

## WSR 24-24-068

## EMERGENCY RULES

## EVERETT COMMUNITY COLLEGE

[Filed November 27, 2024, 3:40 p.m., effective November 27, 2024, 3:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To bring Everett Community College's (college) code of student rights and responsibilities (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.

The college's board of trustees adopted an emergency rule on July 30, 2024, to amend WAC 132E-122-010 et seq. to comply with changes to federal regulations with respect to sex-based discrimination, commonly referred to as Title IX, that took effect on August 1, 2024. In anticipation of those changes, the college initiated a permanent rule making to amend the code language to align with the emergency provision and explore other changes. The CR-101 preproposal statement of inquiry for the permanent rule making was filed as WSR 24-13-072 on June 14, 2024. This second emergency rule continues the emergency rule originally filed on July 31, 2024, as WSR 24-16-081, without change.

Citation of Rules Affected by this Order: Repealing WAC 132E-122-170, 132E-122-180, 132E-122-190, 132E-122-250, 132E-122-260, 132E-122-370, 132E-122-380, 132E-122-410, 132E-122-420, 132E-122-430, 132E-122-440, 132E-122-450, 132E-122-460, 132E-122-470, 132E-122-480 and 132E-122-490; and amending WAC 132E-122-010, 132E-122-020, 132E-122-040, 132E-122-050, 132E-122-060, 132E-122-070, 132E-122-160, 132E-122-200, 132E-122-210, 132E-122-230, 132E-122-240, 132E-122-270, 132E-122-280, 132E-122-290, 132E-122-300, 132E-122-310, 132E-122-320, 132E-122-330, 132E-122-340, 132E-122-350, 132E-122-360, and 132E-122-400.

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 college has been engaging with the appropriate shared governance processes to adopt changes to its student code of conduct. The deadline for implementing this new rule was August 1, 2024. As such, changes are necessary for implementation before finalization of the code, as outlined in the preproposal statement of inquiry.

In addition to complying with the new final rule, the college is updating its code to address the use of gendered language as petitioned by a resident. Further changes were made to reflect title and position changes, as well as further clarify processes to promote accountability and efficiency. 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 18, Repealed 14; 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 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 16, Repealed 2.

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: November 19, 2024.

Joshua R. Ernst  
Vice President  
Human Resources and Compliance

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-010 Authority.** (1) The Everett Community College (referred to as the "College" or "EvCC") board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the (~~vice president of instruction and student services~~) chief student affairs officer or their designee(s). (~~The~~) Except in cases involving protected class discrimination, the student conduct officer, or delegate, shall serve as the principal investigator and/or administrator for alleged violations of this code.

(2) The Director of Equal Opportunity and Title IX Programs, also known as the Title IX coordinator, shall serve as the principal investigator and/or administrator for alleged violations of this code as (~~it pertains to sexual misconduct and~~) they pertain to protected class discrimination, including sex-based harassment. The (~~Title IX coordinator~~) Director of Equal Opportunity & Title IX Coordinator:

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

(b) May conduct investigations or assign investigators.

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

(d) (~~Will~~) May make, or designate a qualified decisionmaker to make, findings of fact on completed (~~sexual misconduct or~~) protected class discrimination investigations.

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

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

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

(a) On college owned and/or operated premises;  
 (b) At or in connection with college sponsored activities; or  
 (c) Off-campus or in a noncollege electronic environment when such conduct is deemed to threaten the safety or security or otherwise adversely impacts the college community.

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

(3) Students are responsible for their conduct from ~~((notification of acceptance))~~ the time they gain admission to at the college through the ~~((actual receipt of a degree))~~ 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) Student organizations affiliated with the college may also be sanctioned under this code for the conduct of their student members.~~

~~((5))~~ (4) These standards shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending. ~~((The conduct officer or, in matters involving sexual misconduct, the Title IX coordinator has sole discretion, on a case-by-case basis, to determine whether the conduct code will be applied to conduct that occurs off campus.~~

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

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

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

(5) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct 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 18-01-119, filed 12/19/17, effective 1/19/18)

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

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

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

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

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

**(2) Values.**

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

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

(b)(i) Accountability.

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

(c) Inclusion. We value diversity in all its forms by engaging in inclusive assessment of, and action in, our workforce selection, in our policies and practices, in our curricular offerings, and in the scope of our services and programs. We actively seek and serve a diverse population of students. As a community, we are made richer by

the variety of experiences and influences that individuals and groups contribute to our institution.

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

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

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

(3) Any student, employee, applicant, or visitor who believes that they have been the subject of protected class discrimination should report the incident(s) to the ~~((Title IX coordinator))~~ director of equal opportunity and Title IX programs, also known as the Title IX coordinator, identified below. If the complaint is against the Title IX coordinator, the incident(s) should be reported to the ~~((vice president of administrative services))~~ vice president of human resources and compliance.

~~((Title IX coordinator))~~ Director of equal opportunity and Title IX programs

425-388-9271  
TitleIXcoordinator@everettcc.edu  
Olympus Hall Room ~~((207))~~ 111  
2000 Tower Street  
Everett, WA 98201

~~((Vice President of Administrative Services))~~ Vice president of human resources and compliance

425-388-9232  
~~((vpadmin@everettcc.edu))~~  
Olympus Hall Room 116  
2000 Tower Street  
Everett, WA 98201

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(23) "**Student**" is all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.~~

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

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

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

~~(2) "**Allegation of misconduct**" is any report of an alleged violation of this conduct code, which may include, but is not limited to, a~~

police report, an incident report, a witness statement, other documentation, or a verbal report or written statement from a complainant or a third party.

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

(4) "Day(s)" means business day(s) when the college is under regular operations, excluding weekends, holidays, and campus closures.

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

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

(7) "College premises" 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.

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

(9) "Complainant" is any person who is the alleged victim of prohibited conduct, whether or not such person has made an actual complaint. This includes students, employees, or other members of the college community who were participating or attempting to participate in college programs and activities at the time of the alleged violation, and who are 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 protected class 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 determination of responsibility or dismissal of their complaint

(c) The right to be accompanied by an advisor, who may be an attorney retained at the complainant's cost.

(10) "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.

(11) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include summary suspension. A written or verbal warning is not disciplinary action.

(12) "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 a dismissal from the college are heard by the student conduct committee. Appeals of all other disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

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

(14) "Grievance Committee" is a group of college employees appointed by the president and current students appointed by the student



government who shall be trained to hear and serve as decisionmakers in the proceedings listed below. The members of specific committees shall be drawn from this larger Grievance Committee. Members of the Grievance Committee may be called to serve on any committee discussed in this code and may sit on hearing panels for the following issues:

- (a) Student affairs grievance
- (b) academic grievance
- (c) student conduct
- (d) protected class nondiscrimination

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

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

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

(18) "**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.

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

(20) "**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.

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

(22) "**Program**" or "**Programs and Activities**" means all operations of the College.

(23) "**Relevant**" means related to the allegations of discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged discrimination occurred.

(24) "**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.

(25) "**Resolution**" is the means by which the complaint is finally addressed. This may be accomplished by using methods which may include counseling, supporting, disciplinary action, or otherwise facilitating the resolution of the complaint. No Title IX complainant will be re-

quired to have face-to face interactions with the respondent in any resolution proceedings.

(26) "**Respondent**" is any student who is alleged to have violated the student conduct code. Respondents in cases involving protected class discrimination 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.

(27) "**Service**" means the process by which a document is officially delivered to a Party by electronic transmission to a student or employee college issued email account. If a Party does not have a college issued email account, the College will use the last known personal email account or physical mailing address on record with or provided to the College. Service is deemed complete upon the date that the document is emailed.

(28) "**Spokesperson**" is a person who would, on the behalf of a student approved for this accommodation, address or assist in addressing college officials.

(29) "**Student**" is any person taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, as well as current and former students who engage in prohibited conduct between terms of actual enrollment or before awarding of a degree or certificate of completion. 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.

(30) "**Student Conduct Officer**" is a college administrator designated by the president to be responsible for implementing and enforcing this code.

(31) "**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.

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

(33) "**Supportive measures**" means reasonably available, individualized and appropriate, non-punitive and non-disciplinary 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 envi-

ronment; or providing support during the college's grievance and disciplinary procedures, or during any informal resolution process.

(b) For complaints of sex-based harassment specifically, 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 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.

(34) "Title IX Coordinator" means the director of equal opportunity and Title IX programs who is responsible for processing Title IX and protected class complaints and who oversees the resolution processes under the protected class nondiscrimination grievance procedure.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-070 Statement of student rights.** (1) As members of the Everett Community College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

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

(a) **Academic freedom.**

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

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

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

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

(b) **Due process.**

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

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

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-160 Prohibited student conduct.** (~~(Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this sections means "without limitation.")~~) 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, battery, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health and safety of another person or another person's property.)~~) 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 later in 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.

~~((2))~~ (3) **Abuse of the student conduct process.** Abuse of the student conduct process includes:

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

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

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

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

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

(a) **Cheating** (~~(including, but not limited to, intentional use or attempted use of unauthorized material, information, or study aids, misrepresentation of invention or any information such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.)~~) - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

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

the ideas, writings, work of another person, or artificial intelligence, 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) **Unauthorized collaboration** including, but not limited to, intentionally sharing or working together in an academic exercise when such actions are not approved by the course instructor.~~

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

(c) **Fabrication** - 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.

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

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

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

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

(5) **Acts of dishonesty.** Acts of dishonesty, 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) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee;

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

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

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

~~(b) **Marijuana.** A marijuana violation includes using, possessing, delivering, selling, or being under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human con-~~

sumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits any possession or use of marijuana on college premises or in connection with college activities.

~~(c) **Other drugs.** A drug violation includes using, possessing, delivering, selling, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.~~

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

(6) **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.

(7) **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 RCW 69.41, or any other controlled substance under RCW 69.50, 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 twenty-five 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) **Computer abuses.** Computer abuses include, but are not limited to:~~

~~(a) Unauthorized use of college computer resources;~~

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

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

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

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

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

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

(8) **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, non-consensual recording of sexual activity, and non-consensual distribution of a recording of sexual activity.

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

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

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

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

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

~~(10) **Discriminatory harassment.** ((Discriminatory harassment is language or conduct directed at a person because of the person's identity that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect~~

of unreasonably interfering with a person's academic or work performance, or the person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.)

(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) 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.

~~((11) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the college. The term includes disorderly conduct, breach of the peace, violation of local or college noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of college investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.~~

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

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

~~(i) A current or former spouse or intimate partner;~~

~~(ii) A person with whom the person shares a child in common;~~

~~(iii) A person with whom one is cohabitating or has cohabitated;~~

~~or~~

~~(iv) A person with whom one resides including a roommate, suite-mate, or housemate.~~

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

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

~~((13) **Ethics**)) (11) **Ethical violations.** ((An ethics violation includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or college policy relating to the ethical use of college resources.)) 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.~~



~~((14))~~ (12) Failure to comply with directive. Failure to comply (means refusing to obey the lawful directive of a college official or authorized college body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.) 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.

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

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

~~(17) Harassment.~~

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

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

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

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

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

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

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

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

(13) 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 perform-

ance, 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.

~~((18))~~ (14) 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) Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person. Hazing activities may include, but are not limited to, encouraging or promoting the abuse of alcohol; striking another person whether by use of any object or any part of one's body; causing someone to experience excessive fatigue or physical and/or psychological shock; and causing someone to engage in degrading or humiliating games or activities that create a risk of serious mental, emotional, and/or physical harm.~~

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

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

(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.

(15) 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.

(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.

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

~~((20))~~ (17) **Property ((violations)) violation.** ((The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.)) Damage to, theft from, misappropriation of, unauthorized use or possession of, vandalism, or other non-accidental damaging or destruction of college property, including vending machines, or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~((21))~~ (18) **Retaliation.** ((The term "retaliation" means harming, threatening, intimidating, coercing or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.)) 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, investigat-

ing, or addressing allegations or violations of federal, state or local law, or college policies.

~~((22))~~ (19) Safety violations. ~~((The term "safety violation" includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.))~~ Non-accidental, 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.

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

~~(24) Sexual harassment. Sexual harassment includes, but is not limited to, unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, based on sex:~~

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

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

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

~~(i) Physical assault.~~

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

~~(A) Comments of a sexual nature;~~

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

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

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

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

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

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

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

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

stalking. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, unconsciousness, or other cause.

(a) "Consent" is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has 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.

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

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

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

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

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

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

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

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

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

- ~~(b) A supervisor who gives an employee a promotion or special privileges in exchange for sexual favors.~~
- ~~(c) Sexually explicit statements, questions, jokes, or anecdotes.~~
- ~~(d) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.~~
- ~~(e) Remarks of a sexual nature about an individual's clothing, body, or speculation about previous sexual experiences.~~
- ~~(f) Persistent, unwanted attempts to change a professional relationship to a romantic relationship.~~
- ~~(g) Direct or indirect propositions for sexual activity.~~
- ~~(h) Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.~~
- ~~(28) Sexual exploitation. Sexual exploitation includes:~~
  - ~~(a) Taking nonconsensual or abusive advantage of another for one's own sexual benefit, or for the sexual benefit of anyone other than the one being exploited;~~
  - ~~(b) Compelling another by threat or force to engage in sexual conduct or activity;~~
  - ~~(c) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings of a private and sexual nature where such transmission, publication, or distribution is without the consent of the subject(s) and is likely to cause emotional distress to the subject(s);~~
  - ~~(d) Taking or making photographs, films, or digital images of the private body parts of another person without that person's consent;~~
  - ~~(e) Causing or attempting to cause the impairment of another person to gain nonconsensual sexual advantage over that person;~~
  - ~~(f) Prostituting another person;~~
  - ~~(g) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity; or~~
  - ~~(h) Taking, making, or directly transmitting nonconsensual video or audio recordings of sexual activity.)~~

(20) **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 eighteen (18).

(D) **Statutory Rape (Rape of a Child)** is non-forcible 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 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) **Sexual Exploitation.** An act or a failure to act that involves a member of the College community taking non-consensual, unjust, humiliating, or abusive sexual advantage of another, either for the individual's own advantage or to benefit anyone other than the person being exploited. Sexual advantage may include, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third Parties to observe private sexual acts; disclosing, causing to be disclosed or threatening to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed; engaging in voyeurism, and intentionally exposing another to a sexually transmitted infection.

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

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

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

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



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

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

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

(22) **Unauthorized disclosure.** Distributing or otherwise making public materials created or produced during the grievance procedures except as required by law or as expressly permitted by the College, or publicly disclosing a Party's identifiable information without consent. Unauthorized Disclosures may also be considered Retaliation.

~~((34)) (23) **Violation of ((law)) other laws or policies.** ((Any conduct that would constitute a violation of any federal, state, or local criminal law may be the subject of disciplinary proceedings under this conduct code.)) Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college housing, traffic, and parking rules.~~

~~((35)) **Weapons ((violations)).** ((A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on college premises of any firearm or other dangerous weapon in violation of public law or college policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160. Examples include, but are not limited to:~~

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

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

~~(i) The action of gunpowder or other explosives;~~

~~(ii) The action of compressed air; or~~

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

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

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.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**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.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-200 ((Disciplinary sanctions.)) Corrective action, disciplinary sanctions, terms and conditions.** ((Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the student code of conduct hearing procedures.

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

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

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

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

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

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

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

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

~~(1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.~~

~~(a) **Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for 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 student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the 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 dismissal is imposed.~~

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

~~(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) **Education.** Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.~~

~~(b) **Loss of privileges.** Denial of specified privileges for a designated period of time.~~

~~(c) **Not in good standing.** A student deemed "not in good standing" with the college 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 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.

(e) **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.

(f) **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.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(h) **Residence hall suspension or termination.** Removal from a residence hall for a specified period or permanently. Conditions may be imposed before a student is permitted to return to a residence hall.

(3) More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

(4) 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 for readmission to the college.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-210 ((Terms and conditions.)) Hazing sanctions.**

~~((Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a sanction(s) include, but are not limited to, the following:~~

~~(1) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.~~

~~(2) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as approved by the college. The student will sign all neces-~~

sary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. A student may not return to campus if the evaluation indicates that the student is not capable of functioning within the college community, or if the evaluation lacks information for the college to make reasonable accommodations, or until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

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

(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 nonprofit, 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 18-01-119, filed 12/19/17, effective 1/19/18)

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-240 Initiation of disciplinary action (~~(—Non-Title IX.)~~)** (~~((1) **Written notice.** The conduct officer will initiate disciplinary action by serving the respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations, the specific conduct code provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violation(s), and specify the time and location of the meeting.~~

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

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

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

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

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

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

(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) Protected class discrimination, including sex-based harassment. The College's director of equal opportunity and Title IX programs or designee shall review, process, and, if applicable, investigate complaints or other reports of protected class discrimination, including sex-based harassment. Allegations of discrimination, including sex-based harassment, by a student shall be addressed through the protected class nondiscrimination policy and associated grievance procedures and 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, 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 ten calendar 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. 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.

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

(a) Dismiss the case if

(i) Insufficient evidence exists to demonstrate responsibility for the alleged infraction;

(ii) The college is unable to identify a respondent after taking reasonable steps to do

so;

(iii) Respondent is not participating in the college's educational programs or activities;

(iv) The reporting party has voluntarily withdrawn any or all of the allegations in the complaint;

(b) Exonerate the respondent and terminate the proceedings.

(c) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132E-122-200; or

(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.

(12) In cases involving allegations of sex-based harassment, the student conduct officer shall review the investigation report provided by the director of equal opportunity and Title IX programs, and within five business days refer the matter to the student conduct committee.

(a) Upon receipt of the student conduct committee's decision, the director of equal opportunity and Title IX programs 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 protected class nondiscrimination grievance procedure.

(b) If the respondent is found responsible for engaging in sex-based harassment, the director of equal opportunity and Title IX programs 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 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-270 ((Appeals—All cases.)) Appeal from Disciplinary Action.** ((The following general rules apply to appeals of disciplinary action at any stage of the student disciplinary proceeding.

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

(2) ~~Filing appeals.~~

(a) ~~Appeal periods.~~ The respondent may appeal a disciplinary action by filing a written notice of appeal with the designated college



official within ten business days of services of the conduct officer's decision.

