

WSR 24-20-071

EMERGENCY RULES

CENTRAL WASHINGTON UNIVERSITY

[Filed September 27, 2024, 9:34 a.m., effective September 27, 2024, 9:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To comply with the new Title IX regulations that are effective August 1, 2024, Central Washington University (CWU) has updated their process for receiving and responding to concerns involving students engaging in discrimination, discriminatory harassment, and sexual violence. CWU has updated the student conduct code to comply with these changes.

Citation of Rules Affected by this Order: Repealing WAC 106-125-045, 106-125-200, 106-125-201, 106-125-205, 106-125-210, 106-125-215, 106-125-220, 106-125-225, 106-125-230, 106-125-235, 106-125-240, and 106-125-245.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Other Authority: 34 C.F.R. Part 106.

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: Revised definitions and procedures, including procedures for responding to complaints of discrimination against students, are required to comply with updated Title IX regulations, 34 C.F.R. Part 106. The Title IX regulations went into effect on August 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 12; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 27, 2024.

Thomas Pedersen
Coordinator of Policy and Risk

OTS-5878.1

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-005 Authority (~~(—Jurisdiction)~~). (~~((+1))~~) This student conduct code is adopted by the governing board of Central Washington University as authorized under RCW 28B.35.120. Authority is hereby delegated to the university president and administrative officers to administer and enforce the provisions of this code.

~~((2) The student conduct code shall apply to student conduct that occurs on university premises and to conduct that occurs at or in connection with university sponsored events, programs, or activities. This code may also apply to other student conduct occurring off campus (or in nonuniversity electronic environments) when the university deems such conduct to threaten safety or security or otherwise adversely impact the university community. Students shall be responsible for their conduct from the time of acceptance for admission or registration through the actual awarding of a degree or other certificate of completion. The university shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate. Student organizations affiliated with the university may also be sanctioned under this code for the conduct of their student members.~~

~~(3) The university shall not be required to stay disciplinary action under this student code pending any criminal or civil proceeding arising from the same conduct that would constitute a violation of this code. Nor shall the disposition of any such criminal or civil proceeding control the outcome of any student disciplinary proceeding.~~

~~(4) Nothing in this student code shall be construed as authorizing the university to prohibit or to discipline protected speech or other conduct that is protected by law or constitutional right.))~~

NEW SECTION

WAC 106-125-006 Jurisdiction. (1) The student conduct code shall apply to conduct by students or student groups that occurs:

- (a) On university premises;
- (b) At or in connection with university-sponsored events, programs, or activities; or
- (c) Off campus (or in nonuniversity electronic environments) when the university deems such conduct to threaten safety or security or otherwise adversely impact the university community.

(2) Jurisdiction extends to locations in which students are engaged in university programs or activities including, but not limited to, university housing, foreign or domestic travel, activities funded by the students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other university-sanctioned social or club activities.

(3) Students shall be responsible for their conduct from the time of acceptance for admission or registration through the last day of enrollment or actual awarding of a degree or other certificate of completion. The university shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate.

(4) These standards shall apply to a student's conduct even if the student withdraws from the university while a disciplinary matter is pending.

(5) The university has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

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

(7) The university shall not be required to stay disciplinary action under this student code pending any criminal or civil proceeding arising from the same conduct that would constitute a violation of this code. Nor shall the disposition of any such criminal or civil proceeding control the outcome of any student disciplinary proceeding.

(8) Nothing in this student code shall be construed as authorizing the university to prohibit or to discipline protected speech or other conduct that is protected by law or constitutional right.

NEW SECTION

WAC 106-125-007 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the university community.

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

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly, subject to reasonable time, place, and manner regulations as set forth in WAC 106-141-040.

(b) Students are free to pursue appropriate educational objectives from among the university's curricula, programs, and student affairs, subject to the limitations of RCW 28B.35.120.

(c) Students shall be protected from academic evaluation that 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 that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sex discrimination.

(2) Due process.

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

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

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

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-010 Definitions. The following definitions shall apply for purposes of this student conduct code:

(1) **Advisor of choice.** The "advisor of choice" is the person selected by a complainant or respondent to provide informal advice and support at any stage of a disciplinary proceeding under this student code. Except as otherwise provided in these rules, the role of the advisor of choice does not include representation of a party.

(2) **Complainant.** A "complainant" ~~((for purposes of this student code means any person who is the alleged victim or target of prohibited student conduct, whether or not such person has made an actual complaint))~~ means the following individuals who are alleged to have been subjected to conduct that would constitute discriminatory harassment or sex discrimination:

(a) A student or employee; or

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

(3) **Conduct officer.** The "conduct officer" or "student conduct officer" is the university official designated by the university to be responsible for ~~((initiating disciplinary action for alleged violations of this code))~~ implementing and enforcing the student conduct code.

