual by treating them differently from an otherwise similarly situated individual based on:~~

- (1) Sex stereotypes;
- (2) Sex characteristics;
- (3) Pregnancy or related conditions;
- (4) Sexual orientation; and
- (5) Gender identity.

For the purpose of this procedure, "sex-based harassment" is a type of sex discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(6) **Quid pro quo harassment.** An employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(7) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(a) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(b) The type, frequency, and duration of the conduct;

(c) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(d) The location of the conduct and the context in which the conduct occurred; and

(e) Other sex-based harassment in the recipient's education program or activity.

(8) **Sexual violence** 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 either wholly or half related. Descendant includes stepchildren and adopted children under the age of ~~((eighteen))~~ 18.

~~((4))~~ (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.))~~ Nonforcible sexual intercourse with a person who is under the statutory age of consent.

~~((4))~~ (9) **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))~~ (10) **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))~~ (11) **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.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-030 Title IX jurisdiction. (1) This procedure applies only if the alleged misconduct:

(a) ~~((Occurred in the United States;~~

~~(b) Occurred during a college educational program or activity;~~
and

~~(c) Meets the definition of Title IX sexual harassment as that term is defined in this procedure.)~~ Meets the definition of sex discrimination, sex-based harassment, or retaliation as defined in this disciplinary procedure, including causing more than de minimis harm to the complainant;

(b) Occurred in the United States or interfered with the complainant's ability to access or participate in the college's educational programs or activities in the United States; and

(c) Occurred during a college educational program or activity, or interferes with the complainant's ability to access or participate in the college's educational programs or activities.

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

(3) Proceedings under this procedure must be dismissed if the Title IX coordinator or designee 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 addressing allegations or taking disciplinary action against conduct that violates provisions of the college's student conduct code, chapter 132S-100 WAC, federal or state law, or other college policies.

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

WSR 24-15-128
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-135—Filed July 23, 2024, 2:39 p.m., effective July 25, 2024]

Effective Date of Rule: July 25, 2024.

Purpose: The purpose of this emergency rule is to extend sockeye seasons in the Skagit River.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to extend sockeye seasons in Skagit River, from the Hwy. 536 bridge in Mt. Vernon to the Dalles Bridge at Concrete.

Current data indicates the river sport fishery has not reached the harvest guideline for sockeye, and incidental Chinook encounters remain within conservation goals.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 23, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000R Freshwater exceptions to statewide rules—Puget Sound. Effective July 25 through July 31, 2024, the following provisions of WAC 220-312-040 regarding Skagit River salmon seasons, shall be modified described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Skagit River (Skagit Co.): From the Hwy. 536 (Memorial Hwy. Bridge) in Mt. Vernon to the Dalles Bridge at Concrete:

Salmon:

- (a) Daily limit 4. Release all salmon other than sockeye.
- (b) Night Closure in effect.
- (c) Selective gear rules are not in effect for salmon.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 24-15-144

EMERGENCY RULES

SKAGIT VALLEY COLLEGE

[Filed July 24, 2024, 1:45 a.m., effective August 1, 2024]

Effective Date of Rule: August 1, 2024.

Purpose: To bring the college's student conduct code (the code) into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: New WAC 132D-150-080; repealing WAC 132D-150-350, 132D-150-370, 132D-150-390, 132D-150-410, 132D-150-500, 132D-150-510, 132D-150-520, 132D-150-530, 132D-150-540, 132D-150-550, 132D-150-560, 132D-150-570 and 132D-150-580; and amending WAC 132D-150-010, 132D-150-020, 132D-150-030, 132D-150-040, 132D-150-050, 132D-150-070, 132D-150-090, 132D-150-110, 132D-150-150, 132D-150-170, 132D-150-190, 132D-150-210, 132D-150-230, 132D-150-250, 132D-150-270, 132D-150-290, and 132D-150-310.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

In addition to complying with the new final rule, the college is updating its student conduct code to address the changes addressed in the 2024 Title IX regulations. These new definitions of prohibited behavior and updated procedures are necessary to address conduct that may pose a threat to the general welfare of the college community and/or college operations and to protect the constitutional and procedural rights of individual students.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 17, Repealed 13; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 17, Repealed 13.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 24, 2024.