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

~~(c) **Issues that may be raised on an appeal.** The issues that may be raised on an appeal include: New information, contradictory information, and information indicating that the party was not afforded due process.~~

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

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

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

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

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

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

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

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

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

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

~~(c) Have acted previously in another capacity.~~

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

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

~~(b) Dismissals; and~~

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

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

~~(a) Suspension of ten instructional days or less;~~

~~(b) Disciplinary probation;~~

~~(c) Written reprimand; and~~

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

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

~~(11) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the conduct officer following the same procedures as set forth above for the respondent:~~

~~(a) The dismissal of a sexual misconduct complaint; or~~

~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including disciplinary warning.)~~

(1) Except as specified for cases involving allegations of protected class discrimination, as set forth in WAC 132E-122-240(12), the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within fifteen business 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. Appeals may be based upon:

(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 student conduct officer had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) The parties to an appeal shall be the respondent, complainant if any, and the student conduct 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) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) suspensions of ten 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) protected class discrimination, and

(d) disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the chief student affairs office.

(9) Appeals of disciplinary action taken by the student conduct committee shall be submitted to and heard by the chief student affairs officer (studentconduct@everettcc.edu, 2000 Tower Street, Everett, WA 98201).

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

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

Each party involved in ~~((sexual misconduct proceedings))~~ disciplinary meeting, interview, or hearing may appear alone or with another person of their choice to advise and assist them during any conduct proceeding, including meetings, interviews, and hearings.

(2) Any advisor who accompanies the complainant, respondent, or witness may provide support or guidance but may not speak, represent, or advocate on their behalf during ~~((sexual misconduct proceedings with the exception of full adjudication proceedings (WAC 132E-122-290 through 132E-122-350)))~~ proceedings unless otherwise indicated herein. An advisor has an exclusively non-speaking role, and may not otherwise present evidence, argue, or assert any right on behalf of the party they advise.

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

(4) ~~((An accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's documented disability warrants such an accommodation.))~~ If a Party needs language assistance or reasonable accommodations due to a qualifying disability in order to fully and meaningfully participate in these procedures, access requests must be made five days prior to any meeting, interview, or live hearing by contacting the Student Conduct Office at 425-388-9271 or studentconduct@everettcc.edu.

(5) ~~((**Notice of attorney advisor.** Anyone who plans to have an attorney present during a conduct proceeding must notify the conduct officer (awilliams@everettcc.edu or 425-388-9282) Title IX coordinator (TitleIXcoordinator@everettcc.edu or 425-388-9271), or chair of the student conduct committee (email address or phone number) of this intent four business days in advance of the scheduled sexual misconduct proceeding.))~~ An attorney advising a party must enter a notice of appearance with the college at least five days before the initial interview, meeting, or live hearing they plan to attend, so the college can secure its own legal representation, if necessary. This notification can be made to the student conduct officer (studentconduct@everettcc.edu or 425-388-9258), Title IX coordinator (TitleIXcoordinator@everettcc.edu or 425-388-9271), or chair of the student conduct committee, as applicable.

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

(7) Advisors should not disclose details of their interactions with their advisees to institutional officials or decisionmakers, unless there is an emergency or a health and safety concern.

(8) Everett Community College, which includes any official acting on behalf of the college, has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. Advisors who are disruptive, disrespectful, or refuse to follow college policy or procedures will be removed. The college has the right to take appropriate steps to ensure compliance with college policy and proce-

dures, including by placing limitations on the advisor's ability to participate in future meetings and proceedings.

(9) Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Everett Community College. Unauthorized disclosures may also be considered retaliation. The college may restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by privacy expectations.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

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

(1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which (~~he or she~~) conduct review officer 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 (~~(, and in cases involving sexual misconduct, the complainant)~~). Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

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

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

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~ten~~) fifteen business 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 in excess of ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-300 Brief adjudicative proceedings—Review of initial decision.** (1) An initial decision is subject to review by the (~~(vice president of instruction and student services)~~) chief student affairs officer, provided a party files a written request for review

with the conduct review officer within ~~((ten))~~ fifteen business days of service of the initial decision.

(2) The ~~((vice president of instruction and student services))~~ chief student affairs 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.

(3) During the review, the ~~((vice president of instruction and student services))~~ chief student affairs officer shall give ~~((each party))~~ 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 decision and must be served on the parties within twenty ~~((business))~~ days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the ~~((vice president of instruction and student services))~~ chief student affairs officer does not make a disposition of the matter within twenty business days after the request is submitted.

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

~~((6))~~ In cases involving allegations of sexual misconduct, the vice president of instruction and student services, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.)

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-310 ((Full adjudicative)) Live hearing process— Student conduct committee.** (1) The student conduct committee shall consist of ~~((three))~~ five members ~~((appointed by the president in consultation with student and faculty leadership))~~, pulled from the larger grievance committee:

(a) ~~((A full-time student))~~ Two students appointed by the student government;

(b) ~~((A full-time faculty member))~~ Two faculty members appointed by the president; and

(c) ~~((A full-time exempt administrative staff member who shall serve as chair of the committee))~~ One administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president who shall serve as chair of the committee

and presiding officer for all committee proceedings and may take action on preliminary hearing matters prior to convening the committee.

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

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

~~(4) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and by the model rules of procedure (chapter 10-08 WAC), as supplemented by these rules.)~~

(2) 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.

(3) 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 the committee for disqualification of a committee member.

(4) 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.

(5) 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 18-01-119, filed 12/19/17, effective 1/19/18)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Proceedings of the student conduct committee shall be governed by the Administrative Procedures Act, Chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than ten business 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 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 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 ex-

clusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

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

(a) the student 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 shall provide reasonable assistance to the respondent 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 twenty-four 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 an advisor of their choice, which may be an attorney retained at the party's expense.

(10) 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 five 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 protected class 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 paragraph 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 paragraph 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) Privacy. 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 paragraph 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 decisionmaker;

(iii) that 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 forty-eight 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 twenty-four 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 forty-eight 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) Privacy. 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,

ted 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 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-330** ~~((Full adjudicative process—Hearing procedure.))~~ **Student conduct committee—Presentation of evidence** (1)  
~~((Should a party fail to attend))~~ 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 ((an order)) of default in accordance with RCW 34.05.440.

~~(2) ((The student conduct committee chair shall cause the hearing to be recorded pursuant to RCW 34.05.449 by a method the chair selects.))~~ 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 student conduct committee chair shall maintain the official record of the proceeding that is required by RCW 34.05.476.~~

~~Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.))~~ 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 ensure 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 ((student conduct committee)) chair shall preside at the hearing and shall decide procedural questions that arise during the hearing, except as overridden by a majority vote of the committee.~~

~~(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case ((for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence)).~~

~~(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.~~

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

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

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

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

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

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, questions will be submitted to the chair by the parties, who will then ask questions of the parties and witnesses.

(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 party 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 party.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

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

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

(2) Within ~~((twenty))~~ fifteen days following the conclusion of the hearing or the committee's receipt of closing arguments, the student conduct committee shall issue a decision in accordance with RCW 34.05.461 and WAC 132E-122-160 and 132E-122-200. The 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 found to be violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

~~((a) The decision shall contain findings on:~~

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

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

~~(iii) Any sanction(s).~~

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

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

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

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

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

~~The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential information not relating to sexual misconduct allegations.))~~ (3) The committee's decision shall also include a determination of appropriate 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 (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 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 its decision to be served on the parties and their attorney, if any. The notice will inform all 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 sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

**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.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-350** ~~((Full adjudicative proceedings—Student conduct committee appeal.))~~ **Student conduct committee Appeal of initial decision.** (1) ~~((A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee))~~ Any party may appeal the committee's ((initial)) decision to the ((vice president of instruction and student services by filing a notice of appeal to the vice president of instruction and student services within ten business days of services of the committee's initial decision)) chief student affairs officer office within fifteen business days of services 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 vice president may ask for additional briefing from the parties on issues raised on appeal. The vice president of instruction and student services' review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.~~

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

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

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

an 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, decisionmaker, student conduct officer, or director of equal opportunity and Title IX programs 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 chief student affairs officer or a designee will promptly serve a copy of the appeal on all non-appealing parties, who will have ten 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 chief student affairs officer 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 chief student affairs officer shall serve a written decision on all parties and their attorneys, if any, within fifteen days after receipt of the appeal. The chief student affair officer'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 chief student affairs officer's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(7) The chief student affairs officer shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-360 Summary suspension (~~(—Purpose and proceeding)~~).**

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

- ~~(a) Has violated any provision of this chapter; and/or~~
- ~~(b) Presents an imminent danger either to themselves, other persons on the campus, or to the educational process.~~

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

~~(3) The procedures for a summary suspension hearing shall be considered an emergency adjudicative proceeding and shall be conducted as soon as possible and, if feasible, within five business days. It is the student's responsibility to schedule the hearing. The chief stu-~~

dent affairs officer or designee may, upon the request of the student, schedule the hearing at a time later than five business days. The chief student affairs officer or designee shall preside over the meeting. The student may appear alone or with another to advise and assist them as they appear before the appropriate college official(s). Any person who accompanies the student may provide support or guidance to the student, but may not speak, represent, or advocate for the student before the college official. An accommodation of a spokesperson (a person who would address the college official(s)) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the chief student affairs officer or designee. The chief student affairs officer or designee shall, at the summary suspension proceeding, determine whether there is probable cause to believe that continued suspension is necessary and/or whether other disciplinary action is appropriate.

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

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

(b) The violation(s) by the student are grounds for disciplinary action per the provisions of this code.)) (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 calendar 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(s) 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 warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and

subject to arrest for criminal trespass if they enter 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 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.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

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

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



REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132E-122-170	Reporting—Sexual misconduct and discrimination.
WAC 132E-122-180	Confidentiality and right to privacy.
WAC 132E-122-190	Retaliation is prohibited.
WAC 132E-122-250	Initiation of Title IX proceedings.
WAC 132E-122-260	Interim measures.
WAC 132E-122-370	Summary suspension—Notice.
WAC 132E-122-380	Summary suspension—For failure to appear.
WAC 132E-122-410	Order of precedence.
WAC 132E-122-420	Prohibited conduct under Title IX.
WAC 132E-122-430	Title IX jurisdiction.
WAC 132E-122-440	Initiation of Title IX proceedings.
WAC 132E-122-450	Prehearing procedure.
WAC 132E-122-460	Rights of parties.
WAC 132E-122-470	Evidence.
WAC 132E-122-480	Initial order.
WAC 132E-122-490	Title IX appeals.

**WSR 25-02-042**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-288—Filed December 20, 2024, 8:32 a.m., effective December 23, 2024]

Effective Date of Rule: December 23, 2024.

Purpose: This emergency rule closes commercial harvest of sea cucumber in management District 1.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000V.

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 closes harvest of sea cucumber in management District 1 due to quota attainment. 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 0, 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: December 20, 2024.

Kelly Susewind  
Director

REPEALER

The following section of Washington Administrative Code is repealed, effective December 23, 2024:

WAC 220-340-73000V Sea cucumbers (24-280)

**WSR 25-02-044**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed December 20, 2024, 8:59 a.m., effective December 28, 2024]

Effective Date of Rule: December 28, 2024.

Purpose: The developmental disabilities administration (DDA) is enacting these changes on an emergency basis to implement home and community-based services (HCBS) waivers as approved by the Centers for Medicare and Medicaid Services (CMS).

Primary waiver amendments:

- These amendments add: Waiver eligibility for children and youth age 20 and younger who are subject to a court dependency or a similar proceeding in a tribal court or are receiving extended foster care services from the department of children, youth, and families (DCYF) or from a tribe in Washington state; technical information about service plan collaboration; and teleservice delivery as a service delivery method for some services.
- These amendments adjust: Waiver enrollment limits; language about cross-agency collaboration; service definition for transportation; provider qualifications for music therapists; and level-of-care and inter-rate reliability level of care evaluation processes.
- These amendments clarify: Teleservice language in all services where teleservice delivery is now available; and waiver service definitions and service limit language across all five waivers.

To read all other CMS-approved waiver amendments effective September 1, 2024, open a waiver under "Current Approved Waivers" on DDA's home and community-based waivers website.

This is the second emergency filing on these sections and is necessary to keep the rules in effect until DDA completes the permanent rule-making process. We have filed a CR-101 preproposal under WSR 24-18-103. DDA is preparing the rules for external review.

Citation of Rules Affected by this Order: New WAC 388-842-0001, 388-842-0005, 388-842-0010, 388-842-0015, 388-842-0020, 388-842-0025, 388-842-0030, 388-842-0035, 388-842-0040, 388-842-0045, 388-842-0060, 388-842-0065, 388-842-0070, 388-842-0075, 388-842-0080, 388-842-0085, 388-842-0090, 388-842-0095, 388-842-0110, 388-842-0115, 388-842-0120, 388-842-0125, 388-842-0140, 388-842-0145, 388-842-0150, 388-842-0165, 388-842-0170, 388-842-0175, 388-842-0180, 388-842-0185, 388-842-0190, 388-842-0195, 388-842-0205, 388-842-0210, 388-842-0215, 388-842-0220, 388-842-0230, 388-842-0235 and 388-842-0250; repealing WAC 388-825-0571 and 388-845-2019; and amending WAC 388-825-020, 388-825-096, 388-825-120, 388-828-1020, 388-828-1340, 388-828-1540, 388-828-5120, 388-828-5140, 388-828-5160, 388-828-5180, 388-828-5920, 388-828-5940, 388-828-5980, 388-845-0001, 388-845-0030, 388-845-0045, 388-845-0055, 388-845-0060, 388-845-0100, 388-845-0110, 388-845-0111, 388-845-0113, 388-845-0210, 388-845-0760, 388-845-0955, 388-845-1515, 388-845-1607, 388-845-1620, 388-845-2000, 388-845-2010, 388-845-2200, 388-845-3015, and 388-845-3095.

Statutory Authority for Adoption: RCW 34.05.350.

Other Authority: RCW 71A.12.380(1); 42 C.F.R. 441.301.

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: Enacting these rules on an emergency basis is necessary in order to implement HCBS waivers as approved by CMS. Aligning rules with approved waiver amendments provides assurances required under 42 C.F.R. 441.301.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 39, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 39, Amended 33, Repealed 2.

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: December 20, 2024.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 25-03 issue of the Register.

## WSR 25-02-046

## EMERGENCY RULES

## HEALTH CARE AUTHORITY

[Filed December 20, 2024, 9:28 a.m., effective December 20, 2024, 9:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (agency) is amending these rules to expand screening and preventative services for certain sexually transmitted infections, to include HIV testing, viral hepatitis B and C, and hepatitis A/B combination vaccines, when clinically appropriate or according to nationally recognized guidelines. The agency is also including coverage for family planning-related services and supplies, defined as those services provided as part of, or as follow-up to, a family planning visit.

Citation of Rules Affected by this Order: Amending WAC 182-532-530, 182-532-550, and 182-532-560.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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: These rules are necessary to expand family-planning only (FPO) coverage to support preventative screenings and family planning services while the permanent rule-making process is completed. The agency began the permanent rule-making process under WSR 23-24-065 and filed emergency rules on December 29, 2023, April 26, 2024, and again on August 23, 2024. The FPO program operates under a federal waiver allowing changes to be in response to state needs. These changes were approved by the Centers for Medicare and Medicaid Services (CMS) as eligible additions to the state program.

The agency has drafted the rule amendments, but a fourth emergency rule filing is needed to renew the previous emergency rules filed under WSR 24-18-018. The agency is waiting for CMS to approve the renewal of the FPO waiver application, which includes the expanded coverage. CMS has paused technical assistance on renewal of the waiver application until the end of January 2025.

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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: December 20, 2024.

Wendy Barcus  
Rules Coordinator

OTS-5096.1

AMENDATORY SECTION (Amending WSR 22-02-025, filed 12/28/21, effective 2/1/22)

**WAC 182-532-530 Family planning only programs—Covered services.**

The medicaid agency covers all of the following services:

(1) One comprehensive preventive family planning visit once every twelve months, based on nationally recognized clinical guidelines. This visit must have a primary focus and diagnosis of family planning and include counseling, education, risk reduction, and initiation or management of contraceptive methods;

(2) Assessment and management of family planning or contraceptive problems, when medically necessary;

(3) Family planning-related services and supplies defined as those services provided as part of, or as follow-up to a family planning visit;

(4) Contraception, including:

(a) Food and Drug Administration (FDA)-approved contraceptive methods, as described under WAC 182-530-2000;

(b) Education and supplies for Federal Drug Administration (FDA)-approved contraceptive, natural family planning, and abstinence; and

(c) Sterilization procedures, as described under WAC 182-531-1550.

~~((4))~~ (5) The following services, when clinically appropriate ~~(, during a visit focused on family planning)~~ or according to nationally recognized guidelines:

(a) Pregnancy testing;

(b) Cervical cancer screening ~~(, according to nationally recognized clinical guidelines)~~;

(c) Gonorrhea and chlamydia screening and treatment ~~((for clients age thirteen through twenty-five, according to nationally recognized clinical guidelines))~~;

(d) Syphilis screening and treatment ~~((for clients who have an increased risk for syphilis, according to nationally recognized guidelines; and))~~;

(e) Sexually transmitted infection (STI) screening, testing, and treatment, when medically indicated by symptoms or report of exposure, and medically necessary for the client's safe and effective use of their chosen contraceptive method;

(f) HIV testing, including rapid tests; and

(g) Viral hepatitis B and C testing.

(6) Hepatitis B and hepatitis A/B combination vaccines.

~~((5))~~ (7) Human papillomavirus (HPV) vaccines.

AMENDATORY SECTION (Amending WSR 19-18-024, filed 8/28/19, effective 10/1/19)

**WAC 182-532-550 Family planning only programs—Payment limitations.** (1) The medicaid agency limits payment under the family planning only programs to services that:

(a) Have a primary focus and diagnosis of family planning as determined by a qualified licensed medical practitioner; ~~(and)~~

(b) Are medically necessary for the client to safely and effectively use, or continue to use, the client's chosen contraceptive method; and

(c) Include family planning-related services and supplies listed in WAC 182-532-530.

(2) The agency pays:

(a) Providers for covered family planning services using the agency's published fee schedules;

(b) For family planning pharmacy services, family planning laboratory services, and sterilization services using the agency's published fee schedules; and

(c) A dispensing fee only for contraceptive drugs purchased through the 340B program of the Public Health Service Act. (See chapter 182-530 WAC)

(3) The agency does not pay for inpatient services under the family planning only programs, except for complications arising from covered family planning services.

(4) The agency requires providers to:

(a) Meet the timely billing requirements of WAC 182-502-0150; and

(b) Seek timely reimbursement from a third party when a client has available third-party resources, as described under WAC 182-501-0200. Exceptions to this requirement are described under WAC 182-501-0200 (2) and (3) and 182-532-570.

(5) Services provided to family planning clients by federally qualified health centers (FQHCs), rural health centers (RHCs), and Indian health care providers (IHCP) do not qualify for encounter or enhanced rates.