(4) **Conduct review officer.** The "conduct review officer" is the university official designated by the university to ~~((hear appeals of disciplinary action conducted as brief adjudicative proceedings and to enter final decisions in proceedings heard by the student conduct council.~~

~~(5) **Consent.** The term "consent" for purposes of this code means knowing, voluntary, and clear permission and agreement, by actual words or conduct, to engage (or to continue engaging) in sexual activity. A person may be incapable of giving consent, or of diminished capacity to consent, by reason of age, threat or intimidation, lack of opportunity to consent, physical or mental impairment, drug or alcohol consumption, unconsciousness, or other cause. A person engages in non-consensual sexual activity if the person knows, or reasonably should know, that the other person is of diminished capacity to consent or has in any way manifested lack of consent. Intoxication is not a defense against allegations of nonconsensual sexual activity.~~

~~(6))~~ be responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(5) **Day.** The term "day," unless otherwise qualified, means "calendar day." The qualified term "instructional day" means ~~((any day within an academic term that the university is open for business, excluding weekends and holidays.~~

~~(7) **Dean of student success.** The term "dean" or "dean of student success" means the chief student affairs officer of the university and includes any acting or interim dean designated by the president to perform the functions and duties of the dean under this student code.~~

~~(8))~~ a weekday, excluding weekends and university holidays.

(6) **Disciplinary action.** The term "disciplinary action" means the ~~((decision of the designated university official regarding alleged violations of the student code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include a summary suspension))~~ process by which the student conduct officer im-

poses discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

(7) **Disciplinary appeal.** The term "disciplinary appeal" means the process by which an aggrieved party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal from the university are heard by the student conduct council. Appeals of all other disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

~~((9))~~ (8) **Filing and service.**

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

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

(c) **Electronic filing and service.** Unless otherwise provided, filing or service may be accomplished by electronic mail.

~~((10) **Party.** A "party" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct or discriminatory harassment.~~

~~((11))~~ (9) **Pregnancy or related conditions.** The term "pregnancy or related conditions" means:

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

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

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

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

~~((12))~~ (11) **President.** The "president" is the president of the university. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(12) **Program.** "Programs" or "programs and activities" means all operations of the university.

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

(14) **Remedies.** The term "remedies" means measures provided to a complainant or other person whose equal access to the university's educational programs and activities has been limited or denied by discrimination. These measures are intended to restore or preserve that

person's access to educational programs and activities after a determination that discrimination has occurred.

(15) **Respondent.** A "respondent" is a student (~~(against whom disciplinary action is initiated)~~) who is alleged to have violated the student conduct code.

~~((13))~~ (16) **Service.** See "Filing and service."

~~((14))~~ (17) **Student.** The term "student" includes all persons taking courses at or through the university, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.

~~((15))~~ (18) **Student employee.** The term "student employee" means an individual who is both a student and an employee of the university. When a complainant or respondent is a student employee, the university must make a fact-specific inquiry to determine whether the individual's primary relationship with the university is to receive an education; and whether any alleged student conduct code violation including, but not limited to, sex-based discrimination, harassment, and/or retaliation occurred while the individual was performing employment-related work.

(19) **Student group.** The term "student group" means a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(20) **Supportive measures.** The term "supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the university to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the university's educational program or activity, including measures that are designed to protect the safety of the parties or the university's educational environment; or providing support during the university's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(21) **Title IX coordinator.** The "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, and overseeing investigations and informal resolution processes in accordance with university policy.

(22) **University premises.** "University premises" shall include all campuses and electronic presences of the university, wherever located, and includes all land, buildings, facilities, vehicles, equipment,

computer systems, websites, and other property owned, used, or controlled by the university.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-020 Prohibited student conduct. Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this section means "without limitation."

(1) **Academic dishonesty.** The term "academic dishonesty" for purposes of this student code includes cheating, plagiarism, and fabrication. Nothing in this student code shall be construed as limiting the authority of faculty and academic administrators to assign academic consequences for these or other forms of academic misconduct.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, including collaboration without authority.

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

(c) **Fabrication.** 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 academic assignment.

(d) **Deliberate damage.** Taking deliberate action to destroy or damage another's academic work or university property in order to gain an advantage for oneself or another.

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

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

(~~b~~) (3) **Cannabis (~~/marijuana~~).** A "cannabis violation" (~~or "marijuana violation"~~) includes using, possessing, growing, delivering, selling, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on university premises or university-sponsored events. While state law permits the recreational use of (~~marijuana~~) cannabis, federal law prohibits any possession or use of (~~marijuana~~) cannabis on university premises or in connection with university activities.

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

~~tion of prescription or over-the-counter medications may also constitute a drug violation.~~

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

~~(3-))~~ (4) **Cyber misconduct.** The term "cyber misconduct" includes the use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, nonconsensual distribution of a recording of sexual activity, possession and/or distribution of pornographic material involving minors, and the creation and/or distribution of artificial intelligence generated pornographic material depicting the likeness of another member of the university community without that individual's consent.

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

~~((4))~~ (6) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the university's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

(7) **Drugs.** A "drug violation" includes the use, possession, production, delivery, sale, or being observably under the influence of

any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

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

~~((5))~~ (9) **Failure to comply.** The term "failure to comply" means refusing to obey the lawful directive of a university official or authorized university body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

~~((6))~~ (10) **False or deceptive conduct.** The term "false or deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of university records, furnishing false or misleading information to the university, falsely claiming an academic credential, or falsely accusing any person of misconduct.

