

WAC 172-121-121 Brief hearing procedures. (1) Applicability:

The conduct review officer (CRO) may hold a brief hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve a Title IX complaint, or felony level criminal behavior.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO.

(b) Closing hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the respondent's input.

(b) Appearance: The respondent, and complainant in cases of sexual misconduct or interpersonal violence, will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. People may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (e) of this subsection. If a person does not appear at the hearing, the hearing authority will decide the case based on the information available.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. In brief hearings, the advisor is limited to advising the student and cannot speak on behalf of the student.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Electronic appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by an electronic appearance as determined by the CRO.

(4) Standard of proof. The hearing authority shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office will schedule a prehearing conference with the respondent. Only the respondent and the respondent's advisor may appear at the prehearing conference, unless the case involves alleged sexual misconduct or interpersonal violence. In cases alleging sexual misconduct or interpersonal violence, the respondent and the complainant, along with their advisors, if they choose to have an advisor, may appear at the same or separate prehearing conferences. The purpose of the prehearing conference is to advise

the parties regarding the student conduct process. During the prehearing conference, the CRO will:

- (a) Review the written list of allegations with the respondent;
- (b) Inform the respondent who is bringing the complaint against them;
- (c) Provide the respondent with a copy of the student conduct code and any other relevant university policies;
- (d) Explain the respondent's rights under the student code;
- (e) Explain the conduct review procedures;
- (f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and
- (g) Explain possible penalties under the student conduct code.

At the end of the prehearing conference, the CRO will either conduct or schedule a brief hearing with the respondent as set forth in this subsection. If proper notice was given of the prehearing conference and the respondent fails to attend the conference, the CRO may either proceed with the brief hearing and decide the case based on the information available, or place a hold on the respondent's academic records as described in WAC 172-121-080 until the respondent cooperates with the student conduct process.

(6) Scheduling. A brief hearing may take place immediately following the prehearing conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct or interpersonal violence, a brief hearing cannot take place without first notifying the complainant/respondent of the hearing. If the brief hearing will be held at a later date or time, the CRO shall schedule the hearing and notify the respondent and, in the case of sexual misconduct or interpersonal violence, the complainant of the date, time, and place of the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so. The CRO has sole discretion as to whether to call witnesses.

(7) If the respondent fails to appear at the brief hearing, the CRO may conduct the hearing without the respondent present. The CRO may also place a hold on the respondent's academic records under WAC 172-121-080 until the respondent cooperates with the student conduct process.

(8) Deliberation. After the hearing, the CRO shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence and issue a decision within seven business days.

(a) If the CRO determines that there is not sufficient information to establish a violation by a preponderance of evidence, the CRO shall dismiss the complaint.

(b) If the CRO determines that the respondent violated the student conduct code, the CRO shall impose any number of sanctions as described in WAC 172-121-210, except suspension or expulsion.

(9) Sanctions. In determining what sanctions shall be imposed, the CRO may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the CRO authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

(10) Notification. The CRO shall serve the respondent with a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

(a) The findings shall be based exclusively on the evidence provided at the hearing. The decision must also include:

(i) Identification of the section of the code alleged to have been violated;

(ii) A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews, methods to gather evidence, and hearings;

(iii) Findings of fact supporting the determination;

(iv) Conclusions regarding the application of the code to the facts along with the rationale for each determination;

(v) Sanctions and remedies;

(vi) Respondent's right to appeal.

(b) In cases of sexual misconduct or interpersonal violence, the complainant shall be provided with written notice of:

(i) The university's determination as to whether such sexual misconduct or interpersonal violence occurred;

(ii) The complainant's right to appeal;

(iii) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

(c) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or other crime as defined in 42 U.S.C. Sec. 13925(a).

(11) Finality. The CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be timely.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-121, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-121, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-121, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-121, filed 8/9/17, effective 9/9/17.]