AMENDATORY SECTION (Amending WSR 19-18-024, filed 8/28/19, effective 10/1/19)

**WAC 182-532-560 Family planning only programs—Documentation requirements.** In addition to the requirements in WAC 182-502-0020, providers must document the following in the client's medical record:

(1) Primary focus and diagnosis of the visit is family planning or family planning related;

(2) Contraceptive methods discussed;

(3) Plan for use of a contraceptive method, or the reason and plan for no contraceptive method;

(4) Education, counseling, and risk reduction with sufficient detail that allows for follow-up;

(5) Referrals to, or from, other providers; and

(6) If applicable, a copy of the completed consent form for sterilization. (See WAC 182-531-1550)

**WSR 25-02-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-287—Filed December 20, 2024, 12:02 p.m., effective December 20, 2024, 12:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to amend commercial crab fishing regulations in Puget Sound;

WAC 220-340-45500R closes Region 2-East on December 21, 2024.

WAC 220-340-47000N: (1) Changes pot limit in closed Region 2-West to zero; and (2) maintains current pot limits in Regions 1, 2-East, 3-2, and 3-3.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500R and 220-340-47000N; and amending WAC 220-340-455 and 220-340-470.

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: Region 2-East will close to harvest on December 21, 2024, due to quota attainment. There is sufficient allocation remaining to allow continued harvest in Puget Sound commercial crab fishery in Regions 1, 3-2, and 3-3, until further notice. These provisions are in conformity with agreed management plans with applicable tribes. Comanagement plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. Further adjustments of season structure may be made pending updated harvest data. 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 2, Amended 0, Repealed 2.

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: December 20, 2024.

Kelly Susewind  
Director



NEW SECTION

**WAC 220-340-45500S Commercial crab fishery—Seasons and areas—Puget Sound.** Notwithstanding the provisions of WAC 220-340-455, effective immediately, until further notice:

Harvest of Dungeness crab in Puget Sound is permitted during the "Open period" indicated in the following table. On the opening date, harvest will be permitted starting at 8:00 a.m. Harvest for these areas after the opening date is permitted starting one hour before official sunrise until further notice. Any closures will take effect one hour after official sunset unless otherwise indicated.

<b>Geographical Management Unit (WAC 220-320-110)</b>	<b>Open Period</b>
Region 1, MFSF Catch Areas 21A, 21B, and 22B	Immediately, until further notice.
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	Immediately, until further notice.
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	Immediately, through December 21, 2024
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	Immediately, through December 21, 2024.
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	Closed, until further notice.
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	Closed, until further notice.
Subregion 3-1	Closed, until further notice.
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Immediately, until further notice.
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	Immediately, until further notice.
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	Immediately, until further notice.
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Closed, due to ongoing public health concerns.
Subregion 3-3	Immediately, until further notice.
Subregion 3-4	Closed, until further notice.

**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.

NEW SECTION

**WAC 220-340-47000P Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas** Notwithstanding the provisions of 220-340-470, effective immediately, until further notice:

Effective during the "Open period" listed in WAC 220-340-45500S it is unlawful for any person to harvest crabs with more than the "Pot limit" per license per buoy tag number indicated within each "geographical management unit".

<b>Geographical Management Unit (WAC 220-320-110)</b>	<b>Pot limit</b>
Region 1, MFSF Catch Areas 21A, 21B, and 22B	60
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	60
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	20
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	20
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	0

Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	0
Subregion 3-1	0
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	60
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	20
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	20
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	0
Subregion 3-3	50
Subregion 3-4	0

**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.

### REPEALER

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

- WAC 220-340-45500R Commercial crab fishery—Seasons and areas—Puget Sound. (24-284)
- WAC 220-340-47000N Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas. (24-284)

WSR 25-02-049  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 24-286—Filed December 20, 2024, 12:36 p.m., effective December 28, 2024]

Effective Date of Rule: December 28, 2024.

Purpose: This emergency rule opens recreational razor clam seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000Z; and amending WAC 220-330-160.

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: Survey results show that adequate clams are available in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from these Razor Clam Areas 1, 3, 4, and 5 to be safe for human consumption. 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: December 20, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-330-16000Z Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective December 28, 2024, through January 3, 2025, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 on dates and during times listed below:

Razor Clam Area	Date	Time
Area 1	December 28, 2024, through January 3, 2025	From 12:01 p.m. to 11:59 p.m.

Razor Clam Area	Date	Time
Area 2	Closed	Closed
Area 3	December 28, 2024, through January 3, 2025	From 12:01 p.m. to 11:59 p.m.
Area 4	December 28 and 31, 2024; January 1, 2025	From 12:01 p.m. to 11:59 p.m.
Area 5	December 29 and 30, 2024; January 2 and 3, 2025	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

(2) It is unlawful to dig for razor clams at any time in the Long Beach and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 4, 2025:

WAC 220-330-16000Z Razor clams—Areas and seasons.

## WSR 25-02-064

## EMERGENCY RULES

## THE EVERGREEN STATE COLLEGE

[Filed December 23, 2024, 9:13 a.m., effective December 23, 2024, 9:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To bring The Evergreen State College's (college) student conduct code (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.

The new federal rules from the Department of Education went into place on August 1, 2024. The college submitted an emergency rule-making request on September 4, 2024, and the 120-day period for that submission expires on January 6, 2025. The college is now submitting the same updates for a second emergency rule making, to be effective starting January 6, 2025, to keep the emergency rules in place until permanent rule making can be completed.

Citation of Rules Affected by this Order: Amending WAC 174-123-170, 174-123-200, 174-123-270, 174-123-280, 174-123-290, 174-123-310, 174-123-355, 174-123-360, 174-123-370, 174-123-380, 174-123-390, 174-123-400, 174-123-410, 174-123-420, 174-123-430, and 174-123-440.

Statutory Authority for Adoption: RCW 28B.40.120(12); chapter 34.05 RCW.

Other Authority: United States Department of Education, Title IX Amendments of 1972.

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: 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 16, 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: December 23, 2024.

Daniel B. Ralph  
Rules Coordinator

OTS-5838.1

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

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

(1) Conduct related to community.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Public urination or defecation.

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

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

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

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

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

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

(2) Conduct related to persons.

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

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

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

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

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

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

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

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

(c) **Cyber misconduct.** The term "cyber misconduct" includes, but is not limited to, behavior involving the use of a computer, computer network, the internet, or use of electronic communications including, but not limited to, electronic mail, instant messaging, list serves,



electronic bulletin boards/discussion boards, ad forums and social media sites or platforms, to disrupt college function, adversely affect the pursuit of the college's objectives, or to stalk, harm or harass, or engage in other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person, or which is sufficiently severe, persistent, or pervasive that it interferes with or diminishes the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual exploitation, sexual violence, relationship violence, domestic violence, and stalking. (~~(Sexual harassment)~~) Sex

discrimination as prohibited by Title IX is defined in the supplemental Title IX student conduct procedures. See WAC 174-123-355.

(3) Sexual misconduct and consent.

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

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

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

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

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

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

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

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

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. The term "sexual violence" means an act or acts of a sexual nature against a person without their consent. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic

violence, relationship violence, and stalking are all types of sexual violence.

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

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

(a) A student issued an interim restriction that includes loss of privileges will receive written notice of the interim restriction, the

reason for instituting an interim restriction, and advised of the date, time, and place for a hearing regarding the interim restriction before the student conduct official, or their designee. The hearing will take place no later than five business days from the effective date of the interim restriction.

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

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

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

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

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

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

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

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

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

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

(f) If the student fails to appear at the designated hearing time, the senior college official or their designee may order that the

interim suspension remain in place pending the conclusion of the investigation and conduct or Title IX proceedings.

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

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

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

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

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

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

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

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

(2) The conduct review officer will schedule an informal hearing and serve written notice of the hearing to the parties at least seven calendar days in advance of the hearing. The notice of informal hearing will include the following:

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

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

(c) A date on which the parties may review documents held by the student conduct official; and

(d) A date by which the parties must provide a list of witnesses and copies of any documents to other parties and to the conduct review officer.

(3) The conduct review officer will serve an initial decision upon the parties within (~~ten~~) 10 calendar days of the completion of the informal hearing. The initial decision will contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~ten~~) 10 business days of service of the initial decision, the initial decision will be deemed the final decision.

(4) If the conduct review officer determines that the respondent's conduct may warrant imposition of a college or college housing suspension of more than (~~ten~~) 10 days or college expulsion or college housing eviction, the matter will be referred to the student conduct appeal panel for a new hearing.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-280 Brief adjudicative appeal proceedings—Administrative review of initial decision.** (1) An initial decision may be appealed to the senior college official or designee, provided a party files a written request including the grounds for appeal for review with the conduct review officer within (~~ten~~) 10 calendar days of service of the initial decision. The grounds for appeal are limited to new information not available at the time of the initial process, procedural error that impacted the outcome of the process, and/or bias of the student conduct official, or the conduct review officer.

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

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

(4) The decision on appeal must be in writing and must include a brief statement of the reason for the decision and must be served on the parties within (~~twenty~~) 20 calendar days of the request for appeal. The decision will contain a notice whether appeal to Thurston County superior court is available.

(5) If the senior college official or designee determines that the respondent's conduct may warrant imposition of a college suspension of more than (~~ten~~) 10 days or college expulsion, the matter will be referred to the student conduct appeal panel for a hearing.

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

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

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

(1) If not addressed in the code, the proceedings of the student con-

duct appeal panel will be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The senior college official, or designee, will schedule a hearing before the student conduct appeal panel and serve written notice of the hearing to the parties at least (~~ten~~) 10 calendar days in advance of the hearing. The notice period may be shortened by the senior college official, or designee, with the parties' permission; and the senior college official may reschedule a hearing to a later time for good cause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Each party may be accompanied at the hearing by an advisor of the party's choice. A respondent, or complainant in a case involv-



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

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

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

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

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

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

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

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

(16) All procedural questions and other decisions are subject to the final decision of the panel chair unless otherwise provided for in these rules. The chair will ensure that the proceeding is held in an orderly manner such that the rights of all parties to a full, fair, and impartial proceeding that adheres to the code is achieved.

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

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

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

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

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

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

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

(3) Within (~~fifteen~~) 15 calendar days following the conclusion of the hearing, or the panel's receipt of closing arguments, whichever is later, the panel will issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210 or written notice specifying the date by which it will issue a decision. The decision will include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses will be so identified.

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

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

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

(7) In cases involving allegations of assault, non-Title IX sexual misconduct, or Title IX (~~sexual harassment~~) sex discrimination, the chair of the student conduct appeal panel, on the same date as the decision is served to the respondent, will serve a written notice to the complainant informing the complainant of the panel's decision and describing any sanction(s) and/or condition(s) issued to the respondent, including suspension or expulsion of the respondent. The complainant may request reconsideration of the panel's decision subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-355 Order of precedence.** This supplemental procedure applies to allegations of (~~(sexual harassment)~~) sex discrimination arising on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Evergreen's standard (~~(disciplinary)~~) code of student rights and responsibilities and procedures, WAC 174-123-110 through 174-123-340, these supplemental procedures shall take precedence.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

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

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

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

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

(3) **Complainant** means (~~(an)~~) the following individuals who (~~is~~ alleged to be the victim of conduct) have been subjected to alleged conduct that could constitute (~~(sexual harassment-~~

~~(3-))~~ sex discrimination:

(a) A student or employee; or

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

~~(4) **Respondent** means an individual who has been ((reported to be the perpetrator of conduct that could constitute sexual harassment.~~

~~(4) **Formal complaint** means a writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the college conduct an investigation)) alleged to have violated Evergreen's Title IX policy and procedure's prohibited conduct.~~

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

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

~~(7)) **Interim suspension** means a temporary exclusion from enrollment, including exclusion from college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 174-123-200 (2).~~

(7) **Confidential employee** means an Evergreen employee whose communications are privileged and confidential under federal or state law. An employee's status as a confidential employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.

(8) **Investigation procedure** is the process Evergreen uses to initiate, informally resolve, and/or investigate allegations that an individual has violated Evergreen policies prohibiting sex discrimination or sex-based harassment.

(9) **Peer retaliation** means retaliation by a student against another student or an employee against another employee.

(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;

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

(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** mean measures provided to a complainant or other person whose equal access to Evergreen's education program or activity 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 if sex discrimination has occurred.

(13) **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, Evergreen will 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 code of student rights and responsibilities violations including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(14) **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.

(15) **Supportive measures** means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by Evergreen's Title IX coordinator to the complainant and respondent without unreasonably burdening either party, and without fee or charge, for purposes of:

(a) Restoring or preserving the party's access to Evergreen's educational programs and activities, including measures that are designed to protect the safety of the parties or Evergreen's educational environment; or

(b) Providing support during Evergreen's investigation and disciplinary procedures, or during any informal resolution process.

(16) **Title IX personnel** are the Title IX coordinator and designees; investigators; decision makers and hearing panel members at both the hearing and appeal level responsible for administering Evergreen's Title IX policy and procedure; facilitators of the informal resolution process, and any other employees who are responsible for implementing Evergreen's Title IX policy and procedures for students and employees or have the authority to modify or terminate supportive measures.

(17) **Title IX coordinator** is responsible for processing Title IX complaints and conducting and/or overseeing investigations and informal resolution processes under this procedure, providing supportive measures and remedies if applicable.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-370 Prohibited conduct under Title IX.** Pursuant to ((~~RCW 28B.50.140(13) and~~) Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Evergreen may impose disciplinary sanctions up to and including dismissal from Evergreen against a student (~~who~~ commits, attempts to commit, or aids, abets, incites, encourages, or assists) or student groups who have been found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging, or assisting another person to commit(~~(, an)~~) or engage in act(s) of ("sexual harassment.") sex discrimination, including sex-based harassment.

(1) **Sex discrimination**, which includes sex-based harassment, occurs when a respondent causes more than de minimis (insignificant) harm to an individual by treating them differently from an otherwise similarly situated individual based on:

(a) Sex stereotypes;

(b) Sex characteristics;

(c) Pregnancy or related conditions;

(d) Sexual orientation; or

(e) Gender identity.

Conduct that prevents a person from participating in an education program or activity consistent with a person's gender identity subjects a person to more than de minimis harm on the basis of sex and is prohibited.

(2) **Sex-based harassment.** For purposes of this supplemental procedure, (~~"sexual harassment" encompasses the following conduct:~~

~~(1))~~ 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 (~~Evergreen~~) employee (~~conditioning the provision of~~), agent, or other person authorized by Evergreen to provide an aid, benefit, or service (~~of Evergreen on an individual's~~) under Evergreen's educational 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.

~~((2))~~ (b) Hostile environment. Unwelcome sex-based conduct that (~~a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to~~), 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 Evergreen's educational programs or activities(~~, or Evergreen employment~~) (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 Evergreen's educational program or activity;

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

(iii) The parties' ages, roles within Evergreen's educational 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 Evergreen's educational program or activity.

~~((3))~~ (c) Sexual (~~assault~~) violence. Sexual (~~assault~~) violence includes the following conduct:

~~((a))~~ (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.

~~((b))~~ (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.

~~((e))~~ (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 (~~eighteen~~) 18.

~~((d))~~ (iv) Statutory rape. ((Consensual)) Nonforcible sexual intercourse ((between someone who is eighteen years of age or older and someone who is under the age of sixteen)) with a person who is under the statutory age of consent.

~~((4))~~ (3) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, ~~((or))~~ 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.

~~((5))~~ (4) 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))~~ (5) 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.

(6) Retaliation. Means intimidation, threats, coercion, or discrimination against a person by Evergreen, a student, or an employee or other person authorized by Evergreen to provide aid, benefit, or service under Evergreen's educational program or activity, for the purpose of interfering with any right or privilege secured by Evergreen policies and procedures prohibited 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 or this procedure. Nothing in this definition prevents Evergreen from requiring an employee to provide aid, benefit, or service under Evergreen's educational program or activities to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

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

(a) ~~((Occurred in the United States,))~~ Meets the definition of sex discrimination, sex-based harassment or retaliation as defined in this procedure, including causing more than de minimis harm to the complainant;

(b) Occurred ((during an Evergreen)) in the United States or interfered with the complainant's ability to access or participate in Evergreen's educational programs or ((activity)) activities in the United States; and

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

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

~~(3)) Occurred during an Evergreen educational program or activity or interferes with the complainant's ability to access or participate in Evergreen's educational program or activity.~~

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

~~((4)) (3) If the Title IX coordinator ((and/or the student conduct official)) determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the ((student conduct official will)) Title IX coordinator must issue a notice of dismissal in whole or part to ((the)) both parties explaining why some or all of the Title IX claims have been dismissed.~~

(4) Both parties can appeal the dismissal of the complaint, with the procedures described in this policy.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-390 Initiation of discipline.** (1) Upon ~~((receiving the Title IX))~~ receipt of the investigation report ~~((from the Title IX coordinator)),~~ the ~~((student conduct official will))~~ decision maker shall independently review the report to determine whether ~~((there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.~~

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

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

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

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

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

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



~~(i) The advisors will be responsible for questioning all witnesses and the other party(ies) on the party's behalf;~~  
~~(ii) An advisor may be an attorney; and~~  
~~(iii) Evergreen will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and~~

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

~~(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence), by the preponderance of the evidence, there was a violation of Evergreen's Title IX policy and procedure and prohibited conduct under these rules, and if so what disciplinary sanction(s) and/or remedies will be determined. The decision maker has the ability to speak with parties at their discretion should additional information be needed. The decision maker will, within 14 calendar days of receiving the investigation report, serve the respondent, complainant and Title IX coordinator with a proposed order, which includes a description of the facts and conclusions supporting the decision, as well as sanction(s). The time for serving this proposed order may be extended by the decision maker for good cause.~~

~~(2) The decision maker will be responsible for drafting the proposed order that:~~

~~(a) Identifies the allegations of sex discrimination;~~

~~(b) Describes the procedures of this policy and process, starting with Evergreen's receipt of the complaint through the proposed order, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and interviews held;~~

~~(c) Makes findings of fact supporting the proposed order;~~

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

~~(e) Contains a statement of, and a rationale for the determination of responsibility for each allegation;~~

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

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

~~(h) Describes the process for requesting an appeal hearing to the Title IX coordinator.~~

~~(3) The proposed order shall be served on the parties and the Title IX coordinator. If the case involves allegations of sex-based harassment, the proposed order shall be served on the parties and Title IX coordinator simultaneously.~~

~~(4) The complainant or respondent shall have 21 calendar days from service of the proposed order to either accept the proposed order or request an appeal hearing before the Title IX hearing panel. The request may be verbal or written but must be clearly communicated through the Title IX coordinator. Requests for appeal must identify the specific findings of fact and/or conclusions in the proposed order being challenged and must contain argument(s) as to why the appeal should be granted.~~

(5) Upon receiving a request for an appeal, the Title IX coordinator shall promptly notify the decision maker, the other party, party's advisors, and the appeal hearing chair of the request and forward a copy of the proposed order to the appeal hearing chair. The written appeal notice must:

- (a) Set forth the basis of Title IX jurisdiction;
  - (b) Identify the alleged Title IX violation(s);
  - (c) Set forth the facts underlying the allegation(s);
  - (d) Explain to the parties that they will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial appellate officer(s);
  - (e) Provide the proposed order which makes clear the rationale for the decision and sanctions;
  - (f) Explain that the parties are entitled to be accompanied by an advisor of their choosing during the hearing and that:
    - (i) Advisors will be responsible for questioning all witnesses and the other party on the party's behalf;
    - (ii) Advisors may be an attorney;
    - (iii) Evergreen will appoint the party an advisor of Evergreen's choosing at no cost to the party if the party does not choose an advisor;
  - (g) Explain that if a party fails to appear at the hearing, a decision on the appeal may be made in the party's absence;
  - (h) 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 and prior to the appeal hearing.
- (6) If no requests for an appeal hearing is provided to the Title IX coordinator within 21 calendar days, the decision maker's proposed order will be final and the disciplinary sanctions, if any, shall be implemented immediately.
- (7) Service of the final order or any other document required to be served under this procedure shall be done:
- (a) In person; or
  - (b) By first class or certified mail to the party's last known address and by electronic mail to the party's Evergreen email address.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-400 Appeal prehearing procedure.** (1) In cases where the proposed order and sanctions are not expulsion or suspension over 10 calendar days, parties will have their appeal hearing through a brief adjudicative proceeding, conducted by an appellate officer and in accordance with WAC 174-123-270 through 174-123-280. In cases where the proposed order and sanctions are expulsion or suspension over 10 days, parties will have their appeal hearing heard through a hearing panel in accordance to WAC 174-123-290 through 174-123-310. In all cases, the provisions and requirements of this supplemental Title IX student conduct procedures shall apply in addition to the rules for a brief adjudicative appeal and hearing panel identified above.