~~((7))~~ (11) **Harassment or bullying.** The term "harassment" (~~or "discriminatory harassment"~~) means unwelcome and objectively 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 severe, pervasive, or persistent as to have the effect of denying, limiting, or unreasonably interfering with the ability of a student to participate in or benefit from the university's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s). Protected status includes a person's actual or perceived race, color, national origin, gender, disability, or other status protected by law. See "Sexual misconduct" for the definition of "sexual harassment."

~~(8))~~ means conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the university's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(12) **Harm of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, reckless endangerment, invasion of privacy, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

~~(13)~~ **Hazing.** "Hazing" includes 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 the destruction or removal of public or private property or))~~ act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a university-sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious ((mental)) psychological or emotional harm, to any student or other person, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing.

~~(14)~~ **Indecent exposure.** The term "indecent exposure" means the intentional or knowing exposure of a person's genitals or other private body parts when done in a public place. Breastfeeding or expressing breast milk is not indecent exposure.

~~(15)~~ **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the university. Such misuse includes, but is not limited to:

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

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

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

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

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

(f) Use of such time or resources to interfere with normal operation of the university'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 university's electronic information resources without authorization; or

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

~~((9))~~ **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

~~(10))~~ ~~(16)~~ **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of university property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential

personal information, intellectual property, and university trademarks.

~~((11) Relationship violence.~~ The term "relationship violence" includes "domestic violence" and "intimate partner violence."

~~(a) Domestic violence.~~ The term "domestic violence" means the infliction of physical harm, bodily injury, or assault (or the objectively reasonable fear of such harm, injury, or assault), or stalking, perpetrated against a current or former spouse or intimate partner, current or former cohabitant, a person with whom one shares a child in common, or a person with whom one resides, including roommates.

~~(b) Intimate partner violence.~~ The term "intimate partner violence," also known as dating violence, means the infliction of physical harm, bodily injury, or assault (or the objectively reasonable fear of such harm, injury, or assault), or stalking, perpetrated by a person against another with whom one is or has been in a social relationship of a romantic or intimate nature. The existence of such a relationship will be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

~~(12)) (17) Retaliation.~~ The term "retaliation" means harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person ~~((because such person reported an alleged violation of this code or other university policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a university investigation or disciplinary proceeding))~~ for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or university policies.

~~((13)) (18) Safety violations.~~ The term "safety violation" includes any nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any university policy, equipment, or procedure relating to the health, safety, or security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

~~((14) Sexual misconduct.~~ The term "sexual misconduct" includes "sexual harassment," "sexual exploitation," and "sexual violence."

~~(a) Sexual harassment.~~ The term "sexual harassment" means unwelcome and objectively offensive conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is directed at a person because of such person's sex or gender and that is sufficiently severe, pervasive, or persistent as to have the effect of denying, limiting, or unreasonably interfering with the ability of a student to participate in or benefit from the university's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s).))

(19) Sex discrimination. The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

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

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

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

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

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

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

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

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

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

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

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

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

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, or any other conduct prohibited under RCW 10.99.020 committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any

other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

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

(I) The length of the relationship;

(II) The type of relationship; and

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

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Sexual exploitation.** The term "sexual exploitation" means taking sexual advantage of another, without consent, for the gratification of oneself or any third person(s). The term includes voyeurism, indecent exposure, the nonconsensual recording of nudity or sexual activity where there is a reasonable expectation of privacy (or the nonconsensual distribution of such recording), inducing another person to engage in sexual activity for payment or other benefit, and knowingly exposing another to a sexually transmitted infection.

(c) ~~((**Sexual violence.** The term "sexual violence" includes "nonconsensual sexual contact" and "nonconsensual sexual intercourse."~~

~~(i) **Nonconsensual sexual contact.** The term "nonconsensual sexual contact" means any nonaccidental touching (including touching with any object) of the intimate parts of another person's body, clothed or unclothed, including a person's mouth, breasts, genital area, and buttocks, without the consent of the other person. The term also includes nonconsensual touching in a sexual manner of one's own intimate body parts, nonconsensual touching of another with one's own intimate body parts, removing another person's clothing without consent, or inducing a person without consent to touch their own or another person's intimate body parts.~~

~~(ii) **Nonconsensual sexual intercourse.** The term "nonconsensual sexual intercourse" includes any penetration, however slight, with any body part or object, of another person's mouth, vagina, or anus without the consent of the other person. The term also includes nonconsensual oral sex, with or without penetration.~~

~~(15) **Stalking.** The term "stalking," including cyberstalking, means a course of conduct, directed at a specific person, that involves repeatedly contacting, harassing, or following the person for no legitimate purpose, causing the person to have the same fear for the person's safety, the safety of others, or the security of property that a reasonable person in the same situation would experience under all the circumstances.~~

~~(16)) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.~~

~~(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.~~

~~(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct~~

indicating freely given agreement to have sexual intercourse or sexual contact.

