

WSR 24-22-103

EMERGENCY RULES

WASHINGTON STATE UNIVERSITY

[Filed November 4, 2024, 8:12 a.m., effective November 4, 2024, 8:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Washington State University (university) is updating the rules regarding the standards of conduct for students to comply with new Title IX requirements effective August 1, 2024.

Note: This emergency rule-making order was originally filed on August 7, 2024, as WSR 24-16-143. A preproposal for permanent rules for chapter 504-26 WAC, including similar permanent rules for WAC 504-26-403, was filed on July 3, 2024, as WSR 24-14-139, with a proposal filed on September 4, 2024, as WSR 24-18-118, and intended for adoption on November 25, 2024.

Citation of Rules Affected by this Order: Amending WAC 504-26-403.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Reasons for this Finding: The United States Department of Education (DOE) promulgated regulations updating the requirements regarding university hearings related to students that went into effect on August 1, 2024. The new rules codified in 34 C.F.R. § 106.46 (f) (3) change how complainants, respondents, and universities are allowed to question all witnesses in cases that involve sexual harassment and discrimination. Specifically, all parties to a case must provide the question to the decision maker who must make a determination regarding its relevance and permissibility under the new regulations before that question is posed to the witness. The university can lose federal funding from DOE if it does not comply with the new regulation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 4, 2024.

Deborah L. Bartlett, Director
Policies, Records, and Forms
and University Rules Coordinator

OTS-5716.1

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-403 Conduct board hearings (full adjudications). (1)

Conduct board hearings are used in matters in which the respondent faces possible sanctions of suspension for more than 10 instructional days, expulsion, or revocation of degree and matters in which a recognized or registered student organization faces possible loss of recognition. In addition, conduct board hearings are generally used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221. Other matters may be referred to a conduct board at the discretion of CCS.

(2) Adoption of model rules of procedure. Conduct board hearings are full adjudications governed by the Administrative Procedure Act, RCW 34.05.413 through 34.05.476, and chapter 10-08 WAC, Model rules of procedure, except as otherwise provided in this chapter. In the event of a conflict between the rules in this chapter and the model rules, this chapter governs.

(3) Notice of hearing. Notice to the parties of a conduct board hearing must comply with model rule WAC 10-08-040 and standards of conduct rule WAC 504-26-035. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-401 must be provided.

(4) Time for conduct board hearings. The conduct board hearing is scheduled not less than seven calendar days after the parties have been sent notice of the hearing.

In accordance with WAC 10-08-090, requests to extend the time and/or date for hearing must be addressed to the presiding officer. A request for extension of time is granted only upon a showing of good cause.

(5) Subpoenas. Subpoenas may be issued and enforced in accordance with model rule WAC 10-08-120. In determining whether to issue, quash, or modify a subpoena, the presiding officer must give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal Office for Civil Rights. The party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(6) Discovery. Depositions, interrogatories, and physical or medical examinations of parties are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process.

(7) Direct questioning and cross-examination. As required by RCW 34.05.449, direct and cross-examination of witnesses is permitted to the extent necessary for full disclosure of all relevant facts and issues.

(a) For hearings involving allegations where EP15 is implicated, parties and/or their advisors or representatives may submit direct and cross-examination ((is conducted orally through the party's advisor or representative. If a party does not have an advisor or representative, an advisor is provided by the university free of charge to conduct cross-examination on that party's behalf. Advisors and representatives are required to engage in cross-examination questioning in a respectful manner. In no circumstance may the complainant or respondent be permitted to cross-examine each other directly. Before any witness or

party may answer a)) questions to the presiding officer who asks relevant, permissible, clear, and nonharassing questions. Prior to asking any direct and cross-examination question, the presiding officer must first determine whether the question is relevant, permissible, clear, and nonharassing. If a presiding officer excludes a question, the presiding officer must explain the rationale for exclusion and provide the party and/or advisor an opportunity to clarify or revise their question.

(b) For hearings involving allegations where EP15 is not implicated, cross-examination is conducted orally through the party's advisor or representative. If a party does not have an advisor or representative, an advisor is provided by the university free of charge to conduct cross-examination on that party's behalf. Advisors and representatives are required to engage in cross-examination questioning in a respectful manner. In no circumstance may the complainant or respondent be permitted to cross-examine each other directly. Before any witness or party may answer a cross-examination question, the presiding officer must first determine whether the question is relevant. The presiding officer must instruct parties or witnesses not to answer cross-examination questions that are irrelevant, immaterial, or unduly repetitious.

(8) Decision requirements. Decisions regarding responsibility and sanctions are made by a majority of the conduct board hearing the matter.

(9) Notice of decision and right to appeal. Within 10 calendar days of the completion of the hearing, the conduct board must issue a decision simultaneously to all parties, which is the initial order of the university and must contain the following:

(a) Description of the allegations that initiated the community standards process;

(b) Description of procedural steps taken from the receipt of the formal complaint up to and including the university conduct board hearing;

(c) Appropriately numbered findings of fact and conclusions;

(d) The sanction(s) and/or remedy(ies) to be assigned, if any, and the rationale for the sanction(s) and/or remedy(ies);

(e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and

(f) Notice that the initial order becomes final unless an appeal is filed within 20 calendar days of the date the initial order is sent to the parties.