

WSR 21-09-004

PROPOSED RULES

WHATCOM COMMUNITY COLLEGE

[Filed April 7, 2021, 3:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-061.

Title of Rule and Other Identifying Information: Chapter 132U-126 WAC, Whatcom Community College (WCC) student rights and responsibility policy. Edit chapter 132U-126 WAC based on new Title IX regulations requiring updates and removal of Title IX procedures from this rule.

Hearing Location(s): On May 25, 2021, at 2:00 p.m., <https://us02web.zoom.us/j/86286782028?pwd=M055ZC9aKzY1MUthbFkxQ1NYbFFGUT09>.

Date of Intended Adoption: May 25, 2021.

Submit Written Comments to: Benjamin Reed, 237 West Kellogg Road, Laidlaw 208, Bellingham, WA 98226, email breed@whatcom.edu, fax 360-383-4000, by March 8, 2020 [2021].

Assistance for Persons with Disabilities: Contact Kerri Holferty, phone 360-383-3043, fax 360-383-4000, TTY 360-225-7182, email ADS@whatcom.edu, by March 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing chapter 132U-126 WAC, Student rights and responsibility policy, does not meet current Title IX regulations. Items including investigative procedures and definitions of key terms need to be removed or edited.

Reasons Supporting Proposal: The existing WAC does not address the recent federal and state regulations.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Rule is necessary because of federal law, [no information supplied].

Name of Proponent: WCC, governmental.

Name of Agency Personnel Responsible for Drafting: Benjamin Reed, Laidlaw 208, 360-383-3074; Implementation and Enforcement: Benjamin Reed, Laidlaw 208, 360-383-3074, and Becky Rawlings, Laidlaw 235, 360-383-3400.

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.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

February 17, 2021

Barbara Nolze

Administrative Assistant to the
Vice President for Student Services

OTS-2982.1

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-010 Definitions. The following definitions shall apply for the purpose of this student conduct code:

(1) "Business day" any day, Monday through Friday (excluding holidays), during which college offices are open.

(2) "College community" shall include any person or entity with a connection or relationship with pursuit of the college mission.

(3) "College premises" shall include the college campus and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, leased, or controlled by the college.

(4) "Complainant" is an ((alleged victim of sexual misconduct)) employee(s), applicant(s), student(s), or visitor(s) of Whatcom Community College who alleges that they have been subjected to behavior that is a violation of this policy.

(5) "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 is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(6) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary cases in accordance with the procedures of this code.

~~((6))~~ (7) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

~~((7))~~ (8) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten business days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

~~((8))~~ (9) "Filing" is the process by which a document is received by a college official responsible for facilitating a disciplinary process. Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:

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

(b) Sending the document by first class mail to the specified college official's office; or

(c) Emailing the document to specified college official's colleges email address.

~~((9))~~ (10) "Guest" is any person who is not a member of the college community, who is on institutional property or attending an institutional function that the invitation of and/or hosted by a member of the college community.

~~((10))~~ (11) "Preponderance of evidence" is defined as "more likely than not" and is the standard of responsibility that is used when determining whether a violation of the student rights and responsibilities has occurred.

~~((11))~~ (12) "President" is the president of the college. The president is authorized to delegate or reassign any and all of their responsibilities as may be reasonably necessary.

~~((12))~~ (13) "Reporting party" is a student or another member of the college community who reports an alleged violation of this code that has been committed.

~~((13))~~ (14) "Respondent" is the student against whom disciplinary action is initiated.

~~((14))~~ (15) "Service" is the process by which a document is officially delivered to a party. Service is deemed complete upon the hand delivery of the document, or upon the date the document is emailed or post marked by the mail service. Unless otherwise provided, service upon a person shall be accomplished by:

- (a) Hand delivery of the document to a person; or
- (b) Sending the document by certified or first class mail to the person's last known address; or
- (c) Emailing the document to the party's official college email address.

~~((15))~~ (16) "Student" includes all persons taking courses at or through the college, whether on a full-time or a 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 admissions are considered "students."

~~((16))~~ (17) "Student conduct code" or "code" is the student rights and responsibilities policy in this chapter.