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

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

(20) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(21) **Tobacco.** A "tobacco violation" includes the use of tobacco, electronic smoking devices (included e-cigarettes and vape pens), and related products in any building owned, leased or operated by the university or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the university. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

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

~~((17) **University policy violations.** The term "policy violation" means))~~ (23) **Violation of other laws or policies.** This includes the violation of any university policy or applicable law governing the conduct of students as members of the university community, including university policies governing nondiscrimination, alcohol and drugs, computer use, copyright, campus health and safety, and parking and traffic.

~~((18))~~ (24) **Weapons ((violations)).** A "weapons violation" includes the possession, display, storage, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on university premises of any firearm or other dangerous weapon in violation of public law or university policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-030 Corrective action, disciplinary sanctions, terms, and conditions. ((The university may impose any of the following disciplinary sanctions for violations of this student code. Violations must be proved by a preponderance of the evidence.

(1) ~~**Conduct reprimand.**~~ A "conduct reprimand" is a written notice formally censuring a student for a student code violation and providing notice that a repeated violation will subject the student to more severe disciplinary action.

(2) ~~**Conduct probation.**~~

(a) ~~The term "conduct probation" means a specified period of time during which a student's continued enrollment will be conditioned on the student's compliance with specified requirements or restrictions. The probation may be for a limited term or may extend for the duration of the student's attendance at the university, depending on the nature and seriousness of the code violation(s). The sanction of conduct probation may be imposed in the form of a deferred suspension.~~

(b) ~~Conditions placed on a student's continued enrollment may include, without limitation, any one or more of the following requirements or restrictions:~~

(i) ~~Compliance with applicable standards of conduct under the student code and university policies;~~

(ii) ~~Restitution, defined as payment of compensation for damage or loss caused to the university or any person as a result of the student's misconduct, or the assessment of such fines as may be authorized under specific university policies for violations of those policies;~~

(iii) ~~Restrictions on the student's contact with specified individuals or groups, which may include an order that the student refrain from having any communication with the specified persons;~~

(iv) ~~Restrictions on the student's access to specified university premises and/or limitations on the student's participation in university activities, which may include removal from or reassignment of student housing or denial of eligibility to participate in intercollegiate athletics;~~

(v) ~~A requirement that the student receive education or participate in training relating to the student's misconduct, which may include other educational sanctions assigned for the purpose of facilitating student development and learning as deemed appropriate to the offense;~~

(vi) ~~A requirement that the student be professionally evaluated by a qualified health care provider who is approved by the university and who is authorized by the student to discuss the evaluation with designated university officials, together with a requirement that the student comply with treatment recommendations relating to the student's ability to maintain appropriate standards of conduct.~~

(c) ~~A student's failure to comply with the conditions of the conduct probation may result in further disciplinary action including, but not limited to, disciplinary suspension or permanent dismissal.~~

(3) ~~**Conduct suspension.**~~ A "conduct suspension" means a temporary dismissal from the university and the suspension of student status for a specified period of time with no refund of tuition or fees. Reenrollment following a disciplinary suspension may be conditioned on any of the requirements or restrictions that may apply to a conduct probation.

~~(4) **Conduct dismissal.** The term "conduct dismissal" means permanent expulsion from the university with no refund of tuition or fees and may include an order trespassing the student from university premises. A sanction of conduct dismissal shall be recorded on the student's academic transcript.~~

~~(5) **Other sanctions.** The following additional sanctions for student code violations may be imposed as required or permitted by law or university policy.~~

~~(a) **Athletics eligibility.** A student athlete found in violation of WAC 106-125-020 (2) (c), relating to drug violations, shall be ineligible to participate in university athletics pursuant to RCW 69.41.340. Eligibility to participate in intercollegiate athletics may be denied based on violations of other student conduct prohibited under WAC 106-125-020.~~

~~(b) **Parent/guardian notification.** The university reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.) (1) The following corrective actions or disciplinary sanctions may be imposed upon students or upon university-sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.~~

(a) **Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

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

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

(d) **Disciplinary suspension.** Dismissal from the university and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the suspension is imposed.

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

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

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

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

(c) Not in good standing. A student deemed "not in good standing" with the university shall be subject to the following restrictions:

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

(ii) Ineligible to represent the university to anyone outside the university community in any way, including representing the university at any official function, or any forms of intercollegiate competition or representation.

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

(e) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the university. The student will sign all necessary releases to allow the university access to any such evaluation. The student's return to university may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the university community, the student will remain suspended until future evaluation recommends that the student is capable of re-entering the university and complying with the rules of conduct.

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

(g) Trespass or restriction. Restrictions on the student's access to specified university premises and/or limitations on the student's participation in university activities, which may include removal from or reassignment of student housing or denial of eligibility to participate in intercollegiate athletics.

(h) Parent/guardian notification. The university reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.

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

(4) If a student withdraws from the university or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the university.

NEW SECTION

WAC 106-125-031 Hazing sanctions. (1) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or non-

profit, the individual directors of the corporation may be held individually liable for damages.

(2) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the university.

(3) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the university.

