

**WSR 25-01-018**  
**PERMANENT RULES**  
**SECRETARY OF STATE**

[Filed December 6, 2024, 10:25 a.m., effective January 6, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This amended language updates the declaration printed on ballot return envelopes in compliance with SB 5890 and the requirements for instructions accompanying ballot packets.

Citation of Rules Affected by this Order: Amending WAC 434-230-015.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 24-21-117 on October 21, 2024.

Changes Other than Editing from Proposed to Adopted Version: Subsection (1): Clarification that the date of the election shall be the date printed on the ballot. Subsection (10): Clarification that the county auditors may use the previous ballot declaration through May 2025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 6, 2024.

Amanda Doyle  
Secretary of State Chief of Staff

**OTS-4415.6**

AMENDATORY SECTION (Amending WSR 21-21-001, filed 10/6/21, effective 11/6/21)

**WAC 434-230-015 Ballots and instructions.** (1) Each ballot shall specify the county, the date of the election, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes if candidate races appear on the ballot.

(3) Instructions that accompany a ballot must:

(a) Instruct the voter how to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notify the voter that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) Explain how to complete and sign the ballot declaration. The following declaration must accompany the ballot:

"I do solemnly swear or affirm under penalty of perjury that I am:

A United States citizen;

A Washington state resident (~~(that meets the requirements for voting mandated by state law)~~);

At least 18 years old on election day, or 17 years old at the primary and 18 years old by the day of the November general election;

Voting only once in this election and not voting in any other United States jurisdiction;

Not serving a sentence of total confinement under the jurisdiction of the Department of Corrections for a Washington felony conviction or currently incarcerated for a federal or out-of-state felony conviction;

Not disqualified from voting due to a court order; (~~and~~)

Aware it is illegal to forge a signature or cast another person's ballot and that attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both; and

Aware that the signature on this declaration will be compared to the signature(s) in the voter's registration file."

The declaration must include space for the voter to sign and date the declaration, for the voter to write (~~(his or her)~~) their phone number, and for two witnesses to sign if the voter is unable to sign.

(d) Explain how the voter may make a mark, witnessed by two other people, if the voter is unable to write their signature;

(e) Explain that a power of attorney cannot be used to sign a ballot for someone else;

(f) Explain how to place the ballot in the security envelope/sleeve and place the security envelope/sleeve in the return envelope;

(g) Explain how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(h) Explain how the voter may update their address;

(i) If applicable, include language with the reissued ballot notifying the voter that the reissued ballot is their current ballot;

(j) (~~(If applicable, explain that postage is required, or exactly how much postage is required. See WAC 434-250-200 on return postage;~~

~~(k))~~) Explain that, in order for the ballot to be counted, it must be either postmarked no later than election day or deposited at a ballot drop box no later than 8:00 p.m. election day;

(~~(l))~~) (k) Explain how to learn about the locations, hours, and services of voting centers and ballot drop boxes, including the availability of accessible voting equipment;

(~~(m))~~) (l) Include, for a primary election that includes a partisan office other than a presidential primary race, a notice on an insert explaining:

"In each race, you may vote for any one candidate listed. The two candidates who receive the most votes in the primary will advance to the general election.

Each candidate for partisan office may state a political party that (~~(he or she)~~) the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

~~((n+))~~ (m)(i) Include, for a general election that includes a partisan office, the following explanation:

"If a primary election was held for an office, the two candidates who received the most votes in the primary advanced to the general election.

Each candidate for partisan office may state a political party that ~~((he or she))~~ the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice president appear on the general election ballot, the following must be added to the statement required by ~~((n+))~~ (m)(i) of this subsection:

"The election for president and vice president is different. Candidates for president and vice president are the official nominees of their political party."

(4) Instructions that accompany a special absentee ballot authorized by RCW 29A.40.050 must also explain that the voter may request and subsequently vote a regular ballot, and that if the regular ballot is received by the county auditor, the regular ballot will be tabulated and the special absentee ballot will be voided.

(5) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(6)(a) If the ballot includes a partisan office other than a presidential primary race, the ballot must include the following notice in bold print immediately above the first partisan congressional, state, or county office: "**READ:** Each candidate for partisan office may state a political party that ~~((he or she))~~ the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice president but immediately above the first partisan congressional, state, or county office: "**READ:** Each candidate for president and vice president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that ~~((he or she))~~ the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(7) ~~((Counties))~~ County auditors may use varying sizes and colors of ballots, provided such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate various types of ballots.

(8) Ballots shall be formatted as provided in RCW 29A.36.161 and 29A.36.170.

(9) Removable stubs are not considered part of the ballot.

(10) If ballots are printed with sequential numbers or other sequential identifiers, the county auditor must take steps to prevent

ballots from being issued sequentially, in order to protect secrecy of the ballot.

((Counties)) County auditors may use ballot envelopes with the previous declaration through ((~~December 2021~~) May 2025).

**WSR 25-01-023**  
**PERMANENT RULES**  
**OFFICE OF MINORITY AND**  
**WOMEN'S BUSINESS ENTERPRISES**

[Filed December 6, 2024, 4:33 p.m., effective January 6, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The office of minority and women's business enterprises (OMWBE) is the sole certifying agency for small minority, women, and socially and economically disadvantaged business enterprises. OMWBE has both a state and federal certification program with similar rules. On April 9, 2024, the United States Department of Transportation (USDOT) announced that the disadvantaged business enterprise and airport concessions disadvantaged business enterprise rules will change and become effective on May 9, 2024. The USDOT rules are codified in 49 C.F.R. Parts 23 and 26 and used for OMWBE's federal certification. To align OMWBE's state certification program with its federal program, OMWBE proposes changes to the above-listed certification rules, which are found in chapter 326-20.

Citation of Rules Affected by this Order: Amending chapter 326-20 WAC.

Statutory Authority for Adoption: RCW 34.05.353 (1)(b).

Adopted under notice filed as WSR 24-18-064 on August 28, 2024.

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

Date Adopted: December 6, 2024.

Julie Bracken  
Public Records Officer  
Records Manager  
Rules Coordinator

**OTS-5813.1**

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

**WAC 326-20-010 In general.** (1) Any business which meets the definition of a minority business enterprise, a women's business enterprise, a minority woman's business enterprise, (~~(or)~~) a combination minority and women's business enterprise, (~~(or)~~) socially and economically disadvantaged business enterprise, (~~(or)~~) corporate-sponsored

dealership as set forth in this title, or public works small business enterprise is eligible to be certified by the state of Washington.

(2) It is not the intent of the program to encourage the participation of businesses owned and controlled by minorities, and/or women, and/or socially and economically disadvantaged individuals, who have not encountered practices which prohibited or limited their access to contract opportunities, markets, financing, and other resources, based on their race, ethnic origin, or sex, or disability.

(3) Notwithstanding the provisions in subsection (1) of this section, to be eligible for certification, any business applying for certification shall have obtained all licenses necessary to lawfully conduct business in the state of Washington.

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

**WAC 326-20-047 Proof of economic disadvantage.** Evidence of individual social disadvantage and/or individual economic disadvantage must include the following elements:

(1) Submission of narrative and financial information.

(a) Each individual claiming economic disadvantage must describe the conditions, which are the basis for the claim in a narrative statement, and must submit personal financial information.

(b) When married, an individual claiming economic disadvantage also must submit separate financial information for (~~his or her~~) their spouse, unless the individual and the spouse are legally separated.

(2) Factors to be considered. In considering diminished capital and credit opportunities, the office will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. The office will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that the office will compare include total assets, net sales, pretax profit, sales/working capital ratio, and net worth.

(3) Transfers within two years.

(a) Except as set forth in (b) of this subsection, the office will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(b) The office will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recogni-

tion of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(c) In determining an individual's access to capital and credit, the office may consider any assets that the individual transferred within such two-year period described by (a) of this subsection that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

**WAC 326-20-048 Presumption of disadvantage.** (1) Social disadvantage. The agency rebuttably presumes the following persons are socially disadvantaged individuals for the purposes of certification, consistent with 49 C.F.R. (~~Part~~) Section 26.67: Women; persons who are black/African American, Hispanic/Latino, Native American, Asian, Pacific Islander, native Hawaiian, and Alaska native; and other minorities found disadvantaged by the small business association.

(2) Each presumptively socially disadvantaged applicant must submit a signed declaration of eligibility (DOE), as provided by the office, that ((she or he is)) they are socially and economically disadvantaged.

(3) (a) Economic disadvantage. Each owner of a firm applying for state certification must sign a declaration that ((he or she has)) they have a personal net worth that does not exceed ((1.32 million dollars)) \$2,047,000, per WAC 326-20-049. The office will adjust the personal net worth cap routinely.

(b) Rebuttal of economic disadvantage. If the statement of personal net worth that an individual submits under this section shows that the individual's personal net worth exceeds ((1.32 million dollars)) \$2,047,000 or ((shows that a person has been able to accumulate substantial wealth)) a reasonable person would not consider the person economically disadvantaged, the individual's economic disadvantage is rebutted, and the individual is not deemed to be economically disadvantaged. Such an individual is no longer eligible to participate in the program and cannot regain eligibility by making an individual showing of disadvantage. The office is not required to have a proceeding under this section ((in order)) to rebut the presumption of economic disadvantage in this case.

(4) Individual determinations of social and economic disadvantage. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for Socially and Economically Disadvantaged Business Enterprise (SEDBE) certification. The office makes a case-by-case determination of whether each individual whose ownership and control are relied upon for SEDBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to the office, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds ((1.32 million dollars)) \$2,047,000 shall not be deemed to be economically disadvantaged. In making these determinations, the office uses WAC 326-20-046 and 326-20-047. The office requires that applicants provide sufficient information to permit determinations under WAC 326-20-046 and 326-20-047.

AMENDATORY SECTION (Amending WSR 17-13-020, filed 6/12/17, effective 8/1/17)

**WAC 326-20-049 Personal net worth.** (1) Each individual owner of a firm applying for state certification, whose ownership and control are relied on for certification, must fill out a personal net worth statement and sign a declaration of eligibility that ~~((his or her))~~ their personal net worth does not exceed ~~((1.32 million dollars))~~ \$2,047,000. If any individual's personal net worth exceeds ~~((1.32 million dollars))~~ \$2,047,000, the individual's presumption of economic disadvantage is rebutted and the individual does not meet the criteria for certification.

(2) The office may require additional financial information where necessary to accurately determine an individual's personal net worth.

(3) In determining an individual's personal net worth, the office will use the following criteria:

(a) Exclude the individual's ownership interest in the applicant firm;

(b) Exclude the individual's equity in his or her primary residence. The equity is the market value of the residence less any mortgages and home equity loan balances;

(c) Not use a contingent liability to reduce the individual's net worth;

~~(d) ((With respect to assets held in vested pension plans, individual retirement accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time))~~ Exclude retirement assets in full;

(e) Include any assets the individual has transferred within two years prior to the application or ~~((renewal))~~ certification update to:

(i) An immediate family member;

(ii) A trust where the beneficiary is an immediate family member;

or

(iii) The applicant firm for less than fair market value.

(f) The assets described in (e) of this subsection will not be counted toward an individual's personal net worth if:

(i) The applicant demonstrates that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or

(ii) The transfer is consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(g) For the purposes of this section, "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under state law.

(4) If an individual's personal net worth does not exceed ~~((1.32 million dollars))~~ \$2,047,000 as described in this section, the office may rebut an individual's presumption of economic disadvantage if the statement of personal net worth and supporting documentation demonstrates that ~~((the individual is able to accumulate substantial wealth. In making this determination, the office may consider factors that include, but are not limited to:~~



~~(a) Whether the average adjusted gross income of the owner over the most recent three year period exceeds three hundred fifty thousand dollars;~~

~~(b) Whether the income was unusual and not likely to occur in the future;~~

~~(c) Whether the earnings were offset by losses;~~

~~(d) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;~~

~~(e) Other evidence that income is not indicative of lack of economic disadvantage; and~~

~~(f) Whether the total fair market value of the owner's assets exceed six million dollars)) a reasonable person would not consider the individual to be economically disadvantaged even though the individual's personal net worth (PNW) did not exceed the limitation cap. Among the evidence the office can consider are ready access to wealth, income or assets of a type or magnitude inconsistent with economic disadvantage, a lavish lifestyle, community property, or other circumstances that economically disadvantaged people typically do not enjoy. Liabilities and the kind of asset exclusions used in PNW calculations would not be taken into account as part of this determination.~~

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

**WAC 326-20-050 Proof of ownership of business.** ~~((1) In determining whether a socially and economically disadvantaged participant(s) in a firm owns the business, the agency considers all facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership, or transfer of ownership, must be in the normal course of business.~~

~~(2) To be an eligible for certification, a firm must be at least fifty-one percent owned by a socially and economically disadvantaged individual(s).~~

~~(a) In the case of a sole proprietorship or other cases where documentary proof of ownership is not available, the agency may undertake further investigation and may require documents showing how and when the socially and economically disadvantaged owner(s) interest in the business was acquired.~~

~~(b) In the case of a corporation, a socially and economically disadvantaged individual(s) must own at least fifty-one percent of each class of voting stock outstanding and fifty-one percent of the aggregate of all stock outstanding.~~

~~(c) In the case of a partnership, a socially and economically disadvantaged individual(s) must own at least fifty-one percent of each class of partnership interest.~~

~~(d) In the case of a limited liability company, a socially and economically disadvantaged individual(s) must own at least fifty-one percent of each class of member interest.~~

~~(3) The socially and economically disadvantaged individual(s) ownership, including the individual's contribution of capital or expertise to acquire ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm. It may include ownership interest acquired:~~

~~(a) As the result of a final property settlement or court order in a divorce or legal separation, provided no term or condition of the agreement or divorce decree is inconsistent with this section;~~

~~(b) Through inheritance or because of the death of the former owner; and~~

~~(c) Through debt instruments from financial institutions or other organizations lending funds in the normal course of business, even when the debtor's ownership interest is security for the loan.~~

~~(4) The disadvantaged owner(s) must enjoy the customary incidents of ownership, share in the risks, and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form of arrangements.~~

~~(5) When expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership, the applicant must have a significant financial investment in the firm, and the applicant's expertise must be:~~

~~(a) In a specialized field;~~

~~(b) In areas critical to the firm's operations;~~

~~(c) Indispensable to the firm's potential success;~~

~~(d) Specific to the type of work the firm performs; and~~

~~(e) Documented in the records of the firm, which must show the contribution of expertise and value to the firm.~~

~~(6) The following are insufficient to be considered ownership in a firm by a socially and economically disadvantaged individual for the purposes of certification:~~

~~(a) A promise to contribute capital; an unsecured note payable to the firm or an owner who is not a disadvantaged individual; mere participation in a firm's activities as an employee; capitalization not commensurate with the value for the firm; and any terms or practices giving a nondisadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s).~~

~~(b) Except as allowed by this section, interests or assets obtained by an applicant in the form of a gift or transfer without adequate consideration from any nondisadvantaged individual or firm who is: Involved in the same firm or affiliate where the individual is seeking certification; involved in the same or a similar line of business; or engaged in an ongoing business relationship with the firm or an affiliate where the individual is seeking certification. To overcome this presumption and permit the interests or assets, the disadvantaged individual must demonstrate by clear and convincing evidence that: The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification; and the disadvantaged individual controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who provided the gift or transfer.)~~ (1) General rule: A socially and economically disadvantaged owner must own at least 51 percent of each class of ownership of the firm. Each socially and economically disadvantaged owner whose ownership is necessary to the firm's eligibility must demonstrate that their ownership satisfies the requirements of this section. If not, the firm is ineligible.

(2) Overall requirements. A socially and economically disadvantaged owner's acquisition and maintenance of an ownership interest meets the requirements of this section only if the owner demonstrates the following:

(a) Acquisition. The socially and economically disadvantaged owner acquires ownership at fair value and by one or more "investments" as defined in subsection (3) of this section.

(b) Proportion. No owner derives benefits or bears burdens that are clearly disproportionate to their ownership shares.

(c) Maintenance. This section's requirements continue to apply after the socially and economically disadvantaged owner's acquisition and the firm's certification. The socially and economically disadvantaged owner must maintain their investment and its proportion relative to those of other owners such that eligible individuals retain at least 51 percent ownership.

(i) The socially and economically disadvantaged owner may not withdraw or revoke their investment.

(ii) When an existing co-owner contributes significant, additional, post-acquisition cash or property to the firm, the socially and economically disadvantaged owner must increase their own investment to a level not clearly disproportionate to the nondisadvantaged owner's investment.

(iii) An organic increase in the value of the business does not affect maintenance because the value of the owners' investments remains proportional.

(3) Investments. A socially and economically disadvantaged owner may acquire ownership by purchase, capital contribution, or gift. Subject to the other requirements of this section, each is considered an "investment" in the firm, as are additional purchases, contributions, and qualifying gifts.

(a) Investments are unconditional and at full risk of loss.

(b) Investments include a significant outlay of the socially and economically disadvantaged owner's own money.

(c) For purposes of this part, title determines ownership of assets used for investments and of ownership interests themselves. This rule applies regardless of contrary community property, equitable distribution, banking, contract, or similar laws, rules, or principles.

(i) The person who has title to the asset owns it in proportion to their share of title.

(ii) However, the title rule is deemed not to apply when it produces a certification result that is manifestly unjust.

(d) If the socially and economically disadvantaged owner jointly (50/50) owns an investment of cash or property, the socially and economically disadvantaged owner may claim at least a 51 percent ownership interest, only if the other joint owner formally transfers to the socially and economically disadvantaged owner enough of his ownership in the invested asset(s) to bring the socially and economically disadvantaged owner's investment to at least 51 percent of all investments in the firm. Such transfers may be gifts described in subsection (5) of this section.

(4) Purchases and capital contributions.

(a) The following situations qualify as purchase and/or capital contributions:

(i) A purchase of an ownership interest is an investment when the consideration is entirely monetary and not a trade of property or services.

(ii) Capital that the socially and economically disadvantaged owner contributes directly to the company is an investment when the contribution is all cash or a combination of cash and tangible property and/or realty.

(iii) Debt-financed purchases or capital contributions are investments when they comply with the requirements of this section.

(b) The following situations do not qualify as purchase and/or capital contribution:

(i) Contributions of time, labor, services, and the like are not investments or components of investments.

(ii) Loans are not investments. The proceeds of loans may be investments to the extent that they finance the socially and economically disadvantaged owner's qualifying purchase or capital contribution.

(iii) Guarantees are not investments.

(iv) The firm's purchases or sales of property, including ownership in itself or other companies, are not the socially and economically disadvantaged owner's investments.

(v) Other persons' or entities' purchases or capital contributions are not the socially and economically disadvantaged owner's investments.

(5) Gifts. A gift to the socially and economically disadvantaged owner is an investment when it meets the requirements of this section. The gift rules apply to partial gifts, bequests, inheritances, trust distributions, and transfers for inadequate consideration. They apply to gifts of ownership interests and to gifts of cash or property that the socially and economically disadvantaged owner invests. The following requirements apply to gifts on which the socially and economically disadvantaged owner relies for their investment:

(a) The transferor/donor is or immediately becomes uninvolved with the firm in any capacity and in any other business that contracts with the firm other than as a lessor or provider of standard support services;

(b) The transferor does not derive undue benefit; and

(c) A writing documents the gift. When the socially and economically disadvantaged owner cannot reasonably produce better evidence, a receipt, canceled check, or transfer confirmation suffices, if the writing identifies transferor, transferee, amount or value, and date.

(d) Curative measures. The rules of this section do not prohibit transactions that further the objectives of, and compliance with, the provisions of this part. A socially and economically disadvantaged owner or firm may enter into legitimate transactions, alter the terms of ownership, make additional investments, or bolster underlying documentation in a good faith effort to remove, surmount, or correct defects in eligibility, as long as the actions are consistent with this part.

(i) The certifier may notify the firm of eligibility concerns and give the firm time, if the firm wishes, to attempt to remedy impediments to certification.

(ii) The firm may, of its own volition, take curative action up to the time of the certifier's decision. However, it must present evidence of curation before the certifier's decision.

(iii) The certifier may provide general assistance and guidance but not professional (legal, accounting, valuation, etc.) advice or opinions.

(iv) While the certifier may not affirmatively impede attempts to cure, it may maintain its decision timeline and make its decision based on available evidence.

(v) The certifier must deny or remove certification when the firm's efforts or submissions violate the rules in (e) of this subsection.

(e) Anti-abuse rules.

(i) The substance and not the form of transactions drives the eligibility determination.

(ii) The certifier must deny applications based on sham transactions or false representations, and it must decertify firms that en-

gage in or make them. Transactions or representations designed to evade or materially mislead subject the firm to the same consequences.

(iii) Fraud renders the firm ineligible and subjects it to possible sanctions, suspension, debarment, criminal prosecution, civil litigation, and any other consequence or recourse not proscribed in this part.

(6) Debt-financed investments.

(a) Subject to the other provisions of this subpart, a socially and economically disadvantaged owner may borrow money to finance an investment to acquire ownership if the following requirements are met:

(i) Money that the socially and economically disadvantaged owner receives as a gift is their own money.

(ii) The firm does not finance any part of the investment, directly or indirectly. The socially and economically disadvantaged owner does not rely on the company's credit or other resources to repay any part of the debt or otherwise to finance any part of their investment.

(iii) The loan is real, enforceable, not in default, not offset by another agreement, and on standard commercial, arm's length terms. The loan agreement requires level, regularly recurring payments of principal and interest, according to a standard amortization schedule. The loan agreement must permit prepayments, including by refinancing.

(b) If the creditor forgives or cancels all or part of the debt, or the socially and economically disadvantaged owner defaults, the entire debt-financed portion of the socially and economically disadvantaged owner's purchase or capital contribution is no longer an investment. This does not prohibit refinancing with debt that meets the requirements of this section or preclude prompt cures of ownership issues.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

**WAC 326-20-055 Subsidiaries.** An eligible firm must be owned by an individual(s) who is socially and economically disadvantaged, rather than owned by another firm, except as provided below:

(1) If a socially and economically disadvantaged individual(s) owns and controls a firm through a parent or holding company that is established for tax, capitalization, or other purposes consistent with industry practice; and the parent or holding company owns and controls the subsidiary.

(2) The agency may certify such a subsidiary if there is cumulatively (~~(fifty-one)~~) 51 percent ownership of the subsidiary by a socially and economically disadvantaged individual(s). Examples of such subsidiaries include, but are not limited to:

(a) A socially and economically disadvantaged individual(s) owns (~~(one hundred)~~) 100 percent of a holding company and has a wholly owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

(b) A socially and economically disadvantaged individual(s) owns (~~(one hundred)~~) 100 percent of the holding company and owns (~~(fifty-one)~~) 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

(c) A socially and economically disadvantaged individual(s) owns (~~(eighty)~~) 80 percent of the holding company and the holding company

in turn owns (~~(seventy)~~) 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is (~~(fifty-six)~~) 56 percent (~~(eighty)~~) 80 percent of the (~~(seventy)~~) 70 percent). This is more than (~~(fifty-one)~~) 51 percent, so the agency may certify the subsidiary, if all other requirements are met.

(d) Same as the examples in (b) and (c) of this subsection, but someone other than the socially and economically disadvantaged owner(s) of the parent or holding company control the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, the agency cannot certify it because it fails to meet control requirements.

(e) A socially and economically disadvantaged individual(s) owns (~~(sixty)~~) 60 percent of the holding company and (~~(fifty-one)~~) 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is approximately (~~(thirty-one)~~) 31 percent. This is less than (~~(fifty-one)~~) 51 percent, so the agency cannot certify the subsidiary.

(f) The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification or the gross receipts cap of WAC 326-20-096. Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(3) Businesses certified by the office are limited to having one level of ownership above an operating company. That is, there could be a "parent" company but not a "grandparent" company.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

**WAC 326-20-060 Community ownership.** (1) When an ownership interest arises in a nonapplicant spouse or registered domestic partner solely because of community property laws, the agency will not disqualify the applicant if both parties certify that:

(a) Only the applicant spouse or registered domestic partner participates in the management of the business; and

(b) The nonparticipating spouse or registered domestic partner relinquishes control over (~~(his/her)~~) their community interest in the business.

(2) When an ownership interest arising in a nonapplicant spouse or registered domestic partner solely because of community property laws, the agency will not disqualify the applicant because of a provision for the nonapplicant spouse or domestic partner to cosign a financing agreement, contract for the purchase or sale of real or personal property, bank signature card, or other document.

(3) The agency must give particular scrutiny to the ownership and control of a firm to ensure it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual, when the ownership of the firm or its assets is transferred from a spouse or registered domestic partner who is not a socially and economically disadvantaged individual.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

**WAC 326-20-080 Factors considered in determining control.** (~~((1)~~

~~In determining whether disadvantaged owner(s) control a business, the office must consider all of the facts in the record, viewed as a whole.~~

~~(2) The disadvantaged owner(s) must demonstrate the ability to make independent and unilateral business decisions needed to guide the future and direction of the business.~~

~~(3) The certifiable business must not be subject to any formal or informal restrictions limiting the customary discretion of the disadvantaged owner(s). Restrictions through corporate charter provisions, bylaw requirements, contracts or any other formal or informal devices, such as cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by nondisadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, limitations on or assignments of voting rights, preventing the disadvantaged owner(s), without the cooperation or vote of any nondisadvantaged individual, from making any business decision are prohibited. This subsection does not preclude a spouse or registered domestic partner cosignature on the office's spouse or domestic partner nonparticipation statement.~~

~~(4) Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the business and make daily and long-term decisions on matters of management, policy, and operations.~~

~~(a) Disadvantaged owner(s) must hold the highest officer position in the company, such as chief executive officer or president.~~

~~(b) In a corporation, disadvantaged owners must control the board of directors.~~

~~(c) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions. In order for a partnership to be controlled by disadvantaged individuals, any nondisadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.~~

~~(d) Nondisadvantaged or immediate family members may be involved in a certified business as owners, managers, employees, stockholders, officers, or directors. They must not possess or exercise the power to control the business or be disproportionately responsible for the operation of the business.~~

~~(e) Disadvantaged owner(s) of the business may delegate various areas of the management, policymaking, or daily operations of the business to other participants in the business, regardless of whether these participants are disadvantaged individuals. Such delegations of authority must be revocable, and the disadvantaged owner(s) must retain the power to hire and fire any person to whom such authority is delegated. The disadvantaged owner(s) managerial role in the business's overall affairs must be such that the recipient can reasonably conclude the disadvantaged owners actually exercise control over the business's operations, management, and policy.~~

~~(f) Disadvantaged owner(s) must demonstrate the ability to make basic decisions pertaining to the daily operations of the business independently and have an overall understanding of, managerial and technical competence and experience directly related to, the type of busi-~~

ness in which the business is engaged and operating. The owner(s) are not required to have experience or expertise in every critical area of operations or given field than managers or key employees. They must have the ability to intelligently and critically evaluate information presented by other participants in the business's activities and to use this information to make independent decisions concerning the business's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principle business activities of the business is insufficient to demonstrate control.

(g) If state or local law requires the persons to have a particular license or other credential in order to own or control a certain type of business, then the disadvantaged person(s) who own and control a potential certifiable business of that type must possess the required license or credential. If state or local law does not require the applicant to possess such a license or credential to own or control a business, the office must not deny certification solely on the ground the person lacks the license or credential. However, the office may take into account the absence of the license or credential as one factor in determining whether the disadvantaged owner(s) actually control the business.

(h) The office may consider differences in remuneration between the disadvantaged owner(s) and other business participants in determining whether to certify a business. Such consideration must be in the context of the duties of the persons involved, normal industry practices, the business's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the business. The office may determine a disadvantaged owner controls a business although that owner's remuneration is lower than that of some other participants in the business. In a case where a nondisadvantaged individual formerly controlled the business, and a disadvantaged individual now controls it, the office may consider a difference between the remuneration of the former and current controller of the business as a factor in determining who controls the business, particularly when the nondisadvantaged individual remains involved with the business and continues to receive greater compensation than the disadvantaged individual.

(i) In order to be viewed as controlling a business, a disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the business or prevent the individual from devoting sufficient time and attention to the affairs of the business to control its activities. For example, absentee ownership of a business and part-time work in a full-time business are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings or weekends, if the individual controls it all the time it is operating.

(j) A disadvantaged individual may control a business even though one or more of the individual's nondisadvantaged immediate family members, participate in the business as a manager, employee, owner, or in another capacity. Except as otherwise provided in this subsection, the office must make a judgment about the control the disadvantaged owner exercises vis-a-vis other persons involved in the business as the office does in other situations, without regard to whether or not the other persons are immediate family members. If the office cannot determine the disadvantaged owners, as distinct from the family as a whole, control the business, then the disadvantaged owners failed to



carry their burden of proof concerning control, even though they may participate significantly in the business's activities.

~~(k) When a business was formerly owned or controlled by a nondisadvantaged individual, whether or not an immediate family member, and ownership or control was transferred to a disadvantaged individual, and the nondisadvantaged individual remains involved with the business in any capacity, there is a rebuttable presumption of control by the nondisadvantaged individual unless the disadvantaged individual now owning the business demonstrates to the office, by clear and convincing evidence, that:~~

~~(i) The transfer of ownership or control to the disadvantaged individual was made for reasons other than obtaining certification; and~~

~~(ii) The disadvantaged individual actually controls the management, policy, and operations of the business, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned or controlled the business.~~

~~(l) In determining whether its disadvantaged owner controls a business, the office may consider whether the business owns equipment necessary to perform its work. However, the office must not determine a business is not controlled by disadvantaged individuals solely because the business leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the business.~~

~~(m) A business operating under a franchise or license agreement may be certified if it meets the standards in this paragraph and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the office should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.~~

~~(n) The disadvantaged individual(s) controlling a business may use an employee leasing company. The use of such a company does not preclude the individual(s) from controlling their business if they continue to maintain an employer-employee relationship with the leased employees. This includes responsibility for hiring, firing, training, assigning, and otherwise controlling on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.) (1) General rules.~~

~~(a) One or more socially and economically disadvantaged owners of the firm must control it.~~

~~(b) Control determinations must consider all pertinent facts, viewed together and in context.~~

~~(c) A firm must have operations in the business for which it seeks certification at the time it applies.~~

~~The office does not certify plans or intentions, or issue contingent or conditional certifications.~~

~~(2) Socially and economically disadvantaged owner as final decision maker. A socially and economically disadvantaged owner must be~~

the ultimate decision maker in fact, regardless of operational, policy, or delegation arrangements.

(a) Governance. Governance provisions may not require that any socially and economically disadvantaged owner obtain concurrence or consent from a nonsocially and economically disadvantaged owner to transact business on behalf of the firm.

(i) Highest officer position. A socially and economically disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(ii) Board of directors. A socially and economically disadvantaged owner must have present control of the firm's board of directors, or other governing body, through the number of eligible votes.

(A) Quorum requirements. Provisions for the establishment of a quorum must not block the socially and economically disadvantaged owner from calling a meeting to vote and transact business on behalf of the firm.

(B) Shareholder actions. A socially and economically disadvantaged owner's authority to change the firm's composition via shareholder action does not prove control within the meaning of this section.

(iii) Partnerships. In a partnership, at least one socially and economically disadvantaged owner must serve as a general partner, with control over all partnership decisions.

(iv) Exception. Bylaws or other governing provisions that require nonsocially and economically disadvantaged owner consent for extraordinary actions generally do not contravene the control rules of this section. Nonexclusive examples are a sale of the company or substantially all of its assets, mergers, and a sudden, wholesale change of type of business.

(b) Expertise. At least one socially and economically disadvantaged owner must have an overall understanding of the business and its essential operations sufficient to make sound managerial decisions not primarily of an administrative nature. These requirements vary with type of business, degree of technological complexity, and scale.

(c) Socially and economically disadvantaged owner decisions. To distinguish control, the firm must show that the socially and economically disadvantaged owner has authority, critically analyzes information, and uses that analysis to make independent decisions. The firm must also demonstrate that the eligible owner makes the business decisions not primarily of an administrative nature.