(2) Upon receiving the ((disciplinary notice)) proposed order and the request for an appeal, the ((hearing panel chair)) Title IX coordinator will send a hearing notice to all parties, in compliance with WAC ((174-123-290(3))) 174-123-390(5). In no event will the hearing date be set less than ((ten)) 10 days after the Title IX coordinator

provided the ~~((final investigation report))~~ proposed order to the parties. Evergreen may, at its discretion, contract with an administrative law judge or other qualified person to act as the hearing panel.

~~((2) A party may choose an advisor to be at the hearing with them. The advisor will be conducting the cross-examination of parties and witnesses. The full names and contact information for all advisors selected by the parties to appear at the hearing must be submitted to the hearing panel chair at least five days before the hearing.~~

~~(3) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the hearing panel chair, with copies to all parties and the student conduct official.~~

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

(3) Any party may make a written request for an extension of time and must do so no later than 48 hours before any date specified in the appeal notice. A party requesting an extension of time should provide a statement to the appellate officer, in writing, and provide rationale for the extension. Once received, the written request will be served by email to all parties. Any party may respond and object to the request for an extension of time no later than 24 hours after service of this written request. The appellate officer will make a determination to grant the extension of time if it shows good cause and will serve a written decision onto the parties and will include the reasons for granting or denying any request. The appellate officer's decision on an extension request will be final.

(4) Complainants and respondents may be accompanied by an advisor of their choice during the process at the party's own expense. The advisor may be an attorney. If a party does not select their own advisor, Evergreen will provide the party with an advisor at no cost to the party. If the advisor is an attorney, the advisor must file a notice of appearance with the Title IX coordinator, who will provide copies to all parties and the appellate officer(s) at least five calendar days before the hearing. If a notice of appearance is not filed within this time frame, the party will be deemed to have waived their right to have an attorney as an advisor.

(5) In preparation for the appeal hearing, ((the parties will have equal access to all)) Evergreen will provide parties with an accurate description of all relevant and not otherwise privileged evidence gathered by the investigator during the investigation, regardless of whether Evergreen intends to offer the evidence at the appeal hearing. All parties shall have an equal opportunity to access the evidence upon request.

(6) The appeal hearing may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the appellate officer(s) and parties to simultaneously see and hear the party or the witness while the person is speaking.

(7) The appellate officer may, upon written request of any party and showing good cause, extend the time for disclosure of witness and exhibit list, accessing and reviewing evidence, or the hearing date.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

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

(2) The college has the burden of offering and presenting sufficient ~~((testimony and))~~ evidence to establish that the respondent is responsible for ~~((a Title IX violation))~~ engaging in sex discrimination, sex-based harassment or retaliation related to or arising from such allegations by a preponderance of the evidence standard.

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

(4) ~~((During the hearing, each party shall be represented by advisors. The parties are entitled to advisors of their own choosing and the advisor may be an attorney. If a party does not choose a process advisor, then the Title IX coordinator will appoint a process advisor of the college's choosing on the party's behalf at no expense to the party.))~~ The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

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

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

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

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

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

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

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

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

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

~~(a) Spousal/domestic partner privilege;~~

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

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

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

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

~~(f) Other legal privileges identified in RCW 5.60.060.~~

~~(7) Recording of live hearing: The live hearing will be audio-recorded, and copies may be provided to the parties, upon written request.) Investigation and appeal hearings are subject to the following definitions, procedures, and restrictions:~~

(1) Relevant or relevance means a question or evidence is related to the allegations of sex discrimination at issue in the proceeding. 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 the appellate officer(s) in determining whether the alleged sex discrimination occurred.

(2) Impermissible evidence:

(a) Privileged information. The appellate officer(s) shall not consider legally privileged information unless the individual holding the privilege has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

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

(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, and other legal privileges identified in RCW 5.60.060.

(b) Prior sexual behavior. Question 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.

(3) The appellate officer(s) may not make an inference regarding responsibility solely on a witness or party's absence from the proceeding or refusal to answer questions.

(4) During the hearing, the appellate chair will work with the complainant and respondent to question the other parties.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

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

~~(a) Identifies the allegations of sexual harassment;~~

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

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

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

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

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

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

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

~~(2) The hearing panel chair will serve the initial order on the parties simultaneously.)~~ (1) In cases involving sex-based harassment, the complainant and the respondent may not directly question one another during the appeal hearing. The appellate officer(s) will determine whether questions will be submitted through the appellate chair or asked by the party's advisor.

(2) The appellate officer(s) may revise this process if, in the appellate officer's determination, the questioning by any party, advisor, or attorney becomes contentious or harassing.

(3) Prior to any question being posed to a party or witness, the appellate officer(s) 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. Any written copies will be retained for the record.

(4) The appellate officer(s) must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(5) The appellate officer(s) shall exclude and not consider legally privileged information, outlined in the evidence section of this policy, unless the individual holding the privilege has waived that privilege.

(6) The appellate officer(s) shall exclude and 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 are offered to prove consent.

(7) The appellate officer(s) may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions. The appellate officer(s) must not draw an inference about whether sex-based harassment occurred based solely on a party or witness's refusal to respond.

(8) At the conclusion of the appeal hearing, the appellate officer(s) will have 14 calendar days to make a written final decision. The final decision will include:

(a) Determining the grounds for appeal;

(b) Whether the decision of responsibility and/or sanctions in the proposed order is affirmed, vacated, or amended;

(c) If amended, set for the new disciplinary sanctions and conditions;

(d) Information on the ability to administratively appeal for a final appeal.

(9) The final decision shall be served on all parties and the Title IX coordinator. If a case involves sex-based harassment, the final

decision shall be served on the parties and the Title IX coordinator simultaneously.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-440 Final appeal((s)).** (1) The parties shall have the right to appeal (~~((from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint))~~) the final decision from the appellate officer(s). The parties may do so by filing a written notice of final appeal with the (~~(hearing panel chair)~~) Title IX coordinator within (~~(ten)~~) 10 calendar days of service of the (~~(student conduct official's, or hearing panel's decision)~~) final decision. Failure to timely file a notice of final appeal constitutes a waiver of the right to appeal and the decision shall be deemed final.

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

(2) The president or their designee will determine whether the grounds for final appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the (~~(initial order)~~) final decision are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

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

(4) The final decision will include information on the ability to judicially appeal to the Washington superior courts, pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.

**WSR 25-02-071**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-289—Filed December 23, 2024, 1:07 p.m., effective December 23, 2024, 1:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to prohibit the feeding of wildlife including deer, elk, and moose located in game management units (GMU) 124, 127, and 130.

Citation of Rules Affected by this Order: New WAC 220-440-26000A.

Statutory Authority for Adoption: RCW 77.04.012, 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: Chronic wasting disease (CWD) cases in the ungulate populations have been confirmed in Washington state. This emergency rule is part of the department of fish and wildlife's (department) broad effort to reduce the infection and spread of CWD in GMUs 124, 127, and 130. This is the second filing of an emergency rule to combat the spread of CWD that was originally filed on September 11, 2024, under WSR 24-19-046. It is filed in concert with several recent emergency rules filed by the department (see Order 24-162 filed on August 23, 2024, and Order 24-166 filed on August 26, 2024) to combat the spread of CWD. The department began permanent rule making on this topic under WSR 24-21-094 that was filed on October 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 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: December 20, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-440-26000B Prohibition of feeding wildlife** (1) Except as provided in subsection (3), it is an infraction under RCW 77.15.160 (6)(b) to place, deposit, distribute, or scatter feed including but not limited to grain, hay, minerals, salt, fruit, or other such substances or food types to feed, lure or attract deer, elk, or moose not



lawfully held in captivity in Game Management Units (GMU) 124, 127, and 130.

(2) This rule does not apply in the completion of any of the following agricultural practices:

(a) Cultivation, production, and harvest of crops including but not limited to, fruit, vegetable, hay, and grains;

(b) Animal husbandry related to the care and feeding of domestic livestock and poultry.

(3) The Director may authorize the feeding of deer, elk, or moose under the following conditions:

(a) Prevent damage to private property;

(b) Mitigate population loss anticipated by a predicted winter mortality;

(c) Support a WDFW research or management program.

**WSR 25-02-072**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-290—Filed December 23, 2024, 1:08 p.m., effective December 23, 2024, 1:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chronic wasting disease (CWD) is a fatal neurologic disease of cervids including deer, elk, moose, and caribou. It is caused by infectious proteins called prions that are transmitted directly from animal to animal or indirectly through environments. There is no cure or vaccine for CWD, and the disease is always fatal. It can only be confirmed through testing of an animal's lymph nodes or brainstem tissue. The purpose of the rule is to aid in sample collection, reduce the concentration of animals and reduce the likelihood of disease transmission through transportation of carcasses. The emergency rules also prohibit scents that could contain cervid urine or glandular tissue in the area surrounding the detection as these scents can contain the disease.

Citation of Rules Affected by this Order: Amending WAC 220-400-040, 220-413-030, 220-413-100, and 220-414-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

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: Recently, CWD cases have been confirmed in Washington state. As a result, testing for the disease and limiting the potential spread of the disease are now more important than ever. These emergency rules are intended to increase testing by making it mandatory to test salvaged and harvested animals in the area surrounding the detection. Also, to reduce the potential spread of the disease, emergency rules will prohibit the transportation of deer, elk, and moose from the region surrounding the detection area and prohibit baiting during hunting in the area near the detection. The effect of CWD is always fatal on cervids. This is a refile of an emergency rule that was originally filed on August 22, 2024, under WSR 24-18-017. The department of fish and wildlife began permanent rule making on this topic under WSR 24-21-094, which was filed with the code reviser on October 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 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 4, 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: December 20, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-400-04000B Possession of dead wildlife.** Effective August 22, 2024, and until further notice, notwithstanding the provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070, the salvage possession requirements of WAC 220-400-040 for deer, elk and moose are modified as contained herein. All other provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

In GMUs 124, 127, and 130 salvagers must submit the whole head with at least 3 inches of the neck attached or extracted lymph nodes to WDFW for chronic wasting disease sampling within 3 days of receiving a salvage permit.

NEW SECTION

**WAC 220-413-03000F Transportation, importation and retention of dead resident and nonresident wildlife** Effective August 22, 2024, and until further notice, notwithstanding the provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070, the transportation, importation, and retention requirements of WAC 220-413-030 for deer, elk and moose are modified as contained herein. All other provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful:

(a) To transport deer, elk, or moose, or parts thereof, taken from within 100 series GMUs in areas that require a Washington state hunting license, to other areas of Washington state, with the following exceptions:

(b) To import or possess meat that has been deboned in the state or province where it was harvested and is imported as boned-out meat, or meat that has been deboned within 100 series GMUs and is transported as boned-out meat to other areas of the state;

(2) It is unlawful for an importer or receiver of deer, elk, or moose to fail to notify the department within 24 hours if a state, province, tribe, or laboratory alerts the importer or receiver that a harvested animal has tested positive for chronic wasting disease. Violation of this subsection is an infraction punishable under RCW 77.15.160 Infractions.

NEW SECTION

**WAC 220-413-10000B Mandatory report of hunting activity** Effective September 1, 2024, and until further notice, notwithstanding the provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070, the hunting reporting requirements of WAC 220-413-100 for deer, elk and moose are modified as contained herein. All other provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

In GMUs 124, 127, and 130 successful deer, elk or moose hunters must present the whole head with at least 3 inches of the neck attached or extracted lymph nodes to WDFW for chronic wasting disease sampling within 3 days of harvesting.

NEW SECTION

**WAC 220-414-03000B Baiting for the purposes of hunting deer, moose or elk.** Effective September 1, 2024, and until further notice, notwithstanding the provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070, the baiting requirements of WAC 220-414-030 for deer, elk and moose are modified as contained herein. All other provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

In GMUs 124, 127, and 130, it is unlawful to hunt deer, elk or moose using:

(1) Any type of bait placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting deer or elk with the intent to hunt them.

(2) Natural or synthetic scents that contain or are derived from cervid urine and glandular extracts

**WSR 25-02-106**

**RESCISSION OF EMERGENCY RULES**

**HEALTH CARE AUTHORITY**

[Filed December 31, 2024, 9:59 a.m., Effective January 1, 2025]

Effective January 1, 2025, the health care authority requests withdrawal of emergency rule-making order filed as WSR 24-20-004, distributed in the 24-20 State Register. These emergency rules (filed under temporary numbers WAC 182-12-5110 and 182-12-5120) will no longer be necessary with the permanent rules, filed under WSR 24-18-080, taking effect on January 1, 2025.

Wendy Barcus  
Rules Coordinator

**WSR 25-02-107**

**RESCISSION OF EMERGENCY RULES**

**HEALTH CARE AUTHORITY**

[Filed December 31, 2024, 10:01 a.m., effective January 1, 2025]

Effective January 1, 2025, the health care authority requests withdrawal of emergency rule-making order filed as WSR 25-01-147, distributed in the 25-01 State Register. These emergency rules (filed under temporary number WAC 182-12-5200) will no longer be necessary with the permanent rules, filed under WSR 24-18-080, taking effect on January 1, 2025.

Wendy Barcus  
Rules Coordinator

**WSR 25-02-108**

**RESCISSION OF EMERGENCY RULES**

**HEALTH CARE AUTHORITY**

[Filed December 31, 2024, 10:04 a.m., effective January 1, 2025]

Effective January 1, 2025, the health care authority requests withdrawal of emergency rule-making order filed as WSR 24-21-107, distributed in the 24-21 State Register. These emergency rules (filed under temporary numbers WAC 182-30-5000 and 182-30-5010) will no longer be necessary with the permanent rules, filed under WSR 24-15-107, taking effect on January 1, 2025.

Wendy Barcus  
Rules Coordinator

## WSR 25-02-111

## EMERGENCY RULES

## HEALTH CARE AUTHORITY

[Filed December 31, 2024, 2:22 p.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: The state supplemental operating budget (section 211(34), chapter 376, Laws of 2024, (ESSB 5950)), included funding for the health care authority (HCA) to implement a birth doula benefit for apple health (medicaid) clients. HCA is developing new rules in chapter 182-533 WAC to accomplish this.

Citation of Rules Affected by this Order: New WAC 182-533-0610, 182-533-0620, 182-533-0630, 182-533-0640, 182-533-0650, 182-533-0660, 182-533-0665, 182-533-0670, and 182-533-0680.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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 implement reimbursement for birth doula services, effective January 1, 2025, while the permanent rule-making process is completed. Coverage for birth doula services is directed by section 211(34), chapter 376, Laws of 2024 (ESSB 5950), and is a critical step for improving access to doula care and addressing preventable poor maternal and infant outcomes.

HCA filed the CR-101 under WSR 24-10-016 on April 19, 2024, to begin the permanent rules process. HCA drafted the permanent rules, conducted an internal review, held two external partner meetings to gather feedback, and expects to send another draft of the rules out to external partners for review in January.

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 9, 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 9, Amended 0, Repealed 0.

Date Adopted: December 31, 2024.

Wendy Barcus  
Rules Coordinator

OTS-5879.4



**BIRTH DOULA SERVICES**NEW SECTION

**WAC 182-533-0610 Birth doula services—Purpose.** WAC 182-533-0610 through 182-533-0680 establish the medicaid agency's provider and documentation requirements and coverage and payment rules for birth doula services when provided to eligible apple health clients. Birth doula services improve and promote healthy pregnancy, birth, postpartum, and infant outcomes. A birth doula delivers services to eligible pregnant and post-pregnant people, their infants, and their families.

NEW SECTION

**WAC 182-533-0620 Birth doula services—Definitions.** The following definitions and those found in chapter 182-500 WAC apply to birth doula services.

**"Agency"** - See WAC 182-500-0010.

**"Birth doula"** - A nonmedical support person certified under chapter 246-835 WAC and trained to provide physical, emotional, and informational support to birthing persons, their infants, and their families.

**"Birth doula services"** - Preventive services, as defined by 42 C.F.R. 440.130(c), provided by a birth doula to pregnant and post-pregnant people, their infants, and their families. Services include advocating for and supporting the birthing person and their family to self-advocate by helping them to know their rights and make informed decisions.

**"Care coordination"** - Collaboration and communication between the client's birth doula provider and other medical or health and social services providers, including Indian health care providers, or both, to partner with and address the individual client's and family's needs.

**"Culturally congruent care"** - See WAC 246-835-010.

**"Department of health (DOH)"** - The state agency that works with others to protect and improve the health of all people in Washington state and which certifies the birth doula profession under chapter 246-835 WAC.