(4) Student groups found responsible for violating the code of student conduct, university antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the university setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-040 Disciplinary action—Initiation. (~~((1) The student conduct officer will initiate disciplinary action by serving the student respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations or the issues involved, the specific conduct code provision(s) the respondent is alleged to have violated, and the range of possible sanctions for such violations(s).~~

~~(2) At the disciplinary meeting, the student conduct officer will review the allegations with the respondent and will afford the respondent an opportunity to respond. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.~~

~~(3) In a proceeding involving allegations of sexual misconduct or discriminatory harassment, the student conduct officer prior to taking disciplinary action will afford the complainant an opportunity to discuss the results of any investigation and the possible sanctions and/or conditions that could be imposed for the complainant's protection if the sexual misconduct or discriminatory harassment allegations are found to be substantiated.~~

~~(4) The student conduct officer may take any of the following disciplinary actions:~~

~~(a) The conduct officer may dismiss the proceeding upon finding the allegations to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review, except as provided in proceedings involving allegations of sexual misconduct or discriminatory harassment.~~

~~(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 106-125-030. Such sanction(s) shall be subject to review on appeal as provided in this student code.~~

~~(c) The conduct officer may refer the matter for disciplinary action by the student conduct council. Such referral shall be in writ-~~

~~ing, to the attention of the dean of student success, with a copy served on the respondent (and any complainant in a proceeding involving allegations of sexual misconduct or discriminatory harassment). The decision to refer shall not be subject to appeal or further review.~~

~~(5) Within 10 days of the initial disciplinary meeting, the conduct officer will serve the respondent (and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations) with a written decision either dismissing or referring the matter or imposing disciplinary sanctions. If sanctions are imposed, the written decision will specify the conduct code provision(s) found to have been violated, will describe the facts and conclusions supporting the sanction(s), and will provide notice of any appeal rights.~~

~~(6) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the decision will state whether such allegations were substantiated and will describe any sanctions or conditions imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.)~~ (1) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) Discriminatory harassment and sex discrimination, including sex-based harassment. The university's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of discriminatory harassment or sex discrimination, including sex-based harassment. Allegations of discriminatory harassment or sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the university will be handled in accordance with university policies.

(b) Hazing by student groups. A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the university. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(2) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(3) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve discriminatory harassment or sex discrimination, including sex-based harassment, complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(4) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(5) Both the respondent and the complainant in cases involving allegations of discriminatory harassment or sex discrimination, including sex-based harassment, shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(6) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

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

(8) 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.

(9) Within 10 calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

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

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 106-125-030; or

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

(11) In cases involving allegations of discriminatory harassment or sex-based harassment, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five instructional days of receiving the investigation report, serve respondent, complainant, and the Title IX coordina-

tor with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct council decision maker.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct council decision maker.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving discriminatory harassment or sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The university is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the university's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The university determines that, even if proven, the conduct alleged by the complainant would not constitute discriminatory harassment or sex discrimination; or

(v) The conduct alleged by the complainant falls outside the university's disciplinary jurisdiction.

(f) In cases involving allegations of discriminatory harassment or sex-based harassment, the university must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the university's Title IX grievance procedure.

(i) If the respondent is found responsible for engaging in discriminatory harassment or sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that the discrimination does not recur and that complainant has equal access to the university's programs and activities.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-050 Disciplinary action—Appeals. ~~((1) Respondent.~~
The student respondent may appeal the disciplinary action of the student conduct officer in accordance with the following rules:

~~(a) The respondent may appeal disciplinary action imposing a conduct reprimand, conduct probation, conduct suspension not in excess of~~

~~10 days, removal from student housing, or denial of eligibility to participate in intercollegiate athletics by filing a written notice of appeal with the conduct review officer within 10 days of service of the disciplinary decision.~~

~~(b) The respondent may appeal disciplinary action imposing a conduct suspension in excess of 10 days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within 20 days of service of the disciplinary decision.~~

~~(2) **Complainant.** The complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations may appeal the disciplinary action of the student conduct officer with respect to such allegations in accordance with the following rules:~~

~~(a) The complainant may appeal disciplinary action dismissing the proceeding or imposing a conduct reprimand, conduct probation, or conduct suspension not in excess of 10 days by filing a written notice of appeal with the conduct review officer within 10 days of service of the disciplinary decision.~~

~~(b) The complainant may appeal disciplinary action imposing a conduct suspension in excess of 10 days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within 20 days of service of the disciplinary decision.~~

~~(3) If no appeal is filed within the applicable time period, the disciplinary action of the student conduct officer shall be final.)~~

(1) Except as specified for cases involving allegations of discriminatory harassment or sex-based harassment, as set forth in WAC 106-125-075(11), the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent, complainant if any, and the student conduct officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct council, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the university bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation; and

(c) Written reprimands; and

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

(8) The student conduct council shall hear appeals from:

(a) Disciplinary suspensions in excess of 10 instructional days;

(b) Dismissals;

(c) Discriminatory harassment or sex discrimination, including sex-based harassment cases; and

(d) Disciplinary cases referred to the council by the student conduct officer or a conduct review officer.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-055 Conduct review hearings—Initial decision.