Pam Davis
Rules Coordinator

OTS-5640.1

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-010 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president for student services or designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-020 Statement of jurisdiction. (1) The code of student conduct shall apply to ~~((student))~~ conduct by students or student groups that occurs:

- (a) On college premises;
- (b) At or in connection with college ~~((sponsored))~~ programs or activities; or
- (c) ~~((To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.))~~ Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to ~~((, but is not limited to,))~~ locations in which students are engaged in official college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the associated students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time ~~((of application for admission))~~ they gain admission to the college through the ~~((actual receipt of a degree,))~~ the last day of enrollment or award of any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

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

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

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-030 Definitions. The following definitions shall apply for purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "Calendar day" means days on the calendar including weekends and holidays.

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

(4) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

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

(6) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) "Disciplinary appeal" is the process by which an aggrieved party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

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

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

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

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

(9) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(10) "President" is the president of the college. The president is authorized to delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary, and reassign any and all duties or responsibilities as set for this chapter as may be reasonably necessary.

(11) "Program" or "programs and activities" means all operations of the college.

(12) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(13) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that persons access to educational programs and activities after a determination that sex discrimination has occurred.

(14) "Respondent" is a student who is alleged to have violated the student conduct code.

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

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

(b) By sending the document via first class mail to the party's last known address; or

(c) By sending the document by email via Skagit Valley College's online student conduct software. It is the responsibility of each student to regularly check their official Skagit Valley College email address.

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

(16) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(17) "Student conduct officer" is a college administrator designated by the president or vice president for student services to be responsible for implementing and enforcing the student conduct code. The president or vice president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

~~((2) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the con-~~

~~duct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(3) "The president" is the president of the college. The president is authorized to delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary, and reassign any and all duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.~~

~~(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.~~

~~(6) "Respondent" is the student against whom disciplinary action is initiated.~~

~~(7) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:~~

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

~~(b) By sending the document via first class mail to the party's last known address; or~~

~~(c) By sending the document by email via Skagit Valley College's online student conduct software. It is the responsibility of each student to regularly check their official Skagit Valley College email address.~~

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

~~(8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:~~

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

~~(b) By sending the document by email and first class mail to the specified college official's office and college email address.~~

~~Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.~~

~~(9) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.~~

~~(10) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."~~

~~(11) "Business day" means a weekday, excluding weekends and college holidays.~~

~~(12) "Calendar day" means days on the calendar including weekends and holidays.~~

~~(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132D-150-050.)~~ (18) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or a respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(19) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(20) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to, counseling; extensions of the deadlines and other course-related adjustments; campus escort services; increased security and monitoring of a certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(21) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

Note: "Day" refers to calendar days unless otherwise specified.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-040 Statement of student rights. (1) 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 should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

(2) The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(a) Academic freedom.

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

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

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

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

(b) Due process.

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

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

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

AMENDATORY SECTION (Amending WSR 23-19-024, filed 9/10/23, effective 10/11/23)

WAC 132D-150-050 Prohibited student conduct. The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team, or living group, who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by the law.

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

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

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

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

~~((2) Other))~~ (3) **Acts of dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

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

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

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

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

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

~~(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.~~

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

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

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

~~(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.~~

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

~~(a) The college or state;~~

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

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

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

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

~~(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:~~

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

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

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

~~(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.~~

~~(9) **Hazing.** Any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public institution of higher education in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.~~

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

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

~~(b) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

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

~~(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" includes, but is not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.~~

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

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

~~gender identity; veteran's status; or any other legally protected classification.~~

~~(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.~~

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

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

~~(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating 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, 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.~~

~~(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any 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.~~

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

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

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

~~(vi) 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 he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for~~

any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

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

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

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

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

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

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

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

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

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

(i) Failure to comply with the college's electronic use policy.

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

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

~~(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.~~

~~(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.~~

~~In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.)~~ (4) **Alcohol, drug, and tobacco violations.**

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

(b) **Cannabis.** The use, possession, delivery, sale, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

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

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" includes, but is not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

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

(6) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

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

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

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

(9) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(10) **Hazing.** Any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public institution of higher education in this state, including causing, directing, coercing, or forcing

a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Examples of hazing include, but are not limited to:

(a) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(b) Humiliation by ritual act;

(c) Striking another person with an object or body part;

(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(11) **Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(12) **Lewd conduct.** Conduct which is:

(a) Lewd. Involving sexual conduct that is considered indecent or offensive.

