

WSR 21-07-024

PROPOSED RULES

GRAYS HARBOR COLLEGE

[Filed March 8, 2021, 1:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-090.

Title of Rule and Other Identifying Information: Repeal chapter 132B-120 WAC. Revising student conduct code and making emergency rules for new Title IX regulations into permanent rules. Adding new chapter to Title 132B WAC.

Hearing Location(s): On April 27, 2021, at 12:00 p.m., online via Zoom, <https://ghc.zoom.us/j/82234139332>.

Date of Intended Adoption: April 28, 2021.

Submit Written Comments to: Richard Arquette, 1620 Edward P. Smith Drive, Aberdeen, WA 98520, email richard.arquette@ghc.edu, by April 22, 2021, at 5 p.m. PST.

Assistance for Persons with Disabilities: Rhonda Riggs, phone 360-538-4099, email Rhonda.riggs@ghc.edu, by April 22, by 5 p.m. PST.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating the student conduct code and complying with Title IX regulations.

Reasons Supporting Proposal: Updating the student conduct code to current practices and updating Title IX regulations in compliance with the updated United States Department of Education Title IX policies.

Statutory Authority for Adoption: RCW 28B.50.130.

Rule is necessary because of federal law, Federal Register printed amendments to Title IX regulations (85 F.R. 30575).

Name of Proponent: Grays Harbor College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Richard Arquette, 1620 Edward P. Smith Drive, Aberdeen, WA 98520, 360-538-4078.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. There is not financial impact of these changes.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Federal Register printed amendments to Title IX regulations (85 F.R. 30575). This policy specifically impacts current WAC 132B-120-300, 132B-120-305, 132B-120-310, and 132B-120-315.

March 8, 2021

Darin Jones

Human Resources Chief

OTS-2751.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132B-120-010	Definitions.
WAC 132B-120-020	Statement of policy and community philosophy.
WAC 132B-120-030	Jurisdiction.
WAC 132B-120-035	Interpretations.
WAC 132B-120-040	Authority.
WAC 132B-120-045	Loss of eligibility—Student athletic participation.
WAC 132B-120-055	Trespass.
WAC 132B-120-065	Student rights.
WAC 132B-120-075	Student responsibilities.
WAC 132B-120-085	Groups and organizations.
WAC 132B-120-120	Disciplinary process.
WAC 132B-120-130	Sanctions.
WAC 132B-120-135	Summary suspension.
WAC 132B-120-143	Brief adjudicative proceedings—Review of an initial decision.
WAC 132B-120-145	Brief adjudicative proceedings—Review of an initial decision.
WAC 132B-120-155	Appeal from disciplinary action.
WAC 132B-120-170	Student conduct committee.
WAC 132B-120-180	Student conduct committee procedures.
WAC 132B-120-181	Student conduct appeals committee hearings—Presentations of evidence.
WAC 132B-120-185	Student conduct committee—Initial decision.
WAC 132B-120-190	Appeal from student conduct committee's initial decision.
WAC 132B-120-200	Reporting, recording and maintaining records.
WAC 132B-120-210	Hazing sanctions.
WAC 132B-120-220	Student complaint, grievance and grade appeal processes.
WAC 132B-120-300	Supplemental sexual misconduct procedures.
WAC 132B-120-305	Supplemental definitions.
WAC 132B-120-310	Supplemental complaint process (sexual misconduct).
WAC 132B-120-315	Supplemental appeal rights.

OTS-2752.1

**Chapter 132B-125 WAC
STUDENT CONDUCT CODE****PART 1 - CONDUCT CODE**NEW SECTION

WAC 132B-125-100 Purpose. The purpose of these rules is to prescribe standards of conduct for students of Grays Harbor College. Violations of these standards may be cause for disciplinary action as described in this code. This code will be made available to students online or, when requested, paper copies will be made available.

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NEW SECTION

WAC 132B-125-105 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the student conduct officer or their designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

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NEW SECTION

WAC 132B-125-110 Student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of federal and state law and college rules, policies, and procedures:

(1) **Academic freedom.**

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

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs and services, subject to the limitations of RCW 28B.50.090 (3)(b) (College board—Powers and duties), available space in the class, and meeting any required prerequisites.

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

(d) Students are 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.