~~((1) **Conduct review officer – Authority.**~~

~~(a) The conduct review officer will hear a respondent's appeal of disciplinary action imposing a conduct reprimand, conduct probation, conduct suspension not in excess of 10 days, removal from student housing, or denial of eligibility to participate in intercollegiate athletics.~~

~~(b) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the conduct review officer will hear a complainant's appeal of disciplinary action dismissing the sexual misconduct or discriminatory harassment allegations or imposing, with respect to such allegations, a conduct reprimand, conduct probation, or conduct suspension not in excess of 10 days.~~

~~(c) The conduct review officer shall have the same authority as the student conduct officer to dismiss a proceeding, to impose a disciplinary sanction of conduct reprimand, conduct probation, or conduct suspension not in excess of 10 days, or to refer the matter for disciplinary action by the student conduct council.~~

~~(2) **Appeal hearing.** Appeals heard by the conduct review officer will be conducted as informal administrative hearings consistent with the rules for "brief adjudicative proceedings" under RCW 34.05.482 and WAC 106-08-050. The review officer shall provide each party an opportunity to explain the party's view of the matter.~~

~~(3) **Initial decision – Service.**~~

~~(a) Within 10 days of consideration of the appeal, the conduct review officer will serve an initial decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. The initial decision will explain the reasons for the decision and will provide notice of any right to request further administrative review.~~

~~(b) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the initial decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.~~

~~(c) A decision by the conduct review officer to refer the appeal to the student conduct council is not subject to further administrative review.~~

~~(4) **Initial decision – Request for review.** The respondent (or any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations) may request administrative review of the initial decision by filing a written request for review with the dean of student success within 21 days of service of the initial decision. If no request for review is filed, the initial decision of the conduct review officer shall be final.) (1) Appeals shall be conducted by a conduct review officer as brief adjudicative hearings. The conduct re-~~

view officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

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

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

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within 10 calendar days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 10 days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct council for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-060 Conduct review hearings—Review of initial decision. ~~((1) Requests for review of the initial decision of the conduct review officer will be heard by the dean of student success (or designee). The dean shall have the same authority on review as the conduct review officer to take disciplinary action.~~

~~(2) The dean will review the hearing record and will afford the parties the opportunity to file written statements explaining their views of the matter. The dean may make any inquiries necessary to ascertain whether the proceeding should be referred to the student conduct council for a formal hearing.~~

~~(3) Within 20 days of the date for the parties to submit written statements, the dean will serve a written review decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. The review decision will explain the reasons for the decision and will provide a notice that judicial review may be available.~~

~~(4) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the review decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.~~

~~(5) The review decision of the dean (or designee) shall be final.)~~ (1) An initial decision is subject to review by the conduct review officer, provided a party files a written request for review with

the conduct review officer within 21 calendar days of service of the initial decision.

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

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

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available.

(5) If the review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 instructional days or expulsion, the matter shall be referred to the student conduct council for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-070 Student conduct council. (1) The student conduct council shall consist of ~~((three))~~ a pool of university employees appointed by the university president or president's designee. The conduct council ~~((members))~~ decision maker will be selected ~~((by the council advisor))~~ subject to availability and qualification in accordance with WAC 106-125-045(6). ~~((Additional university employees may be selected to serve as alternate council members.))~~ Any party may petition the council for disqualification and appointment of a different decision maker.

(2) The student conduct council decision maker shall ~~((elect a chair to))~~ preside over the hearing ~~((, and the dean of student success shall appoint a nonvoting staff member as council advisor to convene and otherwise advise and assist the council))~~.

(3) The student conduct council will hear appeals of disciplinary action imposing a conduct suspension in excess of 10 days or a conduct dismissal. The council decision maker will hear such other matters as may be referred to the council by the student conduct officer ~~((7))~~ or conduct review officer ~~((7 or dean of student success))~~. The council decision maker shall have the authority to dismiss a proceeding or to impose any of the disciplinary sanctions under WAC 106-125-030.

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

(5) For cases involving allegations of discriminatory harassment or sex discrimination, including sex-based harassment, members of the student conduct council must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, bias. The decision maker must also receive training on the student conduct process for discriminatory harassment and sex discrimination cases, as

well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The university may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct council and/or council decision maker.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-075 Student conduct council—Prehearing procedure.

(1) The conduct council (~~(chair or advisor)~~) decision maker shall cause all parties to be served with written notice of the hearing not less than seven calendar days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The (~~chair or advisor~~) decision maker may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown. The notice shall include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(2) The conduct council (~~(chair, assisted by the council advisor,~~) decision maker is authorized to conduct prehearing conferences and to make prehearing decisions concerning the forms and extent of any discovery, issuance of protective orders, and similar procedural matters.

(3) The council (~~(chair or advisor)~~) decision maker may direct the parties prior to the hearing to exchange lists of potential witnesses and copies of exhibits that the parties reasonably expect to present to the council. Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.