**"Health care record"** - See WAC 182-502-0020 for health care record requirements.

**"In person"** - The client and the provider are face-to-face in the same location.

**"Lived experience"** - Having first-hand knowledge and insight gained from navigating challenges similar to those faced by the people in the community. This can include shared experiences like cultural backgrounds, socioeconomic status, health conditions, or barriers accessing the health and social service systems.

"Medicaid agency" - See WAC 182-500-0070.

"Postpartum period" - The period lasting until the end of the 12th month after the pregnancy ends.

"Washington apple health" - See WAC 182-500-0120.

#### NEW SECTION

**WAC 182-533-0630 Birth doula services—Client eligibility.** To receive birth doula services, a client must:

- (1) Be eligible for one of the Washington apple health programs listed in the table in WAC 182-501-0060; and
- (2) Be within one of the following eligibility periods:
  - (a) During pregnancy;
  - (b) Birth, inclusive of any end of pregnancy outcome; or
  - (c) The postpartum period as defined in WAC 182-533-0620.

#### NEW SECTION

**WAC 182-533-0640 Birth doula services—Provider requirements.** To be eligible to provide birth doula services to Washington apple health clients, a birth doula must:

- (1) Be 18 years of age or older;
- (2) Be a resident of the state of Washington or a bordering city as specified in WAC 182-501-0175;
- (3) Possess current certification as a birth doula with the Washington state department of health under chapter 246-835 WAC;
- (4) Be enrolled as an eligible birth doula provider with the medicaid agency (see WAC 182-502-0010);
- (5) Meet the requirements in this chapter, chapter 182-502 WAC, and the billing and documentation requirements found in the agency's current birth doula services billing guide;
- (6) Meet the standards required by state and federal laws governing the privacy and security of personally identifying information;
- (7) Participate in care coordination activities throughout pregnancy and the postpartum period with the client's prenatal clinical care provider and, if applicable, their maternity support services (MSS) provider (see WAC 182-533-0310 through 182-533-0345);
- (8) Provide culturally congruent care to the client and client's family; and
- (9) Have lived experience that aligns with and provides a connection between the birth doula and the community being served.

#### NEW SECTION

**WAC 182-533-0650 Birth doula services—Documentation requirements.** (1) Providers must fulfill the documentation requirements found in WAC 182-502-0020 and the medicaid agency's current birth doula services billing guide.

(2) Each provider must maintain a client health care record for each client that states the services provided and justifies how those services support provider reimbursement.

(3) The following must be documented in the client's health record:

- (a) Consent to services to be signed at the initiation of care;
- (b) The date and time/duration of services and information substantiating the time/duration of services;
- (c) The nature of the care and service(s) provided;
- (d) Any coordination with medical or other care providers;
- (e) Any referrals and coordination efforts with community resources or community supports;
- (f) If screening is provided using a validated screening tool, the name of the tool, the score, and any communication following a positive screening including referrals to community resources, coordination with clinical team, etc.; and
- (g) The following required components of the prenatal intake visit:
  - (i) The date and time/duration of services, minimum two-hour visit;
  - (ii) A completed and signed consent for services form;
  - (iii) Provide an overview of the apple health birth doula benefit;
  - (iv) Co-design a plan of care across antepartum, delivery, and postpartum periods, as appropriate;
  - (v) Initiate discussion and implementation of birth plan or client/family preferences for care;
  - (vi) Support the client in establishing care as needed, including clinical pregnancy care, behavioral health services, dental services, etc. Coordinate with the managed care organization if needed to assist the client in accessing desired services, timely appointments, or any other care coordination or case management need;
  - (vii) Review the client's health history including any previous pregnancies, births, and loss of life;
  - (viii) Coordinate with medical providers regarding mental and emotional health screenings, and if appropriate, support symptom reduction through care navigation or peer support;
  - (ix) Review social determinants of health (SDOH) and other social-related health needs. Provide resources and support guided by client or family priorities; and
  - (x) Assess family and other relational support networks.

#### NEW SECTION

**WAC 182-533-0660 Birth doula services—Covered services.** (1) To be covered, birth doula services must:

- (a) Be preventive in nature according to 42 C.F.R. 440.130(c); and
  - (b) Provide physical, emotional, and informational support to pregnant, birthing, and postpartum people.
- (2) The medicaid agency covers the following birth doula services:

(a) One prenatal intake visit billed only once per client, per pregnancy. The visit must take place in person. Required components of the prenatal visit are listed in WAC 182-533-0650;

(b) Continuous labor and delivery support billed only once per client, per pregnancy. This must take place in person and be provided to one client at a time;

(c) One comprehensive postpartum visit per pregnancy; and

(d) Additional prenatal and postpartum visits per client, per pregnancy across the prenatal and postpartum periods.

(3) The agency determines the maximum number of units of services allowed per client when directed by the legislature to achieve targeted expenditure levels for payment of birth doula services for any specific biennium. The maximum number of units allowed per client is published in the agency's current birth doula services billing guide.

(4) The agency evaluates requests for authorization of covered services that exceed limitations on a case-by-case basis in accordance with WAC 182-501-0169.

(5) For birth doula services not allowed via telemedicine, see WAC 182-533-0680.

#### NEW SECTION

**WAC 182-533-0665 Birth doula services—Noncovered services.** Under this chapter, the medicaid agency does not cover the following services when provided by birth doulas:

(1) Childcare;

(2) Chore services including, but not limited to, shopping and cooking;

(3) Group services;

(4) Phone calls, text messages, and emails;

(5) Documentation time; and

(6) Travel time and mileage.

#### NEW SECTION

**WAC 182-533-0670 Birth doula services—Payment.** (1) The medicaid agency pays for the birth doula services described in WAC 182-533-0660 when they are:

(a) Provided to a client who meets the eligibility requirements in WAC 182-533-0630;

(b) Provided to a client during a face-to-face encounter, including audio-visual telemedicine (see WAC 182-533-0680);

(c) Provided and billed according to the agency's current birth doula services billing guide; and

(d) Documented in the client's health care record or chart per WAC 182-533-0650.

(2) The agency pays for:

(a) The prenatal intake visit at a flat rate with a minimum of two hours of one-to-one service delivered face-to-face;

(b) Labor and delivery support at a flat rate with one-to-one service delivered face-to-face; and

(c) Additional prenatal and postpartum visits per unit of time with one unit being equal to 15 minutes. Providers must bill for the direct service delivery at the minimum time equivalent.

(3) For clients enrolled in managed care or fee-for-service (FFS) who are eligible for birth doula services, the agency pays for covered birth doula services through FFS using the agency's published fee schedule.

(4) The agency uses the appropriate payment methodology found in WAC 182-531-1850 for birth doula services.

#### NEW SECTION

**WAC 182-533-0680 Birth doula services—Telemedicine.** The medic-aid agency pays for birth doula services provided via telemedicine according to WAC 182-501-0300 and the limitations in this section.

(1) The agency pays for birth doula services provided via telemedicine only when:

(a) The prenatal intake has been provided in person;

(b) The first visit with a new birth doula has been provided in person if the client changes their birth doula; and

(c) The servicing provider for the telemedicine service uses the same billing provider's national provider identifier (NPI) used to bill for the in-person prenatal intake visit.

(2) If the client changes their birth doula, the first visit with the new birth doula must be performed in person. The agency will not pay for the first visit via telemedicine. The change of birth doula must be documented in the birth doula's client health care record.

(3) The agency does not pay for the following birth doula services provided via telemedicine:

(a) The prenatal intake visit;

(b) The first visit with a new birth doula if the client changes their birth doula; and

(c) Labor and delivery support.

**WSR 25-02-112**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**

[Filed December 31, 2024, 3:04 p.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: The health care authority (agency) is developing rules under ESSB 5187, section 211(83), 68th legislature, 2023 regular session. This legislation directed the agency to implement a program that began on July 1, 2024, with coverage comparable to the categorically needy medicaid program for certain adults age 19 and older who: (a) Have an immigration status making them ineligible for medicaid or federal subsidies through the health benefit exchange; and (b) are not eligible for another full scope federally funded medical assistance program. These rules are filed as emergency rules under WSR 24-21-064, on October 11, 2024.

The amendments in the following two rule sections are also needed to support the previous mentioned rule making: WAC 182-501-0065(1) to add apple health expansion as one of the agency's service categories; and WAC 182-503-0535 (2)(e) to include apple health expansion as a program available to undocumented people.

The agency is also amending WAC 182-501-0065 (2)(t) to add birth doula services. This addition is necessary to support an unrelated, separate rule making filed under WSR 24-10-016 on April 19, 2024. Emergency rules are also filed under WSR 25-02-111, effective January 1, 2025.

Citation of Rules Affected by this Order: Amending WAC 182-501-0065 and 182-503-0535.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESSB 5187, section 211(83), 68th legislature, regular session.

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: These rules are necessary to support the implementation of the agency's apple health expansion program, as directed in ESSB 5187, to provide health care coverage for adults who qualify. The program took effect on July 1, 2024. The agency previously filed emergency rules under WSR 24-13-067 on June 14, 2024, and again on October 11, 2024, under WSR 24-21-064; these rules continue to be in effect. The amendments in the following two rule sections are also needed to support the implementation of the agency's apple health expansion program: WAC 182-501-0065(1) to add apple health expansion as one of the agency's service categories; and WAC 182-503-0535 (2)(e) to include apple health expansion as a program available to undocumented people.

Progress to complete the permanent rule-making process continues. The agency shared two versions of the other apple health expansion draft rules with interested parties in February and May of this year and received substantial comments on each of the drafts. After the agency filed the emergency rules, staff subsequently asked stakeholders to review and comment on a permanent enrollment process for the apple health expansion program. The agency has developed its permanent enrollment policy, based on stakeholders' input, and staff are con-

tinuing to prepare proposed rules that include the permanent enrollment process.

In addition to the rule revisions for the apple health expansion program, the agency is also amending WAC 182-501-0065 (2)(t) to add birth doula services. The permanent rule-making process for this revision is being conducted under an unrelated, separate rule making (WSR 24-10-016 on April 19, 2024). Emergency rules are also filed under WSR 25-02-111, effective January 1, 2025.

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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 31, 2024.

Wendy Barcus  
Rules Coordinator

## OTS-6057.2

AMENDATORY SECTION (Amending WSR 24-10-081, filed 4/30/24, effective 7/1/24)

**WAC 182-501-0065 Health care coverage—Description of service categories.** This rule provides a brief description of the medical, dental, mental health, and substance use disorder (SUD) service categories listed in the table in WAC 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For alternative benefits plan (ABP), categorically needy (CN), medically needy (MN), ~~((and))~~ medical care services (MCS), and apple health expansion, refer to the WAC citations listed in the following descriptions for specific details regarding each service category.

(2) The following service categories are subject to the exclusions, limitations, restrictions, and eligibility requirements contained in agency rules:

(a) **Ambulance** - Emergency medical transportation and ambulance transportation for nonemergency medical needs. (WAC 182-546-0001 through 182-546-4000.)

(b) **Applied behavior analysis (ABA)** - (Chapter 182-531A WAC.)

(c) **Behavioral health services** - (Chapter 182-538D WAC, Behavioral health services, WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services, and chapter 246-341 WAC, Behavioral health services administrative requirements.)

- (d) **Blood, blood products, and related services** - Blood and/or blood derivatives, including synthetic factors, plasma expanders, and their administration. (WAC 182-550-1400 and 182-550-1500.)
- (e) **Community behavioral health support services (CBHS)** - (Chapter 182-561 WAC.)
- (f) **Dental services** - Diagnosis and treatment of dental problems including emergency treatment and preventive care. (Chapters 182-535 and 182-535A WAC.)
- (g) **Diagnostic services** - Clinical testing and imaging services. (WAC 182-531-0100; WAC 182-550-1400 and 182-550-1500.)
- (h) **Early and periodic screening, diagnosis, and treatment (EPSDT)** - (Chapter 182-534 WAC and WAC 182-501-0050(10).)
- (i) **Enteral nutrition program** - Enteral nutrition products, equipment, and related supplies. (Chapter 182-554 WAC.)
- (j) **Habilitative services** - (Chapter 182-545 WAC.)
- (k) **Health care professional services** - The following services found in chapter 182-531 WAC:
- (i) Office visits and vaccinations;
  - (ii) Screening/brief intervention/referral to treatment (SBIRT), emergency room, and nursing facility services;
  - (iii) Home-based and hospital-based services;
  - (iv) Surgery, anesthesia, pathology, radiology, and laboratory services;
  - (v) Obstetric services;
  - (vi) Kidney dialysis and renal disease services;
  - (vii) Advanced registered nurse practitioner, naturopathy, osteopathy, podiatry, physiatry, and pulmonary/respiratory services; and
  - (viii) Allergen immunotherapy services.
- (l) **Health homes** - (Chapter 182-557 WAC.)
- (m) **Hearing evaluations** - The following services found in WAC 182-531-0375:
- (i) Audiology;
  - (ii) Diagnostic evaluations; and
  - (iii) Hearing exams and testing.
- (n) **Hearing aids** - (Chapter 182-547 WAC.)
- (o) **Home health services** - Intermittent, short-term skilled nursing care, occupational therapy, physical therapy, speech therapy, home infusion therapy, and health aide services, provided in the home. (WAC 182-551-2000 through 182-551-2220.)
- (p) **Home infusion therapy/parenteral nutrition program** - Supplies and equipment necessary for parenteral infusion of therapeutic agents. (Chapter 182-553 WAC.)
- (q) **Hospice services** - Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This benefit also includes services rendered in a hospice care center and pediatric palliative care services. (WAC 182-551-1210 through 182-551-1850.)
- (r) **Hospital services—Inpatient/outpatient** - Emergency room; hospital room and board (includes nursing care); inpatient services, supplies, equipment, and prescription drugs; surgery, anesthesia; diagnostic testing, laboratory work, blood/blood derivatives; radiation and imaging treatment and diagnostic services; and outpatient or day surgery, and obstetrical services. (Chapter 182-550 WAC.)



(s) **Intermediate care facility/services for persons with intellectual disabilities** - Habilitative training, health-related care, supervision, and residential care. (Chapter 388-835 WAC.)

(t) **Maternity care and delivery services** - Community health nurse visits, nutrition visits, behavioral health visits, midwife services, birth doula services, maternity and infant case management services, family planning services, and community health worker visits. ((WAC ~~182-533-0330~~) Chapter 182-533 WAC.)

(u) **Medical equipment, supplies, and appliances** - Medical equipment and appliances, including wheelchairs, hospital beds, respiratory equipment; casts, splints, crutches, trusses, and braces. Medical supplies, including antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, syringes, needles, and urological supplies. (Chapter 182-543 WAC.)

(v) **Medical nutrition therapy** - Outpatient medical nutrition therapy and associated follow-ups. (Chapter 182-555 WAC.)

(w) **Nursing facility services** - Nursing, therapies, dietary, and daily care services delivered in a licensed nursing facility. (Chapter 388-97 WAC.)

(x) **Organ transplants** - Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow and peripheral stem cell; skin grafts; and corneal transplants. (WAC 182-550-1900 and 182-556-0400.)

(y) **Orthodontic services** - (Chapter 182-535A WAC.)

(z) **Out-of-state services** - (WAC 182-502-0120.)

(aa) **Outpatient rehabilitation services (OT, PT, ST)** - Evaluations, assessments, and treatment. (WAC 182-545-200.)

(bb) **Personal care services** - Assistance with activities of daily living (e.g., bathing, dressing, eating, managing medications) and routine household chores (e.g., meal preparation, housework, essential shopping, transportation to medical services). (Chapters 388-106 and 388-845 WAC.)

(cc) **Prescription drugs** - Outpatient drugs (including in nursing facilities), both generic and brand name; drug devices and supplies; some over-the-counter drugs; oral, topical, injectable drugs; vaccines, immunizations, and biologicals; and family planning drugs, devices, and supplies. (WAC 182-530-2000.) Additional coverage for medications and prescriptions is addressed in specific program WAC sections.

(dd) **Private duty nursing** - Continuous skilled nursing services provided in a private residence, including client assessment, administration of treatment, and monitoring of medical equipment and client care. For benefits for clients age 17 and younger, see WAC 182-551-3000 through 182-551-3400. For benefits for clients age 18 and older, see WAC 388-106-1000 through 388-106-1055.

(ee) **Prosthetic/orthotic devices** - Artificial limbs and other external body parts; devices that prevent, support, or correct a physical deformity or malfunction. (WAC 182-543-5000.)

(ff) **Reproductive health services** - Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. (WAC 182-532-001 through 182-532-140.)

(gg) **Respiratory care (oxygen)** - All services, oxygen, equipment, and supplies related to respiratory care. (Chapter 182-552 WAC.)

(hh) **School-based health care services** - Early intervention services or special education health-related services provided in

schools to medicaid-eligible children ages birth through 20 who have an individualized education program (IEP) or individualized family service plan (IFSP). (Chapter 182-537 WAC.)

(ii) **Vision care** - Eye exams, refractions, fittings, visual field testing, vision therapy, ocular prosthetics, and surgery. (WAC 182-531-1000.)

(jj) **Vision hardware** - Frames and lenses. (Chapter 182-544 WAC.)

## OTS-6058.1

AMENDATORY SECTION (Amending WSR 24-22-006, filed 10/23/24, effective 11/23/24)

### **WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.**

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than 21 years of age. In that case, the child retains qualified alien status even after he or she turns 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan who, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021, is evaluated as a qualified alien until March 31, 2023, or the end of their parole term, whichever is later, when granted parole:

(A) Between July 31, 2021, and September 30, 2023; or

(B) After September 30, 2022, and is:

(I) Their spouse or child; or

(II) The parent or guardian of an unaccompanied minor described under this subsection.

(xiii) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA) and the Ukraine Security Supplemental Appropriations Act, 2024 (USSAA), is evaluated as a qualified alien until the end of their parole term when:

(A) Granted parole into the United States between February 24, 2022, and September 30, 2024; or

(B) Granted parole into the United States after September 30, 2024, and is:

(I) The spouse or child of a person described in (b) (xiii) (A) of this subsection; or

(II) The parent, legal guardian, or primary caregiver of a person described in (b) (xiii) (A) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(xiv) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than 21 years of age.