~~((17))~~ (18) "Student conduct officer" is a college administrator designated by the president or vice president for student services to be responsible for implementing and enforcing the student conduct code.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-010, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-015 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general condi-

tions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the education goals of the college:

(1) **Academic freedom.**

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

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

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

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

(2) **Due process.**

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

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

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

(3) **Sexual misconduct complainant.** In any case involving an allegation of sexual misconduct as defined in this code, a complainants ~~((is))~~ and respondents are afforded certain rights under this code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which they are a complainant;

(b) The right to appeal to the student conduct committee an initial order issued by a conduct officer;

(c) The right to request presidential review of an initial order issued by the student conduct committee; and

(d) The right to be accompanied to all hearings by an advisor and/or an attorney at the student's expense.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-015, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-030 Prohibited student conduct. The college may impose sanctions against a student found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging, or assisting 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 collaboration relating to the completion of an academic assignment.

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

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

(d) The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic sanctions, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the course syllabus, and any applicable program handbook.

(2) **Other dishonesty.** Any other act of dishonesty including, but 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;

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

(3) (~~(Disruptive behavior. Behavior)~~) **Disruption or obstruction.** Conduct not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders the following:

(a) Instruction, services, research, administration, disciplinary proceedings, 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 or under college jurisdiction, whether or not actually conducted or sponsored by the college.

(4) **Assault or intimidation.** 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. (~~(Bullying is physical or verbal abuse, repeated over time, and involves a power imbalance between the aggressor and victim.)~~) For purpose of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communication including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening

emails, disrupting electronic communications with spam or by sending a computer virus, correspondence using another's identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a re-cording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or property of another person. Property for the purposes of this subsection includes, but is not limited to, computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college copyrights and trademarks.

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

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

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; 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.

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

(9) **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.

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

(a) **Alcohol.** The use, possession, 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 and intended for human consumption, regardless of form, or being under the influence of marijuana or the psychoactive compounds found in marijuana (~~or the possession of drug paraphernalia~~) and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

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

(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.

(11) **Lewd conduct.** Conduct which is obscene, indecent, pornographic and/or lascivious that is not otherwise protected under the law.

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome (~~conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and/or other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members~~) 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 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~~) gender identity or perceived gender including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

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

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object 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 is any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual

touching includes any bodily contact with the breast, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

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

(iv) Dating violence means physical violence, bodily injury, assault, the infliction of fear or imminent physical harm, sexual assault, or stalking committed by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

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

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

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

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

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; age; religion; genetic information; gender, including pregnancy, marital status; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to,

physical conduct, verbal, written, social media and electronic communications.

(15) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, or objectively offensive that it effectively denies a person equal access to the college's educational programs or activities.

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

~~((16))~~ (17) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

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

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

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

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

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;

(i) Failure to comply with the college's electronic use policy.

~~((17))~~ (18) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

~~((18))~~ (19) **Safety violation.** ~~((Safety violation includes))~~ Any nonaccidental or negligent conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of self or the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems. A safety violation may include the operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

~~((19))~~ (20) **Violation of other laws and policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies.

~~((20))~~ (21) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for dis-

position. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-030, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-040 Sanctions. In keeping with the educational mission of Whatcom Community College, sanctions serve the purpose of educating students about their rights and responsibilities, reinforcing the high standards of scholarship expected of Whatcom students, promoting student development, and maintaining safety and well-being of members of the college community. When appropriate, the college may attempt to resolve issues without formal disciplinary action and may give verbal warnings. When a student takes responsibility for a violation or is determined to have violated the code, the student conduct officer may impose one or more of the following sanctions. This list is not meant to be exhaustive and other sanctions may be applied at the discretion of the student conduct officer.

(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 specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation. Probation may be for a specific period of time or for the duration of the student's enrollment at the college.

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

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

(6) **Educational activity.** A student may be required to engage in educational activities related to violation(s). Such activities may include, but are not limited to, attendance at educational programs, community services, project or written assignments, and/or meeting with campus officials.

(7) **Loss of privileges.** A student may be denied specific privileges on a temporary or permanent basis such as participating in specific activities or restriction from specific areas of campus.

(8) **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 proceedings.

(9) **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 conditional upon compliance with the 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 further evaluation recommends that the student is capable of re-entering the college and complying with the rules of conduct.

(10) **Administrative 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.

(11) **Student housing relocation.** Students who are living in college-controlled or administered housing may be transferred to alternate college-controlled or administered housing.

(12) **Termination of student housing contract.** A student may be removed from their college-controlled housing and their housing contract terminated.