(2) **Nondiscrimination.** Students have the right not to be discriminated against on the basis of age, color, creed, disability, gender, gender identity and expression, marital status, national origin or ancestry, race, religion, sexual orientation, or veteran status, or any other legally protected class.

(3) **Due process.**

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

(b) A student accused of violating this code of student conduct is entitled to procedural due process as set forth in this chapter.

(4) **Right to assembly.** Students shall have the right of assembly upon college facilities that are generally available to the public provided such assemblies are in compliance with procedures established in Administrative Procedure 516.03, Rules for Use of Campus as Public Forums, and other behavioral expectations outlined in the code of conduct.

(5) **Grievances.** Students have the right to express and resolve misunderstandings, complaints and grievances according to the stated process in WAC 132B-125-500 Student complaint, grievance, and grade appeal policy and procedures.

(6) **Conduct code revision.** The associated students of Grays Harbor College has the right to participate in the formulation and review of all policies and rules pertaining to student conduct.

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NEW SECTION

WAC 132B-125-115 Student responsibilities. Students who choose to attend Grays Harbor College also choose to participate actively in the learning process offered by the college. The college is responsible for providing its students with an educational environment rich in the high quality resources needed by students to attain their educational goals. In return, the college expects each student assume responsibility to:

- (1) Participate actively in the learning process, both in and out of the classroom;
- (2) Seek timely assistance in meeting educational goals;
- (3) Attend all class sessions;
- (4) Prepare adequately to participate fully in class activities;
- (5) Participate actively in the academic advising system;
- (6) Develop skills required for learning, e.g., basic skills, time management, and study skills;
- (7) Assume final responsibility for the selection of appropriate educational goals;
- (8) Select courses appropriate and required for meeting chosen educational goals;
- (9) Make appropriate use of services;
- (10) Contribute towards improving the college;
- (11) Become knowledgeable of and adhere to the college's policies, practices and procedures; and
- (12) Abide by the standards set forth in the code of conduct.

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NEW SECTION

WAC 132B-125-120 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

- (1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.
 - (a) Cheating: Includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.
 - (b) Plagiarism: Includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.
 - (c) Fabrication: Includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment, including submitting for credit without authorization academic work also submitted for credit in another course.
 - (d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each faculty member's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.
 - (e) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.

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

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

(b) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, Legend drugs—Prescription drugs, or any other controlled substance under chapter 69.50 RCW, Uniform Controlled Substances Act, except as prescribed for a student's use by a licensed practitioner.

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 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, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(3) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(4) **Classroom conduct.** Classroom conduct that seriously interferes with either the instructor's ability to conduct the class or the ability of other students to profit from the instructional program.

(a) Faculty have the authority to take appropriate action to maintain proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

(b) A faculty member may order a student removed for the single class session in which disruptive conduct occurs. The instructor will report any such removal from the class to the student conduct officer, or their designee, immediately following the class. The student conduct officer services or designee may initiate further conduct proceedings as provided in this procedure.

(c) The student is automatically permitted to return to the next class session pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior in any class session that again disrupts the normal classroom procedure, the student may be ordered removed again for that class session by the instructor who shall again report the infraction to the student conduct officer in writing. In all cases involving classroom disruption, the student conduct officer will proceed with the investi-

gation and any disciplinary actions as quickly as possible consistent with the procedural requirements established in this code.

(d) The student conduct officer or designee may set conditions for the student to meet upon return to the classroom or may enforce a continued removal from class pending an investigation. The student has the right to appeal any disciplinary action of an instructor or college employee to the student conduct officer in accordance with the procedures set forth in this code.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, texting, electronic bulletin boards, social media sites, and other communication apps, 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 or malware, sending false messages to third parties using another's identity, non-consensual recording of sexual activity or sexually explicit or intimate images as defined in RCW 9A.86.010, and nonconsensual distribution or disclosing of a recording of sexual activity or sexually explicit or intimate images as defined in RCW 9A.86.010.

(6) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification.