(d) Delegation. A socially and economically disadvantaged owner may delegate administrative activities or operational oversight to a non-SED individual as long as at least one socially and economically disadvantaged owner retains unilateral power to fire the delegate(s), and the chain of command is evident to all participants in the company and to all persons and entities with whom the firm conducts business.

(i) No non-SED participant may have power equal to or greater than that of a socially and economically disadvantaged owner, considering all the circumstances. Aggregate magnitude and significance govern; a numerical tally does not.

(ii) Non-SED participants may not make nonroutine purchases or disbursements, enter into substantial contracts, or make decisions that affect company viability without the socially and economically disadvantaged owner's consent.

(iii) Written provisions or policies that specify the terms under which non-SED participants may sign or act on the socially and economically disadvantaged owner's behalf with respect to recurring matters generally do not violate this paragraph, as long as they are consis-

tent with the socially and economically disadvantaged owner having ultimate responsibility for the action.

(e) Franchise and license agreements. A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the certifier should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, if the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

**WAC 326-20-094 Assignment of North American ((Industrial)) Industry Classification System (NAICS) code.** The office must grant certification to a business only for specific types of work the disadvantaged owner(s) have the ability to control. To become certified in an additional type of work, the business needs to demonstrate its owner(s) are able to control the business with respect to that type of work. The office must not require the business to recertify or submit a new certification application but verify the disadvantaged owner(s) control of the business in the additional type of work.

(1) The types of work a business can perform, whether at initial certification or when a new type is added, must be described in terms of the most specific available North American Industry Classification System (NAICS) code for that type of work. In addition to applying the appropriate NAICS code, the office may apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one describing, as specifically as possible, the ((~~principle~~)) principal goods or services the business would provide to the state. Multiple NAICS codes may be assigned when appropriate. The office must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a business's certification.

(2) Businesses and recipients must check carefully to make sure the NAICS codes cited in a certification are current and accurately reflect work the office has determined the business owners can control. The business bears the burden of providing detailed company information the office needs to make an appropriate NAICS code designation.

(3) If a business believes there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified, the business may request the office, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the business is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients must not

rely on such a description in determining whether a business's participation can be counted toward goals.

(4) The office is not precluded from changing a certification classification or description if there is a factual basis in the record. However, the office must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

**WAC 326-20-099 Small business concern requirement and size standards.** (1) In addition to meeting the ownership and control requirements of chapter 39.19 RCW, a business must qualify as a small business concern for certification eligibility or (~~recertification~~) certification update.

(a) A small business concern is a business that is independently owned and operated, is not dominant in its field of operations, and does not exceed the size limitations as set forth in the current table of North American (~~Industrial~~) Industry Classification System (NAICS) codes or corresponding industry size standards as set forth in 49 C.F.R. Part 26 and amendments or inflationary adjustments thereof.

(b) The number of employees or amount of annual receipts listed as the size standard for each NAICS code indicates the maximum allowed for a business, including its affiliates, to qualify as a small business concern.

(c) The office's determination of whether a business qualifies as a small business concern must be, whenever possible, based on criteria consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. 632, and its implementing regulations, taking into consideration statewide markets.

(2) A business exceeding the small business size limits after certification by the office must be subject to graduation.

(3) At the time of application for certification and recertification, a business must demonstrate to the office that it is a small business concern. The office may verify the business is still a small business concern at any time after certification. In verifying the business's size, the office will review such financial documentation made available to the office, such as annual financial statements, federal income tax returns, state and local excise tax reports, and other relevant information.

(4) Except as otherwise provided in this chapter, affiliation occurs when either directly or indirectly:

(a) One business controls or has power to control the other;

(b) A third party or parties controls or has power to control both; or

(c) An "identity of interest" exists among them so the presumption of affiliation exists.

(5) When reference sets the maximum size standard to "annual receipts," a business exceeding the monetary figure in the standard is not eligible for certification. Annual receipts includes all revenue received or accrued from sources, such as sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. The term "receipts" excludes proceeds from any of the following:

- (a) Sales of capital assets and investments;
- (b) Proceeds from transactions between a concern and its domestic and foreign affiliates;
- (c) Proceeds from payments of notes receivable, accounts receivable, and amounts collected as an agent for another, such as gross bookings when a commission is earned, in which case only the commission earned constitutes revenue, and taxes collected for remittance to a taxing authority.
- (6) The measurement period must comply with the following:
- (a) The size of a business with three or more completed fiscal years will be determined by averaging the annual receipts of the business for the most recent three years;
- (b) The size of a business with less than three fiscal years will be determined by computing the average of the annual receipts from the time the business formed, calculating total revenues compiled over the period divided by the number of weeks, including fractions of a week, multiplied by (~~fifty-two~~) 52;
- (c) Method of determining annual receipts. Revenue may be taken from the regular books of account of the concern. If the office so elects or the business has not kept regular books of account or the Internal Revenue Service has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the federal income tax return of the concern may be used in determining annual receipts along with other information the office deems relevant.
- (7) Where the size standard is "number of employees," size eligibility requires the concern may not exceed the number of employees in that standard.
- (a) "Number of employees" means that average employment of the concern, including domestic and foreign affiliate employees, based upon employment during each of the pay periods for the preceding completed (~~twelve~~) 12 calendar months.
- (b) In computing average employment, part-time and temporary employees count as full-time employees for each applicable pay period.
- (c) If a concern has not been in business for (~~twelve~~) 12 months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.
- (8) No business, regardless of its primary NAICS code, is eligible for certification if it exceeds the largest annual revenue limit contained in 49 C.F.R. Part 26 and any amendments or inflationary adjustments thereof.
- (9) In determining the business's primary industry, including its affiliates, the office must consider the distribution of receipts, employees, and costs in the differing industry areas the business operated during its most recently completed fiscal year. Other factors, such as patents, contract awards, and assets, may be considered.
- (10) If the activities of the business encompass two or more NAICS codes, the first NAICS code listed in the directory is the primary industry classification of the business.
- (11) A business exceeding the small business size limits after certification by the office must be subject to graduation.
- (12) For purposes of utilization on projects funded by any operating modal of the U.S. Department of Transportation the maximum dollar size standard in 49 C.F.R. Part 26 as may be amended or adjusted for inflation, must apply, even if the size standard would otherwise be set by reference to number of employees. This standard is a maxi-

mum. Certified businesses are still subject to applicable lower limits on business size as established by the United States Small Business Administration and these regulations.

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

**WAC 326-20-150 On-site investigations.** The office may, whenever it deems necessary, conduct unannounced on-site investigations into the operations of a business. By submitting the certification application form, an applicant agrees that the office may conduct such investigations at any time. On-site reviews may be conducted in-person or virtually.

**WSR 25-01-036**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed December 9, 2024, 4:33 p.m., effective January 9, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of social and health services (department) is amending WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work? These amendments are necessary to align aged, blind, or disabled (ABD) program rules with the Social Security Administration's revision of the definition of "past relevant work" by reducing the relevant work period from 15 to five years. When effective, this permanent filing supersedes the emergency rule filed under WSR 24-21-091.

Citation of Rules Affected by this Order: Amending WAC 388-449-0080.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.100, 74.09.035, 74.09.530, and 74.62.030.

Adopted under notice filed as WSR 24-18-038 on August 26, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 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 1, 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: December 9, 2024.

Katherine I. Vasquez  
Rules Coordinator

**SHS-5038.1**

AMENDATORY SECTION (Amending WSR 15-03-031, filed 1/12/15, effective 2/12/15)

**WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?**

(1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005;

(b) You have performed in the past (~~fifteen~~) five years; and

(c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and

(b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.



## WSR 25-01-044

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed December 10, 2024, 11:23 a.m., effective January 10, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: As a result of a petition for rule making, the department of agriculture (department) is proposing amending chapter 16-662 WAC to align with the Federal Highway Administration's national electric vehicle infrastructure (NEVI) program's technical requirements for electric vehicle supply equipment (EVSE) payment methods. The department is also expanding upon these requirements to include additional technologies and be inclusive of evolving technologies.

During the 2021 legislative session, the Washington state legislature passed 2SSB 5192 related to EVSE. This legislation directed the department to adopt rules regarding methods of payment. On December 16, 2022, the department adopted rules establishing minimum payment requirements for EVSE, which included having a credit card reader device physically located on either the EVSE unit or a kiosk used to service that equipment. That device must be able to accept a Euro MasterCard Visa (EMV) chip. This rule became effective January 1, 2024.

On July 28, 2023, a group of electric vehicle service provider (EVSP) organizations petitioned the department to amend the required minimum payment methods adopted in WAC 16-662-210 to align with the NEVI program requirements established in February 2023. These requirements include a contactless payment method that accepts major debit and credit cards. They do not require a physical credit card reader device to be installed on the EVSE or kiosk. In response to the NEVI technical requirements adoption in July 2023, California aligned their EVSE payment regulations with the technical requirements of NEVI, specifically removing the requirement for an EMV chip reader to be installed on the EVSE. Due to these changes, Washington will be the only state with a state-level regulation requiring EVSE to provide an EMV chip reader.

Due to the regulations recently adopted by the NEVI program and the state of California, Washington is currently the only state with a state-level regulation requiring EVSE to provide an EMV chip reader to be physically installed on each charging station. The impact of this requirement is significant for electric vehicle (EV) charging providers and EV drivers. It will require different equipment and operational obligations, resulting in different installation and maintenance costs for EVSE manufacturers and network providers for EVSE in Washington compared to other states. To put it simply, manufacturers will have to design an EV charging product just for operating in Washington. This will add further complexity and costs to multi-state EVSE projects, such as those running across California, Oregon, and Washington. For EV drivers in Washington, it will also result in different payment experiences, offerings, reliability, and potentially costs to charge from those of surrounding states.

By amending this rule to align with the NEVI and California requirements, as well as expanding upon those requirements to include additional technologies, the department is ensuring that it continues to meet its statutory mandate to remain consistent with evolving technology, while also seeking to minimize costs and maximize benefits to the public.

Citation of Rules Affected by this Order: Amending WAC 16-662-210.

Statutory Authority for Adoption: RCW 19.94.010, 19.94.190, and 19.94.565.

Adopted under notice filed as WSR 24-21-161 on October 23, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 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 1, 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: December 10, 2024.

Derek I. Sandison  
Director

### OTS-5913.3

AMENDATORY SECTION (Amending WSR 23-01-091, filed 12/16/22, effective 1/1/24)

**WAC 16-662-210 Electric vehicle supply equipment payment method and fee disclosure requirements.** (1) All publicly available electric vehicle supply equipment installed in Washington that requires payment shall ~~((meet the following requirements:~~

~~(a) Have a credit card reader device physically located on either the electric vehicle supply equipment unit or a kiosk used to service that electric vehicle supply equipment. The credit card reader device shall comply with all of the following requirements:~~

~~(i) The credit card reader device shall accept, at a minimum, the Euro MasterCard Visa (EMV) chip and, at a minimum, one of the following credit card types: Visa, MasterCard, or American Express; and~~

~~(ii) The credit card reader device shall be nonlocking and shall always permit customers to remove their credit card without damage to the card, including during a fault situation or power failure.~~

~~(b) All electric vehicle supply equipment subject to this section shall have a mobile payment device physically located on the electric vehicle supply equipment or kiosk used to service that electric vehicle supply equipment; and~~

~~(c) The electric vehicle service provider shall provide and display a toll-free number on each electric vehicle supply equipment or kiosk used to service that electric vehicle supply equipment that provides the user with the option to initiate a charging session and submit payment at any time that the electric vehicle supply equipment is operational and publicly available.~~

~~(2-))~~ provide for secure payment methods, accessible to persons with disabilities, which at a minimum shall include:

(a) A contactless payment method that accepts major debit and credit cards; and

(b) An automated toll-free phone number or a short message/messaging system (SMS) that provides the electric vehicle charging customer with the option to initiate a charging session and submit payment.

(2) "Contactless payment methods" means a secure method for consumers to purchase services using a debit card, credit card, smart-card, mobile applications, or another payment device including, but not limited to, those using radio frequency identification (RFID) technology and near-field communication (NFC).

(3) At a minimum, the electric vehicle service provider shall disclose to the user, at the point of sale, the following minimum information, if applicable:

(a) A fee for use of the parking space;

(b) A nonmember plug-in fee from the electric vehicle service provider;

(c) The price to refuel in United States dollars per kilowatt-hour or mega joule;

(d) Any potential changes in the price to refuel, in United States dollars per kilowatt-hour or mega joule, due to variable pricing; and

(e) Any other fees charged for a charging session.

~~((3))~~ (4) If the charging session or portion of a charging session is offered at no cost, it must be disclosed at the location where the charging session is initiated and prior to a user or a vehicle initiating a charging session.

~~((4))~~ (5) The electric vehicle service provider may not require a subscription, membership, or account or a minimum balance on an account in order to initiate a charging session at an electric vehicle supply equipment subject to this section.

~~((5))~~ (6) The requirements of this section shall not apply to electric vehicle supply equipment exempted under RCW 19.94.555.

WSR 25-01-045  
PERMANENT RULES  
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 10, 2024, 12:07 p.m., effective January 10, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of social and health services (department) is adopting amendments to WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food? This filing is necessary to implement SNAP cost-of-living adjustments received August 3, 2024, from the United States Department of Agriculture, Food, and Nutrition Service, effective October 1, 2024. Once effective, this permanent filing supersedes the emergency rule filed under WSR 24-20-081.

Citation of Rules Affected by this Order: Amending WAC 388-450-0185, 388-450-0190, 388-450-0195, 388-470-0005, and 388-478-0060.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.04.200, 74.04.510, and 74.08.090.

Other Authority: New standards issued by United States Department of Agriculture, Food, and Nutrition Service.

Adopted under notice filed as WSR 24-20-135 on October 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 5, 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 5, Repealed 0.

Date Adopted: December 10, 2024.

Katherine I. Vasquez  
Rules Coordinator

SHS-5054.2

AMENDATORY SECTION (Amending WSR 24-06-065, filed 3/4/24, effective 4/4/24)

**WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?** (1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
3 or fewer	<del>(\$198)</del> \$204
4	<del>(\$208)</del> \$217
5	<del>(\$244)</del> \$254
6 or more	<del>(\$279)</del> \$291

(b) ~~((20%))~~ Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over \$35 a month owed or anticipated by an elderly or disabled person as defined in WAC 388-400-0040 in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 24-06-065, filed 3/4/24, effective 4/4/24)

**WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food?** The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

(a) Monthly rent, lease, and mortgage payments;

(b) Property taxes;

(c) Homeowner's association or condo fees;

(d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
- (i) AU intends to return to the home;
  - (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
  - (iii) AU's home is not being leased or rented during your AU's absence.
- (h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of (~~(\$179)~~) \$190. If the homeless AU has shelter costs in excess of this amount, the AU has the option to claim either:
- (i) The homeless shelter deduction; or
  - (ii) Actual shelter costs.
- (2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2) (a) through (2) (d) from your AU's gross income. The result is your AU's countable income.
- (3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:
- (a) Up to a maximum of (~~(\$672)~~) \$712 if no one in your AU is elderly or disabled as defined in WAC 388-400-0040; or
  - (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over (~~(\$672)~~) \$712.

AMENDATORY SECTION (Amending WSR 24-06-065, filed 3/4/24, effective 4/4/24)

- WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?** (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:
- (a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or
  - (b) Shelter cost income deduction under WAC 388-450-0190 for basic food.
- (2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:
- (a) If your AU has heating or cooling costs or receives more than \$20 in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of (~~(\$483)~~) \$502.
  - (b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of (~~(\$483)~~) \$502.
  - (c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of (~~(\$383)~~) \$396.
  - (d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~(\$58)~~) \$56.
- (3) "Utility costs" include the following:
- (a) Heating or cooling fuel;

- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive (~~low income energy assistance program (LIEAP)~~) LIHEAP, you do not receive a utility allowance.

AMENDATORY SECTION (Amending WSR 23-24-007, filed 11/27/23, effective 2/1/24)

**WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?** (1) The following definitions apply to this chapter:

(a) "**We**" means the department of social and health services.

(b) "**You**" means a person applying for or getting benefits from the department.

(c) "**Fair market value**" or "**FMV**" means the price at which you could reasonably sell the resource.

(d) "**Equity value**" means the FMV minus any amount you owe on the resource.

(e) "**Community property**" means a resource in the name of the husband, wife, or both.

(f) "**Separate property**" means a resource of a married person that one of the spouses:

(i) Had possession of and paid for before they were married;

(ii) Acquired and paid for entirely out of income from separate property; or

(iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:

(a) It is a resource we must count under WAC 388-470-0045 for cash assistance or WAC 388-470-0055 for basic food;

(b) You own the resource and we consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that does not have a title;

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within 20 days.

(3) For cash assistance, you must try to make your resources available even if it will take you more than 20 days to do so, unless:

(a) There is a legal barrier; or

(b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance, there is an equity value resource limit of \$12,000.

(7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for basic food.

(8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:

(a) (~~(\$4,250)~~) \$4,500 if your AU has either an elderly or disabled individual as defined in WAC 388-400-0040; or

(b) (~~(\$2,750)~~) \$3,000 for all other AUs.

(9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of a resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

AMENDATORY SECTION (Amending WSR 24-06-065, filed 3/4/24, effective 4/4/24)

**WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food?** (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section.

The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE (~~(10/1/2023)~~) 10/1/2024



Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income (130% of Poverty Level)	Column C Maximum Net (Countable) Monthly Income (100% of Poverty Level)	Column D Maximum Allotment	Column E 165% of Poverty Level
1	(\$1,580) <u>\$1,632</u>	(\$1,215) <u>\$1,255</u>	(\$291) <u>\$292</u>	(\$2,005) <u>\$2,071</u>
2	((2,137)) <u>2,215</u>	((1,644)) <u>1,704</u>	((535)) <u>536</u>	((2,712)) <u>2,811</u>
3	((2,694)) <u>2,798</u>	((2,072)) <u>2,152</u>	((766)) <u>768</u>	((3,419)) <u>3,551</u>
4	((3,250)) <u>3,380</u>	((2,500)) <u>2,600</u>	((973)) <u>975</u>	((4,125)) <u>4,290</u>
5	((3,807)) <u>3,963</u>	((2,929)) <u>3,049</u>	((1,155)) <u>1,158</u>	((4,832)) <u>5,030</u>
6	((4,364)) <u>4,546</u>	((3,357)) <u>3,497</u>	((1,386)) <u>1,390</u>	((5,539)) <u>5,770</u>
7	((4,921)) <u>5,129</u>	((3,785)) <u>3,945</u>	((1,532)) <u>1,536</u>	((6,246)) <u>6,510</u>
8	((5,478)) <u>5,712</u>	((4,214)) <u>4,394</u>	((1,751)) <u>1,756</u>	((6,952)) <u>7,249</u>
9	((6,035)) <u>6,295</u>	((4,643)) <u>4,843</u>	((1,970)) <u>1,976</u>	((7,659)) <u>7,989</u>
10	((6,592)) <u>6,878</u>	((5,072)) <u>5,292</u>	((2,189)) <u>2,196</u>	((8,366)) <u>8,729</u>
Each Additional Member	+ ((557)) <u>583</u>	+ ((429)) <u>449</u>	+ ((219)) <u>220</u>	+ ((707)) <u>740</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is 60 years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are 60 years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

## WSR 25-01-049

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed December 11, 2024, 8:12 a.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: SB 5800 passed during the 2024 legislative session requires a January 1, 2025, effective date for the provisions implemented by this rule making, which satisfies RCW 34.05.380 (3)(a).

Purpose: Effective January 1, 2025, SB 5800 will allow a "responsible adult" to sign on behalf of a minor for their driver's license application and/or motorcycle endorsement. This rule making will codify changes made during the 2024 legislative session.

Citation of Rules Affected by this Order: Amending WAC 308-104-014 Application for driver's license or identicard.

Statutory Authority for Adoption: SB 5800 and RCW 46.01.110 Rule-making authority.

Adopted under notice filed as WSR 24-20-141 on October 2, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, 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: December 11, 2024.

Ellis Starrett  
Rules and Policy Manager

**OTS-5845.1**

AMENDATORY SECTION (Amending WSR 21-02-030, filed 12/28/20, effective 1/28/21)

**WAC 308-104-014 Application for driver's license or identicard.**

A person applying for a driver's license, instruction permit, or identification card must provide the following information:

(1)(a) The person's full name, current mailing and Washington residential address, and telephone number;

(b) A person applying for an identicard who does not have a permanent primary resident address may be issued an identicard at the cost of production if the person:

- (i) Is under the age of ((eighteen)) 18;
- (ii) Applies in person;

- (iii) Attests to a lack of permanent primary resident address at each application; and
- (iv) Provides a temporary mailing address where the identicard can be mailed(~~(-)~~);
- (2) The person's physical description, including sex, height, weight, and eye color;
- (3) The person's date of birth;
- (4) (a) The person's Social Security number, if the Social Security number is required by state or federal law. If the person's Social Security number is not required by state or federal law, the person may voluntarily provide (~~(his or her)~~) their Social Security number in order to assist the department in verifying identity;
- (b) If the Social Security number is required by state or federal law and the person has not been issued a Social Security number, the person must submit a sworn affidavit, under penalty of perjury, stating that (~~(he or she does)~~) they do not have a Social Security number. The department may require that a person who is applying for a license and who has signed an affidavit under this subsection provide additional documentation satisfactory to the department establishing the person's Washington residence address;
- (5) Whether the person is one of multiple siblings born at the same time;
- (6) If the application is for a driver's license or instruction permit, whether the person has been previously licensed, where such license was issued, and under what name;
- (7) If the application is for a driver's license or instruction permit, whether the person has ever had (~~(his or her)~~) their driver's license or driving privilege suspended, revoked, canceled, disqualified, withheld, or denied, and if so, where and when such driving sanction was imposed and the reason for such action;
- (8) If the application is for a driver's license or instruction permit, whether the person has had a mental or physical condition or is taking any medication which could impair (~~(his or her)~~) their ability to operate a motor vehicle;
- (9) If the application is for a driver's license and the person is under the age of (~~(eighteen)~~) 18, a declaration by the person's parent, guardian, (~~(or)~~) employer, or responsible adult as defined in RCW 46.20.075 that (~~(he or she has)~~) they have read and understand(~~(s)~~) the intermediate license restrictions, and a declaration by the person that (~~(he or she has)~~) they have read and understand(~~(s)~~) the intermediate license restrictions;
- (10) The person's signature and, if the application is for a driver's license or instruction permit and the person is under the age of (~~(eighteen)~~) 18, the signature of the person's custodial parent (~~(or)~~) legal guardian, or responsible adult as defined in RCW 46.20.075; and
- (11) Any supplementary documentation as may be necessary to verify any of the information required by this section.

WSR 25-01-050

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed December 11, 2024, 8:15 a.m., effective January 11, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of licensing (department) is proposing to repeal WAC 308-104-150 Address requests—Terms and fees, as the rule is redundant due to records requests going through our public disclosure department, per chapter 308-10 WAC, Public records disclosure.

Citation of Rules Affected by this Order: Repealing WAC 308-104-150 Address requests—Terms and Fees.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority.

Adopted under notice filed as WSR 24-20-142 on October 2, 2024.

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

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: December 11, 2024.

Ellis Starrett  
Rules and Policy Manager

**OTS-5847.1**

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-104-150      Address requests—Terms and fees.

## WSR 25-01-051

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed December 11, 2024, 8:58 a.m., effective January 11, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 246-230 WAC, Security screening systems. The department of health is adopting a new chapter that establishes radiation safety standards for the use of ionizing radiation for security purposes, while making every reasonable effort to maintain exposures to radiation as low as reasonably achievable to protect public health and safety.

Citation of Rules Affected by this Order: New WAC 246-230-001, 246-230-005, 246-230-010, 246-230-015, 246-230-020, 246-230-025, 246-230-030, 246-230-040, 246-230-050, 246-230-060, 246-230-070, 246-230-080, and 246-230-090.

Statutory Authority for Adoption: RCW 70.388.040.

Adopted under notice filed as WSR 24-19-100 on September 18, 2024.

Changes Other than Editing from Proposed to Adopted Version: The following nonsubstantive changes have been made between the proposed version to the adopted version:

Defined "scan" in WAC 246-230-010 to provide clarification;

Defined "alternative screening" in WAC 246-230-010 to provide clarification;

Defined "qualified expert" in WAC 246-230-010 using the definition from WAC 246-220-010 instead of referencing WAC 246-220-010;

Changed "screening area" to "radiation screening zone" in WAC 246-230-030(5) to be consistent with defined terms.

Changed "or" to "of" in the definition of "screening" to provide clarification; and

Updated the numbers in WAC 246-230-010 to account for the new definitions.

A final cost-benefit analysis is available by contacting Ashlie Laydon, P.O. Box 47822, Olympia, WA 98504-7822, email [ashlie.laydon@doh.wa.gov](mailto:ashlie.laydon@doh.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; 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 13, 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 13, Amended 0, Repealed 0.

Date Adopted: December 11, 2024.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary of Health

OTS-4503.12

**Chapter 246-230 WAC  
SECURITY SCREENING SYSTEMS**

NEW SECTION

**WAC 246-230-001 Authority, purpose, and scope.** The requirements of this chapter are adopted pursuant to the provisions of chapter 70A.388 RCW. This chapter establishes radiation safety standards for the use of security screening systems that emit ionizing radiation to detect contraband under clothing and within body cavities of individuals who have been committed to a correctional facility or who have been presented for confinement in a jail or detention facility.

NEW SECTION

**WAC 246-230-005 Relationship to other regulations.** In addition to the requirements established in this chapter, registrants shall also comply with applicable requirements including, but not limited to, the following:

- (1) Chapter 246-220 WAC;
- (2) Chapter 246-221 WAC;
- (3) Chapter 246-222 WAC; and
- (4) Chapter 246-224 WAC.

NEW SECTION

**WAC 246-230-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "ALARA" (as low as reasonably achievable or as low as is reasonably achievable) means making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to the benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to the utilization of nuclear energy and licensed materials in the public interest.

(2) "Alternative screening" means a method of screening that does not utilize ionizing radiation.

(3) "Correctional facility" means a facility or institution operated directly or by contract by the secretary of corrections or his or her designee for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(4) "Department" means the Washington state department of health, which has been designated as the state radiation control agency under chapter 70A.388 RCW.

(5) "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleges to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring.

(6) "Dose record" means a record for each individual subject to screening and includes:

- (a) Name of individual;
- (b) Date and time of screening; and
- (c) Dose of radiation received at time of screening.

This record does not include images produced by the security screening system.

(7) "Engineering control" means a safety component of the security screening system designed to prevent improper operation or unintended radiation exposure.

(8) "General-use security screening system" means a security screening system that delivers an effective radiation dose equal to or less than 0.25  $\mu\text{Sv}$  (25  $\mu\text{rem}$ ) per screening.

(9) "Jail" means any holding, detention, special detention, or correctional facility as defined in RCW 70.48.020.

(10) "Limited-use security screening system" means a security screening system that is capable of delivering an effective dose greater than 0.25  $\mu\text{Sv}$  (25  $\mu\text{rem}$ ) per screening, but must not exceed an effective dose of 10  $\mu\text{Sv}$  (1 mrem) per screening.

(11) "Minor" means an individual less than 18 years of age.

(12) "Operator" means a trained employee associated with the operation of the security screening system whose responsibilities include at least one of the following:

- (a) Initiating or stopping a scan;
- (b) Verifying the security screening system is operating correctly;
- (c) Providing information and instructions to screened individuals; or
- (d) Controlling access to the radiation screening zone.

(13) "Primary beam" means the beam of radiation emanating from the security screening system intended to reach the individual being scanned. This excludes scattered radiation and radiation transmitted through shielding.

(14) "Qualified expert" means an individual who has demonstrated to the satisfaction of the department the knowledge, training, and experience to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs. The department reserves the right to recognize the qualifications of an individual in specific areas of radiation protection.

(15) "Radiation screening zone" means the general area established for the purpose of limiting or controlling access to the area where screening will be performed.

(16) "Registrant" means any person who is registered by the department or is legally obligated to register with the department in accordance with these rules and the act.

(17) "Safety interlock" means a device that is intended to automatically prevent or interrupt the radiation hazard whenever safety is

compromised by access to the interior of the system, unauthorized access to a radiation area, or by an operational malfunction.

(18) "Scan" means one individual exposure or programmed set of exposures necessary to render an image for evaluation.

(19) "Screening" means the sum of radiation exposures or scans necessary to image objects concealed on all sides of the body as intended by the system design under normal conditions. A screening consists of one scan. If more than one scan needs to be performed to determine if the individual is concealing contraband, all additional scans are considered repeat screenings.

(20) "Security screening system" means a screening system that intentionally exposes an individual to ionizing radiation for the purpose of detecting contraband hidden in an individual's body or under clothing. Security screening systems must use transmission X-ray.

(21) "Shutter" means a device attached to the tube housing assembly which can totally intercept the entire cross sectional area of the useful beam and which has a lead equivalency at least that of the tube housing assembly.

(22) "Technique factors" means the X-ray settings, including:

(a) The peak kilovoltage applied to the X-ray tube;

(b) The electric current passing through the X-ray tube; and

(c) The scan time.

(23) "Transmission X-ray" means a security screening system that uses conventional means of radiographic imaging, in which X-rays or gamma rays pass through an individual to create shadow-grams of enclosed contraband based on their radiation attenuating properties. For the purposes of this chapter, any transmission X-ray system for which at least one dimension of the scan area is greater than 50 cm is considered a security screening system.

#### NEW SECTION

**WAC 246-230-015 Registration.** The owner or controller of the security screening system who is responsible for the safe operation of the security screening system shall register the security screening system facility and security screening system with the department in accordance with chapter 246-224 WAC.

#### NEW SECTION

**WAC 246-230-020 Security screening system requirements.** (1) A security screening system must meet the definition of a general-use security screening system unless a variance, as outlined in WAC 246-230-090, is obtained from the department to operate a limited-use security screening system. If a security screening system is capable of functioning as both a general-use security screening system and a limited-use security screening system, the limited-use function must be disabled unless a variance to operate it as a limited-use security screening system has been obtained from the department.

(2) There must be at least one indicator, clearly visible from any location, indicating when a scan is in progress.

(3) Security screening systems must have the following engineering controls in place:



(a) Power to the security screening system must be controlled by a key switch. The key must be captured (unable to be removed) whenever it is positioned to allow exposures to be initiated.

(b) A means for the operator to:

(i) Initiate the emission of radiation other than the function of an interlock or the main power control.

(ii) Terminate the emission of radiation other than the function of an interlock.

(c) Radiation emission must automatically terminate after a pre-set time or exposure.

(d) Technique factors for each mode of operation must be preset by the manufacturer and must not be alterable by the system operator. If a security screening system has more than one mode, prior to each scan, a mode indicator must be clearly visible to the operator.

(e) A warning label must be permanently affixed or inscribed on the security screening system at any location of any controls used to initiate the emission of radiation. The warning label must read "CAUTION: RADIATION PRODUCED WHEN ENERGIZED."

(4) Security screening systems must have safety interlocks in place:

(a) Failure of any single component of the security screening system must not cause failure of more than one safety interlock.

(b) A tool or key must be required to open or remove access panels. Each access panel to a radiation source must have at least one safety interlock to terminate radiation production when opened.

(c) Safety interlocks must terminate the primary beam in the event of any security screening system problem that may result in abnormal or unintended radiation emission. This includes, but is not limited to:

(i) Unintended stoppage of beam motion;

(ii) Abnormal or unintended radiation source output;

(iii) Computer safety system malfunction;

(iv) Termination malfunction; or

(v) Shutter mechanism malfunction.

(d) Resetting a safety interlock, following any interruption of radiation production by the functioning of any safety interlock, must not result in the production of radiation.

(5) Security screening systems must employ shielding requirements so that during operation, including under maximum operating parameters, the leakage equivalent dose at any point 30 cm from any external surface of the security screening system, outside of the primary beam, must not exceed 2.5  $\mu$ Sv (0.25 mrem) in any one hour.

#### NEW SECTION

**WAC 246-230-025 Authorized use.** (1) A security screening system may only be used to screen an individual who has been committed to a correctional facility or who has been presented for confinement in a jail or detention facility, and must not be used to screen such individuals who are:

(a) Minors;

(b) Pregnant or suspect they may be pregnant;

(c) Health compromised as determined by a licensed health care practitioner; or

(d) Who have met the annual dosage limit established in WAC 246-230-040.