(xv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

- (i) Apple health for adults;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(d) A nonqualified alien may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(e) An undocumented person may be eligible for:

- (i) Alien medical programs;
- (ii) State-only funded apple health for kids; ((~~or~~))
- (iii) State-only funded apple health for pregnant women; or
- (iv) State-only funded apple health expansion.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through (xv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

**WSR 25-02-116**  
**EMERGENCY RULES**  
**BELLEVUE COLLEGE**

[Filed January 1, 2025, 4:01 p.m., effective January 1, 2025, 4:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On April 19, 2024, the United States Department of Education (department) released its final rule to fully effectuate Title IX's promise that no person experiences sex discrimination in federally funded education. Before issuing the proposed regulations, the department received feedback on its Title IX regulations, as amended in 2020, from a wide variety of stakeholders. The final regulations strengthen several major provisions from the current regulations and provide schools with information to meet their Title IX obligations while providing appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures. The final regulations also provide greater clarity regarding: The definition of "sex-based harassment"; the scope of sex discrimination, including schools' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; and schools' obligations to provide an educational environment free from discrimination based on sex. The final regulations are effective on August 1, 2024, and apply to complaints of sex discrimination regarding alleged conduct that occurs on or after that date. Existing policies and procedures will remain in place for complaints of alleged conduct that occurs prior to August 1, 2024.

Citation of Rules Affected by this Order: Amending WAC 132H-126-010, 132H-126-030, 132H-126-040, 132H-126-100, 132H-126-110, [132H-126-115,] 132H-126-120, 132H-126-130, 132H-126-150, 132H-126-160, 132H-126-170, 132H-126-200, 132H-126-210, 132H-126-300, 132H-126-310, 132H-126-320, 132H-126-330, 132H-126-340, 132H-126-400, 132H-126-410, 132H-126-420, 132H-126-430, 132H-126-440, 132H-126-470, and 132H-126-480.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140(13).

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: The final regulations strengthen several major provisions from the current regulations and provide schools with information to meet their Title IX obligations while providing appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures. The final regulations also provide greater clarity regarding: The definition of "sex-based harassment"; the scope of sex discrimination, including schools' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; and schools' obligations to provide an educational environment free from discrimination based on sex.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 24, 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 1, 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: December 31, 2024.

Loreen M. Keller  
Associate Director of Policy and Government Relations

## OTS-5664.1

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-010 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of Bellevue College the authority to administer student disciplinary action. Administration of the disciplinary procedures is the responsibility of the (~~provost for academic and~~) vice president of student affairs or designee and/or the designated student conduct officer. ((The)) Except in cases involving reports of sex discrimination, including sex-based harassment, a student conduct officer, or delegate, shall serve as the principal investigator and administrator for reported violations of this code.

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-030 Statement of jurisdiction.** (1) The student conduct code shall apply to conduct by students or student groups that occurs:

- (a) On college premises;
- (b) At or in connection with college-sponsored activities; or
- (c) Off-campus, if in the judgment of the college the conduct adversely affects 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 locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the Bellevue College's associated student government, athletic events, student groups, training internships, cooperative and distance education, online education, internships, practicums, supervised work experiences, (~~or~~) any other college-sanctioned social or club activities (~~and~~), or college-sponsored housing.

(3) 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.

(4) Students are responsible for their conduct from the time of application for admission through the last day of enrollment or actual (~~receipt~~) award of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(5) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(6) 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.

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-040 Definitions.** The following definitions shall apply for the purposes of this student conduct code:

(1) "**Business day**" means a weekday, excluding weekends and college holidays.

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

(3) "**College premises**" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, other property owned, used, or controlled by the college, study abroad program, retreat, and conference sites, and college-sponsored and/or college-hosted online platforms.

(4) "**Complainant**" (~~is a student or another member of the college community who is allegedly directly affected by a reported violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving a report of sexual misconduct as defined in this student conduct code, a complainant is afforded certain rights under 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; and~~

~~(c) The right to be accompanied by a process advisor.)) 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 reported discrimination.~~

(5) "**Conduct review officer**" is (~~the provost for academic and student affairs or designee or other~~) a college administrator designated by the president to be responsible for receiving and 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 responsi-

bilities, as set forth in this chapter, as may be reasonably necessary.)

(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 disciplinary action.

(7) **"Disciplinary appeal"** is the process by which an aggrieved ((student)) party can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings (BAP).

(8) **"Filing"** is ((the process by which)) how a document is officially delivered to a college official responsible for facilitating a disciplinary review. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. 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 first class mail)) to the specified college official's college email ((and office address)).

(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:

(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) **"Process advisor"** is a person selected by a respondent or a complainant to provide support and guidance during disciplinary proceedings under this student conduct code.

((+10)) (12) **"Program" or "programs and activities"** means all operations of the college.

(13) **"Relevant"** means related to the reports of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the reported sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the reported sex discrimination occurred.

(14) **"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.

(15) **"Respondent"** is a student against whom disciplinary action is initiated. ((Each respondent is 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;~~



~~(b) The right to be informed of all orders issued in the respondent's disciplinary case;~~

~~(c) The right to appeal a disciplinary decision; and~~

~~(d) The right to be accompanied by a process advisor.~~

~~(11))~~ (16) "Service" is the process by which a document is officially delivered to a party. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed (~~and deposited in the mail~~). 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~~) to the party's official college email.

~~((12) "Sexual misconduct" includes prohibited sexual or gender-based conduct by a student including, but not limited to, sexual harassment, sexual violence, sexual exploitation, indecent exposure, dating violence, or domestic violence.~~

~~(13))~~ (17) "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, graduate, or complete courses after the date of a reported violation, 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."~~) a "student" for purposes of this code.

~~((14))~~ (18) "Student conduct officer" is a college administrator designated by the president (~~or provost for academic and student affairs or designee~~) to be responsible for implementing and enforcing the student conduct code. (~~The president or provost for academic and student affairs or designee 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.~~

~~(15))~~ (19) "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 reported student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(20) "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.

~~((16) "The president" is the president of the college. The president is authorized to delegate any and all of their responsibilities, as set forth in this chapter, as may be reasonably necessary.)~~

(21) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to a 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.

(22) "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 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-100 Prohibited student conduct.** The college may impose disciplinary sanctions against a student or a college-sponsored student group who commits ~~((or))~~, attempts to commit, ~~((or))~~ aids, abets, incites, encourages, or assists another person to commit ~~((the following acts))~~ an act(s) of misconduct:

(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) **Abuse of the student conduct process.**

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

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

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

(4) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences, 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 consequences for academic dishonesty can be found in the course syllabus and any applicable program handbook.

(a) **Cheating.** Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) **Plagiarism.** Taking and using as one's own, without proper attribution, the ideas, writings, or work of another person or artificial intelligence 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.** Falsifying data, information, or citations in completing an academic assignment. Fabrication also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) ~~((Multiple submissions. Submitting the same work in separate courses without the express permission of the instructor(s).~~

~~(e))~~ **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.

(5) **Acts of dishonesty.** Acts of dishonesty 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 reasonable request or requirement of a college official or employee; or

(d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(6) **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.

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

(8) ~~((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.~~

~~(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; (~~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.

(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))~~ **(9) Disorderly conduct.** Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace.

~~((11))~~ **(10) Disruption or obstruction.** Disruption or obstruction of 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 any activity that is authorized to occur on college property, whether (~~or not~~) actually conducted or sponsored by the college.

~~((12))~~ **Domestic violence.** Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:

~~(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;~~

~~(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;~~

~~(c) Who shares a child in common with the victim; or~~

~~(d) Who commits acts 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.~~

~~(13))~~ **(11) Economic abuse.** In the context of domestic violence dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

~~((14))~~ **(12) 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.

~~((15))~~ **(13) Failure to comply with directive.** Failure to comply with the reasonable direction of a college official 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.

~~((16))~~ **(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))~~ context, and duration of the comments or actions.

~~((17))~~ **(15) 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 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.

~~((18))~~ **(16) 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))~~ way such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

~~((19))~~ **(17) Cannabis or other drugs.**

(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 under the influence of any prescription drug or possession of drug paraphernalia, 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.

~~((20))~~ **(18) 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 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 computer time or resources to interfere with someone else's work;

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

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

(g) Use of computer 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.

~~((21))~~ **(19) Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of college property or the property of another person. Property, for purposes of this subsection, also includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~((22))~~ **(20) Retaliation.** Harming, threatening, intimidating, coercing, or ~~((taking adverse action of any kind against a person because such person reported a violation of this code or college policy, provided information about a reported violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.~~

~~(23))~~ other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsi-

bilities, 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.

~~(21)~~ **Safety violations.** ~~((Safety violations include committing any))~~ Nonaccidental, reckless, or unsafe ((aet)) conduct that ((endangers others, failing to follow established safety procedures (e.g., failing to evacuate during a fire alarm), or interfering with or otherwise compromising any college equipment relating to the safety and security of the campus community including, but not limited to, tampering with fire safety or first-aid equipment, or)) 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.

~~((24))~~ **(22) Sexual exploitation.** Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other ~~((sexual misconduct))~~ sex-based harassment offenses described herein. Examples of sexual exploitation may include, but are not limited to:

- (a) Invading another person's sexual privacy;
- (b) Prostituting another person;
- (c) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;
- (d) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;
- (e) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;
- (f) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or
- (g) Causing the nonconsensual indecent exposure of another person, as defined by subsection ~~((18))~~ (16) of this section.

~~((25))~~ **Sexual harassment.** Unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual or gender-based nature that is sufficiently severe, persistent or pervasive as to:

- ~~(a) Deny or limit the ability of a student to participate in or benefit from the college's educational program;~~
- ~~(b) Alter the terms or conditions of employment; or~~
- ~~(c) Create an intimidating, hostile, or offensive environment for other campus community members.~~

For sexual harassment prohibited under Title IX, refer to WAC 132H-126-410.

~~(26)~~ **Sexual violence.** A type of sexual harassment that includes nonconsensual intercourse, nonconsensual sexual contact, and sexual coercion.

~~(a-))~~ **(23) Sex discrimination.** The term "sex discrimination" includes sex-based harassment and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them differently 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 and is prohibited.

(a) **Sex-based harassment.** 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.**

(A) **Nonconsensual sexual intercourse.** 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).** Any actual or attempted intentional 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, or sibling, brother or sister either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

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

(E) **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, or 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.** 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.** 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. Effective consent cannot result from force, ((~~or~~)) threat of physical force, coercion, dishonesty, or intimidation.

(ii) ((Physical force means someone is physically exerting control of another person through violence. Physical force includes, but is not limited to, hitting, kicking, and restraining.

(iii) Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.

(iv)) 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.

((~~v~~)) (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.

((~~b~~) **Nonconsensual sexual intercourse.** 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.

(c) **Nonconsensual sexual contact.** 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.

~~(d) **Sexual coercion.** Unreasonably pressuring another for sexual contact. When a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.~~

~~(e) **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.~~

~~(f) **Statutory rape.** Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.~~

~~(27) **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. 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.~~

~~(28)) (c) **Title IX retaliation.** 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 under this part, including during an informal resolution process, during a sex discrimination investigation, or during any disciplinary proceeding involving reports of sex discrimination.~~

~~(24) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.~~

~~((29)) (25) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products is prohibited 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. The use of tobacco, electronic cigarettes, and related products is prohibited in vehicles owned, leased, rented, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.~~

~~((30)) (26) **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 col-~~

lege property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

~~((31))~~ **(27) Unauthorized recording.** The following conduct is prohibited:

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

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

~~((32))~~ **(28) Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including ~~((on-campus))~~ college housing ~~((policies and college))~~, traffic, and parking rules.

~~((33))~~ **(29) Weapons.**

~~((a))~~ Possessing, holding, wearing, transporting, storing, or exhibiting 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:

~~((i))~~ **(a)** Commissioned law enforcement personnel ~~((; or (ii)))~~ or legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued concealed weapons permits may store their weapons in vehicles parked in accordance with RCW 9.41.050 on campus provided the vehicle is locked and the weapon is concealed from view.

(c) The president or delegate may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to any terms or conditions ~~((incorporated therein))~~ 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 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-110 Corrective action, disciplinary sanctions—**

**Terms and conditions.** (1) ~~((The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:))~~ One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college-sponsored student groups found responsible for violating the student conduct code.

(a) **~~((Disciplinary))~~ Warning.** A verbal or written statement to a student that ~~((they are violating or have violated the student conduct code))~~ there is a violation and that continuation of the same or similar behavior may result in more severe discipline. 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 ~~((the))~~ this student conduct code 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, which may include a deferred disciplinary sanction.

(i) Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(ii) 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.

(d) **Disciplinary suspension.** Separation from the college and from the student status for a stated period of time.

(i) There will be no refund of tuition or fees for the quarter in which the action is taken.

(ii) Conditions of suspension may be imposed and will be specified. Except as otherwise specified in the final order, all conditions must be fulfilled before the end of the suspension period. Failure to fulfill all conditions of suspension in a timely manner (~~will~~) may extend the suspension period and any conditions, and may result in additional disciplinary sanctions.

(iii) The college may put a conduct hold in place during the suspension period.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or college-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.

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

(a) **Education.** Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

(b) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(c) **No contact (~~order~~) directive.** (~~A prohibition of direct or indirect physical, verbal, electronic, and/or written contact with another individual or group.~~) 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.

(d) **Not in good standing.** A student found to be "not in good standing" with the college shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student (~~organization~~) group 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.

(e) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional.

(i) The student may choose the professional within the scope of practice and with the professional credentials as defined by the college.

(ii) The student will sign all necessary releases to allow the college access to any such evaluation.

(iii) 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.

(f) **Residence hall suspension.** Separation of the student from a residence hall or halls for a definite period of time, after which the student may be eligible to return. Conditions ((for reacceptance may be specified)) may be imposed before a student is permitted to return to a residence hall.

(g) **Residence hall dismissal.** Permanent separation of the student from a residence hall or halls.

(h) **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.

(i) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(3) More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

(4) 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 for readmission to the college.

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-115 Hazing prohibited—Sanctions.** (1) ~~((Hazing by a student or a student group is prohibited pursuant to WAC 132H-126-100(17)).~~

~~(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.~~

~~(3) Washington state law provides that:~~

~~(a)) 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.~~

~~((b))~~ (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.

~~((e))~~ (3) Any student group ~~((s))~~ 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.

~~((d))~~ (4) Student groups found responsible for violating the code of student conduct, college antihazing 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 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-120 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) Upon receipt, a 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) **(Student on student sexual misconduct.** The college's Title IX coordinator or designee shall investigate complaints or other reports of sexual misconduct by a student against a student.~~

~~(b) **Sexual misconduct involving an employee.** The college's human resource office or designee shall investigate complaints or other reports of sexual misconduct in which an employee is either the complainant or respondent.~~

~~((e)) **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. Reports involving employees, student 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.~~

~~((d))~~ (3) Investigations will be completed in a timely manner according to college procedures and the results of the investigation shall be referred to the student conduct officer for student disciplinary action.

~~((e)) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done in compliance with federal and state laws and without unreasonably risking~~

~~the health, safety, and welfare of the complainant or other members of the college community.~~

~~(3))~~ (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))~~ sex discrimination reports without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.

~~((4))~~ (5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

~~((a))~~ (6) Both the respondent and the complainant in cases involving ~~((allegations of sexual misconduct))~~ reports of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the ~~((initial))~~ disciplinary ~~((decision-making))~~ process and to appeal any disciplinary decision.

~~((b))~~ The student conduct officer, prior to initiating disciplinary action in cases 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.

~~(5))~~ (7) All disciplinary actions will be initiated by a student conduct officer. If that officer is the subject of a complaint initiated by the respondent or the complainant, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

~~((6))~~ (8) A student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. ~~((a))~~ The notice shall briefly describe the factual allegations, the provision(s) of the student conduct code the respondent is reported to have violated, the range of possible sanctions for the reported violation(s), and it will specify the time and location of the meeting.

~~((b))~~ (9) At the ~~((disciplinary))~~ meeting, the student conduct officer will present the allegations to the respondent ~~((r))~~ and the respondent shall be afforded an opportunity to explain what occurred. ~~((e))~~ If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

~~((7))~~ (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 the 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 ~~((if))~~ at the sole discretion of the student conduct officer ~~((, based on information presented at the disciplinary~~

~~meeting, concludes that additional investigation is necessary. If the period is extended, the student conduct officer will notify the respondent, and the complainant in cases involving allegations of sexual misconduct, of this extension, the reason(s), and the anticipated extension time frame)) 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.~~

~~((8))~~ (11) A student conduct officer may take any of the following disciplinary actions:

- (a) Exonerate the respondent and terminate the proceedings~~((7))~~;
- (b) Impose a disciplinary sanction(s), with or without condition(s), as described in WAC 132H-126-110 and 132H-126-115~~((7))~~; 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.

~~((9) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant of the decision, the reasons for the decision, and any disciplinary sanctions and/or conditions that may have been imposed upon the respondent, 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.))~~

(12) In cases involving reports 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 reported by the complainant would not constitute sex discrimination; or

(v) The conduct reported 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 sex discrimination resolution 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 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-130 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132H-126-120, the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within 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 officer. ((If a case involves allegations of sexual misconduct, a complainant also has a right to appeal a disciplinary decision or to intervene in the respondent's appeal of a disciplinary decision to the extent the disciplinary decision, sanctions or conditions relate to allegations of sexual misconduct against the respondent.))

(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) The student conduct committee shall hear appeals ((regard-  
ing)) from:

(a) ~~((The imposition of))~~ Disciplinary suspensions in excess of 10 instructional days ((or, for a student group, suspensions in excess of two academic quarters));

(b) ~~Dismissals ((or, for a student group, deprivation of recognition or approval granted by the college)); ((and))~~

(c) Sex discrimination, including sex-based harassment cases; and

(d) Discipline cases referred to the committee by ((the)) a student conduct officer, ((the)) a 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 conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Residence hall dismissals;

(b) Residence hall suspensions;

(c) Suspensions of 10 instructional days or less;

(d) Disciplinary probation;

(e) Written reprimands; and

(f) ~~((Sanctions against a student group, other than those set forth in subsection (7)(a) and (b) of this section;~~

~~(g)) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions((; and~~

~~(h) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:~~

~~(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or~~

~~(ii) Issues a verbal warning to the respondent.~~

~~(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary complaints are final actions 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 respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent)).~~

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-150 Amnesty policy.** (1) Bellevue College values the health, safety and wellness of those in our college community.

Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of helping another person seek medical or other emergency assistance, admits to a possible policy violation under this student conduct code, provided that any such violations did not and do not place the health or safety of any other person at risk.

