

WSR 24-19-001

EMERGENCY RULES

THE EVERGREEN STATE COLLEGE

[Filed September 4, 2024, 2:32 p.m., effective September 4, 2024, 2:32 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 16, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 4, 2024.

Daniel B. Ralph
Rules Coordinator

OTS-5838.1

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

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

(1) Conduct related to community.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Public urination or defecation.

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

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

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

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

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

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

(2) Conduct related to persons.

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

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

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

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

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

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

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

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

(c) **Cyber misconduct.** The term "cyber misconduct" includes, but is not limited to, behavior involving the use of a computer, computer network, the internet, or use of electronic communications including, but not limited to, electronic mail, instant messaging, list serves, electronic bulletin boards/discussion boards, ad forums and social media sites or platforms, to disrupt college function, adversely affect the pursuit of the college's objectives, or to stalk, harm or harass,

or engage in other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person, or which is sufficiently severe, persistent, or pervasive that it interferes with or diminishes the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual exploitation, sexual violence, relationship violence, domestic violence, and stalking. (~~Sexual harassment~~) Sex discrimination as prohibited by Title IX is defined in the supplemental Title IX student conduct procedures. See WAC 174-123-355.

(3) Sexual misconduct and consent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A student issued an interim restriction that includes loss of privileges will receive written notice of the interim restriction, the reason for instituting an interim restriction, and advised of the date, time, and place for a hearing regarding the interim restriction

before the student conduct official, or their designee. The hearing will take place no later than five business days from the effective date of the interim restriction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) If the conduct review officer determines that the respondent's conduct may warrant imposition of a college or college housing

suspension of more than (~~ten~~) 10 days or college expulsion or college housing eviction, the matter will be referred to the student conduct appeal panel for a new hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Each party may be accompanied at the hearing by an advisor of the party's choice. A respondent, or complainant in a case involving allegations of (~~non-Title IX~~) sexual misconduct or assault may elect to be represented by an attorney at the their own cost, and will

be deemed to have waived that right unless, at least five business days before the hearing, written notice of the attorney's identity and participation is filed with the panel chair with a copy to the student conduct official. The panel will ordinarily be advised by an assistant attorney general. The student conduct official may be represented by an assistant attorney general.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A student or employee; or

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

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

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

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

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

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

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

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

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

(10) **Pregnancy or related conditions** means:

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

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

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

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

(12) **Remedies** mean measures provided to a complainant or other person whose equal access to Evergreen's education program or activity has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination if sex discrimination has occurred.

(13) **Student employee** means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, Evergreen will make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged code of student rights and responsibilities violations including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(14) **Student group** is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

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

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

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

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

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

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

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

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

(a) Sex stereotypes;

(b) Sex characteristics;

(c) Pregnancy or related conditions;

(d) Sexual orientation; or

(e) Gender identity.

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

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

~~(1))~~ sex-based harassment is a type of sex discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

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

~~((2))~~ (b) Hostile environment. Unwelcome sex-based conduct that (~~a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to~~), based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Evergreen's educational programs or activities(~~(, or Evergreen employment)~~) (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

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

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

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

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

(v) Other sex-based harassment in Evergreen's educational program or activity.

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

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

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

~~((e))~~ (iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of (~~eighteen~~) 18.

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

~~((4))~~ (3) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, ((or)) coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, committed ((by a person with whom the victim shares a child in common,)) by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

~~((5))~~ (4) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

~~((6))~~ (5) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Relevant or relevance means a question or evidence is related to the allegations of sex discrimination at issue in the proceeding. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid the appellate officer(s) in determining whether the alleged sex discrimination occurred.

(2) Impermissible evidence:

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

(i) Spousal/domestic partner privilege;

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

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

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

(v) Privileges applicable to sexual assault and domestic violence advocates, and other legal privileges identified in RCW 5.60.060.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Prior to any question being posed to a party or witness, the appellate officer(s) must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant or is otherwise impermissible. Any written copies will be retained for the record.

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

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

(6) The appellate officer(s) shall exclude and shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct or is evidence of specific instances of prior sexual conduct with the respondent that are offered to prove consent.

(7) The appellate officer(s) may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions. The appellate officer(s) must not draw an inference about whether sex-based harassment occurred based solely on a party or witness's refusal to respond.

(8) At the conclusion of the appeal hearing, the appellate officer(s) will have 14 calendar days to make a written final decision. The final decision will include:

(a) Determining the grounds for appeal;

(b) Whether the decision of responsibility and/or sanctions in the proposed order is affirmed, vacated, or amended;

(c) If amended, set for the new disciplinary sanctions and conditions;

(d) Information on the ability to administratively appeal for a final appeal.

(9) The final decision shall be served on all parties and the Title IX coordinator. If a case involves sex-based harassment, the final

decision shall be served on the parties and the Title IX coordinator simultaneously.

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

WAC 174-123-440 Final appeal((s)). (1) The parties shall have the right to appeal (~~((from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint))~~) the final decision from the appellate officer(s). The parties may do so by filing a written notice of final appeal with the (~~(hearing panel chair)~~) Title IX coordinator within (~~(ten)~~) 10 calendar days of service of the (~~(student conduct official's, or hearing panel's decision)~~) final decision. Failure to timely file a notice of final appeal constitutes a waiver of the right to appeal and the decision shall be deemed final.

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

(2) The president or their designee will determine whether the grounds for final appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the (~~(initial order)~~) final decision are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

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

(4) The final decision will include information on the ability to judicially appeal to the Washington superior courts, pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.