(2) Security screening systems may not be used for medical purposes.

#### NEW SECTION

**WAC 246-230-030 Operating requirements of security screening system.** (1) Each operator of a security screening system shall complete radiation safety training prior to performing any security screening system operations. The registrant shall develop a training program in consultation with a qualified expert and must include, at a minimum:

- (a) Radiation safety, including:
  - (i) Identification of radiation hazards associated with the use of the security screening system;
  - (ii) Operating and emergency procedures;
  - (iii) Proper procedures for reporting an actual or suspected overexposure;
  - (iv) Radiation units;
  - (v) Risk and biological effects associated with radiation;
  - (vi) Methods of controlling radiation dose, including:
    - (A) Time;
    - (B) Distance; and
    - (C) Shielding;
  - (vii) Concept of ALARA;
- (b) Preoperational checks;
- (c) Routine maintenance;
- (d) Procedures to follow if the security screening system is damaged or malfunctions; and
- (e) Supervised operations of the security screening system in accordance with the manufacturer's operations manual and facility procedures.

(2) Each operator must complete an annual refresher training, fulfilling the requirements of subsection (1) of this section, not to exceed 12 months between trainings.

(3) Written operating and emergency procedures must be immediately available to each operator. Written procedures must be consistent with manufacturer standards and include, at a minimum:

- (a) Operational procedures to safely use security screening system;
  - (b) Warnings of potential safety hazards;
  - (c) Emergency procedures;
  - (d) Preoperational checks; and
  - (e) Routine maintenance requirements.
- (4) For security screening systems with more than one mode, operating procedures must include technique factors for each operating mode and appropriate use of each mode.

(5) The following requirements apply when screening individuals using a security screening system:

- (a) The operator must follow operating procedures for use of the security screening system;
- (b) The operator must have a clear view of the radiation screening zone. This may be direct line-of-sight, mirror view, or real-time video of the radiation screening zone;

(c) Controls must be in place to prohibit anyone from entering or reentering the radiation screening zone while radiation is being produced; and

(d) If the operator cannot determine if an individual is concealing contraband from the initial screening, additional screening may occur, consistent with a written repeat screening policy developed in consultation with a qualified expert. Records of repeat screening must be kept in accordance with WAC 246-230-080(4).

#### NEW SECTION

**WAC 246-230-040 Dose limits.** (1) The registrant shall confirm that the manufacturer of the security screening system has ensured that operating parameters are optimized for the best performance at the lowest dose.

(2) The radiation dose delivered to an individual must be ALARA while meeting the required detection performance.

(3) The total effective dose to an individual must not exceed 0.25 mSv (25 mrem) in a calendar year from security screening systems.

(4) The area outside the radiation screening zone must not exceed 20  $\mu$ Sv (2 mrem) in any one hour.

#### NEW SECTION

**WAC 246-230-050 Requirements for tracking dosage.** (1) The registrant must ensure a method is in place to track the dose of radiation an individual receives as a result of security screening. The registrant must track the dose of radiation an individual receives from security screening systems:

- (a) Per screening;
- (b) Per calendar year; and
- (c) In a lifetime.

(2) The registrant must ensure that dose records transfer with an individual between facilities.

(3) The registrant must ensure that dose records are provided to an individual upon request.

(4) The registrant must ensure that dose records are maintained for the lifetime of each individual.

#### NEW SECTION

**WAC 246-230-060 Information to be provided to scanned individuals.** Prior to screening, the registrant must ensure that the individual is informed:

- (1) That the security screening system emits ionizing radiation;
- (2) That the security screening system meets all requirements of this chapter; and
- (3) Of any available alternative screening options.

NEW SECTION

**WAC 246-230-070 Radiation surveys.** (1) Radiation surveys must be conducted by a qualified expert to verify:

- (a) Dose of radiation per screening and maximum allowable scans per year for any individual at stated dosage per screening;
- (b) Radiation leakage at the surface, within radiation screening zone, at operator position, and surrounding areas. If the radiation survey conducted by a qualified expert indicates the operators could receive 10 percent of the occupational worker's annual dose limit of 5 rem, a dosimetry badge shall be worn while within the radiation screening zone;
- (c) Safety interlocks are functioning properly;
- (d) Operation and emergency procedures are in place and used as appropriate;
- (e) Training program and training log are in place and used as appropriate; and
- (f) Any other parameters specified by the manufacturer.

(2) The registrant must ensure that radiation surveys are completed:

- (a) Prior to first use and upon replacement of security screening system;
  - (b) Every 10 to 14 months;
  - (c) Within 30 days following any maintenance that affects:
    - (i) Radiation shielding;
    - (ii) Shutter mechanism;
    - (iii) Radiation production components; and
  - (d) Within 30 days following any alteration or incident that may have damaged the system in a way that unintended radiation emission occurs.
- (3) A qualified expert will provide a summary of each radiation survey to the registrant, outlining results and recommendations for corrections. Corrections must be made within 30 days of receiving the recommendations.

NEW SECTION

**WAC 246-230-080 Records.** The registrant must maintain the following records on-site and make them available to the department:

- (1) Training records for each operator must be maintained for five years. Training records must document:
  - (a) Operator's name;
  - (b) Date of training; and
  - (c) Training curriculum provided.
- (2) Radiation surveys conducted by a qualified expert must be maintained for five years. The following information must be documented:
  - (a) Security screening system make, model, serial number, and facility location;
  - (b) Name of qualified expert who completed the survey;
  - (c) Survey date;
  - (d) Make, model, serial number, and calibration dates of instrumentation used to conduct the survey;
  - (e) Results of the visual inspection of the security screening system safety interlocks;

- (f) Background measurements;
  - (g) Radiation survey measurements;
  - (h) Survey diagram, including:
  - (i) Security screening system parameters at which measurements were made; and
  - (ii) Drawings must be to scale as applicable.
- (3) Maintenance logs must be maintained for the life of the security screening system. Logs must document:
- (a) Upgrades;
  - (b) Modifications;
  - (c) Maintenance or repairs made; and
  - (d) Replacement.
- (4) Repeat screening log must be maintained for five years. Repeat screening log must be completed any time an operator cannot determine if an individual is concealing contraband from the initial screening, and additional screening occurs. The following must be documented:
- (a) Name of operator conducting the screening;
  - (b) Name of individual screened;
  - (c) Number of repeated screens performed; and
  - (d) Justification for conducting the repeat screening.

#### NEW SECTION

**WAC 246-230-090 Variance request.** A registrant may submit a written request to the department for a variance from WAC 246-230-020(1). The registrant shall not use a security screening system on individuals until the department approves the variance request.

- (1) The written request must be addressed to: X-ray Supervisor, Office of Radiation Protection, Department of Health, P.O. Box 47827, Olympia, Washington 98504-7827, and must include:
- (a) An explanation of the circumstances involved, and the reason why a limited-use security screening system must be used;
  - (b) A description of how using a limited-use security screening system meets the intent of this chapter and how the registrant will protect individuals and operators;
  - (c) A description of the limited-use security screening system to be used with supporting pictures or documents; and
  - (d) The time period for which the variance is requested.
- (2) If necessary, the department may require the registrant to submit additional information.
- (3) The department may conduct an on-site variance inspection to verify the information provided, or if it otherwise determines that an inspection is necessary.
- (4) As determined by the department, variances may be permanent or temporary.
- (5) The department may impose conditions that may be necessary to protect human health and safety during the term of the variance in order to approve the request.
- (6) The department may, at any time, revoke a variance approval if it is determined that the terms and conditions of the variance are not being followed.

## WSR 25-01-052

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed December 11, 2024, 9:33 a.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The updated forest land values in WAC 458-40-540 are required by RCW 84.33.140 to be updated on or before December 31st for use the following year. RCW 84.33.091 requires the stumpage values in WAC 458-40-660 to be updated on or before December 31st for use the following January 1st through June 30th. RCW 84.33.096 requires the department of revenue to provide administrative definitions.

Purpose: WAC 458-40-540 contains the forest land values used by county assessors for property tax purposes. This rule is being revised to provide the forest land values to be used during 2025.

WAC 458-40-660 contains the stumpage values used by timber harvesters to calculate the timber excise tax. This rule is being revised to provide updated stumpage values for the period from January 1, 2025, through June 30, 2025, and to make a reference correction to the definition of "thinning" within Table 9 and Table 10. "Thinning" within Table 9 and Table 10 of the rule currently references WAC 458-40-610(28); those tables should reference "Thinning" as described in WAC 458-40-610(29).

WAC 458-40-610 contains the definitions for timber excise tax purposes. This rule is being revised to fix an incorrect reference in the rule. WAC 458-40-610(7) currently references WAC 458-40-610(14); it should reference WAC 458-40-610(13).

Citation of Rules Affected by this Order: Amending WAC 458-40-540 Forest land values—2024, 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments, and 458-40-610 Timber excise tax—Definitions.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Other Authority: RCW 84.33.091, 84.33.140.

Adopted under notice filed as WSR 24-22-080 on October 30, 2024.

A final cost-benefit analysis is available by contacting Tiffany Do, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1558, fax 360-534-1606, TTY 1-800-451-7985, email TiffanyD@dor.wa.gov, website dor.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; 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 3, 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: December 11, 2024.

Brenton Madison  
Rules Coordinator

OTS-5950.2

AMENDATORY SECTION (Amending WSR 24-01-027, filed 12/8/23, effective 1/1/24)

**WAC 458-40-540 Forest land values—((2024)) 2025.** The forest land values, per acre, for each grade of forest land for the ((2024)) 2025 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2024)) 2025 VALUES PER ACRE
1	1	((227)) 226
	2	((225)) 224
	3	((211)) 210
	4	((154)) 153
2	1	((194)) 193
	2	((187)) 186
	3	((180)) 179
	4	127
3	1	((150)) 149
	2	((146)) 145
	3	((144)) 143
	4	111
4	1	117
	2	112
	3	111
	4	84
5	1	84
	2	74
	3	73
	4	52
6	1	43
	2	41
	3	41
	4	39
7	1	19
	2	19
	3	17
	4	17
8	1	1

AMENDATORY SECTION (Amending WSR 23-14-011, filed 6/22/23, effective 7/1/23)

**WAC 458-40-610 Timber excise tax—Definitions.** (1) **Introduction.** The purpose of WAC 458-40-610 through 458-40-680 is to prescribe the policies and procedures for the taxation of timber harvested from public and private forest lands as required by RCW 84.33.010 through 84.33.096.

Unless the context clearly requires otherwise, the definitions in this rule apply to WAC 458-40-610 through 458-40-680. In addition to the definitions found in this rule, definitions of technical forestry terms may be found in *The Dictionary of Forestry*, 1998, edited by John A. Helms, and published by the Society of American Foresters.

(2) **Codominant trees.** Trees whose crowns form the general level of the main canopy and receive full light from above, but comparatively little light from the sides.

(3) **Competitive sales.** The offering for sale of timber which is advertised to the general public for sale at public auction under terms wherein all qualified potential buyers have an equal opportunity to bid on the sale, and the sale is awarded to the highest qualified bidder. The term "competitive sales" includes making available to the general public permits for the removal of forest products.

(4) **Cord measurement.** A measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(5) **Damaged timber.** Timber where the stumpage values have been materially reduced from the values shown in the applicable stumpage value tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen causes.

(6) **Dominant trees.** Trees whose crowns are higher than the general level of the main canopy and which receive full light from the sides as well as from above.

(7) **Firewood.** Commercially traded firewood is considered scaled utility log grade as defined in subsection (~~(14)~~) (13) of this section.

(8) **Forest-derived biomass.** Forest-derived biomass consists of tree limbs, tops, needles, leaves, and other woody debris that are residues from such activities as timber harvesting, forest thinning, fire suppression, or forest health. Forest-derived biomass does not include scalable timber products or firewood (defined in WAC 458-40-650).

(9) **Harvest unit.** An area of timber harvest, defined and mapped by the harvester before harvest, having the same stumpage value area, harvest adjustments, harvester, and harvest identification. The harvest identification may be a department of natural resources forest practice application number, public agency harvesting permit number, public sale contract number, or other unique identifier assigned to the timber harvest area prior to harvest operations. A harvest unit may include more than one section, but harvest unit may not overlap a county boundary.

(10) **Harvester.** Every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester. In cases where the identity of the harvester is in doubt, the department of revenue will consider the owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

The definition above applies except when the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use. When a governmental entity described above fells, cuts, or takes timber, the harvester is the first person, other than another governmental entity as described above, acquiring title to or a possessory interest in such timber.

(11) **Harvesting and marketing costs.** Only those costs directly and exclusively associated with harvesting merchantable timber from the land and delivering it to the buyer. The term includes the costs



of piling logging residue on site, and costs to abate extreme fire hazard when required by the department of natural resources. Harvesting and marketing costs do not include the costs of other consideration (for example, reforestation, permanent road construction), treatment to timber or land that is not a necessary part of a commercial harvest (for example, precommercial thinning, brush clearing, land grading, stump removal), costs associated with maintaining the option of land conversion (for example, county fees, attorney fees, specialized site assessment or evaluation fees), or any other costs not directly and exclusively associated with the harvesting and marketing of merchantable timber. The actual harvesting and marketing costs must be used in all instances where documented records are available. When the taxpayer is unable to provide documented proof of such costs, or when harvesting and marketing costs cannot be separated from other costs, the deduction for harvesting and marketing costs is 35 percent of the gross receipts from the sale of the logs.

(12) **Legal description.** A description of an area of land using government lots and standard general land office subdivision procedures. If the boundary of the area is irregular, the physical boundary must be described by metes and bounds or by other means that will clearly identify the property.

(13) **Log grade.** Those grades listed in the "*Official Log Scaling and Grading Rules*" developed and authored by the Northwest Log Rules Advisory Group (Advisory Group). "Utility grade" means logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the "*Official Log Scaling and Grading Rules*" published by the Advisory Group but are suitable for the production of firm useable chips to an amount of not less than 50 percent of the gross scale; and meeting the following minimum requirements:

(a) Minimum gross diameter - Two inches.

(b) Minimum gross length - 12 feet.

(c) Minimum volume - 10 board feet net scale.

(d) Minimum recovery requirements - 100 percent of adjusted gross scale in firm useable chips.

(14) **Lump sum sale.** Also known as a cash sale or an installment sale, it is a sale of timber where all the volume offered is sold to the highest bidder.

(15) **MBF.** One thousand board feet measured in Scribner Decimal C Log Scale Rule.

(16) **Noncompetitive sales.** Sales of timber in which the purchaser has a preferential right to purchase the timber or a right of first refusal.

(17) **Other consideration.** Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent nature. Some examples of permanent improvements are as follows: Construction of permanent roads; installation of permanent bridges; stockpiling of rock intended to be used for construction or reconstruction of permanent roads; installation of gates, cattle guards, or fencing; and clearing and reforestation of property.

(18) **Permanent road.** A road built as part of the harvesting operation which is to have a useful life subsequent to the completion of the harvest.

(19) **Private timber.** All timber harvested from privately owned lands.

(20) **Public timber.** Timber harvested from federal, state, county, municipal, or other government owned lands.

(21) **Remote island.** An area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.

(22) **Scale sale.** A sale of timber in which the amount paid for timber in cash and/or other consideration is the arithmetic product of the actual volume harvested and the unit price at the time of harvest.

(23) **Small harvester.** A harvester who harvests timber from privately or publicly owned forest land in an amount not exceeding 2,000,000 board feet in a calendar year. See RCW 84.33.035.

(24) **Species.** A grouping of timber based on biological or physical characteristics. In addition to the designations of species or subclassifications defined in Agriculture Handbook No. 451 Checklist of United States Trees (native and naturalized) found in the state of Washington, the following are considered separate species for the purpose of harvest classification used in the stumpage value tables:

(a) **Other conifer.** All conifers not separately designated in the stumpage value tables. See WAC 458-40-660.

(b) **Other hardwood.** All hardwoods not separately designated in the stumpage value tables. See WAC 458-40-660.

(c) **Special forest products.** The following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), western redcedar flatsawn and shingle blocks, western redcedar shake blocks and boards.

(d) **Chipwood.** All timber processed to produce chips or chip products delivered to an approved chipwood destination that has been approved in accordance with the provisions of WAC 458-40-670 or otherwise reportable in accordance with the provisions of WAC 458-40-670.

(e) **Small logs.** All conifer logs excluding redcedar harvested in stumpage value area 6 or 7 generally measuring seven inches or less in scaling diameter, purchased by weight measure at designated small log destinations that have been approved in accordance with the provisions of WAC 458-40-670. Log diameter and length is measured in accordance with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group, with length not to exceed 20 feet.

(f) **Sawlog.** For purposes of timber harvest in stumpage value area 6, a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than 10 board feet and meeting the following minimum characteristics: Gross scaling diameter of five inches and a gross scaling length of eight feet.

(g) **Piles.** All logs sold for use or processing as piles that meet the specifications described in the most recently published edition of the *Standard Specification for Round Timber Piles (Designation: D 25)* of the American Society for Testing and Materials.

(h) **Poles.** All logs sold for use or processing as poles that meet the specifications described in the most recently published edition of the *National Standard for Wood Poles—Specifications and Dimensions (ANSI 05.1)* of the American National Standards Institute.

(25) **Stumpage.** Timber, having commercial value, as it exists before logging.

(26) **Stumpage value.** The true and fair market value of stumpage for purposes of immediate harvest.

(27) **Stumpage value area (SVA).** An area with specified boundaries which contains timber having similar growing, harvesting and marketing conditions.

(28) **Taxable stumpage value.** The value of timber as defined in RCW 84.33.035(7), and this chapter. Except as provided below for small

harvesters and public timber, the taxable stumpage value is the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

(a) **Small harvester option.** Small harvesters may elect to calculate the excise tax in the manner provided by RCW 84.33.073 and 84.33.074. The taxable stumpage value must be determined by one of the following methods as appropriate:

(i) **Sale of logs.** Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs has a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber.

(ii) **Sale of stumpage.** When standing timber is sold and harvested within 24 months of the date of sale, its taxable stumpage value is the actual purchase price in cash and/or other consideration for the stumpage for the most recent sale prior to harvest. If a person purchases stumpage, harvests the timber more than 24 months after purchase of the stumpage, and chooses to report under the small harvester option, the taxable stumpage value is the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber. See WAC 458-40-626 for timing of tax liability.

(b) **Public timber.** The taxable stumpage value for public timber sales is determined as follows:

(i) **Competitive sales.** The taxable stumpage value is the actual purchase price in cash and/or other consideration. The value of other consideration is the fair market value of the other consideration; provided that if the other consideration is permanent roads, the value is the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the value is the actual costs incurred by the purchaser for constructing or improving the roads. Other consideration includes additional services required from the stumpage purchaser for the benefit of the seller when these services are not necessary for the harvesting or marketing of the timber. For example, under a single stumpage sale's contract, when the seller requires road abandonment (as defined in WAC 222-24-052(3)) of constructed or reconstructed roads which are necessary for harvesting and marketing the timber, the construction and abandonment costs are not taxable. Abandonment activity on roads that exist prior to a stumpage sale is not necessary for harvesting and marketing the purchased timber and those costs are taxable.

(ii) **Noncompetitive sales.** The taxable stumpage value is determined using the department of revenue's stumpage value tables as set forth in this chapter. Qualified harvesters may use the small harvester option.

(iii) **Sale of logs.** The taxable stumpage value for public timber sold in the form of logs is the actual purchase price for the logs in cash and/or other consideration less appropriate deductions for harvesting and marketing costs. Refer above for a definition of "harvesting and marketing costs."

(iv) **Defaulted sales and uncompleted contracts.** In the event of default on a public timber sale contract, wherein the taxpayer has made partial payment for the timber but has not removed any timber, no tax is due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes are due on the amount the purchaser has been billed by the seller for the volume removed to date. See WAC 458-40-628 for timing of tax liability.

(29) **Thinning.** The total timber volume removed is less than 40 percent of the total merchantable volume of the harvest unit prior to harvest; and

(a) Western Washington stumpage value areas 1, 2, 3, 4, 5, and 9: The harvester leaves a minimum of 100 undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof; or

(b) Eastern Washington stumpage value areas 6 and 7: The harvester leaves a minimum of 80 undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

AMENDATORY SECTION (Amending WSR 24-14-009, filed 6/21/24, effective 7/1/24)

**WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.** (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((July 1 through December 31, 2024))~~ January 1 through June 30, 2025:

Washington State Department of Revenue  
**WESTERN WASHINGTON STUMPAGE VALUE TABLE**  
 ((July 1 through December 31, 2024))  
January 1 through June 30, 2025

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
 Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values		
Douglas-fir <sup>(2)</sup>	DF	1	(( <del>523</del> )) <u>517</u>		
		2	(( <del>530</del> )) <u>544</u>		
		3	(( <del>598</del> )) <u>586</u>		
		4	(( <del>606</del> )) <u>601</u>		
		5	(( <del>487</del> )) <u>516</u>		
		9	(( <del>509</del> )) <u>503</u>		
		Western Hemlock and Other Conifer <sup>(3)</sup>	WH	1	(( <del>240</del> )) <u>244</u>
				2	(( <del>291</del> )) <u>294</u>
				3	(( <del>286</del> )) <u>282</u>
4	(( <del>253</del> )) <u>277</u>				
5	(( <del>302</del> )) <u>295</u>				
		9	(( <del>226</del> )) <u>230</u>		

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Western Redcedar <sup>(4)</sup>	RC	1-5	((1,013)) <u>1,028</u>
		9	((999)) <u>1,014</u>
Ponderosa Pine <sup>(5)</sup>	PP	1-5	((159)) <u>153</u>
		9	((145)) <u>139</u>
Red Alder	RA	1-5	((383)) <u>355</u>
		9	((369)) <u>341</u>
Black Cottonwood	BC	1-5	1
		9	1
Other Hardwood	OH	1-5	92
		9	78
Douglas-fir Poles & Piles	DFL	1-5	((964)) <u>959</u>
		9	((950)) <u>945</u>
Western Redcedar Poles	RCL	1-5	((1,967)) <u>1,968</u>
		9	((1,953)) <u>1,954</u>
Chipwood <sup>(6)</sup>	CHW	1-5	1
		9	1
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-9	((389)) <u>327</u>
Posts <sup>(8)</sup>	LPP	1-9	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	1-9	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-9	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes all Pines in SVA 1-5 & 9.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

**Washington State Department of Revenue**  
**EASTERN WASHINGTON STUMPAGE VALUE TABLE**  
 ((July 1 through December 31, 2024))  
 January 1 through June 30, 2025

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir <sup>(2)</sup>	DF	6	<del>((308))</del> <u>285</u>
		7	<del>((322))</del> <u>299</u>
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	6	<del>((225))</del> <u>237</u>
		7	<del>((239))</del> <u>251</u>
Western Redcedar <sup>(4)</sup>	RC	6	<del>((735))</del> <u>795</u>
		7	<del>((749))</del> <u>809</u>
Ponderosa Pine <sup>(5)</sup>	PP	6	<del>((145))</del> <u>139</u>
		7	<del>((159))</del> <u>153</u>
Other Hardwood	OH	6	1
		7	9
Western Redcedar Poles	RCL	6	<del>((1,538))</del> <u>1,561</u>
		7	<del>((1,552))</del> <u>1,575</u>
Chipwood <sup>(6)</sup>	CHW	6	1
		7	1
Small Logs <sup>(6)</sup>	SML	6	<del>((12))</del> <u>14</u>
		7	<del>((14))</del> <u>16</u>
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	6-7	<del>((389))</del> <u>327</u>
Posts <sup>(8)</sup>	LPP	6-7	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	6-7	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	6-7	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.

(4) Includes Alaska-Cedar.

(5) Includes Western White Pine in SVA 6-7.

(6) Stumpage value per ton.

(7) Stumpage value per cord.

(8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.

(9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50 percent) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over two acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from (~~July 1 through December 31, 2024~~) January 1 through June 30, 2025:

**TABLE 9—Harvest Adjustment Table**  
**Stumpage Value Areas 1, 2, 3, 4, 5, and 9**  
 (~~July 1 through December 31, 2024~~)  
January 1 through June 30, 2025

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	\$0.00
Class 2	Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
	A limited removal of timber described in WAC 458-40-610 <del>((28))</del> (29)	-\$100.00

**TABLE 10—Harvest Adjustment Table**  
**Stumpage Value Areas 6 and 7**  
 ( ~~(July 1 through December 31, 2024)~~ )  
January 1 through June 30, 2025

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$85.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
	A limited removal of timber described in WAC 458-40-610 <del>((28))</del> (29)	-\$60.00

**TABLE 11—Domestic Market Adjustment**

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00
Note:	This adjustment only applies to published MBF sawlog values.	



(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a \$0/ton stumpage value.

## WSR 25-01-054

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed December 11, 2024, 10:34 a.m., effective January 11, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of licensing (department) is pursuing rule making to outline the process for motorcycle safety, commercial driver's license, and driver training schools to submit required information to the department, per SB 5583 passed during the 2023 legislative session. All provided information will be used to populate the interactive map displayed on the department's website.

Citation of Rules Affected by this Order: New 1 [WAC 308-109-070]; and amending 5 [WAC 308-100-005, 308-100-036, 308-108-020, 308-108-140, and 308-109-010].

Statutory Authority for Adoption: SB 5583 Young driver safety; RCW 46.01.110 Rule-making authority.

Adopted under notice filed as WSR 24-21-148 on October 22, 2024.

Changes Other than Editing from Proposed to Adopted Version: A technical correction was made to WAC 308-109-010(14) Definitions "3-wheel advanced course" to correct the word "new" to "advanced" within the definition as pointed out through written feedback.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 5, 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 1, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 11, 2024.

Ellis Starrett  
Rules and Policy Manager

**OTS-5888.1**

AMENDATORY SECTION (Amending WSR 23-23-180, filed 11/22/23, effective 12/23/23)

**WAC 308-100-005 Definitions.** The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Behind-the-wheel (BTW) range training" means training provided by a BTW instructor when a student has actual control of the power unit during a driving lesson conducted for backing, street driving, and proficiency development. BTW range training does not include time a student spends observing the operation of a CMV when he or she is not in control of the vehicle.

(2) "Behind-the-wheel (BTW) instructor" means an individual who provides BTW training involving the actual operation of a CMV by a student on a range or a public road and meets one of these qualifications:

(a) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement and meets all applicable state qualification requirements for CMV instructors; or

(b) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience as a BTW CMV instructor and meets all applicable state qualification requirements for CMV instructors.

(c) **Exception applicable to (a) and (b) of this definition:** A BTW instructor who provides training solely on a range which is not a public road is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, as long as the instructor previously held a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, and complies with the other requirements set forth in (a) or (b) of this definition.

(d) If an instructor's CDL has been canceled, suspended, or revoked due to any of the disqualifying offenses identified in C.F.R. 383.51, the instructor is prohibited from engaging in BTW instruction for two years following the date his or her CDL is reinstated.

(3) "Certified test route" means:

(a) Test route that is approved and assigned by the department.

(b) The areas for completing the pretrip inspection, basic controls and road test as approved by the department for the administration of a commercial driver license skills test.

(4) "Classroom" means a space dedicated to and used exclusively by an instructor for the instruction of students. With prior department approval, a classroom may be located within alternative facilities, such as a public or private library, school, community college, college or university, public agency, or a business training facility. "Classroom," may also include a virtual classroom environment when video conferencing technology is capable of two-way communication between the instructor and all students.

(5) "Classroom/theory instruction" means knowledge instruction on the operation of a CMV and related matters provided by a theory instructor through lectures, demonstrations, audiovisual presentations, computer-based instruction, driving simulation devices, or similar means. Instruction occurring outside a classroom is included if it does not involve actual operation of a commercial motor vehicle and its components by the student.

(6) "Commercial driver license (CDL) third-party examiner" means a person or entity that is authorized by the state to administer commercial driver's license (CDL) skills tests.

(7) "Course cost" means the price charged for a course offering before any taxes, subsidies, discounts, or other price reductions or additional fees.

(8) "Demonstration of proficiency" means driver-trainee must demonstrate proficiency in required skills over time. Demonstration of proficiency of state and federal entry level driver training standards

is not met by the completion of minimum hours of training. Nor is it limited to a single standardized assessment result.

~~((7))~~ (9) "Department" means the department of licensing.

(10) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer.

~~((8))~~ (11) "Employer" means a person or entity that hires one or more individuals to operate a commercial motor vehicle on a regular basis during their normal course of employment and whose primary purpose is not to train operators of commercial motor vehicles.

~~((9))~~ (12) "English proficiency" means applicants for a commercial motor vehicle skills test must be able to understand and respond to verbal commands and instructions in English by a skills test examiner per 49 C.F.R. 383.133(5).

~~((10))~~ (13) "Entry-level driver training schools for commercial driver licenses (CDL)" means an entity that is approved by the department, to provide training as required by RCW 46.25.060 (1) (a) (ii).

(14) "Hour," as used in connection with training requirements, means no less than 50 minutes of training or instruction.

~~((11))~~ (15) "Instructor-led" means person-to-person learning where students can ask questions, receive feedback in real-time, and interaction and discussion are enabled. Some classroom instruction may include self-paced, online components as authorized and certified by the department of licensing. Completely self-paced, online training courses are not authorized.

~~((12))~~ (16) "Lab" means a teaching environment involving a non-moving vehicle for hands on instruction supported by classroom material.

~~((13))~~ (17) "License or endorsement test" means a skills test that is required to obtain a commercial learner's permit, commercial driver license, or endorsement.

(18) "Observation" means the careful watching, as a passenger in a commercial motor vehicle, of street driving during the hours of course instruction, recording lessons learned and applying classroom material.

~~((14))~~ (19) "Proficiency development" means driving exercises that will allow more time to develop the skills needed to demonstrate proficiency, competence, and confidence in the street driving and backing maneuvers portions of a course.

~~((15))~~ (20) "Proficiency-based learning" means:

(a) Learning outcomes emphasize competencies that include application and creation of knowledge along with the development of skills and abilities;

(b) Competency criteria and standards are explicit, measurable, transferable learning objectives that equip driver-trainees with necessary knowledge, skills, and abilities;

(c) Assessments are meaningful and directly related to driver-trainees' accomplishment of objectives;

(d) Driver-trainees receive rapid, differentiated support based on their individual learning needs; and

(e) Driver-trainees are given specific and actionable feedback that allows them to advance upon demonstrated proficiency of content in all required areas of the curriculum.

~~((16))~~ (21) "Range" means an area closed from the public where driving activities are practiced, free of obstructions, enables the driver to maneuver safely and free from interference from other vehicles and hazards, and has adequate sight lines.

~~((17))~~ (22) "Street driving" means driving a commercial motor vehicle on a public road, where the traffic laws are enforced, consisting of city street, country road, and freeway driving.

~~((18))~~ (23) "Theory instructor" means an individual who provides knowledge instruction on the operation of a CMV and meets one of these qualifications:

(a) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience driving a CMV requiring a CDL of the same (or higher) class and/or the same endorsement and meets all applicable state qualification requirements for CMV instructors; or

(b) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience as a BTW CMV instructor and meets all applicable state qualification requirements for CMV instructors.

(c) **Exceptions applicable to (a) and (b) of this definition:** An instructor is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, if the instructor previously held a CDL of the same (or higher) class and complies with the other requirements set forth in (a) or (b) of this definition.

(d) If an instructor's CDL has been canceled, suspended, or revoked due to any of the disqualifying offenses identified in C.F.R. 383.51, the instructor is prohibited from engaging in theory instruction for two years following the date his or her CDL is reinstated.

~~((19))~~ (24) "Training institute/provider" means an entity that is approved by the department, to provide training as required by RCW 46.25.060 (1)(a)(ii):

(a) An institution of higher learning accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education board;

(b) A licensed private vocational school as that term is defined by RCW 28C.10.020(7);

(c) An entity in another state that the department has determined provides training or instruction equivalent to that required under WAC 308-100-033 or 308-100-035; or

(d) An entity that the state has determined provides on-site contracted training or instruction equivalent to that required under WAC 308-100-033.