(13) Disqualification from athletics. Any student found by the college to have violated this code related to the use, possession, sale, or delivery of legend drugs is subject to additional sanctions, including disqualification from college-sponsored athletic events.

(14) College community service. Assignment of labor or responsibilities to any student or student organization with the college or local community. May also include mandatory attendance to educational programs or courses or other assignments.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-040, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-045 Initiation of disciplinary action. (1) All disciplinary actions will be initiated by the student conduct officer in response to a report filed by any college community member. A complaint should be made in writing to the office of ((student conduct)) community standards. Additionally, information received from any source (police report, third party, electronic, etc.) may be considered as a complaint. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint. All complaints of sexual misconduct will be reviewed by the Title IX coordinator or designee to determine whether the complaint is a violation of chapter 132U-305 WAC or the student code of conduct.

(2) The student conduct officer or designee shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and loca-

tion of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer or designee, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) 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 or designee shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the sanction imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132U-125-035.

(c) Refer the matter directly to the student conduct committee for such disciplinary action, as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

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

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-045, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-050 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by submitting a written appeal with the conduct review officer within ten business days of service. Failure to appeal on or before the deadline constitutes a waiver of the right to appeal and the initial decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent and the conduct review 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 sanction by a preponderance of the evidence.

(6) Disciplinary action imposed for violation will not begin while an appeal is pending, except summary suspension and any conditions included in a summary suspension.

(7) The student conduct committee shall hear appeals from:

(a) Disciplinary suspensions in excess of ten (~~(business))~~ instructional days;

(b) Dismissals; and

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

(8) Appeals to the following sanctions shall be reviewed through brief adjudicative proceedings:

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

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the three sanctions listed in this subsection.

(9) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct (~~(office))~~ officer or designee following the same procedures as set forth in subsection (8)(a) through (d) of this section for the respondent:

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

(b) Any sanctions and/or conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(10) If the respondent files an appeal to a decision imposing sanctions for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to participate as a party to the appeal.

(11) Except as otherwise specified in this chapter, a complainant who files an appeal to sanctions or who participates as a party to a respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-050, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-055 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer or designee. The conduct review officer shall not participate in any case in which the conduct officer is complainant or witness; or in which they have direct or personal interest, prejudice,

or bias; or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. The conduct review officer shall conduct an informal hearing and provide each party an opportunity to be informed of the facts as viewed by the college and the initial disciplinary findings. Each party will also have an opportunity to explain their view of the matter.

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

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

(5) Upon review, if the conduct review officer determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten (~~business~~) days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-055, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-060 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president or designee, provided a party files a written request for review with the conduct review officer within ten (~~business~~) days of service of the initial decision.

(2) The president or designee shall not participate in any case in which they are a complainant or witness; has direct or personal interest, prejudice, or bias; or has acted previously in an advisory capacity.

(3) During the review, the president or designee shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision. The decision must be

served on the parties within twenty ((business)) days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president or designee does not make a disposition of the matter within twenty ((business)) instructional days after the request is submitted.

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

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

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-060, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-075 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and may 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) Any involved party, including the committee chair, may submit a request to submit and exchange lists of potential witnesses and copies of potential exhibits that reasonably expect to be presented to the committee. This request must be submitted to the committee chair at least five business days prior to the hearing. The parties shall exchange the items no later than the third business day prior to the hearing. 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 hearings 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, or complainant in a case involving allegations of sexual misconduct, 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 or complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(10) At the option of the college president, the college may appoint an administrative law judge to serve as a hearing officer responsible for handling procedural matters otherwise assigned to the chair and to conduct the hearing on behalf of the student conduct committee.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-075, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-090 Appeal from student conduct committee initial decision. (1) A respondent, or complainant in a case involving allegations of sexual misconduct, who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the student conduct committee's initial decision to the president or designee by filing a written notice of appeal with the president's office within ten ((business)) 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 president or designee shall not participate in any case in which the president or designee is a complainant or witness; has direct or personal interest, prejudice, or bias has or has acted previously in an advisory capacity.

(3) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If

necessary to aid review, the president or designee's may ask for additional briefing from the parties on issues raised on appeal. The 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.

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

(5) 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.

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

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-090, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-126-095 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) **Notice.** Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

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

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a no-

tice 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 as scheduled with the student conduct officer or conduct review officer or to attend a scheduled disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

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

(f) 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.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-095, filed 8/6/18, effective 9/6/18.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132U-126-100 Sexual misconduct proceedings.