(3) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of reporting violence, (~~sexual misconduct~~) sex discrimination, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the incident, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals, rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regard(~~s~~) to alcohol, drugs, or other prohibited conduct.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-160 Interim measures.** (1) After receiving a report of (~~sexual misconduct~~) sex discrimination or other serious student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

- (a) A no-contact order prohibiting direct or indirect contact, by any means, with a complainant, a respondent, a reporting party, other specified persons, and/or a specific student group or organization;
- (b) Reassignment of on-campus housing;
- (c) Changes to class schedules, assignments, or test schedules;
- (d) Modified on-campus employment schedule or location;
- (e) Restrictions on access to portions of campus including, but not limited to, on-campus housing; or
- (f) Alternative safety arrangements such as campus safety escorts.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. (~~The~~) A student conduct officer may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until (~~the~~) student receives notice they have been lifted or modified from (~~the~~) a student conduct officer.

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

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-170 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))~~ A student conduct officer may impose a summary suspension if there is reasonable basis to believe that the respondent:

- (a) Has violated a provision of the student conduct code; 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 notice 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 reportedly 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 their privilege to enter or remain on college premises has been withdrawn and that the respondent shall be ~~((considered to be))~~ trespassing and subject to arrest for criminal trespass if the respondent enters the college campus. The respondent may be authorized to access college premises for the limited purpose of meeting with the student conduct officer, the conduct review officer, or to attend a disciplinary hearing. All such meetings and hearings shall be confirmed in writing in advance and the respondent entering college premises shall be required to produce the written permission to a college official on request.

(5) ~~((The))~~ A 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 the 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))~~ reports 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.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-200 Brief adjudicative proceedings—((Initial))**

**Hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. 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 and the student conduct officer. Before ~~((taking action))~~ acting, the conduct review officer shall conduct an informal hearing and provide each party:

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

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

(3) The conduct review officer shall serve an initial decision upon the 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 ~~((twenty-one))~~ 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) ~~((If the matter is an appeal by the respondent, or the complainant in the case of sexual misconduct, the conduct review officer may affirm, reverse, or modify the disciplinary sanctions and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanctions or conditions as authorized herein. If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.~~

~~((5) 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 of the decision, the reasons for the decision, and a descrip-~~

~~tion of any disciplinary sanctions and/or conditions that may have been imposed upon the respondent. The notice will also inform the complainant of their appeal rights.)) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension 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 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-210 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 calendar 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 each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to determine whether the findings or 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, include a brief statement of the reasons for the decision and typically must be served on the parties within (~~twenty~~) 20 calendar days of the initial decision or 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 without a response from the president.

(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 dismissal, 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 of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the respondent. The notice will also inform the complainant of their appeal rights.))~~

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-300 Student conduct committee.** (1) The student conduct committee shall consist of six members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) Two administrative staff members, other than an administrator serving as a student conduct or conduct review officer, appointed by the president prior to the beginning of the academic year for alternating two-year terms.

(2) One of the administrative staff members shall serve as the chair of the committee and may ~~((take action))~~ act on preliminary hearing matters prior to convening the committee. ~~((The administrative staff members 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, one student, and one administrative staff member 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

~~((+))~~

- ~~(a) Are a complainant or witness;~~

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

- ~~(c) Have acted previously in an advisory capacity.~~

~~(5) Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4))~~ 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 the committee for disqualification of a committee member.

(5) For cases involving reports 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.

(6) In sex discrimination cases, the college may, in its sole and exclusive 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 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-310 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 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 reported 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 notice of discipline, or referral to the committee ~~((+))~~ and (b) the notice of appeal, or any response to referral, by the respondent or, in a case involving ~~((allegations of sexual misconduct))~~ reports of sex discrimination, the complainant. 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))~~ A student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant 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 necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) ~~((All parties))~~ Each party may be accompanied at the hearing by a process advisor of their choice, which may be an attorney retained at the party's expense.

~~((The respondent, in all appeals before the committee, and the complainant, in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own expense. The respondent and/or complainant will be deemed to have waived the right to be represented by an attorney 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.~~

~~(11))~~ 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 also be represented by ~~((a second, appropriately screened,))~~ an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least five 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 reports 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 reported 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;

(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 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-320 Student conduct committee—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 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 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 reports of (~~sexual misconduct~~) sex discrimination, the respondent and complainant shall not directly question or cross-examine one another (~~(. Attorneys for the respondent and complainant are also prohibited from directly questioning opposing parties absent express permission from the committee chair. Subject to this exception, all cross-examination questions by the respondent and complainant shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf. All cross-examination questions submitted to the chair in this manner shall be memorialized in writing and maintained as part of the hearing record.)~~) 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 witness by a party's attorney or advisor. The 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 repor-

ted conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the reported 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 reported 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 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-330 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))~~ 20 calendar days following the conclusion of the hearing or the committee's receipt of closing arguments, whichever is later, 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 be so identified and explained.

(3) The committee's ~~((initial order))~~ decision shall also include a determination on appropriate ~~((discipline))~~ sanctions, if any. If the matter was referred to the committee by ~~((the))~~ a student conduct officer, the committee shall identify and impose disciplinary sanctions or conditions, if any, as authorized in the student conduct code. If the matter is an appeal by ~~((the respondent or the complainant in the case of sexual misconduct))~~ a party, the committee may affirm, reverse, or modify the disciplinary sanctions and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanctions or conditions as authorized herein. The notice will also inform the respondent of their appeal rights.

(4) The committee chair shall cause copies of ~~((the initial))~~ its 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 will make arrangements to have a written notice served on the complainant informing the complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the respondent, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. This notice shall be served on the complainant on the same date as the initial decision is served on 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 other parties.)) attorney, if any. The notice will inform all 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 sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-340 Student conduct committee—Review of an initial decision.** (1) ~~((A respondent, or a complainant in a case involving allegations of sexual misconduct, who is aggrieved by the findings or conclusions issued by the student conduct committee may request a review of 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 or a written notice.)) 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 appeal request within this time frame 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. ((The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to those issues and arguments raised in the notice of appeal. As part of the review process, the president may ask the non-appealing party(ies) to respond to the arguments contained in the notice of appeal.~~

~~(3) The president shall provide a written decision to all parties within thirty days after receipt of the notice of appeal or receipt of the response from nonappealing parties, whichever is later. 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 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) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.) 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 Title IX coordinator.~~

~~(7) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.~~

**SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES FOR REPORTED INCIDENTS OCCURRING BEFORE AUGUST 1, 2024**

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-400 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment occurring before August 1, 2024, 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 132H-126-100 through 132H-126-340, these supplemental procedures shall take precedence. Bellevue 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.

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-410 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." These definitions apply to reported incidents occurring before August 1, 2024.

For purposes of this supplemental 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:

(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.

(4) **Domestic violence.** Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:

(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;

(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(c) Who shares a child in common with the victim; or

(d) Who commits acts against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) **Economic abuse.** In the context of domestic violence dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

(7) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

(8) **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 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-420 Title IX jurisdiction.** (1) This supplemental procedure applies only if the reported 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; and

(d) Before August 1, 2024.



(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 reported 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 ~~((e))~~ (d) 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 132H-126 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.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-430 Initiation of discipline.** These supplemental procedures apply to reported incidents occurring before August 1, 2024.

(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, the complainant, and their respective advisors. The notice must:

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

(b) Identify the reported 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 reported violation(s); and

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

(i) The advisors will be responsible for questioning all witnesses on their 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.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-440 Prehearing procedure.** These supplemental pre-hearing procedures apply to reported incidents occurring before August 1, 2024.

(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 132H-126-310. In no event will the hearing date be set less than (~~ten~~) 10 business 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 business 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.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-470 Initial order.** These supplemental procedures apply to reported incidents occurring before August 1, 2024.

(1) In addition to complying with WAC 132H-126-330, 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 education programs or activities; and

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

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

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-480 Appeals.** These supplemental procedures apply to reported incidents occurring before August 1, 2024.

(1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132H-126-340.

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

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

**WSR 25-02-122**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-285—Filed January 2, 2025, 10:12 a.m., effective January 2, 2025, 10:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule is needed to set recreational fishing closure dates for Grays Harbor and central coast tributaries.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000Q; and amending WAC 220-312-020.

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 will provide additional protection for wild steelhead stock by closing fisheries during the peak of wild steelhead migration. Although there has been a recent increase in coastal steelhead stocks, returns are still below long-term averages and a precautionary approach to steelhead management is necessary. The rules contained in this filing are expected to result in a reduction of wild steelhead encounters relative to permanent rules in place.

Enacting these rules follows an extensive public engagement process, which included a two-part virtual town hall series during fall 2024. Hundreds of people joined the Washington department of fish and wildlife (department) fishery managers during these virtual meetings, and many provided feedback on the department's coastal steelhead management web page through an online portal.

Tribal comanagers along the coast have also taken similar steps alongside the department to advance recovery of wild steelhead.

The department continues to operate under its statewide steelhead management plan, which requires the department to prioritize the sustainability of wild coastal steelhead runs by focusing on healthy levels of abundance, productivity, diversity, and distribution.

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: January 2, 2025.

Amy H. Windrope  
for Kelly Susewind  
Director

NEW SECTION**WAC 220-312-02000S Freshwater exceptions to statewide rules—**

**Coast.** Effective immediately, through April 30, 2025, the following provisions of WAC 220-312-020, regarding open fishing seasons, gear and hook restrictions, and trout retention for central coast and Grays Harbor tributaries shall be modified as described in the areas and during the time periods contained herein. All areas described as Closed Waters in WAC 220-312-020 remain Closed Waters. All other provisions of WAC 220-312-020 not addressed in the areas and during the time periods described herein, or unless otherwise amended by emergency rule, remain in effect:

**(1) Chehalis River (Grays Harbor Co.):**

(a) From the mouth upstream to the confluence of Skookumchuck River:

(i) Effective immediately, through February 28, 2025:

(A) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(B) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

(ii) Effective March 1 through April 15, 2025: Closed waters.

(b) From the confluence of Skookumchuck River upstream, including all forks: Effective immediately through April 15, 2025: Closed Waters.

**(2) Clearwater River (Jefferson Co.), from the mouth to Snahapish**

River:

(a) Effective immediately, through February 28, 2025:

(i) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(ii) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

(b) Effective March 1 through April 15, 2025: Closed waters.

**(3) Cloquallum Creek (Grays Harbor/Mason Co.):** Effective immediately, through February 28, 2025: Closed waters.

**(4) Copalis River (Grays Harbor Co.):** Effective immediately, through February 28, 2025:

(a) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(b) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

**(5) Elk Creek (Lewis/Pacific Co.):** Effective immediately, through March 31, 2025: Closed waters.

**(6) Elk River (Grays Harbor Co.):** Effective immediately, through February 28, 2025: Closed waters.

**(7) Hoquiam River including West Fork (Grays Harbor Co.):** Effective immediately, through February 28, 2025: Closed waters.

**(8) Hoquiam River, East Fork (Grays Harbor Co.):** Effective immediately, through February 28, 2025: Closed waters.

**(9) Humptulips River (Grays Harbor Co.):**

(a) From the mouth to Highway 101 Bridge including all channels, sloughs, and interconnected waterways:

(i) Effective immediately, through February 2, 2025:

(A) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(B) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

(ii) Effective February 3 through March 31, 2024: Closed waters.

(b) From Highway 101 Bridge to confluence of East and West forks: Effective immediately, through March 31, 2025: Closed waters.

**(10) Humptulips River, West Fork (Grays Harbor Co.):** Effective immediately, through March 31, 2025: Closed waters.

**(11) Johns River (Grays Harbor Co.):** Effective immediately, through February 28, 2025: Closed waters.

**(12) Moclips River (Grays Harbor Co.),** from the mouth to Quinault Indian Reservation boundary: Effective immediately, through February 28, 2025:

(a) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(b) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

**(13) Newaukum River, including South Fork (Lewis Co.):** Effective immediately, through March 31, 2025: Closed waters.

**(14) Newaukum River, Middle Fork (Lewis Co.):** Effective immediately, through March 31, 2025: Closed waters.

**(15) Newaukum River, North Fork (Lewis Co.):** Effective immediately, through March 31, 2025: Closed waters.

**(16) Quinault River (Grays Harbor/Jefferson Co.),** from the mouth at upper end of Quinault Lake upstream to Olympic National Park boundary:

(a) Effective immediately, through March 31, 2025:

(i) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(ii) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

(b) Effective April 1 through April 15, 2025: Closed waters.

**(17) Salmon River (Jefferson Co.):** Effective immediately, through February 28, 2025:

(a) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(b) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

**(18) Satsop River and East Fork (Grays Harbor Co.),** from mouth to Bingham Creek Dam:

(a) Effective immediately, through February 28, 2025:

(i) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(ii) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

(b) Effective March 1 through March 31, 2025: Closed waters.

**(19) Satsop River, Middle Fork (Grays Harbor Co.):** Effective immediately, through February 28, 2025: Closed waters.

**(20) Satsop River, West Fork (Grays Harbor Co.):** Effective immediately, through February 28, 2025: Closed waters.

**(21) Skookumchuck River (Lewis/Thurston Co.):** From mouth to 100' below outlet of TransAlta WDFW steelhead rearing pond located at the base of Skookumchuck Dam:

(a) Effective immediately, through February 28, 2025:

(i) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(ii) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

(b) Effective March 1 through April 30, 2025: Closed waters.

**(22) Stevens Creek (Grays Harbor Co.):**

(a) From the mouth to cable crossing downstream of WDFW hatchery outlet:

(i) Effective immediately, through February 2, 2025:

(A) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(B) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

(ii) Effective February 3 through March 31, 2024: Closed waters.

(b) From WDFW hatchery outlet to Highway 101 Bridge: Effective immediately, through March 31, 2025: Closed waters.

**(23) Van Winkle Creek (Grays Harbor Co.):** Effective immediately, through January 31, 2025: Closed waters.

**(24) Wishkah River (Grays Harbor Co.):** Effective immediately, through February 28, 2025: Closed waters.

**(25) Wynoochee River (Grays Harbor Co.):**

(a) From the mouth to 7400 Line Bridge:

(i) Effective immediately, through February 28, 2025:

(A) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(B) Trout: Statewide minimum size and daily limit, except cut-throat trout minimum size 14 inches. Release wild rainbow trout.

(ii) Effective March 1 through March 31, 2025: Closed waters.

(b) From 7400 Line Bridge upstream, effective immediately through March 31, 2025: Closed waters.

**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 220-312-02000Q Freshwater exceptions to statewide rules—Coast. (24-275)

**WSR 25-02-124**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed January 2, 2025, 10:38 a.m., effective January 2, 2025, 10:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making is to amend college in the high school rules in alignment with 2SSB 5048 (2023) that eliminated fees for students.

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

Citation of Rules Affected by this Order: Repealing WAC 392-725-325; and amending WAC 392-725-005, 392-725-015, 392-725-050, 392-725-225, 392-725-235, 392-725-250, and 392-725-300.

Statutory Authority for Adoption: RCW 28A.600.287; and 2SSB 5048 (chapter 314, 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 emergency rules are necessary to ensure students participating in college in the high school programs are not required to pay fees as provided in 2SSB 5048 during the 2023-24 school year.

OSPI will also conduct permanent rule making concerning college in the high school (chapter 392-725 WAC).

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 7, 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 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: January 2, 2025.

Chris P.S. Reykdal  
State Superintendent of Public Instruction

**OTS-4916.2**



AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

**WAC 392-725-005 Authority.** The authority for this chapter is RCW ((28A.600.290)) 28A.600.287, which authorizes the superintendent of public instruction to adopt rules governing RCW ((28A.600.290)) 28A.600.287, with the state board of community and technical colleges, the student achievement council, and the public baccalaureate institutions to jointly develop rules, and with the association of Washington school principals to be consulted. The rules set forth in this chapter have been jointly developed and agreed upon by the four organizations with the council of presidents representing the public baccalaureate institutions. The rules may be modified only by agreement of the superintendent of public instruction, state board of community and technical colleges, the student achievement council, and an organization representing the interest of the public baccalaureate institutions.

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

**WAC 392-725-015 Definitions.** The following definitions in this section apply throughout this chapter.

(1) **"College in the high school course"** means a dual credit course provided on a high school campus or in a high school environment in which an eligible student is given the opportunity to earn high school credit to be awarded by a district, charter school, or tribal compact school and college credit awarded by the participating institution of higher education by completing a college course with a passing grade. College in the high school courses may be either academic or career and technical (vocational) education.

(2) **"College in the high school program"** means the subset of dual credit courses meeting NACEP quality standards and provided on a high school campus or in a high school environment in which an eligible student is given the opportunity to earn high school credit to be awarded by a district, charter school, or tribal compact school and college credit awarded by the participating institution of higher education by completing a college course with a passing grade.

(3) **"Eligible student"** means any student who meets the following conditions:

(a) The student meets the definition of an enrolled student pursuant to WAC 392-121-106.

(b) The student under the grade placement policies of the district, charter school, or tribal compact school through which the high school credits will be awarded has been deemed to be a ((~~tenth, eleventh, or twelfth~~)) 9th, 10th, 11th, or 12th grade student.

(4) **"Participating institution of higher education"** means an institution of higher education that:

(a) A district, charter school, or tribal compact school has contracted with to provide the college in the high school program;

(b) Meets the definition in RCW 28B.10.016, is authorized or exempt under the requirements of chapter 28B.85 RCW, or is a public tribal college located in Washington as ((~~noted in RCW 28A.600.290~~)) (7)(a)) described in RCW 28A.600.287 (12)(c);

(c) Meets the college in the high school program standards outlined in WAC 392-725-130 through 392-725-170; and

(d) Is accredited by National Alliance of Concurrent Enrollment Partnerships or commits to the reporting of evidence requirement outlined in WAC 392-725-120.

(5) **"National Alliance of Concurrent Enrollment Partnerships"** is the professional organization that works to ensure that college in the high school courses are as rigorous as courses offered on the sponsoring college campuses. National Alliance of Concurrent Enrollment Partnerships (NACEP) has defined a set of quality standards that is the basis of their accreditation process.

(6) **"Council of presidents"** is defined throughout this chapter as the organization representing the interest of public baccalaureate institutions (~~(, specific to RCW 28A.600.290(6)).~~

~~(7) **"Fees."**~~

~~(a) **"College in the high school fees"** means the per credit or per course fee charged by the participating institution of higher education for the registration for the college course.~~

~~(i) The maximum college in the high school fee shall not exceed the college in the high school state-funded subsidies described in RCW 28A.600.290.~~

~~(ii) The college in the high school fee may be less than the college in the high school state-funded subsidies.~~

~~(iii) The institution of higher education must receive the corresponding fee for any student seeking to earn college credit from the college in the high school course in accordance with the general requirements identified in WAC 392-725-225 (2)(a) unless the student qualifies for the state-funded subsidies in accordance with WAC 392-725-325(4).~~

~~(b) **"Other associated college in the high school fees"** means additional fees required to fully participate in the college in the high school program charged by the participating institution of higher education such as registration fees and fees for consumables.~~

~~(8) **"College in the high school state-funded subsidies"** means the amount provided in the Omnibus Appropriations Act that pays the college in the high school fee for specific eligible eleventh or twelfth grade students pursuant to RCW 28A.600.290 (1)(b)(i) only and for the limited amount provided in WAC 392-725-325(2)).~~

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

**WAC 392-725-050 Local agreement requirement.** Prior to the start of the college in the high school program(s), a local agreement between the district, charter school, or tribal compact school and the participating institution of higher education must be developed and in place. The agreement shall be for no more than one school year, meet the district, charter school, or tribal compact school's board policies and the policies of the institution of higher education regarding contracting agreements, and address the following requirements:

(1) List of college in the high school courses.