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

(8) **Failure to comply with directive.** Failure to comply with the direction of college officer or employee acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(9) **Harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(10) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization, or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to

cause, bodily danger or physical harm, or serious mental or emotional harm to any student, regardless of whether the victim has consented.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

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

(a) Unauthorized use of such resources or opening of a file, message or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene, abusive, threatening, or harassing 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;

(i) Use of college electronic resources to intentionally disseminate viruses, destructive, malicious or invasive programs;

(j) Failure to comply with the college's electronic use policy;

or

(k) Illegal peer-to-peer file sharing or distribution of copyrighted works using campus resources. In addition to code of conduct sanctions, students may be subject to criminal and civil penalties if they engage in such unauthorized activity.

(13) **Motor vehicle operation.** Operation of any motor vehicle on college property in an unsafe manner or contrary to posted signs or college procedures.

(14) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

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

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(c) The person in charge of any college office, department, or facility is responsible for conduct in that office, department, or facility and is authorized to take such steps as are necessary when behavior of the student disrupts the normal operations. The person in charge may order a student removed for up to the full day in which such disruptive behavior occurs. When such behavior results in such removal from an office, department, or facility, the person in charge must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return the next day pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior at any time in the future that again disrupts the normal operations, the student may be ordered removed again for a single

day by the person in charge who shall again report the infraction to the student conduct officer in writing. In all cases involving office, department, or facility disruption, the student conduct officer will proceed with the investigation and any disciplinary actions as quickly as possible consistent with the procedural requirements established in this code.

(d) The student has the right to appeal any disciplinary action of a college employee to the student conduct officer in accordance with the procedures set forth in this code.

(15) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

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

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

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

(19) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in WAC 132B-125-405 Prohibited conduct under Title IX.

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

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

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

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

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

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

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

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

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

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any rea-

son, 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.

(20) **Student procedure violations.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

- (a) Failure to obey a subpoena;
- (b) Falsification or misrepresentation of information;
- (c) Disruption or interference with the orderly conduct of a proceeding;
- (d) Interfering with someone else's proper participation in a proceeding;
- (e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;
- (f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member or other disciplinary official; or
- (g) Failure to comply with any disciplinary sanction(s), action, term, or condition imposed under this chapter.

(21) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, code or other restricted means of access to college property, unauthorized entry onto or into college property, or entering or remaining in any closed college facility or entering after closing time of the college facility without permission of a college official. In situations of apparent misconduct or apparent unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from properly identified college personnel is a violation of this code and may result in a disciplinary action if the person is found to be a student. In emergency situations, cases of misconduct, or where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by college personnel that the person questioned is not a student and may result in direct civil or criminal action.

(22) **Unauthorized use.** Unauthorized use of college equipment, facilities or supplies. Use of college equipment, facilities, supplies, or computer systems for personal gain without proper authority.

(23) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

- (a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;
- (b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 Carrying firearms, provided the vehicle is locked and the weapon is concealed from view; or
- (c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing

and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.

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

(25) Intentionally encouraging, compelling, attempting, aiding, abetting, conspiring, hiring or being an accessory to commit any of the foregoing acts of misconduct.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

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NEW SECTION

WAC 132B-125-125 Disciplinary sanctions. More than one sanction may be imposed for any single violation as appropriate. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

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

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

(3) **Disciplinary probation.** Formal action placing 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 dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time, or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken. Access may be denied to all or part of college facilities.

(5) **Discretionary sanctions.** These may include, but are not limited to:

- (a) Work assignments;
- (b) Service to college or community;
- (c) Class/workshop attendance; or

(d) Other discretionary assignments, such as educational interventions intended as learning experiences.

(6) **Loss of recognition.** A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval for a student organization. Loss of recognition may include, but is not limited to, withdrawal of use of information technology resources, funding, college facility use and rental, and involvement in organizational activities.

(7) **Loss of privileges.** Loss of specific college privileges for a specified period of time. These may include, but are not limited to, student activities, athletic events, drama or music performances, or club participation.

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

(9) **No trespass.** A student may be prohibited from entering upon or remaining upon college facilities and premises. Refer to WAC 132B-125-205 Trespass.

(10) **Revocation of admission or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation or for other serious violations committed by a student.

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

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:

(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 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.

(3) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) 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.

(4) **Disqualification from athletics.** Any student found by the college to have violated this is subject to additional sanctions, including disqualification from college-sponsored athletic events.