~~((20))~~ (25) "Without a CDL" means any period of cancellation, expiration, revocation, surrender, or suspension.

AMENDATORY SECTION (Amending WSR 19-01-078, filed 12/17/18, effective 1/17/19)

**WAC 308-100-036 Reporting training results.** (1) A training provider and employer must provide electronic notification to the department when a student successfully completes a course of instruction de-

scribed in WAC 308-100-033 for schools and WAC 308-100-035 for employers.

(2) The notification of course completion must consist of:

(a) A certification that the student/employee demonstrated proficiency in all elements of the curriculum required in subsection (1) of this section;

(b) Driver license number;

(c) Phone number;

(d) Type of training;

(e) Classroom hours completed;

(f) Backing hours completed;

(g) Street driving hours completed;

(h) Proficiency hours completed;

(i) Range hours completed;

(j) Course start date;

(k) Course completion date; and

(l) Instructor.

(3) The department must receive an electronic notification of successful completion prior to a student/employee taking a skills test.

(4) All entry-level driver training schools for commercial driver licenses and commercial driver license third-party examiners must report the following information to the department at time of license or contract application, license or contract renewal, and no less than once per year unless otherwise specified in this or another chapter:

(a) Name of business;

(b) Location(s) where services are provided, in standard USPS format;

(c) Contact information, including:

(i) Phone number;

(ii) Email address;

(iii) Website (if applicable);

(d) Language(s) services are offered in;

(e) All course offerings;

(f) Course cost; and

(g) License or endorsement test offerings.

## OTS-5889.1

AMENDATORY SECTION (Amending WSR 22-22-075, filed 10/31/22, effective 12/1/22)

**WAC 308-108-020 Definitions.** The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Adult course" means the course offered to adults who do not need the comprehensive driver training education required for minor drivers.

(2) "Behind the wheel instruction" means that portion of a traffic safety education course that consists of on-street, dual-controlled vehicle operation or similar instruction given under simulated conditions that has been approved by the director.

~~((2))~~ (3) "Branch office" or "branch classroom" means a facility within a 35-mile radius of a driver training school's established place of business, except where the 35-mile radius requirement has been waived or extended by the department as provided by RCW 46.82.360 (6)(c), that has been approved by the department for use by the driver training school.

~~((3))~~ (4) "Classroom," defined in RCW 46.82.280(2), may also include a virtual classroom environment when video conferencing technology is capable of two-way communication between the instructor and all students.

~~((4))~~ (5) "Course cost" means the price charged for a course offering before any taxes, subsidies, discounts, or other price reductions or additional fees.

(6) "Department" means the department of licensing.

(7) "Driver training education course" means the driver training education course as defined in RCW 46.82.280 and following the required curriculum.

(8) "Engage in a course of instruction" means to enroll in, schedule, collect a fee for, or sign an application for an instruction permit in order to attend or take part in a driver training education course.

~~((5))~~ (9) "Inactive instructor" means an instructor with a valid Washington instructor's license who is no longer employed by or otherwise associated with a licensed driver training school.

~~((6))~~ (10) "Instructor-led" means person-to-person learning where students can ask questions, receive feedback in real-time, and interaction and discussion are enabled.

~~((7))~~ (11) "Instructor-trainer" means a currently licensed instructor who is training traffic safety education instructors and who has not less than:

(a) One thousand hours of experience in providing traffic safety education in the past year;

(b) Five years of previous experience in providing traffic safety education; or

(c) One thousand hours or five years experience in the field of traffic safety and proof of training acceptable to the director in how to teach and train others, and not less than 300 hours of previous experience in training others.

~~((8))~~ (12) "License or endorsement test" means a test that is required to obtain a personal or commercial driver license or permit or a motorcycle permit or endorsement.

(13) "Records" means all documents, papers and reports required to own a driver training school, including but not limited to:

(a) Vehicle registration, title, insurance policy, and maintenance information;

(b) Business financial documents, such as franchise agreements, corporate documents, bank records, partnership agreements, lease agreements, and purchase and sale agreements; and

(c) Student classroom and behind-the-wheel instruction reports.

~~((9))~~ (14) "Student" means any person enrolled in an approved driver training education course who is at least 15 years of age.

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

**WAC 308-108-140 Reporting requirements.** (1) All driver training school owners shall:

~~((1))~~ (a) Report to the department within ~~((ten))~~ 10 days any driving or traffic-related incidents involving an instructor employed by the school ~~((7))~~ including, but not limited to:

~~((a))~~ (i) Conviction for a traffic violation;

~~((b))~~ (ii) Finding that a traffic infraction has been committed;

~~((e))~~ (iii) Entry into a deferred prosecution agreement; or

~~((d))~~ (iv) Suspension, revocation, cancellation, or denial of driving privileges.

~~((2))~~ (b) Report to the department within ~~((twenty-four))~~ 24 hours following any traffic safety education vehicle involved in a traffic collision for which an accident report must be or has been made under the provisions of RCW 46.52.030. Prior to the return to service of any traffic safety education vehicle that has been involved in a collision, the school owner must forward a vehicle inspection report to the department.

~~((3))~~ (c) Forward to the department by the seventh day of each month, a report of student enrollment in traffic safety education courses provided by the school, including but not limited to:

~~((a))~~ (i) The start date and end date of any courses provided by the school that are initiated during the reporting period, including the total number of students enrolled in each course;

~~((b))~~ (ii) The names and certificate numbers of all instructors providing classroom and/or behind the wheel instruction for each course;

~~((e))~~ (iii) The names and instruction permit or driver's license numbers or dates of birth of all students enrolled in each course, along with the identifying number of the traffic safety education certificate reserved for each student for issuance upon successful completion of the course.

~~((4))~~ (d) Not less than annually, have completed and have on file at the main school location a vehicle inspection report as required under WAC 308-108-110 (1)(b) for all traffic safety education vehicles in use by the school.

~~((5))~~ (e) Report to the department within ~~((ten))~~ 10 days any new vehicles used by the school for instructional purposes or any vehicles taken out of service.

(2) All driver training schools must report the following information to the department at time of license application, license renewal, and no less than once per year unless otherwise specified in this or another chapter:

(a) Name of business;

(b) Location(s) where services are provided, in standard USPS format;

(c) Contact information, including:

(i) Phone number;

(ii) Email address;

(iii) Website (if applicable);

(d) Language(s) training course services are offered in;

(e) Course offerings, including:

(i) Driver training education course;

(ii) Adult course;



- (iii) Course cost; and
- (f) License or endorsement test offerings.

**OTS-5890.3**

AMENDATORY SECTION (Amending WSR 24-03-114, filed 1/19/24, effective 3/1/24)

**WAC 308-109-010 Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Contracted training provider" means an agency, firm, provider, organization, individual, or other entity performing services as outlined in RCW 46.20.520 and 46.81A.020 and is under contract with the department.

(2) "Course cost" means the price charged for a course offering before any taxes, subsidies, discounts, or other price reductions or additional fees.

(3) "Department" means the department of licensing.

(4) "License or endorsement test" means a test that is required to obtain a personal or commercial driver license or permit or a motorcycle permit or endorsement.

(5) "Motorcycle safety course" means any course offered by a contracted training provider and approved by the department of licensing. This also includes approved out-of-state courses.

(6) "Student" means persons who receive a pass, fail or incomplete status on a course completion report furnished to the department.

~~((3))~~ (7) "2-wheel novice course" means a 2-wheel motorcycle safety course intended for new riders and approved by the department.

(8) "2-wheel advanced course" means a 2-wheel motorcycle safety course intended for experienced riders and approved by the department.

(9) "2-wheel permit level knowledge test" is a test created/approved by the department of licensing to determine an acceptable novice knowledge level for operating a two-wheel motorcycle. This test is valid for 365 days.

~~((4))~~ (10) "2-wheel permit level skills test" is a test created/approved by the department of licensing to determine an acceptable novice skill level for operating a two-wheel motorcycle. This test is valid for 365 days.

~~((5))~~ (11) "2-wheel endorsement level knowledge test" is a test created/approved by the department of licensing to determine an acceptable knowledge level for operating a two-wheel motorcycle. This test is valid for 365 days.

~~((6))~~ (12) "2-wheel endorsement level skills test" is a test created/approved by the department of licensing to determine an acceptable skill level for operating a two-wheel motorcycle. This test is valid for 365 days.

~~((7))~~ (13) "3-wheel novice course" means a 3-wheel motorcycle safety course intended for new riders and approved by the department.

(14) "3-wheel advanced course" means a 3-wheel motorcycle safety course intended for advanced riders and approved by the department.

(15) "3-wheel knowledge test" is a test created/approved by the department of licensing to determine an acceptable knowledge level for operating a three-wheel motorcycle. This test is valid for 365 days.

~~((8))~~ (16) "3-wheel skills test" is a test created/approved by the department of licensing to determine an acceptable skill level for operating a three-wheel motorcycle. This test is valid for 365 days.

~~((9) "Motorcycle safety course" means any course offered by a contracted training provider and approved by the department of licensing. This also includes approved out-of-state courses.~~

~~(10))~~ (17) "2-wheel motorcycle instruction permit" means authorization to ride a two-wheel motorcycle on the roads and highways of Washington. With limitations found in RCW 46.20.510.

~~((11))~~ (18) "3-wheel motorcycle instruction permit" means authorization to ride a three-wheel motorcycle on the roads and highways of Washington. With limitations found in RCW 46.20.510.

#### NEW SECTION

**WAC 308-109-070 Reporting requirements.** All motorcycle safety contracted training providers must report the following information to the department at time of contract application, contract renewal, and no less than once per year unless otherwise specified in this or another chapter:

- (1) Name of business;
- (2) Location(s) where services are provided, in standard USPS format;
- (3) Contact information, including:
  - (a) Phone number;
  - (b) Email address;
  - (c) Website (if applicable);
- (4) Language(s) training course services are offered in;
- (5) Course offerings, including:
  - (a) 2-wheel novice course;
  - (b) 2-wheel advanced course;
  - (c) 3-wheel novice course;
  - (d) 3-wheel advanced course;
- (6) Course cost; and
- (7) License or endorsement test offerings.

**WSR 25-01-071**  
**PERMANENT RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed December 12, 2024, 8:21 a.m., effective January 12, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Revising WAC 139-07-040 to remove the requirement that the criminal justice training commission adopt into policy polygraph examination model questions.

Citation of Rules Affected by this Order: Amending 1 [WAC 139-07-040].

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 24-22-082 on December 11 [October 31], 2024.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, 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: December 11, 2024.

Lacey Ledford  
Rules Coordinator

**OTS-5928.1**

AMENDATORY SECTION (Amending WSR 23-01-086, filed 12/16/22, effective 1/16/23)

**WAC 139-07-040 Polygraph examination or other truth verification assessment.** (1) Polygraph assessments provide hiring agencies with insight into an individual's honesty and an opportunity to ask an array of additional background questions.

(2) Standards for polygraph assessments:

(a) Examiners must have graduated from a polygraph school accredited by the American Polygraph Association (APA) or an association with equivalent standards for membership. The examiner must also show that they are in compliance with completion of a minimum of 30 hours of APA-approved continuing education every two calendar years;

(b) Polygraph equipment used as a part of the preemployment assessment must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer;

(c) Techniques for conducting a polygraph must meet industry standards and comply with all applicable federal and state laws in-

cluding, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination;

(d) Preemployment assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement; and

(e) Assessment information and results should be considered confidential within the screening process to be used exclusively by the hiring agency to assist with the selection of an applicant.

(3) Polygraph assessments:

(a) Polygraph assessments administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph assessments, risk assessment, risk management, and field investigation principles;

(b) Polygraph examiners shall ask questions including, but not limited to, the following topics: General background, employment history, police/corrections experience, driving record, military service, arrest information, personal habits, illegal drug use or possession, credit/financial, sexual activities, domestic violence/temperament, theft, and security and personal associations. Additional questions shall apply specifically to laterals and corrections officers; and

(c) (~~Model questions shall be adopted in commission policy; and~~  
~~(d)-~~) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.

(4) At a minimum, a polygraph instrument shall continuously record the following components during the assessment process:

(a) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;

(b) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;

(c) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and

(d) A motion sensor.

(5) Examiners shall provide hiring agencies with a thorough report that analyzes the results of the assessment. Such report shall include any and all disclosures made by the applicant to the questions asked during the preassessment interview, as well as the results of the applicant's truthfulness to the assessment questions.

(6) The agency which authorized the polygraph assessment shall maintain all documentation of the assessment as required in the law enforcement records retention schedule provided by the Washington state secretary of state's office.

(7) It is the responsibility of the hiring agency to accept the results of the polygraph assessment. The commission does not routinely review these assessments but may do so pursuant to RCW 43.101.400.

(8) An applicant may be offered employment by more than one agency. The polygraph results may be shared with more than one law enforcement or correctional agency under the following circumstances:

(a) The agency which initiated the polygraph assessment agrees to share the results of the assessment in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to obtain the assessment report;

(c) The polygraph assessment was completed within six months of the request; and

(d) The job analyses of both agencies are substantially similar.

(9) Other truth verification assessments must be approved by the commission with additional rules established by the commission's governing body regarding its standards of use in fulfilling RCW 43.101.095.

(10) Polygraph reports older than six months shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

## WSR 25-01-077

## PERMANENT RULES

## SKAGIT VALLEY COLLEGE

[Filed December 12, 2024, 3:34 p.m., effective January 12, 2025]

Effective Date of Rule: Thirty-one days after filing.

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

Citation of Rules Affected by this Order: New WAC 132D-150-080, 132D-150-120 and 132D-150-130; repealing WAC 132D-150-350, 132D-150-370, 132D-150-390, 132D-150-410, 132D-150-500, 132D-150-510, 132D-150-520, 132D-150-530, 132D-150-540, 132D-150-550, 132D-150-560, 132D-150-570 and 132D-150-580; and amending WAC 132D-150-010, 132D-150-020, 132D-150-030, 132D-150-040, 132D-150-050, 132D-150-070, 132D-150-090, 132D-150-110, 132D-150-150, 132D-150-170, 132D-150-190, 132D-150-210, 132D-150-230, 132D-150-250, 132D-150-270, 132D-150-290, and 132D-150-310.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Adopted under notice filed as WSR 24-21-137 on October 22, 2024.

Changes Other than Editing from Proposed to Adopted Version: Added two new sections: WAC 132D-150-120 and 132D-150-130.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 3, Amended 17, Repealed 13; 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 3, Amended 17, Repealed 13.

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: December 12, 2024.

Pam Davis  
Rules Coordinator

**OTS-5640.2**

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-010 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president for student services or designee. Except in cases involving allega-

tions of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-020 Statement of jurisdiction.** (1) The code of student conduct shall apply to ~~((student))~~ conduct by students or student groups that occurs:

- (a) On college premises;
- (b) At or in connection with college ~~((sponsored))~~ programs or activities; or
- (c) ~~((To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.))~~ Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

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

(3) Students are responsible for their conduct from the time ~~((of application for admission))~~ they gain admission to the college through the ~~((actual receipt of a degree,))~~ last day of enrollment or award of any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

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

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

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

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-030 Definitions.** The following definitions shall apply for purpose of this student conduct code:

- (1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "Calendar day" means days on the calendar including weekends and holidays.

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

(4) "Complainant" means the following individuals who are alleged to have been subjected to conduct violations of this code:

(a) A student or employee; or

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

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

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

(7) "Disciplinary appeal" is 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 an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

(b) By sending the document by email and/or first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(9) "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) "President" is the president of the college. The president is authorized to delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary, and reassign any and all duties or responsibilities as set for this chapter as may be reasonably necessary.

(11) "Program" or "programs and activities" means all operations of the college.

(12) "Relevant" means related to allegations under investigation. Questions are relevant when they seek evidence that may aid in showing whether a violation occurred, and evidence is relevant when it may aid a decision maker in determining whether a violation occurred.

(13) "Respondent" is a student who is alleged to have violated the student conduct code.



(14) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document via first class mail to the party's last known address; or

(c) By sending the document by email via Skagit Valley College's online student conduct software. It is the responsibility of each student to regularly check their official Skagit Valley College email address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and/or deposited in the mail.

(15) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(16) "Student conduct officer" is a college administrator designated by the president or vice president ((for)) of student services to be responsible for implementing and enforcing the student conduct code. The president or vice president ((for)) of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

~~((2) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(3) "The president" is the president of the college. The president is authorized to delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary, and reassign any and all duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.~~

~~(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.~~

~~(6) "Respondent" is the student against whom disciplinary action is initiated.~~

~~(7) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:~~

~~(a) Hand delivery of the document to the party; or~~

~~(b) By sending the document via first class mail to the party's last known address; or~~

~~(c) By sending the document by email via Skagit Valley College's online student conduct software. It is the responsibility of each stu-~~

dent to regularly check their official Skagit Valley College email address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(9) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(10) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(11) "Business day" means a weekday, excluding weekends and college holidays.

(12) "Calendar day" means days on the calendar including weekends and holidays.

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132D-150-050.) (17) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or a respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

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

(19) "Supportive/interim measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college 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 college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive/interim measures may include, but are not limited to, counseling; extensions of the deadlines and other course-related adjustments; campus escort services; increased security and monitoring of a certain areas of campus; restriction on contact applied to one or

more parties; a leave of absence; change in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; modified on-campus employment schedule or location; restrictions on access to portions of campus including, but not limited to, on-campus housing; and training and education programs related to sex-based harassment.

(20) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

**Note:** "Day" refers to calendar days unless otherwise specified.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

**WAC 132D-150-040 Statement of student rights.** (1) 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 college community.

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

(a) Academic freedom.

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

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

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

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

(b) Due process.

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

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

(iii) 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 23-19-024, filed 9/10/23, effective 10/11/23)

**WAC 132D-150-050 Prohibited student conduct.** The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team, or living group, who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, 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 the law.

(2) **Abuse of the student conduct process.**

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

(ii) Influencing or attempting to influence another person to commit an abuse of the student conduct process;

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in the conduct proceeding.

(3) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, (~~and~~) fabrication, and deliberate damage.

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

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

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

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

~~((2) Other)~~ (4) **Acts of dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

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

~~((3) Obstruction or disruption. Obstruction or disruption of:~~

~~(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or~~

~~(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.~~

~~(4) **Assault, intimidation, harassment.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:~~

~~(a) Bullying is severe or pervasive physical or verbal abuse involving a power imbalance between the aggressor and victim.~~

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

~~(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. 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, and nonconsensual distribution of a recording of sexual activity.~~

~~(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:~~

~~(a) The college or state;~~

~~(b) Any student or college officer, employee, or organization;~~

~~(c) Any other member of the college community or organization; or~~

~~(d) Possession of such property or money after it has been stolen.~~

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

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

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

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

~~(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical, religious, or other purpose. Such permission~~

shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

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

~~(9) **Hazing.** Any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a 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 psychological or emotional harm, to any student or other person attending a public institution of higher education in this state, 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.~~

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

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

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

~~(c) **Drugs.** The use, possession, delivery, sale, or 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.~~

~~(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" includes, but is not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.~~

~~(11) **Lewd conduct.** Conduct which is lewd or obscene.~~

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

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

~~(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational~~

program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) ~~Sexual intimidation.~~ The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

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

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

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, 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.

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

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

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

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

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

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

(14) ~~Harassment.~~ Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a

student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

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

(a) Unauthorized use of such resources or opening of 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 college's computing system or other electronic information resources;

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

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

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

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

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

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

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

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



sition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.) (5) **Alcohol, drug, and tobacco violations.**

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

(b) **Cannabis.** The use, possession, delivery, sale, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, 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.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" includes, but is not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(6) **Cyber misconduct.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), 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, and nonconsensual distribution of a recording of sexual activity.

(7) **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 college'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 campus 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.

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

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

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

(10) **Harassment or bullying.** 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 college'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 not 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.

(11) **Hazing.** Any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a 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 psychological or emotional harm, to any student or other person attending a public institution of higher education in this state, 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. Examples of hazing include, but are not limited to:

(a) 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;

(b) Humiliation by ritual act;

(c) Striking another person with an object or body part;

(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(12) **Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(13) **Lewd conduct.** Conduct which is:

(a) Lewd. Involving sexual conduct that is considered indecent or offensive.

(b) Obscene. Offensive, rude, or shocking, usually because of being too obviously related to sex or showing sex.

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

(a) Unauthorized use of such resources or opening of 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 college's computing system or other electronic information resources;

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

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

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

(15) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(16) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college 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 college trademarks.

(17) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual 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 college policies.

(18) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the

campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(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 (insignificant) 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 college to provide an aid, benefit, or service under the college'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 college's education program or activity;

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

(C) The parties' ages, roles within the college'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 college'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) **Sexual exploitation.** Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexu-

al misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

(I) Invading another person's sexual privacy;

(II) Prostituting another person;

(III) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;

(IV) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;

(V) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;

(VI) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or

(VII) Causing the nonconsensual indecent exposure of another person, as defined by subsection (12) of this section.

(D) **Sexual coercion.** Unreasonably pressuring another for sexual contact. When a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.

(E) **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.

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

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

(H) **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.

(I) **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) **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.

(c) **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.

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

(21) **Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy (e.g., restroom or residence hall room).

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

(22) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college housing, traffic and parking rules.

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

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

(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view.

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a

legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

**WAC 132D-150-070 Corrective action—Disciplinary sanctions—Terms and conditions.** One or more of the following corrective actions or disciplinary sanctions may be imposed upon ((students)) a student or upon college-sponsored student organizations, athletic teams, or living groups found ((to have violated)) responsible for violating the student conduct code.

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

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

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college 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 college, 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 college.

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

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

(6) 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, designated to create an awareness of the student's misconduct.

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

(c) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incur-

red by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

~~((b))~~ (d) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be 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 college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

~~((e))~~ (e) Not in good standing. A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

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

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

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

(g) Trespass or restriction. A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

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

If a student withdraws from the college 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 or readmission to the college.

#### NEW SECTION

**WAC 132D-150-080 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 college.

(3) Any student group that knowingly permits 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 college.

(4) Any student group found responsible for violating the code of student conduct, college anti-hazing 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 college 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 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-090 Initiation of disciplinary action.** (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) 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) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of 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 college will be handled in accordance with college 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 college. 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.

(3) 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.

(4) 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 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.

(5) 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.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination 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.

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

~~((2))~~ (8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing ~~((him or her))~~ 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. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

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

~~(4))~~ (9) Within ~~((ten))~~ 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her 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.

~~((5))~~ (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), as described in WAC 132D-150-070.

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

(11) In cases involving allegations of sex discrimination, 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 business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator 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 committee.

(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 committee.

(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 sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

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

(ii) Respondent is not participating in the college'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 college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

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

(f) In cases involving allegations of sex-based harassment, the college 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) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

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

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-110 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth by WAC 132D-150-090(11) Initiation of disciplinary action, the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~ten busi-~~

ness)) 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 ((review)) officer.

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

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a 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) ((The student conduct committee shall hear appeals from:~~

~~(a) The imposition of disciplinary suspensions in excess of ten instructional days;~~

~~(b) Dismissals; and~~

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

~~(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:~~

~~(a) Suspensions of ten instructional days or less;~~

~~(b) Disciplinary probation;~~

~~(c) Written reprimands; and~~

~~(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.)~~ 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 committee shall hear appeals from:

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

(b) Dismissals;

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

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

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of ~~((sexual misconduct))~~ sex discrimination, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a ~~((sexual misconduct))~~ sex discrimination complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a ~~((sexual misconduct))~~ sex discrimination violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a (~~sexual misconduct~~) sex discrimination violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

#### NEW SECTION

**WAC 132D-150-120 Conduct holds on student records.** (1) A student conduct officer or other designated college official may place a conduct hold on the student's record if the student is the respondent in a pending complaint of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the college until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The hold will remain in place until lifted by the student conduct officer or other designated college official with authority to do so.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

#### NEW SECTION

**WAC 132D-150-125 Amnesty policy.** (1) Skagit Valley College values the health, safety, and wellness of those in our college community. Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of helping another person seek medical attention or other emergency assistance, admits to a possible policy violation under this student conduct code, provided that any such violations did not and do not place the health and safety of any other person at risk.

(3) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of reporting violence, sex discrimination, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the incident, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals, rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regards to alcohol, drugs, or other prohibited conduct.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-150 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which (~~he or she is~~) 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, the student conduct officer, and in cases involving (~~sexual misconduct~~) sex discrimination, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency'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 both the parties within (~~ten business~~) 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 (~~ten~~) 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

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

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

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-170 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within (~~twenty-one~~) 21 days of service of the initial decision.

(2) The president shall not participate in any case in which (~~he or she is~~) 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 president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within (~~twenty~~) 20 days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within (~~twenty~~) 20 calendar days after the request is submitted.

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

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

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

**WAC 132D-150-210 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One faculty member or administrator, other than an administrator serving as a student conduct or conduct review officer, appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. ~~((The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.))~~

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party

may petition for disqualification of a committee member (~~(pursuant to RCW 34.05.425(4))~~).

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation 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 college 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 committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-230 Appeal—Student conduct committee—Prehearing.**

(1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW (~~(, and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control)~~).

(2) The student conduct committee chair shall serve all parties with written notice of the hearing no less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must 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.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

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

- (a) The conduct officer's notification of imposition of discipline, or referral to the committee; and



(b) The notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) ~~((Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.))~~ In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.

(10) For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing. The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, 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.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) 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 chair 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 (13)(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 college's control.

(e) **Confidentiality.** The college 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 chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) 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 sex-based harassment;

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

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

(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 chair 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 chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. 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 chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have 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 college's control.

(e) **Confidentiality.** The college 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 chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee 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 college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-250 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that ~~((he/she selects))~~ they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

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

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the college's case for imposing disciplinary sanctions.

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

(7) ~~In cases involving allegations of ((sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.))~~ sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, 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 committee chair may

revise this process if, in the chair'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 chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair 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 chair shall exclude and the committee shall 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 chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that 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 committee 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 committee must not draw an inference about whether 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 sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-270 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form, written or verbal, it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within ~~((twenty))~~ 21 calendar days following the ~~((later of the))~~ conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee 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 committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving ~~((allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.))~~ sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-290 Appeal from student conduct committee review of initial decision.**

(1) ~~((A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.~~

~~((2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.~~

~~(3) The president shall provide a written decision to all parties within twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.~~

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

~~(5)) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.~~

(2) 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.

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

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and the Title IX coordinator.

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

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-310 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of ac-

cess to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

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

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

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

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

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

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

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

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

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

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

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

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

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

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

(6) In cases involving allegations of (~~sexual misconduct~~) sex discrimination, the complainant shall be notified that a summary sus-

pension has been imposed (~~in~~) on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132D-150-350	Supplemental sexual misconduct procedures.
WAC 132D-150-370	Supplemental definitions.
WAC 132D-150-390	Supplemental complaint process.
WAC 132D-150-410	Supplemental appeal rights.
WAC 132D-150-500	Order of precedence.
WAC 132D-150-510	Prohibited conduct under Title IX.
WAC 132D-150-520	Title IX jurisdiction.
WAC 132D-150-530	Initiation of discipline.
WAC 132D-150-540	Prehearing procedure.
WAC 132D-150-550	Rights of parties.
WAC 132D-150-560	Evidence.
WAC 132D-150-570	Initial order.
WAC 132D-150-580	Appeals.



## WSR 25-01-082

## PERMANENT RULES

## EASTERN WASHINGTON UNIVERSITY

[Filed December 13, 2024, 8:37 a.m., effective January 13, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules contain the procedures Eastern Washington University will follow for implementing and utilizing a small works roster. They are consistent with the model rules issued by the department of enterprise services.

Citation of Rules Affected by this Order: New WAC 172-330-010, 172-330-020, 172-330-030, 172-330-100, and 172-330-200.

Statutory Authority for Adoption: RCW 28B.35.120(12), 39.04.151.

Adopted under notice filed as WSR 24-20-076 on September 27, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 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 5, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 5, 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: December 13, 2024.

Annika Scharosch  
Associate Vice President for Civil Rights  
Compliance and Business Services

OTS-5896.1

**Chapter 172-330 WAC**  
**SMALL WORKS ROSTER**

NEW SECTION

**WAC 172-330-010 Purpose and authority.** This chapter of the Washington Administrative Code is adopted pursuant to RCW 39.04.151. This chapter sets forth the procedures for Eastern Washington University's (EWU) use of small works rosters for different specialties, categories of anticipated work, and geographical locations consistent with RCW 39.04.151 and the model rules issued by the department of enterprise services in chapter 200-330 WAC. The vice president for business and finance, or designee, is authorized to establish additional procedures for EWU's use of statewide and independent small works rosters.

NEW SECTION

**WAC 172-330-020 Definitions.** As used in this chapter the terms:

- (1) "Contracting agency" means EWU.
- (2) "Independent roster" means a small works roster established by EWU by itself or with another contracting agency.
- (3) "MRSC" means the municipal research and services center.
- (4) "OMWBE" means the office of minority and women's business enterprises.
- (5) "Publicly available" means published on EWU's public website.
- (6) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of EWU, or which is by law a lien or charge on any property therein. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 39.102.060(4) or other development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).
- (7) "Statewide roster" means the statewide small works roster developed by the department of commerce through MRSC.

NEW SECTION

**WAC 172-330-030 Roster requirements.** EWU is encouraged to use the statewide roster to promote administrative efficiency. The statewide roster must meet all of the requirements set forth in WAC 200-330-035. If EWU chooses to create its own small works roster, the roster must meet the requirements of RCW 39.04.151, 39.04.152, and the following:

- (1) Roster inclusion. All qualified responsible, licensed contractors must be included on the roster at their request. Potential contractors must complete an application with EWU to be placed on the roster. Applications may be submitted at any time.
- (2) Contact information. Contractors on the roster must designate an official email to receive bid notifications from EWU.
- (3) Contractor recordkeeping. Contractors included on EWU's roster must keep records of applicable licenses, certifications, registrations, bonding, and insurance as required by RCW 39.04.350. This information must be made immediately available to EWU upon request.
- (4) Small and diverse business certification.
  - (a) At the time of a contractor's application to be included on the roster, the contractor must indicate its certification status with OMWBE and the department of veterans affairs.
  - (b) EWU must be able to download data from OMWBE and the department of veterans affairs to obtain current information on contractor certifications at the time of solicitation.
- (5) Denial or removal of contractors from small works roster. A contractor may be denied placement on, or after such placement, may be removed from a small works roster for any of the following reasons:
  - (a) The contractor has failed to respond to five solicitations for bids on jobs offered through the small works roster;
  - (b) The contractor does not meet the responsible bidder provisions contained in RCW 39.04.350; or
  - (c) The contractor does not meet supplemental criteria identified by EWU for a specific project consistent with RCW 39.04.350.

NEW SECTION

**WAC 172-330-100 Small works competitive contracting.** (1) Small works bid process. Whenever the estimated cost of construction for a project does not exceed \$350,000 or the current threshold set in RCW 39.04.152, excluding state sales tax, EWU may use the small works competitive contracting process. EWU may either use the statewide roster or establish its own small works roster. Under the small works bid process, contractors included on a small works roster are invited to submit bids for small works projects. No project shall be broken into units or phases for the purpose of allowing the project to qualify for a small works roster process.

(2) Requirements. The small works bid process must meet all of the requirements of RCW 39.04.151, 39.04.152, and chapter 200-330 WAC. This includes, but is not limited to, the following requirements:

(a) Invitations to bid.

(i) Invitations to bid must include:

(A) Plans, specifications, and an estimate of the work sufficient to define the work and for the contractor to generate a bid; and

(B) A date and time for receipt of bids through the designated bidding system.

(ii) EWU must provide an invitation to bid to all contractors on the appropriate roster category associated with the work to be performed.

(b) Estimated cost. EWU's estimate of the work must be equal to or under the cost limit specified in RCW 39.04.152 to solicit bids under the small works competitive contracting process. EWU may award contracts for more than this amount if the contract cost is not excessive or does not constitute a cardinal change. A general guideline is that 10 percent or less of the statutory bid limit will not constitute a cardinal change.