(2) College in the high school student standards pursuant to WAC 392-725-130 will be met.

(3) College in the high school curriculum and assessment standards pursuant to WAC 392-725-140 will be met.

(4) College in the high school faculty standards pursuant to WAC 392-725-150 will be met.

(5) College in the high school evaluation standards pursuant to WAC 392-725-160 will be met.

(6) College in the high school partnership standards pursuant to WAC 392-725-170 will be met.

(7) Award of high school credits pursuant to WAC 392-725-200 will be met.

(8) District, charter school, or tribal compact school's responsibilities for offering college in the high school program.

~~(9) ((Institution of higher education's fee amount per college credit or per college course and a description and amount of other associated college in the high school fees.~~

~~(10))~~ Course materials including, but not limited to, textbooks for each college in the high school course, and which party will be responsible to provide.

~~((11))~~ (10) Provide an explanation of how any compensation paid to the instructor for work performed beyond their contract with the district, charter school, or tribal compact school will be calculated and provide details of what duties the compensation represents.

~~((12) Method and collection of college in the high school fee and other associated college in the high school fees.~~

~~(13))~~ (11) Districts, charter schools, tribal compact schools, and institutions of higher education shall as necessary assure compliance with their respective duties under federal and state law.

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

**WAC 392-725-225 College in the high school general requirements.**

(1) Participating districts, charter schools, or tribal compact schools must provide general information about the college in the high school program to all students in grades ~~((nine))~~ eight through ~~((twelve))~~ 12 and to the parents and guardians of those students.

(2) The enrollment of a student who meets the definition of WAC 392-725-015(2) in the college in the high school program shall be governed as follows:

(a) An eligible student seeking to earn college credit is responsible for enrolling into an institution of higher education on or before the deadline established by the institution of higher education.

(b) An eligible student is entitled to enroll in an institution of higher education for college in the high school program purposes subject to each of the following conditions and limitations:

(i) Enrollment is limited to college courses.

(ii) Prior confirmation pursuant to WAC 392-725-200 by the district, charter school, or tribal compact school of the amount of high school credit to be awarded for a college in the high school course on or before the deadline for enrollment established by the institution of higher education.

(iii) Acceptance of the student by the institution of higher education subject to enrollment requirements and limitations established by the institution.

AMENDATORY SECTION (Amending WSR 17-21-001, filed 10/5/17, effective 11/5/17)

**WAC 392-725-235 Co-delivery of college in the high school courses.** (1) In cases where a college in the high school course is co-delivered with another dual credit course, such as career and technical education dual credit, advanced placement, international baccalaureate, or Cambridge international, the participating institution of higher education, in coordination with the institution's academic department, shall assess curriculum alignment and approve the option to provide a co-delivered course.

(2) In cases where a college in the high school course is co-delivered with another dual credit course, the high school transcript shall reflect the co-delivered courses as follows:

(a) The course title as listed on the high school transcript shall begin with the institute of higher education's curriculum and course number, as described in the office of superintendent of public instruction CEDARS manual.

(b) Any additional course title description for a co-delivered college in the high school course title shall be included pursuant to WAC 392-415-070.

Official course abbreviations for career and technical education dual credit, advanced placement, international baccalaureate and Cambridge international shall be included on the high school transcript as listed in appendix Q of the office of superintendent of public instruction CEDARS manual.

(c) For approved co-delivered courses, as provided in subsection (1) of this section, the high school transcript course title and course designators may reflect two dual credit programs in cases where students have met any required prerequisites or other entrance requirements for both programs.

(3) Students choosing to enroll in a co-delivered college in the high school course for the purpose of earning college credit must meet the college in the high school enrollment requirements outlined in WAC 392-725-225(2).

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

**WAC 392-725-250 Transferability of college credit.** (1) College in the high school programs may include both academic and career and technical education. The college credit shall be applied at institutions of higher education (~~toward:~~

~~(a) General education requirements; or~~

~~(b))~~ as appropriate and applicable to the student's degree requirements.

(2) A college in the high school course has the same transferability as its equivalent course on the college campus. Some courses including career and technical education courses may not meet specific general education and/or degree requirements.

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

**WAC 392-725-300 Finance.** (~~((1))~~) Districts, charter schools, and tribal compact schools claim the college in the high school courses for basic education funding based on the course's average enrolled weekly minutes pursuant to WAC 392-121-122. Courses that qualify for vocational enhanced funding can be claimed pursuant to WAC 392-121-138.

~~((2) The participating institution of higher education receives college in the high school fees as defined in WAC 392-725-015 (7)(a) and other associated college in the high school fees for eligible students as defined in WAC 392-725-015 (7)(b). The amount and method of collection of these fees shall be outlined in local agreement.~~

~~(3) For college in the high school courses that qualify for state funded subsidies as defined in WAC 392-725-015(8) and based on the per student limitations provided in WAC 392-725-325(2), these subsidies are provided in lieu of college in the high school fees as defined in WAC 392-725-015 (7)(a).)~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-725-325      College in the high school state funded subsidies.

**WSR 25-02-125**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed January 2, 2025, 10:38 a.m., effective January 2, 2025, 10:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making is to expand access to running start in alignment with 2SHB 1316 (2023). The rules provide for funding, reporting, and administration of participating students' enrollment in running start courses.

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

Citation of Rules Affected by this Order: Repealing WAC 392-169-057; and amending WAC 392-121-123, 392-121-136, 392-169-015, 392-169-020, 392-169-022, 392-169-025, 392-169-045, 392-169-055, and 392-169-115.

Statutory Authority for Adoption: 2SHB 1316 (chapter 350, Laws of 2023); RCW 28A.600.390 and 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 ensure eligible students can participate in running start at enrollment levels provided for in 2SHB 1316. Emergency rules are needed to ensure requirements for student enrollment calculations, reporting, and program administration are effective by the beginning of the 2023-24 [2025-26] school year.

OSPI will also conduct permanent rule making concerning running start.

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 9, 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 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: January 2, 2025.

Chris P.S. Reykdal  
State Superintendent of Public Instruction

**OTS-4904.1**

AMENDATORY SECTION (Amending WSR 23-13-089, filed 6/16/23, effective 7/1/23)

**WAC 392-121-123 Nonstandard school year programs.** Except for running start, a student participating in a program of education occurring during the nonstandard school year on a tuition-free basis may be claimed for state funding to the extent that the student was not claimed as a 1.0 AAFTE during the regular school year (September through June), subject to the following:

(1) Eligible student FTE in a nonstandard school year program shall be claimed based upon the following:

(a) Enrolled hours based upon the standards in WAC 392-121-122 or 392-121-182.

(b) Credit based for student enrolled in a college program under WAC 392-121-188.

(c) A student enrolled in transition school is not eligible for nonstandard school year funding.

(2) A district or charter school shall make month by month evaluation of the student to determine if the following conditions were met during the regular school year:

(a) The student was not home schooled or enrolled in a private school.

(b) The student was not claimed as a 1.0 FTE in a regular or institution education program.

(3) For each month in which the conditions of subsection (2) of this section are met, the district or charter school shall determine the amount of student FTE claimed for the student. To the extent the enrollment claimed is less than 1.0 FTE for each month, the school district or charter school may claim nonstandard school year FTE based upon the student enrollment in the nonstandard school year school program.

(4) For the running start program only, a student may be claimed up to 1.40 AAFTE for their running start enrollment.

#### OTS-4903.1

AMENDATORY SECTION (Amending WSR 22-15-119, filed 7/20/22, effective 8/20/22)

**WAC 392-121-136 Limitation on enrollment counts.** Enrollment counts under WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts or charter schools operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the aggregate of enrolled hours based upon the fourth day of each summer session.

(i) Prior to the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(ii) Beginning with the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 1,000 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments and is limited to an overall maximum (~~(1.8)~~) 2.0 FTE.

(c) Subject to (b) of this subsection:

(i) A student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student.

(ii) A student enrolled in running start during the regular school year may be claimed for up to a combined (~~(1.2)~~) 1.4 full-time equivalent student.

(iii) A student enrolled in high school and skills center for more than 1.0 FTE, can be claimed for a (~~(0.2)~~) 0.4 running start FTE.

(iv) A student enrolled in an institutional education program under WAC 392-122-205 and a youth engagement program under chapter 392-700 WAC can be claimed up to a combined 2.0 FTE.

(v) Each student may be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment, a maximum of a (~~(1.0)~~) 1.40 full-time equivalent for running start, a maximum of a 1.0 full-time equivalent for the student's high school enrollment, and a maximum of a 1.0 full-time equivalent for institutional education funding under WAC 392-122-225 subject to the overall combined FTE limitation in (b) of this subsection.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old pre-school student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as part-time by a state institution educational program on Form SPI E-672 shall not be reported by a school district or charter school for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts or charter schools for basic education and on Form SPI E-672 must not exceed one full-time equivalent, except if the student is enrolled in a youth reengagement program under chapter 392-700 WAC.

(6) Districts and charter schools providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim for an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.



## OTS-4902.1

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

**WAC 392-169-015 Running start program—Definition.** As used in this chapter, the terms "running start" and "running start program" mean the part-time to full-time equivalent enrollment under this chapter of eligible (~~(eleventh and twelfth)~~) 11th and 12th grade high school students, as defined under this chapter, in an institution of higher education for the purpose of earning at least high school credit to be awarded by a school district, and such additional college level or university level credit as may be awarded by the institution of higher education. A running start program's course must be open for registration to matriculated students at the participating institution of higher education and may not be a course consisting solely of high school students in a high school classroom.

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

**WAC 392-169-020 Eligible student—Definition.** As used in this chapter, the term "eligible student" means any person, including a person who is otherwise attending a private school or receiving home-based instruction, who meets each of the following conditions:

- (1) The person is under the age of (~~(twenty-one)~~) 21 years of age as of September 1<sup>st</sup> of the school year.
- (2) The person is eligible by reason of his or her residence or other criterion established by law to enroll in the school district through which the person seeks to obtain the award of running start program high school credit. See RCW 28A.225.160 (residents of a school district), RCW 28A.225.170 (residents of the United States and Indian Reservations), RCW 28A.225.210 (residents of "nonhigh" school districts), and RCW 28A.225.220 ("choice" students). Note: A running start student who changes his or her school district of residence, including after a rescindment of a choice transfer agreement following enrollment in running start, solely for the purpose of attending an institution of higher education under this chapter shall be deemed to have retained his or her residence in the school district of initial running start enrollment for high school graduation, funding and other purposes under this chapter.
- (3) The person is eligible to be in the 11th or 12th grade under the grade placement policies of the school district through which the person seeks to obtain running start program high school credit (~~(to be in the eleventh or the twelfth grade)~~). For the summer term, eligibility is established when the person has completed the 10th grade at the end of the standard school year or will be eligible to enroll in the 11th or 12th grade in the upcoming school year based upon district grade placement policies.
- (4) The person has not as of the beginning of the school year earned the credits required for the award of a high school diploma by the school district through which the person seeks to obtain the award of running start program high school credit.

(5) The person has not as of the beginning of the school year received a high school diploma or its equivalent. Note: A general education development certificate is not considered to be the equivalent of a high school diploma for purposes of this subsection.

(6) The person's running start program enrollment to date is below the applicable (~~eleventh or twelfth~~) 11th or 12th grade running start enrollment limitations established under WAC 392-169-055.

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

**WAC 392-169-022 Running start student—Definition.** For the purposes of this chapter and chapter 392-121 WAC, the term "running start student" means an eligible student:

(1) Who is enrolled in the running start program in accordance with this chapter;

(2) Whose enrollment has not been suspended or terminated by withdrawal, transfer, suspension or expulsion; and

(3) Who has participated in one or more instructional activities conducted by college or university staff (e.g., classroom or laboratory instruction, course work testing, post enrollment/registration academic counseling, and similar other instructional activities) on at least one college or university day during the current (~~quarter or semester~~) term since the last enrollment count date.

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

**WAC 392-169-025 Full-time equivalent (FTE) running start enrollment—Definition.** For the purposes of this chapter and chapter 392-121 WAC, "full-time equivalent (FTE) running start enrollment" (i.e., college or university enrollment) means the FTE of running start students on an enrollment count date when each student's FTE is determined subject to the limitations of WAC 392-169-022, 392-169-055 and 392-169-115 as follows:

(~~(1)~~) FTE for running start enrollment is the result of dividing a student's enrolled college credits by (~~fifteen~~) 15. For Washington State University classes offered at the college campus only, the FTE for running start enrollment is the result of dividing a student's enrolled college semester credits by (~~fifteen~~) 15.

(~~(2)~~ The sum of the results of running start enrollment under subsection (1) of this section at all colleges shall not exceed 1.00 FTE per student on any count day except for the month of January or 1.00 annual average FTE in any school year.)

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

**WAC 392-169-045 Enrollment—General requirements and conditions.**

The enrollment of an eligible student in the running start program shall be governed as follows:

(1) An eligible student is responsible for applying for and pursuing admission to an institution of higher education on or before the deadline for enrollment established by the college or university.

(2) It shall not be necessary for an eligible student to obtain a release of attendance from (~~his or her~~) their resident school district or school in order for the student to enroll in an institution of higher education.

(3) An eligible student is entitled to enroll in an institution of higher education for running start program purposes subject to each of the following conditions and limitations:

(a) Enrollment is limited to college and university level courses.

(b) Prior confirmation pursuant to WAC 392-169-050 by the school district through which the student seeks to obtain the award of running start program high school credit of the amount of high school credit to be awarded on or before the deadline for enrollment established by the institution of higher education.

(c) Acceptance of the student by the institution of higher education subject to generally applicable admission and enrollment requirements and limitations established by the institution, including a determination that the student is competent to profit from the college or university level course(s) the student seeks to enroll in: Provided, That a technical college shall not deny admission or continued attendance to a person under (~~twenty-two~~) 22 years of age with a disability based upon impaired competency or the creation of a disruptive atmosphere associated with the person's disability.

(d) The limitations upon the duration and extent of institution of higher education course enrollment set forth in WAC 392-169-055 and 392-169-057.

AMENDATORY SECTION (Amending WSR 23-13-089, filed 6/16/23, effective 7/1/23)

**WAC 392-169-055 Enrollment—Extent and duration of running start enrollment.** Running start program enrollment under this chapter is limited as follows (~~((and as may be further limited for academic reasons under WAC 392-169-057))~~):

(1) An eligible student who enrolls upon completion of grade 10 after the end of the regular school year may enroll in an institution of higher education for no more than the course work equivalent to 10 postsecondary credits in the summer term prior to enrolling in grade 11.

(2) An eligible student who enrolls in grade 11 may enroll in an institution of higher education while in the 11th grade for (~~no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student.~~

~~(2)) a maximum 1.40 AAFTE or 63 postsecondary credits, depending on the student's concurrent enrollment in high school and/or skill center courses, subject to the AAFTE limitation under WAC 392-121-136.~~

~~(3) An eligible student who enrolls in grade 12 may enroll in an institution of higher education while in the 12th grade for (no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student.~~

~~(3) As a general rule)) a maximum 1.40 AAFTE or 63 postsecondary credits, depending on the student's concurrent enrollment in high school and/or skill center courses, subject to the AAFTE limitation under WAC 392-121-136.~~

~~(4) An eligible student who enrolls in summer term must have the capacity under the AAFTE limits established in subsections (2) and (3) of this section and may enroll for no more than the course work equivalent of 10 postsecondary credits.~~

~~(5) Even when a student does not enroll at the postsecondary level to the full extent permitted by subsections (1) through (4) of this section, a student's eligibility for running start program enrollment terminates at the end of the ((student's 12th grade regular academic year, notwithstanding the student's failure to have enrolled in an institution of higher education to the full extent permitted by subsections (1) and (2) of this section: Provided, That a student who has failed to meet high school graduation requirements as of the end of the student's 12th grade regular academic year (September through June) due to the student's absence, the student's failure of one or more courses, or another similar reason may continue running start program enrollment for the sole and exclusive purpose of completing the particular course or courses required to meet high school graduation requirements, subject to the enrollment limitation established by subsection (2)) academic year in which a student meets the district's graduation requirements. Students who have not yet met high school graduation requirements as of the end of the 12th grade standard school year would be eligible to enroll in the summer college term, provided they have capacity under the 1.40 AAFTE limitation. Students who have not met running start enrollment limits may continue running start program enrollment into a second 12th grade year due to the student's absence, inability to complete all required courses, or another similar reason for the sole and exclusive purpose of completing the particular course(s) required to meet the district's high school graduation requirements, subject to the enrollment limitation established by subsection (3) of this section.~~

AMENDATORY SECTION (Amending WSR 13-02-006, filed 12/19/12, effective 1/19/13)

**WAC 392-169-115 Finance—Limitations on enrollment counts.** ~~((No running start student enrolled in one or more institutions of higher education reported under WAC 392-169-105 and 392-169-110 shall exceed one full-time equivalent running start student on any enrollment count date except for the month of January or more than one annual average full-time equivalent student in any school year. An exception is allowed for January when the change in high school semesters may result in students exceeding the FTE limitation until the high school begins a new term.))~~ A student enrolled in both high school and running start

may be claimed for a maximum of 1.40 combined monthly FTE and a maximum of 1.40 AAFTE. The high school may only claim a maximum of 1.00 FTE and AAFTE. A student whose enrollment is reported under WAC 392-169-105 and 392-169-110 may be claimed up to a 1.40 monthly FTE on any enrollment count date, except for July and August. No student may be claimed for more than 1.40 AAFTE in any school year. An exception is allowed for December and January when the high school term overlaps with the institution of higher education term but may result in a reduction of the available FTE for the spring term. District business offices or high schools will complete the spring quarter eligibility adjustment form for any student who was claimed for more than a 1.40 FTE in December or January to determine if the student's available FTE for the spring term will be reduced.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-169-057            Enrollment—Extent of combined high school and running start enrollment.