(5) **Hazing sanction.** Any student found to have violated RCW 28B.10.900 related to hazing, by virtue of a criminal conviction or by final decision of the college president or designee shall, in lieu of, or in addition to, any other disciplinary action which may be imposed under this chapter, forfeit any entitlement to state-funded grants, scholarships, or awards of a period of time determined by the college.

In addition, any organization or association found to have knowingly permitted 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.

[]

PART 2 - PRELIMINARY MEASURES

NEW SECTION

WAC 132B-125-200 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. Summary suspension may include no contact orders.

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

(a) Has been alleged of violating 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 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. The written notification shall be entitled "Notice of Summary Suspension" and shall include:

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

(b) The date, time, and location when the respondent must appear before the student conduct 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 com-

munity. 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 into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(4) **Summary suspension hearing.**

(a) The student conduct officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding.

(b) During the summary suspension hearing, the issue before the student conduct 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.

(c) 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.

(d) If the student 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.

(e) As soon as practicable following the hearing, the student conduct 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.

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

(g) In cases involving allegations of sexual misconduct, 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.

[]

NEW SECTION

WAC 132B-125-205 Trespass. The president, the student conduct officer, their designee(s), or the student conduct committee shall have the authority and power to prohibit the entry or withdraw the license or privilege of any person or group of persons to enter into or remain on any college property or facility. Such power and authority may be exercised to halt any event or activity which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any person remaining on or reentering college property after receiving notice that their license or privilege to be on that property has been revoked shall be subject to arrest for criminal trespass under the provisions of chapter 9A.52 RCW, Burglary and trespass.

[]

PART 3 - STUDENT CONDUCT PROCEDURESNEW SECTION

WAC 132B-125-300 Jurisdiction. (1) This chapter shall apply to student conduct that occurs:

(a) On college premises and/or in college facilities;
(b) At or in connection with college-sponsored activities; and
(c) Off-campus student conduct that, in the judgment of the college, adversely affects the well-being of the college community and/or the pursuit of its objectives. The college has sole discretion, on a case-by-case basis, to determine whether the code of student conduct will be applied to conduct occurring off campus.

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

(3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(4) The student conduct officer and the student conduct committee shall have the authority to interpret and apply the standards of conduct for students.

(5) 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 may proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

[]

NEW SECTION

WAC 132B-125-305 Definitions. As used in this document the following words and phrases shall mean:

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

(2) **"Board"** shall mean the board of trustees of Community College District No. 2, state of Washington.

(3) **"College"** shall mean Grays Harbor College or any additional community college hereafter established within Community College District No. 2, state of Washington.

(4) **"College community"** shall mean all employees and students of the college.

(5) **"College facilities"** shall mean and include any or all real property owned, rented, leased, controlled or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto. College facilities extend to affiliated websites, distance learning classroom environments and agencies or institutions that have educational agreements with Grays Harbor College.

(6) **"College official"** shall mean any person employed by the college performing assigned duties.

(7) **"Day"** means a calendar day, except when a "business day" is specified. "Business day" means a weekday, excluding weekends and college holidays.

(8) **"Disciplinary action"** is the process by which discipline is imposed against a student for a violation of the student conduct code by the student conduct officer.

(9) **"Disciplinary appeal"** is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer as provided in WAC 132B-125-320 Appeal from disciplinary action. The student conduct committee hears disciplinary appeals from a suspension in excess of ten instructional days or a dismissal/expulsion. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(10) **"Employee"** shall mean any classified, faculty, administrator, exempt, student worker or volunteer person of the college or an affiliated institution.

(11) **"Faculty"** shall mean any person employed on a full- or part-time basis as a teacher, instructor, counselor, coach or librarian for the college or an affiliated institution. Includes faculty of other colleges (whether or not employed by Grays Harbor College (GHC)) that provide instruction to GHC students through distance education.

(12) **"Filing"** is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review or a presiding officer. Unless expressly specified otherwise, filing shall be accomplished by:

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

(b) By sending the document by email and/or first-class mail to the recipient's college email and office address. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified official or presiding officer.

(13) **"President"** is the president of the college appointed by the board of trustees. The president is authorized to delegate any of their responsibilities as set forth in this chapter as they deem appropriate.

(14) **"RCW"** shall mean the Revised Code of Washington.