(c) Change orders. Change orders may be added to the contract amount at the discretion of EWU if the change orders are necessary to complete the work described in the plans, specifications, and estimate, or do not constitute a cardinal change. EWU shall not use change orders to avoid the statutory bid limit for this type of solicitation.

(d) Retainage. Retainage may be waived or reduced by EWU. If EWU waives or reduces retainage, the waiver or reduction must be indicated in the invitation to bid at the time of solicitation, and EWU then assumes liability for any unpaid wages and taxes.

(e) Bid acceptance. EWU:

(i) Must accept written quotations or accept quotations through electronic methods such as electronic mail or an electronic bid system;

(ii) Shall not establish a formal bid opening; and

(iii) Must make bid tabs publicly available upon request. Bid tabulations may be requested by emailing EWU's public records manager at prr@ewu.edu.

NEW SECTION

**WAC 172-330-200 Small works direct contracting.** (1) Direct contracting process. In lieu of following a formal public works bidding process or the small works competitive contracting process outlined in WAC 172-330-100, EWU may enter into direct contracts with a contractor

by soliciting a quote from a single selected contractor on the state-wide roster or EWU's independent roster and negotiate a final price. Consistent with the limits identified in RCW 39.04.151 and 39.04.152, this process may only be used when EWU's estimate for the work is equal to or less than \$150,000, not including sales tax, or any future limit set by the legislature consistent with RCW 39.04.152 (4) (b).

(2) Requirements. The small works direct contracting process must meet the requirements of RCW 39.04.151, 39.04.152, and chapter 200-330 WAC. This includes, but is not limited to, the following requirements:

(a) Administrative efficiency. Direct contracting is intended to be a quick and administratively efficient process with a focus on promoting the use of small and diverse businesses. This is not a competitive solicitation.

(b) Diverse business utilization plan. EWU must establish a small, minority, women, and veteran-owned business utilization plan prior to using the direct contracting process.

(c) Contractor rotation.

(i) EWU must rotate direct contracting opportunities among the available contractors on the appropriate roster.

(ii) EWU must not favor certain contractors by repeatedly awarding contracts to contractors without documented attempts to directly contract with other contractors.

(iii) EWU must adopt a policy regarding how contract opportunities will be rotated to avoid favoritism in direct contracting. This policy will be posted on EWU's website.

(iv) The rotation policy must, at a minimum, provide the following:

(A) Contractors that have been issued a contract under the direct contracting process must not be offered a future contract until all other contractors on the roster have received a solicitation for a quote through the direct contracting process; and

(B) EWU must consider nonresponsive solicitations and the inability to negotiate an agreed price in their rotation policy.

(d) Soliciting quotes.

(i) Solicitations for a quote under the direct contracting process must include the following:

(A) A description of the work to be performed sufficient for the contractor to develop a price;

(B) The date EWU must receive the contractor's quote; and

(C) Any timeline requirements for mobilization.

(ii) When six or more contractors certified as public works small business enterprises by OMWBE are listed on the appropriate roster, EWU must solicit a quote from a certified public works small business enterprise contractor on the roster in accordance with EWU's rotation policy.

(iii) When five or fewer contractors certified as public works small business enterprises by OMWBE are listed on the appropriate small works roster for this type of work, EWU may solicit a quote from any contractor on the roster in accordance with the agency's rotation policy.

(e) Negotiated price.

(i) A contract price must be negotiated with a single selected contractor from the statewide or independent roster. The negotiated price should be based on the quote from the contractor and available project funds identified by EWU.

(ii) If the contractor and the contracting agency cannot agree on a price, EWU may elect to end negotiations and move to the next contractor on the rotation in accordance with EWU's rotation policy.

(iii) Once a price is established and all other requirements are met, EWU may proceed with award and execution of the contract.

(iv) EWU is prohibited from bid shopping using the direct contracting process. If EWU and the next contractor on the rotation cannot agree on a contract price, EWU must competitively bid the work if it intends to proceed with the work.

(f) Notice of award. EWU must provide notice of a small works contract award to all other contractors on the appropriate roster of award.

(g) Department of labor and industries portal. EWU is required to initiate the small works project using labor and industries' awarding agency portal when awarding a contract under the direct contracting process.

(h) Recordkeeping. EWU must keep documented records of their efforts under the direct contracting process, including records of the following:

(i) The contractors EWU solicited for the contract;

(ii) Whether the contractor responded to the solicitation;

(iii) Records of price negotiations;

(iv) The contracts that were awarded and to whom; and

(v) Records documenting the reasons a negotiated price could not be reached.

## WSR 25-01-083

## PERMANENT RULES

## LOWER COLUMBIA COLLEGE

[Filed December 13, 2024, 8:51 a.m., effective January 13, 2025]

Effective Date of Rule: Thirty-one days after filing.

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

Citation of Rules Affected by this Order: New WAC 132M-126-037; repealing WAC 132M-126-050, 132M-126-110, 132M-126-115, 132M-126-120, 132M-126-125, 132M-126-130, 132M-126-135, 132M-126-140, 132M-126-145, 132M-126-150, and 132M-126-155; and amending WAC 132M-126-005, 132M-126-010, 132M-126-015, 132M-126-020, 132M-126-025, 132M-126-030, 132M-126-035, 132M-126-036, 132M-126-040, 132M-126-045, 132M-126-055, 132M-126-060, 132M-126-070, 132M-126-075, 132M-126-080, 132M-126-085, 132M-126-090, and 132M-126-100.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140(13); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Adopted under notice filed as WSR 24-21-120 on October 21, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 18, Repealed 11; 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 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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: December 11, 2024.

Kendra Sprague  
Vice President of Foundation  
Human Resources and Legal Affairs

**OTS-5633.3**

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-005 Preamble.** Lower Columbia College is a diverse and dynamic learning community. As such, the college maintains a strong commitment to providing a learning environment that is civil and free from disruptive behavior. All members of the college community share ((in)) the responsibility to promote a positive learning en-

vironment, demonstrate mutual respect and dignity, and avoid adversarial relationships. Thus, students are expected to act as responsible members of this community, maintain a high degree of honesty and integrity, comply with the rules and regulations of the college, and respect the college community's rights, privileges, and property (~~of the college community~~). For allegations of sexual harassment occurring before August 1, 2024, the archived rules apply and can be found here: <https://lawfilesexst.leg.wa.gov/law/WACArchive/2023/WAC%20132M-126%20%20CHAPTER.htm>

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-010 Authority.** The board of trustees of Washington State Community College District No. 13, acting pursuant to RCW 28B.50.140(~~(13)~~) (14), delegates to the president of the college the authority to administer disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. (~~Unless otherwise specified~~) Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 22-23-113, filed 11/17/22, effective 12/18/22)

**WAC 132M-126-015 Definitions.** The following definitions shall apply for purposes of this student conduct code:

- (1) "ASLCC" means the associated students of Lower Columbia College as defined in the constitution of that body.
- (2) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.
- (3) "Business day" means a weekday, excluding weekends, college holidays, and college closure days.
- (4) "College" means Lower Columbia College and any other college centers or premises established within Washington State Community College District No. 13.
- (5) "College community" means trustees, students, staff, faculty, and visitors in college facilities and college premises.
- (6) "College official" includes any person employed by the college performing assigned duties.
- (7) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.
- (8) (~~(A "complainant" is an alleged victim of sexual misconduct.)~~) "Complainant" means the following individuals who are alleged

to have been subjected to conduct that would constitute 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 college's education program or activity at the time of the alleged discrimination.

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

(10) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

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

(12) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(13) "Faculty member" and "instructor" mean any employee of Washington State Community College District No. 13 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, or librarian.

(14) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(15) "Pregnancy or related conditions" means:

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

(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.

(16) ~~((The))~~ "President" is the president of the college. 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.

~~((16))~~ (17) "Program" or "programs and activities" means all operations of the college.

(18) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

~~((17))~~ (19) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they



seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(20) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(21) "Respondent" is ((the)) a student ((against whom disciplinary action is initiated.

(18)) who is alleged to have violated the student conduct code.

(22) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) ((By)) Sending the document by email and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

((19) "Sexual misconduct" has the meaning ascribed to this term in WAC 132M-126-030(13).

(20)) (23) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

((21)) (24) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

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

(26) "Student group" ((for purposes of this code,)) is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

((23)) (27) "Student organization" means any number of students who have met the formal requirements of clubs and organizations.

(28) "Supportive measures" means reasonable, available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college 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 college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational envi-

ronment; or providing support during the college'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.

(29) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

AMENDATORY SECTION (Amending WSR 22-23-113, filed 11/17/22, effective 12/18/22)

**WAC 132M-126-020 Statement of jurisdiction.** (1) The student conduct code shall apply to ~~((student))~~ conduct by students or student groups that occurs:

(a) On college premises;

(b) At or in connection with ~~((college-sponsored))~~ college programs or activities; or

(c) Off-campus ~~((conduct that))~~ premises, if in the judgment of the college ~~((adversely affects)),~~ the conduct has an adverse impact on the college community ~~((or)),~~ the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

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

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, ~~((as well as))~~ during the academic year, and ~~((during))~~ periods between terms of actual enrollment.

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

(5) The ~~((student conduct officer))~~ college 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 violations of the student code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disci-

plinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-025 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 college community.

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

(1) (~~(Academic freedom.)~~) Academic freedom.

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

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

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

(2) (~~(Due process.)~~) 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 22-23-113, filed 11/17/22, effective 12/18/22)

**WAC 132M-126-030 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit(~~(r)~~) an act(s) of misconduct, which include, but are not limited to, the following:

(1) Abuse of others. Assault, physical abuse, verbal abuse, threat(s), intimidation, 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.

(2) Abuse in later life.

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) Academic dishonesty. Any act of academic dishonesty including (~~(, but not limited to, cheating, plagiarism, and fabrication.))~~):

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to (~~(the completion of))~~ completing an academic assignment.

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

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

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

(e) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus and program handbook. Further academic consequences may follow consistent with the provisions in any program handbook including, but not limited to, dismissal from an academic program. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

~~((2) Other dishonesty. Any other acts of dishonesty. Such acts))~~

(4) Acts of dishonesty. Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, and/or submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; (~~(or))~~)

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

~~((3) Obstruction or disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:~~

~~(a) Instruction, research, administration, disciplinary proceeding(s), or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or~~

~~(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.~~

~~(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.~~

~~(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic 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, and nonconsensual distribution of a recording of sexual activity.~~

~~(6-)) (d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.~~

~~(5) **Alcohol.** The use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies and federal, state, and local laws) or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.~~

~~(6) **Cannabis, drug, and tobacco violations.**~~

~~(a) **Cannabis.** The use, possession, growing, delivery, sale, 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 college premises or college-sponsored events. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

~~(b) **Drugs.** 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.~~

~~(c) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. This includes all college sidewalks, parking lots, landscaped areas, sports fields, and college buildings. Tobacco use is also prohibited at events on college premises or in college-owned, rented, or leased vehicles. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.~~

(7) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), 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, and nonconsensual distribution of a recording of sexual activity.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **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 college'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 campus 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.

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

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

(12) **Harassment or bullying.** 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 college'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 not 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.

**(13) Hazing.**

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group;

(ii) Any pastime or amusement engaged in with respect to such a student group; or

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) 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;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) Hazing does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

**(14) Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

**(15) Lewd conduct.** Conduct that is lewd or obscene and not otherwise protected under the law.

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

(a) Unauthorized use of such resources or opening of 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 college's computing system or other electronic information resources;

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

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

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

**(17) Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or ~~((the property of another person))~~ another person's property. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

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

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

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

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

~~(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.~~

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

~~(9) Hazing.~~

~~(a) Hazing is any act committed as part of:~~

~~(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or~~

~~(ii) Any pastime or amusement engaged in with respect to such a student group;~~

~~(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.~~

~~(b) Examples of hazing include, but are not limited to:~~

~~(i) 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;~~

~~(ii) Humiliation by ritual act;~~

~~(iii) Striking another person with an object or body part;~~

~~(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or~~

~~(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.~~

~~(c) Hazing does not include customary athletic events or other similar contests or competitions.~~

~~(d) Consent is not a valid defense against hazing.~~

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



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

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

~~(c) **Drugs.** The use, possession, delivery, sale, or 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.~~

~~(d) **Tobacco, electronic cigarettes and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. This includes all college sidewalks, parking lots, landscaped areas, sports fields and college buildings. Use of tobacco is also prohibited at events on college premises, or in college-owned, rented or leased vehicles. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.~~

~~(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.~~

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

~~(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures in this code. See WAC 132M-126-115 through 132M-126-155.~~

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

~~(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;~~

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

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

~~(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.~~

~~(c)) (18) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsi-~~

bilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.

(19) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(20) **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 differently from a similarly situated individual on the basis of: Sex stereotype, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Except as permitted by 20 U.S.C. 1681 (a) (1) through (9) and the corresponding regulations §§ 106.12 through 106.15, 20 U.S.C. 1686 and its corresponding regulation § 106.32(b) (1), or § 106.41(b), preventing a person from participating in an education program or activity consistent with their gender identity constitutes more than de minimis harm and is prohibited.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of discrimination and means of 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 college to provide an aid, benefit, or service under the college'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 college's education program or activity;

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

(C) The parties' ages, roles within the college'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 college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" (~~is a type of sexual discrimination and harassment.~~) includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, dating violence, and stalking (~~are all types of sexual violence~~).

(~~(i)~~) (A) **Nonconsensual sexual intercourse** (~~(. Any actual or attempted)~~) is any sexual intercourse (anal, oral, or vaginal), however slight, with any object (or body part), by a person upon another person (~~(7)~~) 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.

~~((i))~~ (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.

~~((iii))~~ (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.

~~((iv))~~ (D) Statutory rape ~~((-Consensual))~~ (rape of a child) is nonforcible sexual intercourse ~~((between))~~ with a person who is ~~((18 years of age or older, and a person who is under the age of 16))~~ under the statutory age of consent.

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

~~((vi))~~ (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 ~~((-~~

~~(A))~~ who is or has been in a social relationship of a romantic or intimate nature with the victim; and ~~((B))~~ where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

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

~~((vii))~~ (G) Stalking ~~((-))~~ means engaging in a course of conduct directed at a specific person that would cause a reasonable person to ~~((-~~

~~(A))~~ fear for their safety or the safety of others ~~((-))~~ or ~~((B))~~ to suffer substantial emotional distress.

~~((d))~~ (b) 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 word 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.

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

~~(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceedings.~~

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

~~(a) Unauthorized use of such resources or opening of 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 college's computing system or other electronic information resources;~~

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

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

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

~~(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.~~

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

~~(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice~~

that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

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

(22) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college housing, traffic and parking rules.

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

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

(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and subject to such terms or conditions incorporated in the written permission.

(d) Possession and/or use of disabling chemical sprays for the purpose of self-defense is not prohibited.

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

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-035 Corrective action, disciplinary sanctions, and terms and conditions.** (1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon (students found

~~to have violated)) a student or upon college-sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.~~

(a) ~~((Disciplinary))~~ **Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for further 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))~~ continuing 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 college 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 college,))~~ shall take effect immediately without further review. The deferred disciplinary sanction may include, but is not limited to, suspension or dismissal from the college. 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 college.

(d) **Disciplinary suspension.** Dismissal from the college 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 action is taken.

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

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

~~(b-))~~ **Educational ((sanction)).** ~~((The college may require the student to complete))~~ Participation in or successful completion of an educational activity ((or experience directly related to the violation committed, at the student's expense.

(c) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be 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 college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

~~(d-))~~ 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 (~~may be~~) deemed "not in good standing" with the college (~~. If so, the student~~) shall be subject to the following restrictions:

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

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function (~~r~~) or any form (~~s~~) of intercollegiate competition or representation.

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

(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 a professional within the scope of practice and with the professional credentials defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be 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 college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

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

(g) **Trespass or restriction.** A student may be restricted from (~~college property based on their misconduct.~~

~~(f) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.)~~ any or all college premises and/or college-sponsored activities based on the violation.

(h) **Campus housing suspension or termination.** Removal from campus housing for a specified period or permanently. Conditions may be imposed before a student is permitted to return to campus housing.

(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 college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either before 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 college.

AMENDATORY SECTION (Amending WSR 22-23-113, filed 11/17/22, effective 12/18/22)

**WAC 132M-126-036 Hazing prohibited—Sanctions.** (1) ~~((Hazing by a student or a student group is prohibited pursuant to WAC 132M-126-030(9)).~~

~~(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.~~

~~(3) Washington state law provides that:~~

~~(a) 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 nonprofit, the individual directors of the corporation may be held individually liable for damages.~~

~~(b)) 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 nonprofit, 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 college.

~~((e)) (3) Any student group((s)) that knowingly permits 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 college.~~

~~((d)) (4) Any student group((s)) found responsible for violating the code of student conduct, college anti-hazing 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 college 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.~~

NEW SECTION

**WAC 132M-126-037 Amnesty policy.** (1) Lower Columbia College values the health, safety, and wellness of those in our college community. Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of helping another person seek medical or other emergency assistance, admits to a possible policy violation under this student conduct code, provided that any such violations did not and do not place the health or safety of any other person at risk.

(3) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of reporting violence, sexual misconduct, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the inci-



dent, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regard to alcohol, drugs, or other prohibited conduct.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-040 Initiation of disciplinary action.** (1) ~~((All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.))~~ Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to violate the student conduct code.

(a) Sex discrimination, including sex-based harassment. The college's Title IX coordinator or designee shall review, process, and if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of 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 college will be handled in accordance with college 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 college. 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.

(3) 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.

(4) 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 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.

(5) 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.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination 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.

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

(8) 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.

(9) At the meeting, the student conduct officer will present the allegations to the respondent ((and the respondent shall be afforded an opportunity)), who will be allowed 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)) on the available information.

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

~~(4))~~ (10) Within ((ten)) 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer 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 thereof.

~~((5))~~ (11) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings((=));

(b) Impose a disciplinary sanction(s), as described in WAC 132M-126-035((=)); or

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

~~((6))~~ (12) In cases involving allegations of ((sexual misconduct)) sex discrimination, the student conduct officer ((on the same date that a disciplinary decision is served on the respondent, will

~~serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions occurs.)~~ 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. Within five business days of receiving the investigation report, the student conduct officer shall serve the respondent, complainant, and Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The student conduct officer may extend the time for serving a written recommendation 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 committee.

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

(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 sex discrimination, the student conduct officer may recommend dismissal of the complainant if:

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

(ii) Respondent is not participating in the college'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 college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

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

(f) In cases involving allegations of sex-based harassment, the college 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) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

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

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-045 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth by WAC 132M-126-040(12), the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ~~((ten))~~ 21 calendar days of the student conduct officer's decision. Failure to file a notice of appeal timely 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, the complainant if any, and the student conduct ~~((review))~~ officer.

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

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a 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 ~~((r))~~ unless the 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;

(c) Written reprimands; and

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

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

(a) ~~((The imposition of))~~ Disciplinary suspensions in excess of ~~((ten))~~ 10 instructional days;

(b) Dismissals; ~~((and))~~

(c) ~~((Discipline))~~ Sex discrimination, including sex-based harassment cases; and

(d) Disciplinary cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

~~((8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:~~

~~((a) Suspensions of ten instructional days or less;~~

~~((b) Disciplinary probation;~~

~~((c) Written reprimands; and~~

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

~~(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final and are not subject to appeal.~~

~~(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:~~

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

~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.~~

~~(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.~~

~~(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as afforded the respondent.)~~

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-055 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct 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.

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

(a) An opportunity to be informed of the agency'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 ~~((ten))~~ 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((ten))~~ 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

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

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

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-060 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president or designee, provided the party files a written request for review with the conduct review officer within (~~ten~~) 21 calendar days of service of the initial decision.

(2) The president or designee shall not participate in any case in which they are a complainant or witness, 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 president or designee 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 committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within (~~twenty~~) 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. A request for review may be deemed to have been denied if the president or designee does not make a disposition of the matter within (~~twenty~~) 20 calendar days after the request is submitted.

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

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

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-070 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government (ASLCC);
- (b) Two faculty members appointed by the faculty association;
- (c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer) (~~(r)~~) or other impartial hearing chair (~~(r)~~) appointed by the president.
- (2) The administrative staff member or other impartial hearing officer shall serve as the chair of the committee and may take action on preliminary hearing matters (~~(prior to)~~) before convening the committee. (~~(The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.)~~)
- (3) Hearings may be heard by a quorum of three (~~(members of the)~~) committee members so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.
- (4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.
- (5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training in the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation 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 college 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 committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

- WAC 132M-126-075 ((~~Appeal~~))Student conduct committee—Prehearing.**
- (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW (~~(and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control)~~).
- (2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days (~~(in advance of)~~) before the hearing date. (~~(The chair may shorten this notice period if both parties agree, and also may continue the hearing at a later time for good cause shown.)~~) The notice must 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.

(3) The ~~((committee))~~ chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day ~~((prior to))~~ before the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The ~~((committee))~~ chair may provide to the committee members in advance of the hearing copies of (a) the student conduct officer's notification of the imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

(7) The student conduct officer ~~((, upon request,))~~ shall provide reasonable assistance to the respondent and complainant in ~~((obtaining relevant and admissible evidence that is within the college's control))~~ procuring the presence of college 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 business days before the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours before the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe their rationale for any decision on the record.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate ~~((, and))~~. Any improper ex parte communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by ~~((a nonattorney assistant))~~ an advisor of their choice ~~((. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer.))~~, which may be an attorney retained at the party's expense.

(10) The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or complainant is represented by



an attorney, the student conduct officer may also be represented by ~~((a second, appropriately screened))~~ an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney will still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide notice that includes all information required in subsection (2) 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) **Extension of time.** The chair 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 (13)(b) of this section.

(d) **Evidence.** Before 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 college's control.

(e) **Confidentiality.** The college 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 chair about the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) 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 sex-based harassment;

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

(iii) They may have an advisor of their choice, who may be an attorney, to 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 chair 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 chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. 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 chair will serve a written decision upon all parties, including the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

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

(d) **Evidence.** Before 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 college's control.

(e) **Confidentiality.** The college 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 chair regarding the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee 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 college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-080 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method (~~that~~) they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted(~~r~~) in accordance with WAC 10-08-190.

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

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case (~~(for imposing disciplinary sanctions)~~).

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

(7) ~~In cases involving allegations of (sexual misconduct, no party shall directly question or cross-examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair who, in their discretion, shall pose the questions on the party's behalf.)~~ sex discrimination, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, 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 committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

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

(b) The chair 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 chair shall exclude, and the committee shall 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 chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that 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 a determination that sex-based harassment occurred.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses and, if not, to determine whether questions must be submitted to the chair to be asked of witnesses or

to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-085 Student conduct committee—Initial decision.**

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

(2) Within (~~twenty~~) 20 calendar days following the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or (~~the demeanor of witnesses shall be so~~) witnesses' demeanor shall be identified and explained.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee 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 committee 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 committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving (~~allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including the suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights~~) sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-090** (~~(Appeal from)~~) **Student conduct committee—Review of initial decision.** (1) (~~(A party who is aggrieved by the findings or conclusions issued by the student conduct committee)~~) Any party, including a complainant in sex-based harassment cases, may appeal the committee's ((initial)) decision to the president or designee by filing a ((notice of)) written appeal with the president's office within ((ten)) 21 calendar days of service of the committee's ((initial)) decision. Failure to file a timely appeal constitutes a waiver of the right, and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an 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.

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

(4) If necessary to aid review, the president or designee may ask for additional briefing from the parties on issues raised on appeal. The president's or designee's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

~~((3))~~ (5) The president or designee shall ((provide)) serve a written decision ((to the party and the student conduct officer)) on all parties and their attorneys, if any, within ((twenty)) 20 calendar days after receipt of the notice of appeal. The president's or designee's decision shall be final and ((shall include a notice of any rights to request reconsideration and/or judicial review)) subject to judicial review pursuant to chapter 34.05 RCW, Part V.

~~((4))~~ (6) In cases involving allegations of ((sexual misconduct, the president or designee, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

~~((5))~~ sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

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

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-100 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

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

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

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

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

(4) The written notification shall be entitled "notice of summary suspension" and shall include:

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

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

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning the respondent that their privilege to enter into or remain on college premises has been withdrawn ~~((r))~~ and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

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

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

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

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

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

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

~~((6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.))~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132M-126-050	Brief adjudicative proceedings authorization.
WAC 132M-126-110	Sexual misconduct procedures.
WAC 132M-126-115	Order of precedence.
WAC 132M-126-120	Prohibited conduct under Title IX.
WAC 132M-126-125	Title IX jurisdiction.
WAC 132M-126-130	Initiation of discipline.
WAC 132M-126-135	Prehearing procedure.
WAC 132M-126-140	Rights of parties.
WAC 132M-126-145	Evidence.
WAC 132M-126-150	Initial order.
WAC 132M-126-155	Appeals.

**WSR 25-01-087**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed December 13, 2024, 10:04 a.m., effective January 13, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of children, youth, and families licensing division is amending the following rules:

WAC 110-300-0106 and 110-301-0106 to update health and safety training requirements. The language is being amended to allow a three-month time frame to obtain training requirements for child care and early learning programs, specifically including first-aid and CPR certification; and WAC 110-300-0358 to align with state building code WAC 51-51-0331, which limits the capacity of a family home child care to no more than 16 children.

Citation of Rules Affected by this Order: Amending WAC 110-300-0106, 110-300-0358, and 110-301-0106.

Statutory Authority for Adoption: Chapter 43.216 RCW; RCW 43.216.692, 43.216.020, 43.216.250, and chapter 42.56 RCW; 42 U.S.C. §§ 9857-9858r; and 45 C.F.R. part 98.

Adopted under notice filed as WSR 24-22-108 on November 4, 2024.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, 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 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 13, 2024.

Brenda Villarreal  
Rules Coordinator

**OTS-5018.5**

AMENDATORY SECTION (Amending WSR 20-11-026, filed 5/13/20, effective 6/13/20)

**WAC 110-300-0106 Training requirements.** (1) Early learning providers licensed, working, or volunteering in an early learning program (~~((before the date this section becomes effective))~~) must complete the applicable training requirements of subsections (4) through (11) of this section within three months of the date ((this section becomes effective)) of hire and prior to working in an unsupervised capacity with children unless otherwise indicated. State or federal rules may require health and safety training described under this chapter to be renewed annually. (~~((Early learning providers hired after the date this~~



~~section becomes effective must complete the training requirements of subsections (4) through (10) of this section within three months of the date of hire and prior to working in an unsupervised capacity with children.))~~

(2) License applicants and early learning providers must register with the electronic workforce registry prior to being granted an initial license or working with children in an unsupervised capacity.

(3) License applicants, center directors, assistant directors, program supervisors, lead teachers, assistant teachers, and aides must complete the child care basics training as approved or offered by the department:

(a) Prior to being granted a license; or

(b) Prior to working unsupervised with children (~~or~~

~~(c) Within three months of the date this section becomes effective if already employed or being promoted to a new role)).~~

(4) Early learning providers must complete the recognizing and reporting suspected child abuse, neglect, and exploitation training as approved or offered by the department according to subsection (1) of this section. Training must include the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

(5) Early learning providers must complete the emergency preparedness training as approved or offered by the department (applicable to the early learning program where they work or volunteer) according to subsection (1) of this section.

(6) Early learning providers licensed to care for infants must complete the prevention and identifying shaken baby syndrome/abuse head trauma training as approved or offered by the department according to subsection (1) of this section.

(7) Early learning providers must complete the serving children experiencing homelessness training as approved or offered by the department according to subsection (1) of this section.

(8) License applicants and early learning providers licensed to care for infants must complete the safe sleep training as approved or offered by the department. This training must be completed annually and:

(a) Prior to being licensed; or

(b) Prior to caring for infants (~~or~~

~~(c) According to subsection (1) of this section)).~~

(9) Family home licensees, center directors, assistant directors, program supervisors, and lead teachers must complete the medication management and administration training as approved or offered by the department prior to giving medication to an enrolled child, or as indicated in subsection (1) of this section.

(10) Early learning providers who directly care for children must complete the prevention of exposure to blood and body fluids training that meets Washington state department of labor and industries' requirements prior to being granted a license or working with children. This training must be repeated pursuant to Washington state department of labor and industries regulations.

(11) Family home licensees, center directors, assistant directors, program supervisors, lead teachers, assistant teachers, and any other early learning providers counted in staff-to-child ratio, or who could potentially be counted in ratio, must be trained in pediatric first-aid and age-appropriate cardiopulmonary resuscitation (CPR).

(a) At least one early learning provider counted in staff-to-child ratio for each group of children must have a current pediatric first-aid and age-appropriate CPR certificate.

(b) Proof of training can be shown with a certification card, certificate, or instructor letter.

~~((b))~~ (c) The pediatric first-aid and age-appropriate CPR training and certification must:

(i) ~~((Be delivered in person and))~~ Include a live, hands-on component for pediatric first-aid and age-appropriate CPR demonstrated in front of an instructor either in-person or remotely who is certified by the American Red Cross, American Heart Association, ((American Safety and)) Health and Safety Institute, or other nationally recognized certification program;

(ii) Include child and adult first-aid ((and));

(iii) Include pediatric and adult CPR; and

~~((iii) Infant first-aid and))~~ (iv) Include infant CPR, if applicable.

(12) Early learning providers who prepare or serve food to children at an early learning program must obtain a current food worker card prior to preparing or serving food. Food worker cards must:

(a) Be obtained through the local health jurisdiction, in person or online; and

(b) Be renewed prior to expiring.

AMENDATORY SECTION (Amending WSR 22-03-016, filed 1/7/22, effective 2/7/22)

**WAC 110-300-0358 Capacity waiver for family home providers.** (1)

Pursuant to ~~((section 313, chapter 199, Laws of 2021))~~ RCW 43.216.692, the department may waive the limit established in RCW 43.216.010

(1)(c) that restricts family home providers from serving more than 12 children.

(2) ~~((Family home))~~ Providers must apply to the department in writing to request waivers to serve more than 12 but not more than 16 children. To apply in writing, family home providers must use the process prescribed by the department.

(3) The department will consider the following criteria to determine whether to grant, continue, or rescind waivers to family home providers' total capacity of 12 children:

(a) **The licensee's years' of experience providing early learning services.** A ~~((family home))~~ provider must have at least three years' of experience to be eligible for a waiver under this section. To satisfy the three years' experience requirement, the family home provider must have served for a total of three years or more in one or more of the following child care roles: Center director, program supervisor, family home licensee, or other similar role in a child care setting.

(b) **The providers licensing history.** The licensee must be operating under a full, nonexpiring family home license to be approved for a waiver under this section.

(c) **Available square footage:**

(i) There must be at least 35 square feet of licensed, accessible indoor space for each child included in the total capacity.

(ii) There must be an additional 15 square feet of licensed, accessible indoor space for each ~~((infant or toddler))~~ child under the age of 24 months included in the total capacity.

(iii) There must be at least 75 square feet of licensed, accessible outdoor space for each child included in the total capacity. Alternatively, a family home provider may develop a plan to rotate groups of children to play outdoors or a department-approved plan to use an off-site play area.

~~((e))~~ **(d) Staffing qualifications when operating with the 13 to 16 children present:**

(i) The licensee must have an ECE short certificate or equivalent, as approved and verified in the electronic workforce registry by the department.

(ii) When the licensee is not on-site, they must designate a person on-site who meets the requirements of this subsection to manage the early learning program.

(iii) Additionally, at least one staff person or volunteer working on-site must have an ECE initial certificate or equivalent.

~~(e) **Staff-to-child ratios and age group limits.** When operating with 13 (or more children. When the licensee is not on-site, they must designate a person on-site who meets the requirements of this subsection to manage the early learning program.~~

~~(ii) In addition to the requirements in (c)(i) of this subsection, at least one staff person or volunteer working on-site must have an ECE initial certificate or equivalent when operating with 13 or more children.~~

~~(d) **Staff-to-child ratios and age group limits:**~~

~~(i) A family home provider licensed to care for children ages) to 16 children:~~

A provider licensed to care for children ages:

(i) Two years old and above must not exceed a maximum staff-to-child ratio of 1:8 ((when operating with 13 or more children.));

(ii) ((A family home provider licensed to care for children) Under two years of age must not exceed a maximum staff-to-child ratio of 1:6 ((when operating with 13 or more children.