(b) Obscene. Offensive, rude, or shocking, usually because of being too obviously related to sex or showing sex.

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

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

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

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

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

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

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

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

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

(i) Failure to comply with the college's electronic use policy.

(14) **Obstruction or disruption.** Obstruction or disruption of:

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

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(15) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial ac-

count numbers, other confidential personal information, intellectual property, and college trademarks.

(16) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.

(17) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(18) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

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

(B) **Nonconsensual sexual contact (fondling)** is 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** is 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 18.

(D) **Statutory rape (rape of a child)** is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, 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.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and 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.

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) 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.

(iii) 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.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of

interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

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

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

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

(22) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus and during college programming and activities, subject to the following exceptions:

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

(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view.

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

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-070 ~~Corrective action—Disciplinary sanctions—Terms and conditions.~~ One or more of the following corrective actions or disciplinary sanctions may be imposed upon ((students)) a student or upon college-sponsored student organizations, athletic teams, or living groups found ((to have violated)) responsible for violating the student conduct code.

(1) **((Disciplinary)) Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for ((further)) disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

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

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

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

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

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

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

(a) **Education.** Participation in or successful completion of an educational assignment, designated to create an awareness of the student's misconduct.

(b) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(c) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

~~((b))~~ (d) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. 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.

~~((e))~~ (e) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to 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.

~~((d))~~ (f) No contact (~~order~~) directive. An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(g) Trespass or restriction. A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

More than one of the disciplinary terms and conditions above may be imposed for any single violation.

If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions or readmission to the college.

NEW SECTION

WAC 132D-150-080 Hazing sanctions. (1) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or non-profit, the individual directors of the corporation may be held individually liable for damages.

(2) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(3) Any student group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(4) Any student group found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-090 Initiation of disciplinary action. (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) Sex discrimination, including sex-based harassment. The college's Title IX coordinator or designee shall review, process, and, if

applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sex-based harassment complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

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

~~((2))~~ (8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

~~((3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results~~

~~of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.~~

~~(4))~~ (9) Within ~~((ten))~~ 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

~~((5))~~ (10) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132D-150-070.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(11) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-110 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex discrimination, as set forth by WAC 132D-150-090(11) Initiation of disciplinary action, the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ((ten business)) 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent, complainant if any, and the student conduct ((review)) officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

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

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

~~(7) ((The student conduct committee shall hear appeals from:~~

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

~~(b) Dismissals; and~~

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

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

- ~~(a) Suspensions of ten instructional days or less;~~
- ~~(b) Disciplinary probation;~~
- ~~(c) Written reprimands; and~~

~~(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.)~~ A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

- (a) Suspensions of 10 instructional days or less;
- (b) Disciplinary probation; and
- (c) Written reprimands; and

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

(8) The student conduct committee shall hear appeals from:

- (a) Disciplinary suspensions in excess of 10 instructional days;
- (b) Dismissals;

(c) Sex discrimination, including sex-based harassment cases; and

(d) Disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the president.

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

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

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

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

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

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-150 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

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

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

(3) The conduct review officer shall serve an initial decision upon both the parties within (~~ten business~~) 10 calendar days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~ten~~) 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

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

~~(5))~~ If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than (~~ten~~) 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-170 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within (~~twenty-one~~) 21 days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within (~~twenty~~) 20 days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within (~~twenty~~) 20 calendar days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more

than ~~((ten))~~ 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

~~((6) In cases involving allegations of sexual misconduct, the president on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.))~~

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-210 Student conduct committee. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One faculty member or administrator, other than an administrator serving as a student conduct or conduct review officer, appointed by the president at the beginning of the academic year.

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

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

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member ~~((pursuant to RCW 34.05.425(4)))~~.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-230 Appeal—Student conduct committee—Prehearing.

(1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW (~~and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control~~).