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

(16) **"Service"** is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

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

(b) By sending the document by email and/or by certified mail or first-class mail to the party's last known address. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited into the mail.

(17) **"Student"** shall mean and include any person who is enrolled in courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(18) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. The student conduct officer is authorized to delegate any and all of their responsibilities as set forth in this chapter as may be reasonably necessary.

(19) **"Vice president for student services"** is the administrator responsible for implementing and enforcing the student conduct code. The vice president is authorized to delegate any and all of their responsibilities as set forth in this chapter as may be reasonably necessary.

[]

NEW SECTION

WAC 132B-125-310 Groups and organizations. Recognized student groups and organizations may be charged with violations of this code. Such a group or organization and its officers may be held collectively or individually responsible when violations of this code by those associated with the group or organization have received the tacit or overt consent or encouragement of the organization, its leaders, officers or spokespersons.

Sanctions for group or organization misconduct may include, but are not limited to, loss of recognition, as well as other appropriate sanctions permitted under this code. Sanctions of groups or organizations are subject to the appeal process upon request.

[]

NEW SECTION

WAC 132B-125-315 Disciplinary process. (1) Initiating disciplinary action (except summary suspension).

(a) All disciplinary actions will be initiated by the student conduct officer. If that person is the subject of a complaint initiated by the respondent, the president shall, upon request and when

feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(b) The student conduct officer shall initiate disciplinary action by notifying the respondent to attend a disciplinary meeting. At the meeting, the student will be presented with the allegations, the provisions of the conduct code the respondent is alleged to have violated; and the range of possible sanctions for the alleged violation. This information will be provided in writing, either at the meeting or within three business days of the meeting. The respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(c) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written disciplinary decision letter 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.

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

(i) Exonerate the respondent and terminate the proceedings;

(ii) Impose a disciplinary sanction(s), as described in WAC 132B-125-125;

(iii) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate.

(e) Sexual harassment complaints or concerns may be directed to the Title IX coordinator or human resources office.

(f) A student formally charged or under investigation for a violation of this code may not excuse himself or herself from disciplinary hearings by withdrawing from the college.

(2) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision letter is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

[]

NEW SECTION

WAC 132B-125-320 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within ten calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent and the 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) The student conduct committee shall hear appeals from:

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

(b) Dismissals; and

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

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

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation; and

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

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

[]

NEW SECTION

WAC 132B-125-325 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by the conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(a) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party an opportunity to be informed of the college's view of the matter; and

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

(2) The conduct review officer shall serve an initial decision within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten business days of service of the initial decision, the initial decision shall be deemed the final decision.

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

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary sanction of dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

[]

NEW SECTION

WAC 132B-125-330 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 student conduct officer within ten 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 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 ten business days. 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 ten business days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension 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 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.

[]

NEW SECTION

WAC 132B-125-335 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;
(b) Two faculty members appointed by the president; and
(c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

[]

NEW SECTION

WAC 132B-125-340 Student conduct committee process. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

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

(4) Upon request, filed at least five business days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

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

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

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

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

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

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

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

[]

NEW SECTION

WAC 132B-125-345 Student conduct committee hearings—Presentations of evidence.

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

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

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

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449 Procedure at hearing. 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 Agency record, 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 Adjudicative proceedings—Cameras—Recording devices.

(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 Rules of evidence—Cross-examination.

(7) In cases involving allegations of sexual misconduct, neither the complainant nor the respondent shall directly question or cross-examine one another. Attorneys or advisors for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

[]

NEW SECTION

WAC 132B-125-350 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 business days following the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 Entry of orders, and WAC 10-08-210 Adjudicative proceedings—Initial or final order. 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.

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

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

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's in-

initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

[]

NEW SECTION

WAC 132B-125-355 Appeal from student conduct committee's initial decision. (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one calendar days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of 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. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within twenty business days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the 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 may, at their discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(6) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

[]

NEW SECTION

WAC 132B-125-360 Readmission after dismissal. A student dismissed from the college may be readmitted only on written petition to the president. Petitions must indicate reasons that support reconsideration. The president may use whatever review procedures are at the president's disposal in consideration of readmission. The president shall convey a decision in writing to the student within thirty days after completion of the review process.