(4) The council (~~(chair or advisor)~~) decision maker in advance of the hearing may (~~provide council members with~~) review copies of:

- (a) Any notice of disciplinary action (or referral to the council); and
- (b) Any notice of appeal filed by the respondent (or any complainant). However, such "pleadings" shall not be regarded as evidence of any facts they may allege.

(5) The parties may agree before the hearing to designate specific exhibits as admissible without objection.

(6) The student conduct officer shall provide reasonable assistance to the respondent and complainant in procuring the presence of university students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three instructional days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective

witnesses to procure their appearance at the hearing. The council decision maker will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(7) Communications between the council decision maker 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.

(8) Any party may be accompanied at the hearing by an advisor of the party's choice. A respondent (or any complainant) may be represented by an attorney at such party's own cost, but will be deemed to have waived that right unless, at least four instructional days before the hearing, the attorney files and serves a notice of appearance. Failure to do so may, at the discretion of the council decision maker, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student. If the respondent (or complainant) is represented by an attorney, the student conduct officer may be represented by the university's assistant attorney general.

((+6)) (9) The student conduct council decision maker may ((itself)) themselves be advised in any proceeding by an independently assigned assistant attorney general who shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.

(10) In cases involving allegations of discriminatory harassment or sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals.

(a) **Notice.** The university must provide a notice that includes all information required in subsection (1) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The council decision maker may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (11)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the university's control.

(e) **Confidentiality.** The university shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or council decision maker issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(11) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged discriminatory harassment or sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial student conduct council;

(iii) They may have an advisor of their choice, who may be an attorney, assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The council decision maker may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the decision maker in any prehearing conference. The written request must be served simultaneously by email to all parties and the decision maker. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The decision maker will serve a written decision upon all parties, to include the reasons for granting or denying any request. The decision maker's decision shall be final. In exceptional circumstances, for good cause shown, the decision maker may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The university shall provide an advisor to the respondent and any complainant, if the respondent or complainant has not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the university's control.

(e) **Confidentiality.** The university shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or decision maker issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The decision maker may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the council and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the university in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-080 Student conduct council—Hearing procedure. (1)

Upon the failure of any party to attend or participate in a hearing, the student conduct council may either:

- (a) Proceed with the hearing; or
- (b) Serve an order of default in accordance with RCW 34.05.440.

(2) Council hearings shall be closed to the public, unless all parties (including any complainant) agree on the record that all or parts of the proceeding may be open. The council (~~(chair)~~) decision maker shall determine any extent to which the hearing will be open. The (~~chair~~) decision maker may exclude from the hearing any person who disrupts the proceeding.

(3) The council (~~(advisor)~~) decision maker shall cause the hearing to be recorded (~~(pursuant to)~~) by a method that they select, in accordance with RCW 34.05.449 (~~(by a method the advisor selects)~~). Other recording shall be permitted in accordance with WAC 10-08-190. The (~~advisor~~) council decision maker shall maintain the official record of the proceeding that is required by RCW 34.05.476. Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.

(4) The council (~~(chair)~~) decision maker shall preside at the hearing and shall decide procedural questions that arise during the hearing (~~(, except as overridden by a majority vote of the council)~~).

(5) The student conduct officer (or assistant attorney general) shall present the case for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) (~~The respondent and a complainant in any proceeding involving sexual misconduct or discriminatory harassment allegations shall not directly question or cross-examine one another. All questions shall be directed to the council chair, who will act as an intermediary and pose questions on behalf of the parties. The council chair may reframe questions as to form or exclude questions on the grounds of relevance or privilege.~~) In cases involving allegations of discriminatory harassment or sex-based harassment, the complainant and respondent may not directly question one another. In such circumstances, the decision maker will determine whether questions will be submitted to the decision maker, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The council decision maker may revise this process if, in the decision maker's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the decision maker must determine whether any proposed question is relevant and not otherwise impermissible prior to the question being posed; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The decision maker will retain for the record copies of any written questions provided by any party.

(b) The decision maker must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The decision maker shall exclude and not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to information protected by the following:

(i) Spousal/domestic partner privilege;

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

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The decision maker shall exclude and not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The council decision maker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decision maker must not draw an inference about whether discriminatory harassment or sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of discriminatory harassment or sex-based harassment, the decision maker has the discretion in all cases to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the decision maker to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-085 Student conduct council—Initial decision. (1)

At the conclusion of the hearing, the student conduct council decision maker shall permit the parties to make closing arguments in whatever form the council wishes to receive them. The council decision maker may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within 20 days following the later of the conclusion of the hearing or the receipt of closing arguments, the student conduct council decision maker shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The decision shall contain findings on relevant issues of fact, conclusions concerning which, if any, provisions of the student code were found to be violated, and any sanc-

tion(s) imposed. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

~~(3) ((The council chair shall cause the initial decision to be served on the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. In a proceeding involving sexual misconduct or discriminatory harassment allegations, the decision will state whether such allegations were substantiated and will describe any sanctions or conditions imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.~~

~~(4) The council advisor, upon receipt of a timely filed appeal, shall promptly transmit the council's initial decision and the record of the proceedings for review by the conduct review officer who shall enter a final decision. If no appeal is timely filed, the initial decision of the student conduct council shall be the final decision.)) The council decision maker's initial decision shall also include a determination of appropriate sanctions, if any. If the matter was referred to the council by the student conduct officer, the council decision maker shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by a party, the council decision maker may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.~~

~~(4) The council decision maker shall cause copies of its decision to be served on the parties and their attorney, if any. The notice will inform all parties of their appeal rights. The council decision maker shall also promptly transmit a copy of the decision and the record of the council's proceedings to the review officer.~~

~~(5) In cases involving discriminatory harassment or sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.~~

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

WAC 106-125-090 Student conduct council—Appeal of initial decision.