~~(iii) A family home provider licensed to care for children under two years of age may have up to six children under two years of age)); and~~

(iii) Under two years of age may have up to six children attend at any one time under the following conditions:

(A) Five children under two years of age may attend at any one time if at least one of those children can walk independently((?)).

(B) Six children under two years of age may attend at any one time if at least two of those children can walk independently.

~~((iv) A family home provider licensed to care for children under two years of age must not have more than six children under two years of age attend at any one time;~~

~~(e))~~ **(f) The intended use of licensed space.** Plans to use the space must include details regarding napping, supervision, and diapering, if applicable. A waiver granted under this section does not allow a licensee to provide overnight care for more than 12 children.

~~((f))~~ **(g) The emergency preparedness plan.** ~~((The emergency plan must account for the total capacity of children requested.~~

~~(g) **The number of working, accessible toilets and sinks.**)~~ Licenses granted a waiver under this section must follow:

(i) WAC 110-300-0470.

(ii) The emergency plan must account for the total capacity of children requested.

(iii) The early learning program space must have emergency lighting for interior stairs that automatically turns on when electrical

power goes out. Such emergency lighting may include, but is not limited to, battery operated overhead lights.

(iv) Any kitchen within the early learning program space or used by and connected to the early learning program space must have:

(A) At least one fire extinguisher or one can of fire extinguisher aerosol spray; and

(B) A heat detector.

(v) The early learning program staff must be able to demonstrate, at least annually to licensing staff, the ability to evacuate all early learning staff and children from inside the home to a safe location outside the home in two minutes or less.

(h) **The number of working, accessible toilets and sinks.**

(i) There must be a ratio of at least one working flush toilet and one handwashing sink for every 15 household members, staff, and requested capacity of children.

~~((There must be a ratio of at least one working flush toilet and one handwashing sink for every 15 household members, staff, and requested capacity of children.))~~

(A) A child in diapers does not count for purposes of toilet calculations until the child begins toilet training.

(B) Staff persons and household members may use toilets and handwashing sinks located outside of licensed space on the premises.

~~(ii) A ((family home)) provider whose facility relies on a private septic system must provide to the department verification from the local health jurisdiction the system can accommodate the total number of household members, staff, and requested capacity of children.~~

~~((**(h) The provider's licensing history.**))~~

(i) **The number and variety of early learning materials.** For the total capacity requested there must be a sufficient number and variety of materials to engage children in the early learning program.

(j) **The total capacity the provider is requesting.**

(4) A waiver granted under this section may be time specific or may remain in effect for as long as the family home provider continues to comply with the waiver's conditions. If the waiver is time-limited, the provider must not exceed the time frame established by the department.

(5) Before the ((family home)) provider ((implements)) **begins providing care for 13 to 16 children pursuant to a waiver under this section((7)):**

(a) The waiver must be approved in writing by the department secretary or the secretary's designee; and

(b) The licensee must provide documentation to the department from the city or county within which the early learning program operates (or a third party approved by the city or county) that states the early learning program space and structures meet local building codes and the requirements of the department's Family Home Child Capacity Waiver inspection checklist.

(6) A denial of a waiver request is not an enforcement action as described in RCW 43.216.010 and is not subject to an appeal by a provider.

(7) The department may rescind a waiver granted under this section at any time including, but not limited to, the following reasons:

(a) The provider no longer meets the criteria described in this section;

(b) The department issues an enforcement action against the provider;

(c) The department and the provider enter into a facility licensing compliance agreement;

(d) The department determines that continued operation under the waiver does or may harm the health, safety, or well-being of enrolled children;

(e) A licensing rule that was considered in granting the waiver is repealed or amended; or

(f) A license is transferred pursuant to RCW 43.216.305 and WAC 110-300-0011 and the conditions of the waiver can no longer be met.

(8) A family home provider granted a waiver under this section must inform the parents and guardians of enrolled children of the approved waiver:

(a) Prior to operating with 13 (~~or more~~) to 16 children for the first time; and

(b) When a new child or new family is enrolled.

### OTS-5019.5

AMENDATORY SECTION (Amending WSR 21-10-035, filed 4/27/21, effective 6/1/21)

**WAC 110-301-0106 Training requirements.** (1) A school-age provider licensed, working, or volunteering in a school-age program (~~before the date this section becomes effective~~) must complete the applicable training requirements of subsections (3) through (9) of this section within three months of the date ((this section becomes effective) of hire and prior to working in an unsupervised capacity with children unless otherwise indicated. State or federal rules may require health and safety training described under this chapter to be renewed annually. (~~A school-age provider hired after the date this section becomes effective must complete the training requirements of subsections (4) through (8) of this section within three months of the date of hire and prior to working in an unsupervised capacity with children.~~)

(2) License applicants and school-age providers must register with the electronic workforce registry prior to being granted an initial license or working with children in an unsupervised capacity.

(3) License applicants, program directors, site directors, lead teachers, and assistant teachers must complete the school-age basics training as approved or offered by the department:

(a) Prior to being granted a license; or

(b) Prior to working unsupervised with children (~~or~~

~~(c) Within three months of the date this section becomes effective if already employed or being promoted to a new role).~~

(4) A school-age provider must complete the recognizing and reporting suspected child abuse, neglect, and exploitation training as approved or offered by the department according to subsection (1) of this section. Training must include the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

(5) A school-age provider must complete the emergency preparedness training as approved or offered by the department according to subsection (1) of this section.

(6) A school-age provider must complete the serving children experiencing homelessness training as approved or offered by the department according to subsection (1) of this section.

(7) Program directors, site directors, and lead teachers must complete the medication management and administration training as approved or offered by the department prior to giving medication to an enrolled child, or as indicated in subsection (1) of this section.

(8) A school-age provider who directly cares for children must complete the prevention of exposure to blood and bodily fluids training that meets Washington state department of labor and industries' requirements prior to being granted a license or working with children. This training must be repeated pursuant to Washington state department of labor and industries regulations.

(9) Program directors, site directors, lead teachers, assistant teachers and any other school-age provider counted in staff-to-child ratio, or who could potentially be counted in ratio, must be trained in pediatric first-aid and age-appropriate cardiopulmonary resuscitation (CPR).

(a) At least one school-age provider counted in staff-to-child ratio for each group of children must have a current pediatric first-aid and age-appropriate CPR certificate.

(b) Proof of training can be shown with a certification card, certificate, or instructor letter.

~~((b))~~ (c) The pediatric first-aid and age-appropriate CPR training and certification must:

(i) ~~((Be delivered in person and include))~~ A live hands-on component for first aid and CPR demonstrated in front of an instructor either in-person or remotely who is certified by the American Red Cross, American Heart Association, ((American Safety and)) Health and Safety Institute, or other nationally recognized certification program;  
(~~and~~)

(ii) ~~((Include child))~~ Pediatric and adult first aid; and

(iii) Pediatric and adult CPR.

(10) A school-age provider who prepares or serves food to children at a school-age program must obtain a current food worker card prior to preparing or serving food. Food worker cards must:

(a) Be obtained through the local health jurisdiction, in-person or online; and

(b) Be renewed prior to expiring.

WSR 25-01-096

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed December 13, 2024, 1:06 p.m., effective January 13, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The health care authority (agency) amended WAC 182-550-1900 and 182-550-2100 to update which transplant procedures are covered and where the transplants can be performed. The agency repealed WAC 182-550-2200 Transplant requirements—COE, as this section will no longer be necessary due to the changes being proposed to WAC 182-550-1900 and 182-550-2100. As a result of these changes, the agency also amended WAC 182-531-0650 and 182-531-1750.

The agency also removed diabetes education from WAC 182-531-0650, as a COE is not required. This rule making was initiated under WSR 22-16-032 on July 26, 2022, and included in the proposed rule making under WSR 24-22-066.

Citation of Rules Affected by this Order: Repealing WAC 182-550-2200; and amending WAC 182-550-1900, 182-550-2100, 182-531-0650, and 182-531-1750.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-22-066 on October 29, 2024.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
<b>WAC 182-550-1900(1)</b>		
Proposed	The medicaid agency pays for medically necessary transplant procedures only for eligible Washington apple health clients who are not otherwise subject to a managed care organization (MCO) plan.	Removed ambiguous language not found in any other rules.
Adopted	The medicaid agency pays for medically necessary transplant procedures only for eligible Washington apple health clients.	
<b>WAC 182-550-1900(8)</b>		
Proposed	The agency pays for an identical organ transplant procedure only once for the duration of the specific organ's established viability or as determined medically necessary (see WAC 182-501-0165).	To avoid confusion, removed <i>"only once for the duration of the specific organ's established viability."</i>
Adopted	The agency pays for identical organ transplant procedures as determined medically necessary (see WAC 182-501-0165).	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; 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 4, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 1.

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 4, Repealed 1.

Date Adopted: December 13, 2024.

Wendy Barcus  
Rules Coordinator

## OTS-5910.1

AMENDATORY SECTION (Amending WSR 17-04-039, filed 1/25/17, effective 2/25/17)

**WAC 182-531-0650 Hospital physician-related services not requiring authorization when provided in agency-approved centers of excellence or hospitals authorized to provide the specific services.** The medicaid agency covers the following services without prior authorization when provided in agency-approved centers of excellence. The agency issues periodic publications listing centers of excellence. These services include ((the following:

- ~~(1) All transplant procedures specified in WAC 182-550-1900;~~
- ~~(2) Chronic pain management services, including outpatient evaluation and inpatient treatment, as described under WAC 182-550-2400. See also WAC 182-531-0700;~~
- ~~(3))~~ sleep studies including, but not limited to, polysomnograms for clients one year of age and older. The agency allows sleep studies only in outpatient hospital settings as described under WAC 182-550-6350. See also WAC 182-531-1500 (~~;~~ and
- ~~(4) Diabetes education, in a DOH-approved facility, per WAC 182-550-6300).~~

AMENDATORY SECTION (Amending WSR 17-04-039, filed 1/25/17, effective 2/25/17)

**WAC 182-531-1750 Transplant coverage for physician-related services.** The medicaid agency covers transplants when performed in ((~~an agency-approved center of excellence~~)) a facility, as defined in WAC 247-04-020, that has a transplant certificate of need (CON) issued by the department of health. See WAC 182-550-1900 for information regarding transplant coverage.

## OTS-5911.3

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

**WAC 182-550-1900 Transplant coverage.** (1) The medicaid agency pays for medically necessary transplant procedures only for eligible Washington apple health clients ((~~who are not otherwise subject to a managed care organization (MCO) plan~~)). Clients eligible under the alien emergency medical (AEM) program are not eligible for transplant coverage.

(2) The agency covers the following transplant procedures when the transplant procedures are performed in a ((~~hospital designated by the agency as a "center of excellence" for transplant procedures and meet that hospital's criteria for establishing appropriateness and the medical necessity of the procedures~~)) health care facility, as defined



in WAC 247-04-020, that has a transplant certificate of need from the department of health:

- ~~(a) ((Solid organs involving the heart, kidney, liver, lung, heart-lung, pancreas, kidney-pancreas, and small bowel))~~ Bone marrow;
- ~~(b) ((Bone marrow and peripheral stem cell (PSC))~~) Cornea;
- ~~(c) Skin grafts; ((and))~~
- ~~(d) ((Corneal transplants))~~ Stem cell, autologous and allogeneic;
- ~~(e) Intestine;~~
- ~~(f) Kidney;~~
- ~~(g) Liver or combination liver-kidney;~~
- ~~(h) Heart or combination heart-lung;~~
- ~~(i) Lung, single or bilateral;~~
- ~~(j) Pancreas or combination pancreas-kidney; and~~
- ~~(k) Other transplant services determined to be medically necessary. See WAC 182-501-0165 and 182-500-0070.~~

(3) The agency pays for procedures covered under subsection (2)(a) through (d) of this section, performed at qualified facilities, subject to the limitations in this chapter.

~~(4) For procedures covered under subsection((s)) (2)((a) and (b))~~ (e) through (k) of this section, the agency pays facility charges only to those ~~((hospitals))~~ facilities that meet the standards and conditions:

- ~~(a) Established by the agency; and~~
- ~~(b) Specified in WAC 182-550-2100 ((and 182-550-2200.~~

~~(4) The agency pays for skin grafts and corneal transplants to any qualified hospital, subject to the limitations in this chapter).~~

~~(5) The agency ((deems))~~ considers organ procurement fees as being included in the payment to the transplant ~~((hospital))~~ facility. The agency may make an exception to this policy and pay these fees separately to a transplant ~~((hospital))~~ facility when an eligible ~~((medical))~~ apple health client is covered by a third-party payer that will pay for the organ transplant procedure itself but not for the organ procurement.

~~(6) The agency, without requiring prior authorization, pays for up to ((fifteen))~~ 15 matched donor searches per client approved for a bone marrow transplant. The agency requires prior authorization for matched donor searches in excess of ~~((fifteen))~~ 15 per bone marrow transplant client.

~~(7) The agency does not pay for experimental transplant procedures. ((In addition, the agency considers as experimental those services including, but not limited to, the following:~~

~~(a) Transplants of three or more different organs during the same hospital stay;~~

~~(b) Solid organ and bone marrow transplants from animals to humans; and~~

~~(c) Transplant procedures used in treating certain medical conditions for which use of the procedure has not been generally accepted by the medical community or for which its efficacy has not been documented in peer-reviewed medical publications.))~~

~~(8) The agency pays for ((a solid))~~ identical organ transplant procedures ~~((only once per client's lifetime, except in cases of organ rejection by the client's immune system during the original hospital stay))~~ as determined medically necessary (see WAC 182-501-0165).

~~(9) ((The agency pays for bone marrow, PSC, skin grafts, and corneal transplants when medically necessary.~~

~~(10))~~ The agency may conduct a postpayment retrospective utilization review as described in WAC 182-550-1700, and may adjust the

payment if the agency determines the criteria in this section are not met.

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

**WAC 182-550-2100 Requirements—Transplant ((hospitals)) facilities.** This section applies to requirements for ((hospitals)) facilities that perform the medicaid agency-approved transplants described in WAC 182-550-1900(2).

(1) The agency requires instate transplant ((hospitals)) facilities to meet the following requirements to be paid for transplant services provided to Washington apple health clients. A ((hospital)) facility must have:

(a) An approved certificate of need (CON) from the state department of health (DOH) for the type of transplant procedure to be performed ~~((, except that the agency does not require CON approval for a hospital that provides peripheral stem cell (PSC), skin graft or corneal transplant services)); and~~

~~(b) Approval ((from the United Network of Organ Sharing (UNOS) to perform transplants, except that the)) as a medicare-certified transplant facility.~~

~~(c) The agency does not require ((UNOS)) medicare or department of health approval as a transplant facility for a ((hospital)) facility that provides ((PSC)) stem cell, skin graft, or corneal transplant services ~~((; and~~~~

~~(c) Been approved by the agency as a center of excellence transplant center for the specific organ or procedure the hospital proposes to perform).~~

(2) The agency requires an out-of-state transplant ((center)) facility, including bordering city and critical border ((hospitals)) facilities, to be a medicare-certified transplant ((center in a hospital)) facility and participating in that state's medicaid program. All out-of-state transplant services ~~((, excluding those provided in agency-approved centers of excellence (COE) in bordering city and critical border hospitals,))~~ must be prior authorized.

~~(3) ((The agency considers a hospital for approval as a transplant center of excellence when the hospital submits to the agency a copy of its DOH-approved CON for transplant services, or documentation that it has, at a minimum:~~

~~(a) Organ-specific transplant physicians for each organ or transplant team. The transplant surgeon and other responsible team members must be experienced and board-certified or board-eligible practitioners in their respective disciplines, including, but not limited to, the fields of cardiology, cardiovascular surgery, anesthesiology, hemodynamics and pulmonary function, hepatology, hematology, immunology, oncology, and infectious diseases. The agency considers this requirement met when the hospital submits to the agency a copy of its DOH-approved CON for transplant services;~~

~~(b) Component teams which are integrated into a comprehensive transplant team with clearly defined leadership and responsibility. Transplant teams must include, but not be limited to:~~

~~(i) A team-specific transplant coordinator for each type of organ;~~

- ~~(ii) An anesthesia team available at all times; and~~
- ~~(iii) A nursing service team trained in the hemodynamic support of the patient and in managing immunosuppressed patients.~~
- ~~(c) Other resources that the transplant hospital must have include:~~
  - ~~(i) Pathology resources for studying and reporting the pathological responses of transplantation;~~
  - ~~(ii) Infectious disease services with both the professional skills and the laboratory resources needed to identify and manage a whole range of organisms; and~~
  - ~~(iii) Social services resources.~~
- ~~(d) An organ procurement coordinator;~~
- ~~(e) A method ensuring that transplant team members are familiar with transplantation laws and regulations;~~
- ~~(f) An interdisciplinary body and procedures in place to evaluate and select candidates for transplantation;~~
- ~~(g) An interdisciplinary body and procedures in place to ensure distribution of donated organs in a fair and equitable manner conducive to an optimal or successful patient outcome;~~
- ~~(h) Extensive blood bank support;~~
- ~~(i) Patient management plans and protocols; and~~
- ~~(j) Written policies safeguarding the rights and privacy of patients.~~
- ~~(4) In addition to the requirements of subsection (3) of this section, the transplant hospital must:~~
  - ~~(a) Satisfy the annual volume and survival rates criteria for the particular transplant procedures performed at the hospital, as specified in WAC 182-550-2200(2).~~
  - ~~(b) Submit a copy of its approval from the United Network for Organ Sharing (UNOS), or documentation showing that the hospital:~~
    - ~~(i) Participates in the national donor procurement program and network; and~~
    - ~~(ii) Systematically collects and shares data on its transplant programs with the network.~~
- ~~(5)) The agency applies the following specific requirements to a ((PSC)) stem cell transplant ((hospital)) facility:~~
  - ~~(a) A ((PSC)) stem cell transplant ((hospital)) facility must be ((an agency-approved COE)) in compliance with 21 C.F.R. § 1271 to perform any of the following ((PSC)) stem cell services:~~
    - ~~(i) Harvesting, if it has its own apheresis equipment which meets federal or American Association of Blood Banks (AABB) requirements;~~
    - ~~(ii) Processing, if it meets AABB quality of care requirements for human tissue/tissue banking; and~~
    - ~~(iii) Reinfusion, if it meets the criteria established by the Foundation for the Accreditation of ((Hematopoietic Cell)) Cellular Therapy.~~
  - ~~(b) A ((PSC)) stem cell transplant ((hospital)) facility may purchase ((PSC)) stem cell processing and harvesting services from other agency-approved processing providers.~~
- ~~((+6)) (4) The agency does not pay a ((PSC)) stem cell transplant ((hospital)) facility for AABB inspection and certification fees related to ((PSC)) stem cell transplant services.~~
- ~~(5) The agency does not pay for any service that requires consent under RCW 18.130.420.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-550-2200 Transplant requirements—COE.

## WSR 25-01-114

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed December 16, 2024, 1:03 p.m., effective January 16, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Implements HB 1964, passed by 2024 legislature, by removing references to informal hearing, changing penalties for dyed diesel violations, and creates the discovery team to perform fuel tax investigations.

Citation of Rules Affected by this Order: New WAC 308-78-102 Appeals, 308-79A-010 Introduction, 308-79A-020 Records, and 308-79A-030 Investigation; and amending WAC 308-77-102 Appeals, 308-77-114 Unauthorized use of dyed diesel, and 308-91-172 Appeals.

Statutory Authority for Adoption: RCW 82.38.260 Administration and enforcement, 82.41.120 Implementing rules required, 82.42.130 Administration and enforcement, 82.38.072 Dyed special fuel—Penalties, 82.38.390 Prorate and fuel tax discovery team, 82.42.118 Civil and statutory penalties and interest—Deficiency assessments, 82.38.170 Civil and statutory penalties and interest—Deficiency assessments.

Adopted under notice filed as WSR 24-22-125 on November 5, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 3, 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 1, 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 4, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 16, 2024.

Ellis Starret  
Rules and Policy Manager

## OTS-5964.1

AMENDATORY SECTION (Amending WSR 16-13-049, filed 6/9/16, effective 7/10/16)

**WAC 308-77-102 Appeals.** (1) **What are the appeal procedures?** Any person having been issued a notice of assessment for taxes, penalties, or interest may contest the notice by petitioning the department for ~~((an informal hearing in lieu))~~ a department review instead of proceeding directly to a formal hearing. This written petition must be received by the department within ~~((thirty))~~ 30 days of the mailing date of the notice of assessment and list the specific reasons for reassessment. Include the amount of tax, interest, or penalties believed to be due.

(2) **What happens after the department receives the petition for ~~((an informal hearing))~~ a department review?** Upon receipt of a petition for ~~((an informal hearing))~~ a department review, the department will establish the time and place for the ~~((hearing))~~ review and notify you by mail or email at least ~~((ten))~~ 10 days prior to the scheduled date. If ~~((you are))~~ the petitioner is unable to attend the ~~((hearing))~~ review on the date or time scheduled, ~~((you))~~ they may request that the department reschedule the ~~((hearing))~~ review.

(3) **What happens if I fail to appear for my ~~((informal hearing))~~ department review without prior notification?** Failure to appear may result in the loss of your ~~((informal administrative))~~ department review appeal rights.

(4) **What happens following my ~~((informal hearing))~~ department review?** The department will make a determination in accordance with the Revised Code of Washington, administrative rules, and policies established by the department.

(5) **What if I do not agree with the department's ~~((informal hearing))~~ review determination?** ~~((You may,))~~ Within ~~((thirty))~~ 30 days after the date of the mailing of the determination, appeal in writing and request a formal hearing by an administrative law judge. The appeal must indicate the portions of the determination you feel are in error and list the reasons for believing the decision should be amended. ~~((The department will establish a time and place for a formal hearing and give you at least ten days' notice.))~~

(6) **When does my reassessment become final?** The department's decision ~~((of the department upon a petition))~~ for reassessment ~~((shall))~~ becomes final, due and payable ~~((thirty))~~ 30 days after service ~~((upon you unless you appeal))~~ unless further appealed.

## OTS-5965.1

AMENDATORY SECTION (Amending WSR 16-13-049, filed 6/9/16, effective 7/10/16)

**WAC 308-77-114 Unauthorized use of dyed diesel.** (1) **What is the minimum dye concentration allowed for on-road use?** None. The department may assess on any dye concentration found in licensed vehicles, vehicles required to be licensed, or in bulk storage tanks used to fuel licensed or required to be licensed vehicles.

(2) **Who can be assessed a penalty for unlawful use of dyed diesel or dyed biodiesel?**

- (a) The operator of the vehicle;
- (b) The registered owners of the vehicle;
- (c) Any person responsible for the operation, maintenance, or fueling of the vehicle.

(3) **If dyed diesel or dyed biodiesel is discovered in the fuel supply tanks of a vehicle, when must the fuel be removed?** The dyed fuel must be removed from the vehicles within ~~((twenty-four))~~ 24 hours from the time of discovery. Detection of dyed fuel in the same vehicles after the ~~((twenty-four))~~ 24-hour period will be treated as a separate violation.

(4) **Will I be assessed penalties for dyed fuel in bulk storage tanks?** Yes, if any dyed fuel from the bulk storage tanks has been used for unlawful purposes.

(5) **How ((is)) are the dyed diesel fuel ((in a bulk storage tank)) penalties assessed?** ~~((The assessment is based on the capacity or estimated quantity of dyed fuel in the bulk storage tanks without regard to how this fuel will be used. A review by the Department or Appeal may be requested to provide evidence supporting a lower quantity of dyed special fuel within bulk storage in violation.))~~ Dyed diesel found in the fuel supply tank of a vehicle required to be licensed will be penalized \$10.00 for each gallon placed in the supply tank or \$1,000.00 whichever is greater.

Dyed diesel found in bulk storage tanks when used for unlawful purposes will be penalized \$10.00 per gallon based on the capacity of the tank or \$1,000.00 whichever is greater.

(6) **What if I refuse the department or authorized representative access to inspect the vehicles or bulk storage tanks?** The penalty in RCW 82.38.072(2) will be calculated on the capacity of the bulk storage tanks and the number of vehicles subject to the refusal.

(7) **Are there additional penalties for separate or repeated dyed diesel violations?** Yes. Any separate violation of unlawful use of dyed diesel within a five-year period increases with each repeat violation. Any violation for either, or both the fuel supply tank of a motor vehicle and bulk storage tank are included in the repeat violation assessment.

(8) **How are repeat violation assessments calculated?** Each separate violation is multiplied by the prior number of violations, plus one.

OTS-5969.1

#### NEW SECTION

**WAC 308-78-102 Appeals.** (1) **What are the appeal procedures?** Any person having been issued a notice of assessment for taxes, penalties, or interest may contest the notice by petitioning the department for a department review instead of proceeding directly to a formal hearing. This written petition must be received by the department within 30 days of the mailing date of the notice of assessment and list the specific reasons for reassessment. Include the amount of tax, interest, or penalties believed to be due.

(2) **What happens after the department receives the petition for a department review?** Upon receipt of a petition for a department review, the department will establish the time and place for the review and notify you by mail at least 10 days prior to the scheduled date. If the petitioner is unable to attend the review on the date or time scheduled, they may request that the department reschedule the review.

(3) **What happens if I fail to appear for my department review without prior notification?** Failure to appear may result in the loss of your department review appeal rights.

(4) **What happens following my department review?** The department will make a determination in accordance with the Revised Code of Wash-

ington, administrative rules, and policies established by the department.

(5) **What if I do not agree with the department's review determination?** Within 30 days after the date of the mailing of the determination, appeal in writing and request a formal hearing by an administrative law judge. The appeal must indicate the portions of the determination you feel are in error and list the reasons for believing the decision should be amended.

(6) **When does my reassessment become final?** The department's decision for reassessment becomes final, due, and payable 30 days after service unless further appealed.

OTS-5970.1

**Chapter 308-79A WAC**  
**FUEL TAX AND PRORATION—INVESTIGATION PROCEDURES**

NEW SECTION

**WAC 308-79A-010 Introduction.** (1) Chapters 46.87, 82.38, and 82.42 RCW establish the department's authority for ensuring that all statutory requirements related to fuel transactions, licensure, and/or proportional registration are met and that tax obligations are reported to the state accurately and timely. The department is also responsible for ensuring that all fuel taxes and fees are collected appropriately.

(2) Persons must cooperate with the department during investigations conducted to confirm compliance with statutory requirements.

(3) These rules are designed to promote efficiency and consistency in conducting investigations and to give persons notice of what is required of them with respect to investigations and producing records to the department.

NEW SECTION

**WAC 308-79A-020 Records.** (1) Pursuant to chapters 46.87, 82.38, and 82.42 RCW, persons must comply with department requests to inspect any record or document related to fuel transactions, licensure, and/or proportional registration.

(2) Persons must comply with department requests to examine items such as storage facilities, equipment, books, papers, correspondence, memoranda, agreements, or other documents and records which are deemed by the department to be relevant or material to the investigation. The department will make these requests during normal business hours, or during the hours of an appointment agreed to by the parties involved.

(3) It is unlawful for a person to refuse to provide books, records, etc., if requested by the department.



NEW SECTION

**WAC 308-79A-030 Investigation.** (1) During an investigation, persons may be required to provide records or written statements and/or explanations relating to any potential violations.

(2) The department may administer oaths and affirmations, subpoena witnesses, compel their attendance, and take evidence.

(3) All requests will be issued by an authorized representative, such as investigators, auditors, program staff, or other designee.

(4) Requests for records, documents or detailed explanations shall be in writing, by regular mail, facsimile, electronic mail, or in person pursuant to an investigation.

(5) Persons are advised that failure to cooperate or refusal to permit access may result in further action as authorized by statute or rule, and may include civil or criminal penalties.

**OTS-5966.1**

AMENDATORY SECTION (Amending WSR 16-03-071, filed 1/19/16, effective 2/19/16)

**WAC 308-91-172 Appeals.** (1) **What are the appeal procedures?** Any person issued a notice of assessment for taxes, fees, penalties or interest who chooses to appeal the notice, may petition the department for ~~((an informal hearing))~~ a department review instead of proceeding directly to a formal hearing. A petition for a ~~((hearing))~~ review must be in writing and must be received by the department within ~~((thirty))~~ 30 days ~~((after))~~ of the ~~((receipt))~~ mailing date of the notice of assessment. The appeal must include the specific reasons why reassessment is wanted and the amount of tax, fees, penalties or interest believed to be due.

(2) **What happens after the department receives the request for ~~((an informal hearing))~~ a department review?** The department will establish the time and place for the ~~((hearing))~~ review and notify the petitioner by mail or email at least ~~((ten))~~ 10 days prior to the scheduled date. If the petitioner is unable to attend the ~~((hearing))~~ review on the date or time scheduled, they may request the department to reschedule the ~~((hearing. The petitioner may appear in person or a representative authorized to present the case))~~ review.

(3) **What happens if I fail to appear for my ~~((hearing))~~ department review without prior notification?** Failure may result in the loss of your ~~((administrative))~~ department review appeal rights.

(4) **What happens following my ~~((informal hearing))~~ department review?** The department will make a determination in accordance with the Revised Code of Washington, administrative rules, and policies established by the department.

(5) **What if I do not agree with the department's ~~((informal hearing))~~ review determination?** Within thirty days after the date of mailing of the determination, appeal in writing and request a formal hearing by an administrative law judge. The appeal must indicate the portions of the determination that the petitioner believes are in error and provide the reasons the decision should be amended. ~~((The depart-~~

~~ment will establish a time and place for a formal hearing within at least ten days notice.))~~

(6) **When does my reassessment become final?** The department's decision for reassessment becomes final, due, and payable (~~(thirty)~~) 30 days after service unless further appealed.

## WSR 25-01-116

## PERMANENT RULES

## PUBLIC DISCLOSURE COMMISSION

[Filed December 16, 2024, 2:23 p.m., effective January 16, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rules clarify certain exemptions from sponsor identification requirements on political advertising, including implementation of HB 2032 (chapter 148, Laws of 2024), regarding sponsor identification on yard signs under four by eight feet.

Citation of Rules Affected by this Order: Amending WAC 390-18-030.

Statutory Authority for Adoption: RCW 42.17A.110 and [42.17A.]320.

Adopted under notice filed as WSR 24-22-056 on October 28, 2024.

Changes Other than Editing from Proposed to Adopted Version: Includes further clarification that the exemption from sponsor identification does not authorize the use of false or misleading sponsor identification.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, 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: December 16, 2024.

Sean Flynn  
General Counsel

## OTS-6023.2

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

**WAC 390-18-030 Advertising—Exemptions from sponsor identification and alternatives for online advertising.** (1) RCW 42.17A.320 requires that political advertising must identify certain information. The commission is authorized to exempt advertising where the sponsor identification disclosures required by RCW 42.17A.320 (1) and (2) are impractical. In addition, other political advertising is exempt from providing certain disclosures. Political advertising may not include incorrect, false, or misleading sponsor identification whether or not sponsor identification is exempt under this section.

(2) (a) The following forms of advertising need not include the sponsor's name and address, the "no candidate authorized this ad" sponsor identification, the "top five contributors," "top three donors

to PAC contributors," or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17A.320 (1) and (2) and 42.17A.350:

~~((a))~~ (i) Campaign paraphernalia, including novelty or sundry items intended for individual distribution and use, with a printing surface area smaller than ~~((4" x 15"))~~ 60 square inches, including expandable surface area such as a balloon when expanded, or where such identification is otherwise impractical to provide a readable text;

~~((b))~~ (ii) Newspaper ads of one column inch or less (excluding online ads);

~~((c))~~ (iii) Reader boards where a message is affixed in movable letters, or skywriting; and

~~((d))~~ (iv) State or local voter's pamphlets published pursuant to law ~~((; and))~~.

~~((e))~~ (b) Yard signs ~~((—size 4' x 8' or smaller))~~ must include sponsor identification, but need not include "top five contributors" or "top three donors to PAC contributors."

(3) Online political advertising must provide the same disclosures that apply to non-online advertising to the extent practical. As an alternative, small online advertising may provide the required disclosures by using an automatic display with the advertising that takes the reader directly to the required disclosures.