[]

NEW SECTION

WAC 132B-125-365 Sexual misconduct proceedings—Dual procedural rights. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

[]

NEW SECTION

WAC 132B-125-370 Reporting, recording and maintaining records. The office of the student conduct officer shall keep records of all disciplinary cases. Except in proceedings where the student is exonerated, all documentary or other physical evidence produced or considered in disciplinary proceedings and all recorded testimony shall be preserved; insofar as possible, for not more than six years. No other records of proceedings wherein the student is exonerated, other than the fact of exoneration, shall be maintained in the student's file or other college repository after the date of the student's graduation or not more than six years.

[]

PART 4 - SEXUAL MISCONDUCTNEW SECTION

WAC 132B-125-400 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Grays Harbor College's standard disciplinary procedures, chapter 132B-125 WAC, Student conduct code, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132B-125-405 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) Boards of trustees—Powers and duties, and Title IX

of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Grays Harbor College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) **Quid pro quo harassment.** A Grays Harbor College employee conditioning the provision of an aid, benefit, or service of Grays Harbor 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 Grays Harbor College's educational programs or activities, or employment.

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

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

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

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

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their

safety or the safety of others, or suffer substantial emotional distress.

[]

NEW SECTION

WAC 132B-125-410 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Grays Harbor College educational program or activity; and
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Grays Harbor College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Grays Harbor College's student conduct code, WAC 132B-125-120 Prohibited student conduct.

(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 in part to both parties explaining why some or all of the Title IX claims have been dismissed.

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NEW SECTION

WAC 132B-125-415 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

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

- (b) Identify the alleged Title IX violation(s);
 - (c) Set forth the facts underlying the allegation(s);
 - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); 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 the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) Grays Harbor 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.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

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NEW SECTION

WAC 132B-125-420 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the Title IX conduct committee will send a hearing notice to all parties, in compliance with WAC 132B-125-340 Student conduct committee process. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

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NEW SECTION

WAC 132B-125-425 Rights of parties. (1) Grays Harbor College's student conduct procedures, chapter 132B-125 WAC, Student conduct code and this supplemental procedure shall apply equally to all parties.

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

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

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an ad-

visor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

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NEW SECTION

WAC 132B-125-430 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060 Who is disqualified—Privileged communications.

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NEW SECTION

WAC 132B-125-435 Initial order. (1) In addition to complying with WAC 132B-125-340 Student conduct committee procedures, the Title IX conduct committee:

(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 Grays Harbor College's educational programs or activities; and

(h) Describes the process for appealing the initial order to the Grays Harbor College president.

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

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NEW SECTION

WAC 132B-125-440 Title IX appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132B-125-320 Appeal from disciplinary action.

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

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PART 5 - STUDENT COMPLAINT, GRIEVANCE, AND GRADE APPEAL POLICY AND PROCEDURES

NEW SECTION

WAC 132B-125-500 Student complaint, grievance, and grade appeal policy and procedures. The purpose of these procedures is to provide guidelines, which enable a student to express and resolve misunderstandings, complaints, or grievances in a fair and equitable manner. Students have the right to receive clear information and fair application of college policies, standards, rules and requirements and are responsible for complying with them in their relationships with college personnel. This grievance procedure emphasizes an informal resolution, which promotes constructive dialogue and understanding.

(1) **Complaint process.**

(a) A complaint is any expression of dissatisfaction with the performance of a college employee or with the implementation of policy and procedure. The goal is to informally resolve the complaint with the employee most closely responsible for the policy, procedure or action. The college employee and student shall make a good faith effort to resolve the issue on a one-to-one basis. (If the complaint is about a grade, follow the grade appeal process below.) Both parties should openly discuss the concern, attempt to understand the other's perspective, explore alternatives and attempt to arrive at a satisfactory resolution.

(b) The college recognizes that in some cases a student will be unwilling or unable to speak directly with the employee. In such cases, the student may proceed to step one of the grievance process. In general, a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern.

(c) For assistance in identifying the appropriate person a student should contact, the office of the vice president for student services is available to assist in that determination.