(1) Any party, including a complainant in discriminatory harassment or sex-based harassment cases, may appeal the council decision maker's decision by filing a written appeal within 21 calendar days of service of the council's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The initial decision of the student conduct council decision maker will be reviewed on appeal by the conduct review officer. The conduct review officer shall have the same authority on review as the student conduct officer to take disciplinary action.

~~((2))~~ (3) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

- (a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(4) Upon receiving a timely appeal, the conduct review officer will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 instructional days from the date of service to submit a written response addressing the issues raised in the appeal, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(5) The review by the conduct review officer will be limited to the hearing record made before the student conduct council. The conduct review officer will afford all parties the opportunity to file written statements explaining why they agree or disagree with the council's initial decision. The conduct review officer may notify the parties that the review will be limited to reviewing the specific issues raised by the parties.

~~((3))~~ (6) The conduct review officer will serve a written decision upon all parties (including the complainant and Title IX coordinator in any proceeding involving (~~sexual misconduct~~) sex-based harassment or discriminatory harassment allegations) within 20 days of the date for the parties to submit written statements. The decision will adopt or modify the conduct (~~council's~~) council decision maker's initial decision and will provide a notice that reconsideration and/or judicial review may be available pursuant to chapter 34.05 RCW, Part V.

~~((4) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the review decision will explain the reasons for modifying any disciplinary action imposed with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.~~

~~(5))~~ (7) The conduct review officer shall not engage in ex parte communication with any of the parties regarding an appeal.

(8) The decision of the conduct review officer shall be final.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-100 Summary suspension. (1) A summary suspension is the temporary exclusion of a student from all or specified portions of university premises, programs, or activities pending an investigation and/or disciplinary proceeding relating to alleged student code violations.

(2) The ~~((dean of student success (or designee)))~~ student conduct officer may summarily suspend a student when ~~((the dean has))~~ they have cause to believe that the student (a) has violated any provision of the student code and (b) presents an immediate danger to the health, safety, or (~~security~~) welfare of the campus community and/or poses an ongoing threat of ~~((serious))~~ substantial disruption or interference with university operations.

(3) Notice of a summary suspension, if given orally, must be followed by service of a written notice within two instructional days of the oral notice. The written notice shall include:

(a) The duration and scope of the suspension, including any conditions under which the student may access university premises or contact members of the ~~((campus))~~ university community;

(b) The reasons for the suspension, including reference to the student code provisions allegedly violated, together with notice of any resulting or pending disciplinary action; and

(c) Notice of a summary suspension hearing to be held within three instructional days before a reviewing officer not otherwise involved in any pending disciplinary proceeding relating to the student.

(4) The reviewing officer will conduct the summary suspension hearing as an emergency proceeding under RCW 34.05.479. The issue before the reviewing officer shall be whether probable cause exists to continue the summary suspension. The student shall be afforded an opportunity at the hearing to explain why the suspension should not be continued or why the suspension should be less restrictive in scope. If the student fails to appear or to participate in the hearing, the reviewing officer may order that the suspension continue pending the conclusion of disciplinary proceedings.

(5) The reviewing officer, within two instructional days of the hearing, shall issue a written decision either terminating the summary suspension or explaining the immediate danger and policy reasons justifying the continuation and/or modification of the summary suspension. The reviewing officer will provide a copy of the decision to all persons who may be bound or protected by it.

(6) 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.

(7) In cases involving allegations of discriminatory harassment or sex discrimination, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The university will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

(8) The student may request review of the reviewing officer's decision before the student conduct council. Such review will be scheduled promptly and shall be consolidated with any pending disciplinary proceeding arising from the same conduct.

~~((SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 106-125-045 Appeal and review procedures—General.

| | |
|-----------------|------------------------------------|
| WAC 106-125-200 | Order of precedence. |
| WAC 106-125-201 | Revocation by operation of law. |
| WAC 106-125-205 | Prohibited conduct under Title IX. |
| WAC 106-125-210 | Title IX jurisdiction. |
| WAC 106-125-215 | Initiation of discipline. |
| WAC 106-125-220 | Student conduct council. |
| WAC 106-125-225 | Prehearing procedure. |
| WAC 106-125-230 | Rights of parties. |
| WAC 106-125-235 | Evidence. |
| WAC 106-125-240 | Initial decision. |
| WAC 106-125-245 | Appeal of initial decision. |