(a) These automatic displays must be clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible. Online advertising that includes only audio must include the disclosures in a manner that is clearly spoken.

(b) Examples include nonblockable pop-ups, roll-overs, a separate text box or link that automatically appears with or in the advertising that automatically takes the reader directly to the required disclosures upon being clicked once, or other similar mechanisms that disclose the information required in RCW 42.17A.320 in a manner that is compatible with the device and technology used to display the advertising.

(4) Political advertising created and distributed by an individual using their own modest resources is not required to provide the disclosures in RCW 42.17A.320, when all of the following criteria are satisfied:

(a) The individual spends in the aggregate less than ~~((one hundred dollars))~~ \$100 to produce and distribute the advertising or less than ~~((fifty dollars))~~ \$50 to produce and distribute online advertising;

(b) The individual acts independently and not as an agent of a candidate, authorized committee, political committee, corporation, union, business association, or other organization or entity;

(c) The advertising is not a contribution under RCW 42.17A.005 (16) (a) (ii) or (iii) or WAC 390-05-210;

(d) The individual does not receive donations, contributions, or payments from others for the advertising, and is not compensated for producing or distributing the advertising; and

(e) The advertising is either:

(i) A letter, flier, handbill, text, email or other digital communications from the individual that does not appear in a newspaper or other similar mass publication (except for letters to the editor and similar communications addressed in WAC 390-05-490(4)); or

(ii) Disseminated on the individual's social media site, personal website, or an individual's similar online forum where information is produced and disseminated only by the individual.

(5) Political advertising that is internal political communications to members is not required to separately include the disclosures in RCW 42.17A.320 where the sponsor's name is otherwise apparent on the face of the communication.

**WSR 25-01-118**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**

[Filed December 16, 2024, 2:42 p.m., effective January 16, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The health care authority (agency) is adding rules related to the new profession of certified peer specialists, as authorized in SSB 5555 (68th legislature, 2023 regular session). In addition to the rules listed below, the agency's CR-102 filing (WSR 24-21-053) proposed amendments to WAC 182-115-0100 and proposed to repeal WAC 182-115-0200. The agency revised the start date for its certified peer specialist training from January 2025 until March 2025. As a result, the agency is not moving forward with these amendments at this time and intends to propose them at a later date.

Citation of Rules Affected by this Order: New WAC 182-115-0300, 182-116-0100, and 182-116-0200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 71.24.920.

Adopted under notice filed as WSR 24-21-053 on October 9, 2024.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
<b>WAC 182-116-0200</b>		
Proposed	(2) After a person passes the authority's examination, the authority issues a letter stating that the person qualifies to become a certified peer specialist through the department.	To clarify that passing the agency's examination provides a person with the educational qualifications to become a certified peer specialist. The department of health certification includes other requirements for certified peer specialists, such as passing a background check.
Adopted	(2) After a person passes the authority's examination, the authority issues a letter stating that the person meets the educational qualifications to become a certified peer specialist through the department.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; 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 3, 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 3, Repealed 0.

Date Adopted: December 16, 2024.

Wendy Barcus  
 Rules Coordinator

**OTS-5819.5**

NEW SECTION

**WAC 182-115-0300 Peer specialist supervisor training.** Only those people who are certified peer counselors or certified peer specialists may qualify to take the authority's training to become endorsed by the department of health as an approved supervisor.

**OTS-5820.2**

**Chapter 182-116 WAC  
CERTIFIED PEER SPECIALIST**

NEW SECTION

**WAC 182-116-0100 Certified peer specialist—General.** (1) A peer specialist certified by the department of health who provides medic-aid-reimbursable peer support services must meet the requirements in WAC 182-116-0200.

(2) Certified peer specialists who provide services to people enrolled in medicaid must practice:

(a) Under the clinical supervision of a behavioral health provider as defined in RCW 71.24.025 or a certified peer specialist supervisor as defined in RCW 18.420.010; and

(b) In a community behavioral health agency licensed, certified, or subject to an approved tribal attestation by the department of health.

NEW SECTION

**WAC 182-116-0200 Peer specialist—Application, training, examination, and authority approval.** (1) People applying with the authority to train and test to qualify as a peer specialist certified under the department of health must meet all of the following:

(a) Be age 18 or older;

(b) Attest on the authority's application that they self-identify as:

(i) A person with one or more years of recovery from a mental health condition, substance use disorder, or both; or

(ii) The parent or legal guardian of a child age 17 or younger who is receiving or has received behavioral health services.

(c) Pass the authority's educational courses and pass the required examination with a total score of 80 percent or higher.

(2) After a person passes the authority's examination, the authority issues a letter stating that the person meets the educational qualifications to become a certified peer specialist through the department.

## WSR 25-01-123

## PERMANENT RULES

## DEPARTMENT OF TRANSPORTATION

[Filed December 16, 2024, 3:29 p.m., effective January 16, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The amendment corrects a contextual error when referencing WAC 197-11-800 (17) and (18).

Citation of Rules Affected by this Order: Amending WAC 468-12-800.

Statutory Authority for Adoption: RCW 43.21C.120.

Adopted under notice filed as WSR 24-19-087 on September 17, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 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 1, 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: December 16, 2024.

Sam Wilson

Director

Business Support Services

## OTS-5422.1

AMENDATORY SECTION (Amending WSR 84-19-030, filed 9/14/84)

**WAC 468-12-800 Categorical exemptions.** The following activities of the department are within the categorical exemptions contained in the indicated subsections of WAC 197-11-800:

(1) The repair, maintenance, or minor alteration of existing private or public structures, facilities or equipment, as provided in WAC 197-11-800(3)(~~7~~) including, but not limited to:

(a) Burning of weeds or brush within right of way limits;

(b) Preparation, storage, and application of sand and de-icing chemicals;

(c) Disposal and/or treatment of sewage generated on transportation department property in accordance with state and local regulations;

(d) Right of way mowings;

(e) Snow removal and avalanche control;

(f) Erosion control measures;

(g) Stormwater disposal procedures not involving significant changes in existing drainage patterns and quantities outside of transportation right of way;



- (h) Street, road, rail, and airport cleaning and sweeping;
  - (i) Litter pickup and disposal;
  - (j) Removal and disposal of debris;
  - (k) Application of right of way fertilizer;
  - (l) Planting, thinning, and removal of roadside, railyard, or airport vegetation as required for landscaping and maintenance purposes;
  - (m) Dead animal removal and disposal;
  - (n) Pavement burning;
  - (o) Maintenance and fencing of game crossings;
  - (p) Pit and sundry site reclamation;
  - (q) Waste oil disposal;
  - (r) Maintenance of chemical toilets;
  - (s) Control and disposal of roadway spills;
  - (t) The periodic application of approved pesticides to transportation rights of way to maintain design conditions as provided in WAC 197-11-800(24);
  - (u) All repair, maintenance, or minor alteration of existing transportation pavement, drainage facilities, rails, earthwork, bridges, tunnels, guardrails, railroad protective devices, signs, paths, trails, buildings, toll booths, radio and telephone equipment, air quality equipment, rest area facilities, storage facilities, pit sites, airports, and other physical features and structures within the jurisdiction of the transportation department.
- (2) Adoptions or approvals of utility, transportation, and solid waste disposal rates, as provided in WAC 197-11-800(15)(~~7~~) including, but not limited to, the establishment of or changes in toll rates.
- (3) Information collection and research, as provided by WAC 197-11-800(~~(18)~~~~7~~) (17) including, but not limited to, the development, adoption, and revision of transportation plans and six-year construction programs, and any other studies, plans, and programs which lead to proposals which have not yet been approved, adopted, or funded, and which do not commit the transportation department to proceed with the proposals contained therein.

**WSR 25-01-132**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed December 17, 2024, 8:59 a.m., effective January 17, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The office of superintendent of public instruction (OSPI) is adopting rule making to replace the statutory references to chapter 11.88 RCW, which has been repealed under ESSB 6287 (2020), with chapter 11.130 RCW under WAC 392-172A-05135. The rule amendment ensures updated and consistent references to RCW.

Citation of Rules Affected by this Order: Amending WAC 392-172A-05135.

Statutory Authority for Adoption: RCW 28A.155.090.

Adopted under notice filed as WSR 24-17-014 on August 8, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, 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: December 17, 2024.

Chris P.S. Reykdal  
State Superintendent of Public Instruction

**OTS-5251.1**

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

**WAC 392-172A-05135 Transfer of parental rights to the student at age of majority.** (1) Subject to subsections (4) and (5) of this section, when a student eligible for special education services reaches the age of (~~eighteen~~) 18 or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020:

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act and this chapter transfer to the student.

(2) All rights accorded to parents under the act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

(4) Students who have been determined to be incapacitated pursuant to chapter ~~((11.88))~~ 11.130 RCW shall be represented by the legal guardian appointed under that chapter.

(5) Students over the age of ~~((eighteen))~~ 18 who have not been determined incapacitated under chapter ~~((11.88))~~ 11.130 RCW, may be certified as unable to provide informed consent or to make educational decisions, and have an educational representative appointed for them pursuant to the following procedures:

(a) Two separate professionals must state in writing they have conducted a personal examination or interview with the student, the student is incapable of providing informed consent to make educational decisions, and the student has been informed of this decision. The professionals must be:

(i) A medical doctor licensed in the state where the doctor practices medicine;

(ii) A physician's assistant whose certification is countersigned by a supervising physician;

(iii) A certified nurse practitioner;

(iv) A licensed clinical psychologist; or

(v) A guardian ad litem appointed for the student.

(b) When it receives the required written certification, the school district will designate an educational representative from the following list and in the following order of representation:

(i) The student's spouse;

(ii) The student's parent(s);

(iii) Another adult relative willing to act as the student's educational representative; or

(iv) A surrogate educational representative appointed pursuant to and acting in accordance with WAC 392-172A-05130.

(c) A student shall be certified as unable to provide informed consent pursuant to this section for a period of one year. However, the student, or an adult with a bona fide interest in and knowledge of the student, may challenge the certification at any time. During the pendency of any challenge, the school district may not rely on the educational representative under this section until the educational representative obtains a new certification under the procedures outlined in (a) of this subsection. If a guardianship action is filed on behalf of the student while a certification is in effect, the school district must follow any court orders in the guardianship proceeding regarding the student's capacity.

(6) Nothing within this section shall prevent a student, who has reached the age of majority, from authorizing another adult to make educational decisions on that student's behalf using a power of attorney consistent with the requirements in chapter 11.125 RCW.

## WSR 25-01-151

## PERMANENT RULES

## BATES TECHNICAL COLLEGE

[Filed December 18, 2024, 8:54 a.m., effective January 18, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These changes are being made to bring Bates Technical College's (college) student conduct code into compliance with new sex discrimination grievance procedures promulgated by the United States Department of Education as part of the college's new Title IX regulations, which took effect on August 1, 2024. The college's new student conduct code and procedures will be codified at chapter 495A-119 WAC. The college is also repealing its previous student conduct code and Title IX procedures contained in chapters 495A-115, 495A-121, and 495A-300 WAC. The new student conduct code also includes amendments to comply with Washington's antihazing law, RCW 28B.10.901, and to ensure the code's provisions concerning prohibited conduct and disciplinary procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: New chapter 495A-119 WAC; and repealing chapters 495A-115, 495A-121, and 495A-300 WAC.

Statutory Authority for Adoption: 20 U.S.C. § 1681, et seq.; 34 C.F.R. Part 106.

Adopted under notice filed as WSR 24-20-138 on October 2, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 10, Amended 0, Repealed 10; Federal Rules or Standards: New 10, Amended 0, Repealed 10; or Recently Enacted State Statutes: New 3, Amended 0, Repealed 1.

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 21, Amended 0, Repealed 30.

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: November 30, 2024.

Hannah Herber  
Executive Assistant to the President

OTS-5646.1

**Chapter 495A-119 WAC  
STUDENT CODE OF CONDUCT**

NEW SECTION

**WAC 495A-119-010 Authority.** The Bates Technical College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the

president of the college the authority to administer student disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

#### NEW SECTION

**WAC 495A-119-020 Statement of jurisdiction.** (1) The student conduct code shall apply to conduct by students or student groups that occurs:

- (a) On college premises;
- (b) At or in connection with college programs or activities; or
- (c) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to locations in which students are engaged in college programs or activities including, but not limited to, college-sponsored 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 college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time they gain admission to the college through the last day of enrollment or award of any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of enrollment.

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

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

#### NEW SECTION

**WAC 495A-119-030 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 oppor-

tunities 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 college community.

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

(1) Academic freedom.

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

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

(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.

#### NEW SECTION

**WAC 495A-119-040 Definitions.** The following definitions shall apply for purpose of this student conduct code:

(1) "**Business day**" means a weekday, excluding weekends and college holidays.

(2) "**College premises**" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) "**Complainant**" means the following individuals who are alleged to have been subjected to conduct that would constitute 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 college's education program or activity at the time of the alleged discrimination.

(4) "**Conduct review officer**" is a college administrator designated by the president who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(5) "**Disciplinary action**" is the process by which the student conduct officer imposes discipline against a student for a violation

of the student conduct code. A written or verbal warning is not disciplinary action.

(6) "**Disciplinary appeal**" is 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 college are heard by the student conduct committee. Appeals of all other disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

(7) "**Filing**" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) "**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.

(9) "**President**" is the president of the college. 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.

(10) "**Program**" or "**programs and activities**" means all operations of the college.

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

(12) "**Remedies**" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(13) "**Respondent**" is a student who is alleged to have violated student conduct code.

(14) "**Service**" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date that the document is emailed and deposited in the mail, whichever is first.

(15) "**Student**" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered a "student" for purposes of this chapter.

(16) "**Student conduct officer**" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

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

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

(19) "**Supportive measures**" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college 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 college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college'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.

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

#### NEW SECTION

**WAC 495A-119-050 Prohibited student conduct.** The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team or living group, who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, 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.

(2) **Abuse in later life.**

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) **Academic dishonesty.** Any act of academic dishonesty, including:

(a) Cheating - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

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

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

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

(4) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, and/or submission of falsified documents or misuse of any college document, record, or instrument of identification;

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

(c) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(5) **Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(6) **Cannabis, drug, and tobacco violations.**

(a) **Cannabis.** The use, possession, growing, delivery, sale, 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 college premises or college-sponsored events. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(b) **Drugs.** 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.

(c) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(7) **Cyber misconduct.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), 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, and nonconsensual distribution of a recording of sexual activity.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **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 college'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 campus 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.

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

(11) **Failure to comply with directive.** Failure to comply with the direction of a college officer (campus safety) or employee who is act-

ing in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(12) **Harassment or bullying.** 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 college'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 not 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.

(13) **Hazing.** Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college-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 psychological or emotional harm, to any student, 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. Examples of hazing include, but are not limited to:

(a) 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;

(b) Humiliation by ritual act;

(c) Striking another person with an object or body part;

(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(14) **Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. 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 college. 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 college's computing system or other electronic information resources;

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

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

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

(16) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college 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 college trademarks.

(17) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual 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 college policies.

(18) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(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 (insignificant) 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 college to provide an aid, benefit, or service under the college'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 college's education program or activity;

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

(C) The parties' ages, roles within the college'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 college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, 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, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(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) **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.

(c) **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.

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

(21) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college housing, traffic, and parking rules.

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

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

(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view.

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited, thus is allowed.

#### NEW SECTION

**WAC 495A-119-060 Corrective action, disciplinary sanctions, terms and conditions.** (1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon

college-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 college 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 college, 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 college.

(d) **Disciplinary suspension.** Dismissal from the college 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 college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the 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 college shall be subject to the following restrictions:

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

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college 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, college employee, a member of the college community, or a particular college 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 college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be 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 college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college 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 college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(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 college 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 college.

#### NEW SECTION

**WAC 495A-119-070 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 college.

(3) Any student group that knowingly permits 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 college.

(4) Any student group found responsible for violating the code of student conduct, college 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 college 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.

#### NEW SECTION

**WAC 495A-119-080 Initiation of disciplinary action.** (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.



(2) 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) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of 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 college will be handled in accordance with college 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 college. 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.

(3) 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.

(4) 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 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.

(5) 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.

(6) Both the respondent and complainant in cases involving allegations of sex discrimination 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.

(7) 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.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her 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.

(9) 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 at-

tend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(10) 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.

(11) 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 495A-119-060; or
- (c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(12) In cases involving allegations of sex discrimination, 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 business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator 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 committee.

(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 committee.

(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 sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

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

(ii) Respondent is not participating in the college'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 college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

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

(f) In cases involving allegations of sex-based harassment, the college 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) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

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

#### NEW SECTION

**WAC 495A-119-090 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 495A-119-080(12), 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 committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a 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;

(c) Written reprimands; and

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

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

- (a) Disciplinary suspensions in excess of 10 instructional days;
- (b) Dismissals;
- (c) Sex discrimination, including sex-based harassment cases; and
- (d) Disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the president.

#### NEW SECTION

**WAC 495A-119-100 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct 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.

(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 agency'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 21 calendar 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 committee for a disciplinary hearing.

#### NEW SECTION

**WAC 495A-119-110 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president or designee, provided a party files a written request for review with the conduct review officer within 21 calendar days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is 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 president 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 committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision 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. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within 20 calendar days after the request is submitted.

(5) If the president 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 committee for a disciplinary hearing.

#### NEW SECTION

**WAC 495A-119-120 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee.

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation 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 college 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 committee and/or committee chair. In sex discrimination cases, the college may, in its sole and exclusive 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 committee and/or committee chair.

NEW SECTION**WAC 495A-119-130 Student conduct committee—Prehearing.** (1)

Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must 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.

(3) The chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The chair may provide to the committee members in advance of the hearing copies of the student conduct officer's notification of imposition of discipline (or referral to the committee) and the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

(7) The student conduct officer shall provide reasonable assistance to the respondent and complainant in procuring the presence of college 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 business 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 committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.

(10) The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, 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.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) 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 chair 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 (13)(b) of this section.

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

(e) **Confidentiality.** The college 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 chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) 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 sex-based harassment;

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

(iii) They may have an advisor of their choice, who may be an attorney, to 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 chair 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 chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. 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 chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have 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 college's control.

(e) **Confidentiality.** The college 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 chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee 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 college in writing before a case can be dismissed.

#### NEW SECTION

**WAC 495A-119-140 Student conduct committee—Presentation of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

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

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall ensure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request



for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

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

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case.

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, 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 committee chair may revise this process if, in the chair'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 chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair 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 chair shall exclude and the committee shall 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 chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that 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 committee 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 committee must not draw an inference about whether 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 sex-based harassment, the chair has the discretion to determine whether a respondent

may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

NEW SECTION

**WAC 495A-119-150 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the committee chair shall permit the parties to make closing arguments in whatever form, written or verbal, the committee wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within 21 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(3) The committee's decision shall also include a determination of appropriate sanctions, if any. If the matter was referred to the committee by the student conduct officer, the committee 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 committee 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 committee chair 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 committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

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

NEW SECTION

**WAC 495A-119-160 Student conduct committee—Review of initial decision.** (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) 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.

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

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

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

#### NEW SECTION

**WAC 495A-119-170 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

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

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

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

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

(4) The written notification shall be entitled "notice of summary suspension" and shall include:

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

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

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

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

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

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

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

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

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

(6) In cases involving allegations of 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 college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

#### NEW SECTION

**WAC 495A-119-180 Classroom conduct.** The student code of conduct shall not be construed as preventing an instructor from taking immediate disciplinary action when the instructor is required to act upon such breach of performance dishonesty in order to preserve order and prevent disruptive conduct in the classroom. This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for performance dishonesty.

(1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safe-

ty or health hazard without the expressed approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) from their classroom/course/lab/clinical/activity for up to three days if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member's syllabus shall outline how an absence of this type will impact the student's responsibilities in completing assignments, other coursework, or activities. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct officer may set conditions for the student that must be followed upon returning to the class or activity.

(4) The suspension of up to three days discussed in subsection (3) of this section shall not be subject to any further appeal or review. However, any further discipline imposed by the student conduct officer or designee shall be processed in accordance with this chapter.

(5) Any suspension initiated by a faculty member or instructional administrator under this section will not affect any student grading that is based directly on attendance.

#### NEW SECTION

**WAC 495A-119-190 Student grievances.** (1) Grievances should be filed as soon as possible and no more than 30 days after the incident occurs. For matters relating to Title IX violations, the college shall follow the process previously outlined in this chapter.

(a) Step one. The student shall first schedule an informal meeting with the instructor or staff member to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within 10 working days from the time of the informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the area administrator of student services. Within 10 working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(b) Step two. If the grievance is not resolved at step one, the student may within 10 working days of the receipt of the written response, appeal to the area administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area administrator.

(i) The area administrator shall hear the grievance within 10 working days after receipt of the grievance form and shall render a decision in writing within 10 working days after such hearing.

(ii) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts as they relate to the issues raised by the grievance.

(c) Step three. If the grievance is not resolved at step two, the student may within 10 working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the senior administrator of student services.

(i) The senior administrator of student services shall hear the grievance within 10 working days after receipt of the written appeal

and shall render a decision in writing within 10 working days after such hearing concludes.

(ii) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts and issues to be addressed in the grievance.

(iii) The decision of the senior administrator of student services shall be final and binding on all parties involved in the grievance.

(iv) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have binding effect or disposition on any other grievances of similar nature.

(2) Complaints should be filed as soon as possible and no more than 30 days after the incident occurs.

(a) Step one. The student shall first schedule an informal meeting with the instructor or staff member to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within 10 working days from the time of the informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the area administrator of student services. Within 10 working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(b) Step two. If the grievance is not resolved at step one, the student may within 10 working days of the receipt of the written response, appeal to the area administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area administrator.

(i) The area administrator shall hear the grievance within 10 working days after receipt of the grievance form and shall render a decision in writing within 10 working days after such hearing.

(ii) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts as they relate to the issues raised by the grievance.

(c) Step three. If the grievance is not resolved at step two, the student may within 10 working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the senior administrator of student services.

(i) The senior administrator of student services shall hear the grievance within 10 working days after receipt of the written appeal and shall render a decision in writing within 10 working days after such hearing concludes.

(ii) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts and issues to be addressed in the grievance.

(iii) The decision of the senior administrator of student services shall be final and binding on all parties involved in the grievance.

(iv) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have binding effect or disposition on any other grievances of similar nature.

#### NEW SECTION

**WAC 495A-119-200 Time limits on filing a grievance.** The student must file a grievance within one quarter of the event, which caused

the grievance to be filed. The senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness or a leave of absence. No complaints will be considered after two quarters of the occurrence of the source of the grievance. When either party to the grievance is no longer present at the college and does not expect to return, the senior administrator of student services will give the absent party reasonable opportunity to reply to the grievance before making a decision.

The student must file a complaint within one quarter of the event, which caused the grievance to be filed. The senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness, or a leave of absence. No complaints will be considered after two quarters of the occurrence of the source of the grievance. When either party to the complaint is no longer present at the college and does not expect to return, the senior administrator of student services will give the absent party reasonable opportunity to reply to the complaint before making a decision.

#### NEW SECTION

**WAC 495A-119-210 Grievances excluded.** (1) The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual discrimination. The college has separate, specific procedures for such complaints. See the senior administrator of human resources for information on those specific procedures.

(2) A student may not use the provisions of these sections as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in earlier sections of this student rights and responsibilities code or for resolution of specific categories of student complaints where other procedures are required.

(3) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community and technical colleges or the board of trustees of Bates Technical College, District No. 28 are excluded from being grieved.

**WSR 25-01-152**  
**PERMANENT RULES**  
**PENINSULA COLLEGE**

[Filed December 18, 2024, 9:07 a.m., effective January 18, 2025]

Effective Date of Rule: Thirty-one days after filing.

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

Citation of Rules Affected by this Order: New chapter 132A-127 WAC; and repealing chapter 132A-126 WAC.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Adopted under notice filed as WSR 24-22-119 on November 5, 2024.

Changes Other than Editing from Proposed to Adopted Version: To be in compliance with the Federal Drug-Free Schools and Communities Act, we removed the word "recreational" in 6a "Cannabis, drug and tobacco violations" to make it clear that cannabis is prohibited on college premises or in connection with college activities.

Number of Sections Adopted in Order to Comply with Federal Statute: New 17, Amended 0, Repealed 29; 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: December 17, 2024.

Trisha Haggerty  
Rules Coordinator

**OTS-5713.4**

**Chapter 132A-127 WAC**  
**PENINSULA COLLEGE STUDENT RIGHTS AND RESPONSIBILITIES**

NEW SECTION

**WAC 132A-127-005 Authority.** The Peninsula College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer student disciplinary action. The president is authorized to delegate or reassign any



and all duties and responsibilities as set forth in the chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

#### NEW SECTION

**WAC 132A-127-010 Statement of jurisdiction.** (1) The Peninsula College student rights and responsibilities shall apply to conduct by students or student groups that occurs:

- (a) On college premises;
- (b) At or in connection with college programs or activities; or
- (c) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to locations in which students are engaged in college programs or activities including, but not limited to, college-sponsored 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 college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time they gain admission to the college through the last day of enrollment or award of any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of enrollment.

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

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

#### NEW SECTION

**WAC 132A-127-015 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with respon-

sibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

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

(1) Academic freedom.

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

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

(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.

#### NEW SECTION

**WAC 132A-127-020 Definitions.** The following definitions shall apply for purpose of this student conduct code:

(1) "**Business day**" means a weekday, excluding weekends and college holidays.

(2) "**College premises**" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) "**Complainant**" means the following individuals who are alleged to have been subjected to conduct that would constitute 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 college's education program or activity at the time of the alleged discrimination.

(4) "**Conduct review officer**" is the vice president of student services or other college administrator designated by the president who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(5) "**Disciplinary action**" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

(6) **"Disciplinary appeal"** is the process by which an aggrieved party can appeal the discipline imposed or recommended by the student conduct officer. Academic dishonesty and disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal from the college are heard by the student conduct appeals committee. Appeals of all other disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

(7) **"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

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

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) **"Instructional day"** is a day identified in the academic calendar and quarterly schedule as a classroom instruction day.

(9) **"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) **"President"** is the president of the college. 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.

(11) **"Program"** or **"programs and activities"** means all operations of the college.

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

(13) **"Remedies"** means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(14) **"Respondent"** is a student who is alleged to have violated the student conduct code.

(15) **"Service"** is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date that the document is emailed and deposited in the mail, whichever is first.

(16) **"Student"** includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered a "student" for purposes of this chapter.

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

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

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

(20) **"Supportive measures"** means measures reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college 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 college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college'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"** is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

#### NEW SECTION

**WAC 132A-127-025 Prohibited student conduct.** The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team or living group, who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, 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.

(2) **Abuse in later life.**

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) **Academic dishonesty.** Any act of academic dishonesty, including:

(a) Cheating - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

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

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

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

(4) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, and/or submission of falsified documents or misuse of any college document, record, or instrument of identification;

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

(c) Tampering with an election conducted by or for college students; or

(d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(5) **Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(6) **Cannabis, drug, and tobacco violations.**

(a) Cannabis. The use, possession, growing, delivery, sale, 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 college premises or college-sponsored events. While state law permits the use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(b) Drugs. 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.

(c) Tobacco, electronic cigarettes and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(7) **Cyber misconduct.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), 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, and nonconsensual distribution of a recording of sexual activity.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **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 college'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 campus 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.

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

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

(12) **Harassment or bullying.** 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 college'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 not 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.

(13) **Hazing.** Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college 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 psychological or emotional harm, to any student, 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 intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. 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 college. 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 college's computing system or other electronic information resources;

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

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

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

(16) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college 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 college trademarks.

(17) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual 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 college policies.

(18) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(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 (insignificant) 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 college to provide an aid, benefit, or service under the college'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 college's education program or activity;

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

(C) The parties' ages, roles within the college'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 college's education program or activity.



(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, 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, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(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) **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.

(c) **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.

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

(21) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college housing, traffic, and parking rules.

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

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

(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view.

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

#### NEW SECTION

**WAC 132A-127-030 Corrective action, disciplinary sanctions, terms and conditions.** (1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college 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 college 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 college, 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 college.

(d) **Disciplinary suspension.** Dismissal from the college 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 college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the 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 college shall be subject to the following restrictions:

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

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college 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, college employee, a member of the college community, or a particular college 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 college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be 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 college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college 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 college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(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 college 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 college.

#### NEW SECTION

**WAC 132A-127-035 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 college.

(3) Any student group that knowingly permits 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 college.

(4) Any student group found responsible for violating the code of student conduct, college 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 college 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.

#### NEW SECTION

**WAC 132A-127-040 Initiation of disciplinary action.** (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) 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) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimina-

tion, including sex-based harassment. Allegations of 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 college will be handled in accordance with college 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 college. 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.

(3) 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.

(4) 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 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.

(5) 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.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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 132A-127-030; or

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

(12) In cases involving allegations of sex discrimination, 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 business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator 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 committee.

(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 committee.

(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 sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

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

(ii) Respondent is not participating in the college'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 college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

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

(f) In cases involving allegations of sex-based harassment, the college 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) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

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

#### NEW SECTION

**WAC 132A-127-045 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132A-127-040(12), 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 committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a 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 committee shall hear appeals from:

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

(b) Dismissals;

(c) Sex discrimination, including sex-based harassment cases;

(d) Academic dishonesty cases; and

(e) Disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the president.

NEW SECTION

**WAC 132A-127-050 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct 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.

(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 agency'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 21 calendar 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 committee for a disciplinary hearing.

NEW SECTION

**WAC 132A-127-055 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, 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 president 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 president 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 committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision 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. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within 20 calendar days after the request is submitted.



(5) If the president 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 committee for a disciplinary hearing.

NEW SECTION

- WAC 132A-127-060 Student conduct committee.** (1) The student conduct committee shall consist of five members:
- (a) Two full-time students appointed by the student government;
  - (b) Two faculty members appointed by the president or designee;
  - (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.
- (2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee.
- (3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.
- (4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.
- (5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation 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 college may, in its sole and exclusive discretion, for sex discrimination or other conduct cases, 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 committee and/or committee chair.

NEW SECTION

- WAC 132A-127-065 Student conduct committee—Prehearing.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.
- (2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must 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.

(3) The chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

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

(a) The student conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so; however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

(7) The student conduct officer shall provide reasonable assistance to the respondent and complainant in procuring the presence of college 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 business 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 committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.

(10) The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, 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.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) 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 chair 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 (13)(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 college's control.

(e) **Confidentiality.** The college 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 chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) 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 sex-based harassment;

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

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

(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 chair 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 chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. 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 chair will serve a written decision upon all parties, to include the

reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing. The college shall not pay for another party's attorney.

(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 college's control.

(e) **Confidentiality.** The college 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 chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must, conduct the hearing with the parties physically present in separate locations, with technology enabling the committee 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 college in writing before a case can be dismissed.

#### NEW SECTION

**WAC 132A-127-070 Student conduct committee—Presentation of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

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

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall ensure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

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

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case.

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, 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 committee chair may revise this process if, in the chair'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 chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair 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 chair shall exclude and the committee shall 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 chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that 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 committee 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 committee must not draw an inference about whether 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 sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

NEW SECTION**WAC 132A-127-075 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the committee chair shall permit the parties to make closing arguments in whatever form, written or verbal, the committee wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within 20 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(3) The committee's decision shall also include a determination of appropriate sanctions, if any. If the matter was referred to the committee by the student conduct officer, the committee 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 committee 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 committee chair 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 committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

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

NEW SECTION

**WAC 132A-127-080 Student conduct committee—Review of initial decision.** (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) 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.

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

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

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

#### NEW SECTION

**WAC 132A-127-085 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

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

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

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

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

(4) The written notification shall be entitled "notice of summary suspension" and shall include:

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

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

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and

subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

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

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

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

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

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

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

(6) In cases involving allegations of 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 college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

## OTS-5712.1

### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132A-126-005	Preamble.
WAC 132A-126-010	Authority.
WAC 132A-126-015	Definitions.
WAC 132A-126-020	Statement of jurisdiction.
WAC 132A-126-025	Statement of student rights.
WAC 132A-126-030	Prohibited student conduct.
WAC 132A-126-035	Disciplinary sanctions—Terms— Conditions.
WAC 132A-126-040	Initiation of disciplinary action.
WAC 132A-126-045	Appeal of disciplinary action.