(2) The student conduct committee chair shall serve all parties with written notice of the hearing no less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

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

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

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

- (a) The conduct officer's notification of imposition of discipline, or referral to the committee; and
- (b) The notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind the members that these "pleadings" 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 committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

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

(8) Communications between committee 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, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) (~~Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by~~)

an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.) In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.

(10) For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing. The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing; and

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-250 Student conduct committee hearings—Presentations of evidence.

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

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

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

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

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the college's case for imposing disciplinary sanctions.

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

(7) ~~In cases involving allegations of ((sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.))~~ sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-270 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form, written or verbal, it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within (~~twenty~~) 21 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer

and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

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

(5) In cases involving ~~((allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.))~~ sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-290 Appeal from student conduct committee review of initial decision.

(1) ~~((A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.~~

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

(3) ~~The president shall provide a written decision to all parties within twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.~~

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

(5)) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely ap-

peal constitutes a waiver of the right and the decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and the Title IX coordinator.

(7) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

WAC 132D-150-310 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

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

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

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

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

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

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

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

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

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

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

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

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132D-150-350	Supplemental sexual misconduct procedures.
WAC 132D-150-370	Supplemental definitions.

WAC 132D-150-390	Supplemental complaint process.
WAC 132D-150-410	Supplemental appeal rights.
WAC 132D-150-500	Order of precedence.
WAC 132D-150-510	Prohibited conduct under Title IX.
WAC 132D-150-520	Title IX jurisdiction.
WAC 132D-150-530	Initiation of discipline.
WAC 132D-150-540	Prehearing procedure.
WAC 132D-150-550	Rights of parties.
WAC 132D-150-560	Evidence.
WAC 132D-150-570	Initial order.
WAC 132D-150-580	Appeals.

WSR 24-15-154
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-137—Filed July 24, 2024, 11:14 a.m., effective July 25, 2024]

Effective Date of Rule: July 25, 2024.

Purpose: The purpose of this emergency rule is to open additional salmon seasons in Catch Record Card Areas 10 and 11, and to reduce the Chinook portion of the salmon daily limit in Area 11 during August and September.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is necessary to open salmon seasons in Catch Record Card Areas 10 and 11 and to reduce the Chinook portion of the salmon daily limit in Area 11 for August and September.

Catch estimates for the Marine Area 10 summer Chinook fishery indicate that through July 21, 27 percent (848/3,166) of the harvest quota, and 28 percent of sublegal encounters (1,806/6,477) have been reached.

Catch estimates for the Marine Area 11 summer Chinook fishery indicate that through July 21, nine percent of the harvest quota (315 of 3,379), and two percent of sublegal encounters (119 of 5,907) have been reached.

Based on daily catch rates, sufficient quota remains to allow additional openings of the 2024 summer Chinook seasons in Area 10 and 11.

Reducing the Chinook portion of the daily limit in August and September is needed to avoid reaching quota early in the season, possibly resulting in early closure.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 24, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000Y Puget Sound salmon—Saltwater seasons and daily limits. Effective immediately, through September 2, 2024, salmon rules for Catch Record Card Area 10 and Catch Record Card Area 11, shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Catch Record Card Area 10, except waters of Shilshole Bay southeast of a line from Meadow Point to West Point; waters of Elliot Bay east of a line from West Point to Alki Point; waters of Sinclair Inlet and Port Orchard south of the Manette Bridge in Bremerton, south of a line true west from Battle Point, and west of a line drawn true south from Point White; and year-round piers (Bremerton Boardwalk, Illahee State Park, Seacrest Pier, and Waterman Pier):

Salmon: Effective July 25 through 27, 2024: Daily limit 2 including no more than 1 Chinook. Release chum and wild Chinook.

(2) Catch Record Card Area 11, except year-round piers (Des Moines Pier, Les Davis Pier, and Point Defiance Boathouse Dock):

(a) Effective July 25 through July 27, 2024:

(i) Salmon: Daily limit 2 including no more than 1 Chinook. Release chum and wild Chinook.

(ii) Commencement Bay (east of a line from Cliff House Restaurant to Sperry Ocean Dock): Closed to fishing for or retention of salmon.

(b) Effective July 28 through July 31, 2024: Salmon: Closed.

(c) Effective August 1 through September 30: Salmon: Daily limit 2 including no more than 1 Chinook. Release chum and wild Chinook.