(d) The following are guidelines for determining who a student should contact with a complaint regarding:

- (i) **Academic/instruction:** Faculty/dean/vice president instruction;
- (ii) **Accommodations:** Coordinator of disability support services/dean of student access and support;
- (iii) **Bookstore:** Bookstore manager/vice president administrative services;
- (iv) **Problem student conduct:** Student conduct officer;
- (v) **Discrimination/harassment:** Title IX coordinator/human resources;
- (vi) **Facilities:** Chief of campus operations/vice president for administrative services;
- (vii) **Financial aid:** Assistant dean of financial aid/dean of student access and support;
- (viii) **Other:** Vice president for student services office for most appropriate contact.

(2) **Grievance process.**

(a) A grievance is a formal procedure instituted when a complaint is not resolved through the informal complaint process. It involves taking the concern to a person other than the employee involved such as a supervisor, dean or vice president. For assistance in identifying the specific person, a student should contact the vice president for student services office. The following procedures shall be used when a student initiates the grievance process.

(b) A discussion with the dean/vice president or supervisor who shall attempt to resolve the matter promptly and fairly. The student may be asked to express the grievance in writing. Written grievances should include an explanation of what has happened, the nature of the student's concern, what the student and/or others have done about it to date and what resolution the student seeks.

(c) The supervisor will investigate and may:

(i) Render an immediate decision;

(ii) Ask the staff members for a written response;

(iii) Request a meeting of one or both parties individually or together; and/or

(iv) Request supporting materials prior to rendering a decision.

In the case of a written grievance, the supervisor will provide a written decision within fifteen instructional days of receipt of the written grievance. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(A) If the student feels a satisfactory resolution was not achieved in step two, they may appeal to the president of the college within five instructional days of receipt of the written decision. The president may amend, modify, reverse or accept the recommendation of the vice president. The decision of the president shall be final.

(B) In general, a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern. In any event, with the exception of discrimination and harassment, informal complaints and formal grievances must be filed within one academic quarter of the inciting event. Timely initiation of a complaint rests with the student.

(C) The appropriate vice president may suspend this rule under exceptional circumstances such as extended illness or leave of a party to the complaint. When either party to the complaint is no longer present at the college and does not expect to return, the vice president will give the absent party reasonable opportunity to reply to the complaint before making a decision.

(3) **Grade appeal process.**

(a) Before a student can file a formal or written grade appeal, they should try to resolve the issue directly with the instructor. Grade appeals should occur within one quarter of issuance of the grade. In any event, appeals will not be considered beyond one year of the grade report.

(b) If direct discussion with the faculty does not resolve the grade dispute to the student's satisfaction the student, within ten instructional days after meeting with the faculty, shall take the matter to the vice president for instruction. The student shall express the appeal in writing. The written appeal should include the course and instructor involved, an explanation of why the student believes the grade received is unfair or unwarranted, what steps the student has taken with the faculty member to resolve the issue, and what resolution the student seeks.

(c) The vice president for instruction will attempt to investigate the appeal and will:

(i) Review the course syllabus;

(ii) Meet with the course instructor; and

(iii) May request and review other supporting documentation prior to rendering a decision. Within ten instructional days of receiving the written appeal, the vice president of instruction will provide a written decision. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(d) If the student feels satisfactory resolution was not achieved in step three, they may, within five instructional days of receipt of the written decision, notify the vice president for instruction to request a hearing before the academic review committee. The vice president for student services or designee will chair the committee.

(i) If anyone on the academic review committee perceives a conflict of interest, they will recuse themselves from the committee for the duration of the appeal. Students are to be given an opportunity to talk with the committee chairperson regarding any concerns about committee membership.

(ii) As soon as possible, the academic review committee (with a minimum attendance of six individuals) will meet with the student, instructor, the vice president of instruction and relevant parties to hear the points at issue in the appeal. The committee will provide its written decision to all parties within five instructional days following the hearing. The decision is final and may not be reviewed further.

(4) Grievances excluded.

(a) The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual harassment. The college has separate specific procedures for such complaints. See the vice president for student services for information on those specific procedures.

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

(c) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community college education or the board of trustees of Community College District No. 2 shall not be grievable matters.

(5) **Records.** The appropriate supervisor shall keep all written statements or transcripts as follows:

(a) Complaints for one year from the initial complaint;

(b) Grievances for six years from the initial complaint;

(c) Grade appeals for five years following the last quarter attended by the student. At that time, the files shall be destroyed.

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