WAC 132A-126-050	Brief adjudicative proceedings authorized.
WAC 132A-126-055	Brief adjudicative proceedings—Initial hearing.
WAC 132A-126-060	Brief adjudicative proceedings—Review of an initial decision.
WAC 132A-126-065	Brief adjudicative proceedings—Agency record.
WAC 132A-126-070	Student conduct committee proceedings.
WAC 132A-126-075	Appeal—Student conduct committee.
WAC 132A-126-080	Student conduct committee hearings—Presentations of evidence.
WAC 132A-126-085	Student conduct committee—Initial decision.
WAC 132A-126-090	Appeal from student conduct committee initial decision.
WAC 132A-126-095	Summary suspension.
WAC 132A-126-100	Sexual misconduct proceedings.
WAC 132A-126-200	Supplemental Title IX student conduct procedures—Order of precedence.
WAC 132A-126-205	Prohibited conduct under Title IX.
WAC 132A-126-210	Title IX jurisdiction.
WAC 132A-126-215	Initiation of discipline.
WAC 132A-126-220	Prehearing procedure.
WAC 132A-126-225	Rights of parties.
WAC 132A-126-230	Evidence.
WAC 132A-126-235	Initial order.
WAC 132A-126-240	Appeals.

**WSR 25-01-156**  
**PERMANENT RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed December 18, 2024, 10:14 a.m., effective January 18, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state liquor and cannabis board (board) has created one section of chapter 314-38 WAC (WAC 314-38-120) to implement HB 2204 (chapter 91, Laws of 2024), codified at RCW 66.20.010(19), which creates an emergency liquor permit for liquor manufacturers who are temporarily unable to operate or access their premises due to an emergency or road closure to allow them to operate in a retail capacity on the premises of another liquor licensee with retail sales privileges, subject to several conditions identified in RCW 66.20.010(19). The rule identifies several conditions of operation that are necessary to align the operation of a liquor manufacturer within the existing rules for liquor licensees with on-premises consumption privileges.

Citation of Rules Affected by this Order: New WAC 314-38-120.

Statutory Authority for Adoption: RCW 66.08.030, 66.20.010, 66.98.070.

Adopted under notice filed as WSR 24-21-168 on October 23, 2024.

A final cost-benefit analysis is available by contacting Daniel Jacobs, Acting Rules and Policy Manager, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-480-1238, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

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

Date Adopted: December 18, 2024.

Jim Vollendroff  
Acting Board Chair

**OTS-5783.4**

NEW SECTION

**WAC 314-38-120 Emergency liquor permits.** (1) Per RCW 66.20.010, there is an emergency liquor permit for eligible licensees to authorize the sale, service, and consumption of liquor of their own production on the premises of another liquor licensee with retail sales

privileges when an emergency has made the permit holder's premises inaccessible and unable to operate due to an emergency or road closure.

(2) There is no fee for the emergency liquor permit.

(3) The following licensees are eligible to obtain an emergency liquor permit:

(a) Distilleries, craft distilleries, and fruit and wine distilleries;

(b) Domestic breweries and microbreweries; and

(c) Domestic wineries.

(4) The following licensees are eligible to operate as a host of a permit holder:

(a) All the licensees identified in subsection (3) of this section;

(b) All liquor licensees with retail sales privileges, except for the following:

(i) Caterers, licensed under RCW 66.24.690;

(ii) Private clubs licensed under RCW 66.24.450 or 66.24.452; and

(iii) Sports entertainment facilities licensed under RCW 66.24.570.

(5) (a) To be eligible to host a permit holder, the host must have the authority to sell the type of products manufactured by the permit holder.

(b) If the permit holder is a distillery, craft distillery, or fruit and wine distillery, the host must comply with the food offerings requirements in WAC 314-28-067.

(6) The permit holder shall identify the host when applying to the board's licensing division for an emergency liquor permit.

(7) (a) The permit shall last for 30 days.

(b) If the emergency continues, the permit may be renewed for an additional 30 days.

(8) The permit holder may store no more than a 30-day supply of liquor at the host premises.

(a) The permit holder's liquor must be kept separate from the host liquor.

(b) Host employees and agents are permitted to serve liquor provided by the permit holder if they have the MAST permits required by RCW 66.20.310 and chapter 314-17 WAC.

(c) The permit holder's employees and agents must meet the same MAST permit requirements as the host's employees and agents.

(9) A host and permit holder may not enter into any type of agreement that would involve impermissible direct or indirect interests as provided in chapter 66.28 RCW.

(10) (a) A host may have no more than three permit holders operating on its premises at a time.

(b) A permit holder may only have one permit at a time.

(c) The permit holder must conspicuously post the emergency liquor permit at the host premises at all times the permit is in use and be available for inspection by liquor enforcement officers.

(11) (a) Hosts and permit holders must maintain separate records consistent with Titles 66 RCW and 314 WAC as it applies to the host and permit holder.

(b) Hosts and permit holders must comply with all tax payment and reporting requirements in Titles 66 RCW and 314 WAC.

(c) Hosts and permit holders must use distinctively marked glassware or serving containers to identify the source of any alcohol product being consumed on the host premises. The distinctive markings may be either permanent or temporary. Any temporary markings must remain

on the glassware or serving containers through the duration of use by the customer.

(12) Hosts and all permit holders on the hosts' premises are jointly responsible for any violation or enforcement issues unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific conduct or action, in which case the violation or enforcement action applies only to those identified licensees.

(13) **Definitions:** For purposes of this section, the following definitions apply:

(a) "Emergency" means an emergency or disaster as defined in RCW 38.52.010.

(b) "Host" means a liquor licensee with the same retail sales privileges that allows a permit holder to operate on their premises pursuant to the terms of the emergency liquor permit.

(c) "Inaccessible" means unable to be safely entered, reached, or used for on-premises business purposes for more than 48 hours.

(d) "Permit holder" means a licensed manufacturer that has experienced an emergency that has made its premises inaccessible and unable to operate due to an emergency or road closure.

(e) "Road closure" means whenever the condition of any state highway, county road, city street, or right-of-way is such that its use by vehicles will be dangerous to traffic, or it is being constructed, altered, or repaired in such a manner as to require their use to be closed or restricted to all vehicles for more than 48 hours.

(f) "Unable to operate" means unable to perform the on-premises activities which the liquor license authorizes in Titles 66 RCW and 314 WAC.

**WSR 25-01-159  
PERMANENT RULES  
LIQUOR AND CANNABIS  
BOARD**

[Filed December 18, 2024, 10:30 a.m., effective January 18, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state liquor and cannabis board (board) has amended the social equity in cannabis program rule (WAC 314-55-570) to implement E2SSB 5080, (chapter 220, Laws of 2023), to expand and improve the social equity in cannabis program, including revisions to the scoring and application process, county licensing thresholds, and local jurisdiction objections.

Citation of Rules Affected by this Order: Amending WAC 314-55-570.

Statutory Authority for Adoption: RCW 69.50.331, 69.50.335, 69.50.345.

Adopted under notice filed as WSR 24-21-169 on October 23, 2024.

Changes Other than Editing from Proposed to Adopted Version:

WAC 314-55-570 Social equity in cannabis program			
Subsection	Proposed Rule (CR-102)	Final Rule (CR-103)	Reason for Change
(4)(a)(i)(B)	... The social equity contractor reserves the right to verify the authenticity ...	... The social equity contractor <u>may</u> verify the authenticity ...	Technical wording change without changing effect.
(4)(a)(ii)(B)			

A final cost-benefit analysis is available by contacting Daniel Jacobs, Acting Rules and Policy Manager, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-480-1238, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, 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 1, 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: December 18, 2024.

Jim Vollendroff  
Acting Board Chair

**OTS-5703.5**

AMENDATORY SECTION (Amending WSR 22-21-058, filed 10/12/22, effective 11/12/22)

**WAC 314-55-570 Social equity in cannabis program. (1) Definitions.**

(a) **"Disproportionately impacted area (DIA)"** means a census tract within Washington state where community members were more likely to be impacted by the war on drugs. ~~((These areas are determined using a standardized statistical equation to identify areas of high unemployment, low income, and demographic indicators consistent with populations most impacted by the war on drugs, including areas with higher rates of arrest for drug charges.))~~ The board will provide maps to identify disproportionately impacted areas. The maps will reflect census tracts from different time periods to account for gentrification. These areas are determined using a standardized statistical equation to identify areas in the top 15th percentile in at least two of the following demographic indicators of populations most impacted by the war on drugs:

(i) The area has a high rate of people living under the federal poverty level;

(ii) The area has a high rate of people who did not graduate from high school;

(iii) The area has a high rate of unemployment; or

(iv) The area has a high rate of people receiving public assistance.

(b) **"Family member"** means:

(i) A biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the ~~((applicant))~~ social equity registrant, as defined in this subsection below, stands in loco parentis (in place of the parent), is a legal guardian, or is a de facto parent, regardless of age or dependency status;

(ii) Grandchild, grandparent, parent, or sibling of a child as defined in (b)(i) of this subsection;

(iii) Spouse or domestic partner;

(iv) Any individual who regularly resides in the ~~((applicant's))~~ registrant's home or where the relationship creates an expectation that the ~~((applicant))~~ registrant care for the ~~((person))~~ individual and that individual depends on the applicant for care, or that the individual care for the ~~((applicant))~~ registrant and that the ~~((applicant))~~ registrant depends on the individual for care.

(c) **"((Median)) Household income"** means the ~~((most recent median household))~~ gross income ~~((within))~~ for the previous calendar year and includes the ~~((state))~~ sum of ~~((Washington as calculated))~~ the income received in the previous calendar year by ~~((the United States Census Bureau))~~ all household members aged 15 years and older before taxes and deductions.

(d) **"((Person)) Individual"** means a real human being, distinguished from a corporation, company, or other business entity.

(e) **"Median household income"** means the median income for households in Washington for the previous calendar year, as determined by the United States Census Bureau.

(f) **"Preliminary letter of approval"** means an approval letter issued to a social equity program applicant. The letter may be used for the purposes of ~~((securing a grant from the department of commerce))~~ applying for funding and/or securing a location, and ~~((other necessities to complete))~~ additional steps that may be necessary for continuing with the licensing application process.

~~((f))~~ (g) **"Social equity program applicant"** means ~~((a person(s) who meets the requirements of))~~ an individual or entity that receives a preliminary letter of approval to apply for the social equity licensing program.

~~((g))~~ (h) "Social equity contractor" means a third party responsible ~~((to review))~~ for reviewing and ~~((score))~~ scoring social equity program applications to identify which applicants qualify to apply for a social equity license.

~~((h))~~ (i) "Social equity licensee" means ~~((a person))~~ an individual or entity that holds a social equity cannabis license or any ~~((person))~~ individual or entity who is a true party of interest in a social equity in cannabis license as described in WAC 314-55-035.

~~((i))~~ "Social equity plan" means a plan that addresses the following elements including, but not limited to:

~~(i)~~ A description of how issuing a cannabis retail license to the social equity applicant will meet social equity goals as described in statute;

~~(ii)~~ The social equity applicant's personal or family history with the criminal justice system, including any offenses involving cannabis; and

~~(iii)~~ Business plans involving partnerships or assistance to organizations or residents with connections or contributions to populations with a history of high rates of enforcement of cannabis prohibition.

~~(j)~~ "Social equity title certificate holder" means a cannabis retail license title certificate holder that meets the requirements of a social equity program applicant as determined by the social equity contractor, and is unable to open for business in the city or county where the cannabis retail license is located) (j) "Social equity registrant" means any individual or entity that registers to be evaluated and scored for the social equity program. Qualification is evaluated based on the registrant's application materials submitted to the social equity contractor. If a registrant is deemed qualified for the social equity program and selected to move forward, the registrant becomes a social equity applicant, as defined in this subsection.

~~(2) ((Social equity applicant requirements.~~

~~(a-))~~ Registering for the social equity program. Registration through a designated portal is required prior to submitting application materials to the social equity contractor. If two or more individuals are registering as a single applicant, only one individual may fill out the registration form on behalf of the other individuals who are applying. Each individual is limited to one registration, within a designated license application window. Individuals registering and submitting application materials who are contributing to the required 51 percent ownership may not be removed or added after registering.

(a) Registration window. The registration window(s) will be open for 30 calendar days. The board will open separate registration windows for retail applications and for producer and processor applications. The board may reopen a designated registration window after conducting an evaluation that considers market demand, impacts related to license density, and availability of licenses.

(3) Social equity application process. After a designated registration window closes, the social equity contractor will provide the registrant with directions for submitting social equity program application materials and verification documents.

(a) Submission requirements. Social equity program application materials must be submitted directly to the social equity contractor in the form and manner required by the social equity contractor, within 21 calendar days after notification from the social equity contractor. Application materials submitted after the specified time frame

will not be reviewed or scored. Registrants are responsible for ensuring the application is complete, accurate, and successfully submitted.

(4) **Qualifying for the social equity program.** To ~~((be considered))~~ qualify for the social equity program under this chapter and RCW 69.50.335, the ~~((following requirements))~~ criteria provided in this subsection must be met ~~((by each applicant:~~

~~(b) At least a))~~. Social equity applicants with the highest scores will be prioritized by the social equity contractor to proceed with the social equity license application process. The social equity contractor will provide the board with a list of the selected registrants that may move forward in the application process as an applicant.

(a) **51 percent ownership.** An applicant must have 51 percent ownership and control by one or more individuals qualifying as a social equity applicant. All individuals that are a part of the license registration must be held by a person, or persons, who has lawfully resided in Washington state for six months prior to the registration date, consistent with RCW 69.50.331. Each individual comprising the 51 percent majority ~~((, or controlling interest, in the applicant, must be held by a person, or persons, who has or have resided in Washington state for six months prior to the application date, consistent with RCW 69.50.331, and meets at least two of the following qualifications))~~ ownership must meet at least two of the four qualifications below:

(i) **Qualification 1:** ~~((The social equity applicant or applicants have lived in a disproportionately impacted area))~~ Resided in a disproportionately impacted area (DIA) in Washington state for a minimum of five years any time between 1980 and 2010 ~~((; or))~~. Time spent living in a DIA does not need to be consecutive.

(A) Proof of address documentation that may demonstrate currently living or having lived in a DIA include, but are not limited to, documents such as: Bank statements, lease agreements, home insurance or car policy, federal or state tax returns that show the address for each year, utility bills, employment records, school records, voter registration. Any combination of documents may be utilized to demonstrate the qualification.

(B) Affidavits may be used as a supplemental document to demonstrate the registrant meets the qualifications under (4)(a)(i) of this subsection, provided that the affidavit is accompanied by other documents. The social equity contractor may verify the authenticity and accuracy of the submitted affidavit and supporting documentation. Additional documentation or evidence may be requested to support the claims made in the affidavit. Failure to provide truthful information or to comply with the verification request may be considered a misrepresentation of fact, under WAC 314-55-050, 314-55-073, or 314-55-505.

(ii) **Qualification 2:** ~~((The social equity applicant or a family member of the applicant has))~~ Been arrested or convicted ~~((of))~~ for a cannabis offense ~~((; or))~~.

(A) To demonstrate this, documents that contain details such as the date of the arrest or conviction, the charges, and the law enforcement agency involved, such as: Arrest records from the agency that made the arrest, booking reports, bail papers, police reports or police logs, court documents (e.g., arrest warrants, charging documents, or minutes from the arraignment), criminal history records, news reports to establish the event, online inmate locator services for the family member, legal representation who can provide details about the arrest or conviction, court mandated community service pa-



perwork, court mandated paperwork, or background checks. Any combination of documents may be utilized to demonstrate the qualification.

(B) Affidavits may be used as a supplemental document to demonstrate an arrest or conviction was a cannabis offense provided that the affidavit is accompanied by court records that provide evidence of an arrest or conviction for a schedule 1 drug offense. Court records include, but are not limited to, arrest records, charging documents, plea agreements, court orders, or sentencing documents. The social equity contractor may verify the authenticity and accuracy of the submitted affidavit and supporting documentation. Additional documentation or evidence may be requested to support the claims made in the affidavit. Failure to provide truthful information or to comply with the verification request may be considered a misrepresentation of fact, under WAC 314-55-050, 314-55-073, or 314-55-505.

(iii) **Qualification 3:** ((The social equity applicant's)) Had a household income ((in the year prior to submitting the application was)) less than the median household income within the state of Washington as ((calculated)) determined by the United States Census Bureau for the calendar year preceding the date of application.

(A) Proof of household income includes, but is not limited to, documents such as: Federal tax return, W-2 forms issued by an employer that shows annual wages and taxes withheld, 1099-NEC forms, bank statements showing consistent deposits, employer income verification letter stating your salary and terms of employment, unemployment benefits statements, court ordered agreements, annuity statements from an insurance company showing regular annuity payments, workers' compensation letter from an employer or insurance company detailing workers' compensation payments, profit or loss statements for self-employed individuals, a statement showing business income and expenses. Any combination of documents may be utilized to demonstrate the qualification.

(iv) **Qualification 4:** Is both socially and economically disadvantaged as defined by the office of minority and women's business enterprises.

(A) Examples of documentation to demonstrate the qualification may include, but are not limited to, those identified by the office of minority and women's business enterprises for Washington state certification. Any combination of documents may be utilized to demonstrate the qualification.

~~((3) **Social equity application process.**~~

~~(a) **Application window.**~~

~~(i) The board will open the application window for an initial period of 30 calendar days.~~

~~(ii) At its sole discretion, the board may reopen the application window:~~

~~(A) After initial evaluation of applications is received and locations are still available; or~~

~~(B) If additional allotments become available after the initial application window has closed pursuant to RCW 69.50.335.~~

~~(b) **Initial application requirements.**~~

~~(i) The social equity application must be submitted electronically through the department of revenue's business licensing online application system.~~

~~(ii) The social equity applicant must apply to the department of revenue's business licensing service within the 30-day application window. All required information must be completed on the application~~

and payment must be submitted within the 30-day application window for the application to be accepted.

~~(iii) The social equity applicant, whether applying as a person, persons, or entity, may apply for a cannabis license only once during each application window described in subsection (4) (c) of this section.~~

~~(iv) An application to reinstate the license of a social equity title certificate holder will not be considered a new social equity license application. The social equity title certificate holder may submit an application for a social equity license and an application to reinstate their existing license through the social equity program.~~

~~(v) A location address is not required at the time of application.~~

~~(e-))~~ **(5) Identifying registrants eligible to apply for a license.** After the social equity contractor has evaluated all registrations from a designated registration window, the social equity contractor will provide the board with a prioritized list of:

(a) The top 52 scoring registrants eligible to apply for a retail license.

(b) The top 10 scoring registrants for a cannabis producer license, which must be issued in conjunction with a cannabis processor license.

(c) The top 100 scoring registrants for a cannabis processor only license.

**(6) Social equity contractor review.** ~~((Once))~~ After the ~~((application))~~ registration window is closed, the social equity contractor will ~~((evaluate and prioritize all applications received within the 30-day application window))~~ provide the registrant, or title certificate holder, with directions for submitting social equity program application materials and verification documents.

~~((i) The social equity applicant must select one county where they wish to operate their business and notify the social equity contractor of their selection in the form and manner required by the social equity contractor.~~

~~(ii) The social equity applicant must submit documentation verifying the eligibility requirements described in (c) (D) (viii) of this subsection to the social equity contractor in the form and manner required by the social equity contractor.~~

~~(iii) Examples of documentation that may verify eligibility requirements include, but are not limited to:~~

~~(A) School records, rental agreements, utility bills, mortgage statements, loan documents, bank records, or tax returns that show the applicant's address(es), or a signed declaration that includes the applicant's address(es) indicating that the applicant resided in a DIA; or~~

~~(B) The applicant's arrest or conviction records, or family member's arrest or conviction records and an affirmation of the familial relationship signed by the applicant and the family member; or~~

~~(C) The applicant's tax returns demonstrating their income for the prior year; or~~

~~(D) Any other documentation that verifies the eligibility requirements described in (c) (D) (viii) of this subsection.~~

~~(iv) If additional materials are needed, the social equity applicant will receive a letter electronically from the social equity contractor directing the applicant to submit additional application materials directly to the social equity contractor.~~

~~(v) The social equity applicant must submit complete and accurate additional application materials directly to the social equity contractor within 15 business days of the date of the letter. It is the responsibility of the social equity applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the social equity contractor.~~

~~(vi) If the application is determined to be incomplete by the social equity contractor, the social equity applicant will be provided with 14 days to submit a complete application. The social equity contractor will score the application based on the materials submitted within the time frame.~~

~~(vii) The social equity contractor will review the application materials, including the social equity plan provided by the social equity applicant to determine if the applicant meets the requirements of a social equity applicant.~~

~~(viii) After the social equity contractor determines that the requirements have been met, the social equity contractor will score social equity applications using the following scoring rubric to prioritize social equity applicants:))~~ (a) **Who is eligible to be scored:** Scoring by the social equity contractor will be limited to each registrant who meets two out of the four required social equity program qualifications, and each registrant may only be scored once. Only the first registration received will be scored for qualifications. Title certificate holders applying for license reinstatement and registering for an eligibility determination shall not be considered a duplicate registration for other new social equity license application under this section.

(b) **Scoring rubric.** The social equity contractor will prioritize social equity program registrants based on the below scoring rubric criteria. The total score will be based on a cumulative total, adding together the highest achieved score for each of the 7 categories:

Social Equity Application Scoring Rubric		
Category	Eligibility Requirements	Point Scale
	1. Lived in a disproportionately impacted area (DIA) 1-5 years = 15 points 6-10 years = 45 points 11+ years = 60 points	((40)) 60
	((1a. How long have you lived in a DIA? 5y-10y = 20 points 10+ years = 40 points	40))
	2. Convicted of a drug offense? (Self) = 15 points Convicted of a cannabis offense? (Self) = 60 points	((40)) 60
	((2a. Convicted of a cannabis offense? (Self)	40))
	3. Convicted of a drug offense? (Family) = 15 points Convicted of a cannabis offense? (Family) = 30 points	((5)) 30
	((3a. Convicted of a cannabis offense? (Family)	5))
	4. If you were convicted of a cannabis offense, what type of sentence did you receive: Fine = ((40)) 15 points Served probation or Confined to home = ((20)) 30 points ((Confined to home = 40 points)) Served time in jail or prison = ((80)) 60 points	((80)) 60
	((5. Did you or your family member's incarceration keep you from getting employment?	5
	6. Did you lose your home or ability to purchase a home or rent a home as a result of your convictions or arrests?	5))
	((7.) 5. Is your household income less than the median household income within the state of Washington as calculated by the United States Census Bureau?	((40)) 45
	((8. Did you own or operate) 6. Owned a medical cannabis dispensary or collective garden, licensed as a business, prior to July 1, 2016 (((10 points?))) = 15 points	((40))
	((or Did you own and operate)) Owned a medical cannabis dispensary or collective garden licensed as a business in a DIA (((30 points?))) = 30 points	((30 in a DIA)) 30
	((9. Have you held or do you currently hold 51 percent majority/controlling interest of a state cannabis (marijuana) retailer license? No = 10 points Yes = 0 points)) 7. Applied during the HB 2870 social equity application window, qualified as a social equity applicant, but were not eligible to be issued a license	((40)) 15
	<b>Total Maximum Points</b>	<b>((310)) 300 points</b>

~~((ix) The social equity contractor will provide the board with a list of eligible and scored social equity applicants.~~

~~(x) Neither the social equity contractor nor its employees shall benefit from any license or licenses granted as a result of their review.~~

~~(d) (i) **Board review.** Social equity applicants that are scored highest by the social equity contractor within the county selected by the social equity applicant will be processed by the board.~~

~~(ii) In the event of a tie, the board will use a double blind lottery conducted by an independent third party to identify the application(s) that will be processed.) (c) **Preliminary score.** Upon initial assessment of the social equity program application materials, the social equity contractor will provide the registrant with a preliminary score, along with a comprehensive explanation of the score detailing the points allocated for each criterion.~~

(i) The registrant may submit additional documentation to potentially improve the final score. Documentation must be submitted in the form and manner specified by the social equity contractor no later than 21 calendar days after being provided the preliminary score.

(d) **Final score.** Prior to issuing the final score, the social equity contractor may adjust the registrant's preliminary score based on a review of any additional documentation provided. The social equity contractor will notify registrants and qualified social equity applicants of the final score and include a detailed explanation of the scoring decision.

(e) **Prioritization.** Qualified registrants with highest final scores will be prioritized by the social equity contractor to be included on the list of social equity applicants who are selected to apply for a social equity license.

(f) **Double-blind lottery.** If a tie should occur among qualified registrants with identical scores, a double-blind lottery will be used to prioritize the social equity applicants who may proceed with applying for a social equity license. The double-blind lottery will be conducted by a third-party contractor who is separate from the social equity contractor reviewing and scoring the application.

(g) **Conflict of interest.** It is a conflict of interest and violation of this chapter if the social equity contractor, the third-party contractor conducting the double-blind lottery, or employees of any contractor benefit from any social equity license granted under this section. Any conflicts of interest between a contractor and applicant or cannabis licensee may result in the denial of an application or a revocation of the cannabis license.

(7) **Board notification.**

~~((e))~~ (a) **Preliminary letter of approval.** Once the social equity applications that will be processed are identified as described in this section, eligible social equity applicants will be issued a preliminary letter of approval.

~~((4) **Additional provisions.**~~

~~(a) **Time restrictions.** There are no time restrictions for a social equity applicant to select and secure a location.~~

~~(b) **Ownership changes.** Social equity applicants may not make ownership changes to an application after the application has been reviewed, scored, and prioritized by the social equity contractor.)~~ (b) **Withdrawal letter.** The board will issue a withdrawal letter notifying registrants that are not eligible to apply for a social equity license if:

(i) The social equity program application or additional materials are determined to be incomplete or incorrect by the social equity contractor;

(ii) The social equity program application materials are not received by the social equity contractor in a timely manner;

(iii) The social equity registrant is not qualified for the social equity program based on the determination made by the social equity contractor;

(iv) The social equity registrant is deemed qualified for the social equity program but did not score high enough to be prioritized, based on the score provided by the social equity contractor or the social equity registrant was not selected in a lottery to determine which registrants could move forward.

(v) The social equity registrant makes a voluntary request to the board, in writing, to voluntarily withdraw the social equity program application being reviewed and scored by the social equity contractor.

The voluntary withdrawal of a social equity program application does not result in a hearing right.

~~((e)) (8) Social equity ((applicants may apply for a social equity)) license ((once per)) application ((window)). ((If a social equity applicant applies more than once, the board will accept only the first application.~~

~~(d) License mobility. Social equity licenses that are currently designated to specific cities may be located anywhere within the county in which the city is located. However, the license may not be transferred outside of that county.~~

~~(e) Qualifying for the social equity program will not result in or guarantee cannabis business license approval. Social equity applicants must meet all license qualifications in WAC 314-55-077 and this chapter to receive a license.) Once the board issues the preliminary letter of approval, selected applicants may submit social equity license application materials to the board. Qualifying as a social equity applicant does not guarantee the issuance of a social equity license.~~

(a) Licensing requirements. To qualify for a social equity license, applicants must meet the licensing requirements provided in this chapter, RCW 69.50.331, and RCW 69.50.335.

(b) Location and financing. There are no time restrictions for when a social equity applicant must select and secure a location and/or financing. Social equity registrants who applied under chapter 220, Laws of 2023, have been scored and prioritized pursuant to this section by the social equity contractor and have been selected to apply for a new social equity license may locate the initial licensed business to any city, town, or county in the state of Washington, one time only. Once the initial licensed location is established it may not be moved from the selected city, town, or county.

(c) County threshold. The board will establish license thresholds for each county to ensure there is an adequate amount of access to licensed sources of cannabis, cannabis concentrates, usable cannabis, and cannabis-infused products to discourage purchases from the illegal market. The board shall conduct a license threshold determination every three years, beginning July 1, 2029. In making its determination, the board shall consider market conditions, economic trends, demographics, and other relevant factors. County thresholds will be publicly posted and updated every three years and will be accessible to all stakeholders and the general public via the internet.

(d) Retailer license mobility. Effective January 1, 2026, social equity applicants, who applied under chapter 236, Laws of 2020, may change the initial business location from their currently allocated local jurisdiction under the following conditions:

(i) The qualifying licensee has not secured a location in the initial county where their license is allocated; and

(ii) Any relocation into a different county requires the qualifying social equity licensee to have received an application score which exceeds the lowest score awarded for successful applicants in the desired county.

(iii) The lowest scores awarded for successful applicants under chapter 236, Laws of 2020, by county will be posted online.

(e) Local ordinance. The board will substantially consider an objection from an incorporated city or town, or county for a proposed location of a social equity retail license if an ordinance limiting retail outlet density is in effect in the area prior to the board receiving the license application.

(f) **License transfer and assumption.** Licenses awarded under this section may not be transferred or assumed within the first year of the license being issued. After the first year and up to the fifth year from the date of the initial license approval, licenses awarded under this section may only be transferred to or assumed by individuals or groups of individuals who meet the ((definition)) qualifications of a social equity program applicant ((for a period of five years from the date of the initial license was approved)).

(g) **Appeals.** An applicant or licensee may request an administrative hearing to contest the withdrawal, denial, nonrenewal, or revocation of a license pursuant to chapter 34.05 RCW. A request for a hearing must be made in writing and received by the board no later than 20 days after the date the notification of withdrawal, denial, nonrenewal, or revocation was mailed to the applicant or licensee.

~~((5) Social equity title certificate holders.)~~ (9) **Title certificate holders.** A title certificate holder ((that meets the requirements of a social equity program applicant as determined by the social equity contractor may reinstate their retail cannabis license anywhere within the county that they hold their title certificate.

(6) **Application withdrawal.** The board will withdraw a social equity application if:

(a) The social equity program application or additional materials are determined to be incomplete or incorrect by the social equity contractor;

(b) The social equity program application materials are not timely received by the social equity contractor;

(c) The social equity applicant is not selected to continue with the licensing application process; or

(d) The social equity applicant(s) requests withdrawal of the social equity program application at any time in the application process. The social equity applicant(s) must request withdrawal in writing. The voluntary withdrawal of a social equity program application does not result in a hearing right.) means a licensee who is unable to open for business in the city or county where the cannabis retail license was originally located due to a ban or moratorium.

(a) Title certificate holders that meet the requirements of a social equity applicant under chapter 220, Laws of 2023, may reinstate their existing license under the social equity program, and locate anywhere in the county where the cannabis retail license was originally located. To reinstate a license under the social equity program, title certificate holders must first register through the board to then submit application materials to the social equity contractor for an eligibility determination, as defined in this chapter and RCW 69.50.335. Scoring by the social equity contractor is not required as part of eligibility determination.

(i) Prior to submitting application materials to the board to reinstate the license under the social equity program, the title certificate holders must have an established business entity structure that has been approved by the board.

(ii) Individuals registering and submitting application materials for an eligibility determination, who are contributing to the required 51 percent ownership, may not be removed after the title certificate holder registers and submits application materials to the social equity contractor during the 30-day registration window.

(iii) An application to reinstate a license and application for a social equity license must be submitted to the board.

(iv) Neither a new location for the retail license in the county or financing are required at the time of the application to reinstate an existing cannabis license.

(v) Nothing shall prevent a title certificate holder from applying for a social equity license under chapter 220, Laws of 2023, in addition to reinstating a license under the social equity in cannabis program. Only social equity registrants receiving a score by the social equity contractor are eligible to be prioritized for a new license under this section.

(10) **Social equity plan reimbursement.** All cannabis licensees with an active license may submit a social equity plan, as defined in RCW 69.50.101, to the board for a one-time reimbursement that equals the cost of the licensee's annual cannabis license renewal fee, one per entity. The board will reimburse the licensee no later than 30 calendar days after the social equity plan has been received and verified.

(a) Reimbursements may only be provided to licenses that are currently operational, and not in the process of assumption, acquisition, or discontinuation of business activities.

(b) Social equity applicants or those who hold a social equity license are not required to pay a license renewal fee.