

WSR 24-24-013
EMERGENCY RULES
OLYMPIC COLLEGE

[Filed November 21, 2024, 9:09 p.m., effective December 2, 2024]

Effective Date of Rule: December 2, 2024.

Purpose: To maintain Olympic College's (college) student conduct code (code) in compliance with a new final rule governing sex discrimination grievance procedure 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, by extending the prior emergency rule effective as of August 1, 2024, while the college engages in the regular rule-making process.

Citation of Rules Affected by this Order: Amending WAC 132C-120-022, 132C-120-065, 132C-120-100, 132C-120-101, 132C-120-120, 132C-120-200, 132C-120-300, 132C-120-305, 132C-120-310, 132C-120-315, 132C-120-320, 132C-120-325, 132C-120-330, 132C-120-335, 132C-120-340, 132C-120-350, 132C-120-355, and 132C-120-360.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

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

In addition to complying with the new final rule, the college is updating its student conduct code to align with the new definitions and procedures. These new definitions of prohibited behavior and updated procedures are necessary to address conduct that may pose a threat to the general welfare of the college community and/or college operations and to protect the constitutional and procedural rights of individual students.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 18, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.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: November 19, 2024.

Renee Lafreniere
Chief of Staff, President's Office

OTS-5708.1

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

WAC 132C-120-022 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 conduct, and harassment, including (~~sexual harassment~~) sex 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 15-03-078, filed 1/16/15, effective 2/16/15)

WAC 132C-120-065 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, or 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) **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 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.

(2) **Other 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, abuse, threats, intimidation, harassment and stalking.** 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, persistent, or pervasive physical or verbal abuse and 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

er'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 firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or his delegee may authorize possession of a weapon on campus upon a showing 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 therein.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

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

(a) **Alcohol.** The use, possession, delivery, or sale 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 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, or sale of any legend drug (any drug that requires a prescription including both controlled substances and nonnarcotic drugs), 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.** Use of tobacco, electronic cigarettes, and related products is prohibited in all buildings owned or controlled by the college, in all college vehicles, and on all college property, except in designated areas. All smoking materials are to be lit, smoked and extinguished in designated areas only. "Related products" include, but are 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/family status; marital status; age (40+); 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, but is not limited to, sexual harassment, sexual intimidation, and sexual violence. Use of alcohol or other drugs will not function as a defense to a violation of college policies regarding sexual misconduct. Cases involving allegations of sexual misconduct are subject to special discipline procedures; see WAC 132C-120-300 through 132C-120-315.~~

~~(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 person to participate in or benefit from the college's educational programs/activities 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.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, or gender or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.) **Sex discrimination,** as defined in WAC 132C-120-325.~~

(14) **Harassment.** Unwelcome and offensive conduct, other than sex discrimination, 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 (40+); 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 communications.

(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, in-

vestigating, 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. Retaliation is considered a separate offense, regardless of the outcome of the original complaint.

(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 violations include 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 disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

WAC 132C-120-100 Statement of jurisdiction. The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college ((sponsored))

programs or activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. 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, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, campus housing, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a 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. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

WAC 132C-120-101 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 of the student services area or designee. The student conduct officer, or a designee, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

WAC 132C-120-120 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; and
- (c) One 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 administrator 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~~) 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 relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(3) Hearings may be heard by a quorum of three members of the committee so long as 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 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).

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

WAC 132C-120-200 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~~) 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 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 (~~warns the student that his or her~~) 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 (~~the respondent enters~~) 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 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 ~~((student))~~ 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 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.

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

WAC 132C-120-300 ~~((Supplemental sexual misconduct procedures.))~~

Reserved. ~~((Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.~~

~~The college reserves the right to take whatever protective measures it deems necessary in response to an allegation of sexual misconduct in order to protect the rights and personal safety of our campus community members. Such measures include, but are not limited to, reasonable changes to academic/housing arrangements, no-contact orders, counseling, interim suspension from campus pending a proceeding, and reporting the matter to local police. The college will consider the concerns and rights of both the recipient of and the person accused of the sexual misconduct. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the college reserves the right to impose different sanctions, from warning to dismissal, depending on the severity of the offense.~~

~~Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132C-120-010 through 132C-120-200. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.)~~

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

WAC 132C-120-305 ((Supplemental definitions.)) Reserved. ((The following supplemental definitions shall apply for purposes of student conduct proceedings involving allegations of sexual misconduct by a student:

- (1) "Complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.
- (2) "Sexual misconduct" is prohibited sexual or gender-based conduct by a student including, but not limited to:
 - (a) Sexual activity for which clear and voluntary consent has not been given in advance;
 - (b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;
 - (c) Sexual harassment;
 - (d) Sexual violence, which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual or gender-based stalking;
 - (e) Nonphysical conduct such as sexual or gender-based digital media stalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.)

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

WAC 132C-120-310 ((Supplemental complaint process.)) Reserved. ((The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

- (1) The college's Title IX compliance officer or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the vice president for the student services area for disciplinary action.
- (2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.
- (3) In no event shall mediation be used to resolve complaints involving allegations of sexual violence.
- (4) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.
- (5) The student conduct officer, prior to initiating disciplinary action, 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.

~~(6) 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 his or her 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 prompt notice of the protective disciplinary sanctions and/or conditions.)~~

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

WAC 132C-120-315 ((Supplemental appeal rights.)) Reserved.

~~((1) The following actions by the student conduct officer may be appealed by the complainant:~~

~~(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.~~

~~(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132C-120-310(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.~~

~~(3) 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.~~

~~(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.~~

~~(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:~~

~~(a) Exoneration and dismissal of the proceedings;~~

~~(b) A disciplinary warning;~~

~~(c) A written reprimand;~~

~~(d) Disciplinary probation;~~

~~(e) Suspensions of ten instructional days or less; and/or~~

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

~~(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.~~

~~(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his~~

or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective non-attorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) 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 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 his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, 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.)

OTS-5701.1

SUPPLEMENTAL ((TITLE IX)) SEX DISCRIMINATION STUDENT CONDUCT CODE AND PROCEDURES

AMENDATORY SECTION (Amending WSR 21-07-094, filed 3/19/21, effective 4/19/21)

WAC 132C-120-320 Sex discrimination—Supplemental student conduct code and procedures—Order of precedence. ((These)) This supplemental ((procedures apply)) student conduct code and procedures ap-

plies to allegations of ((sexual harassment)) sex discrimination arising on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with ((Olympic)) the college's standard ((disciplinary)) student conduct code and procedures, WAC 132C-120-010 through 132C-120-315, these supplemental student conduct code and procedures shall take precedence.

AMENDATORY SECTION (Amending WSR 21-07-094, filed 3/19/21, effective 4/19/21)

WAC 132C-120-325 Sex discrimination—Prohibited conduct ((under Title IX)) and definitions. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student or student group who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "((sexual harassment)) sex discrimination."

For purposes of these supplemental procedures, ("sexual harassment" encompasses) the following ((conduct)) definitions apply:

(1) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee;

(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.

(2) "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.

(3) "Program" or "programs and activities" means all operations of the college.

(4) "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.

(5) "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.

(6) "Respondent" is a student who is alleged to have violated the student conduct code.

(7) "Sex discrimination." The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them different from a similarly situated individual on the basis of: Sex ster-

eotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

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

(i) Quid pro quo harassment. A ((college)) 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 of the college on an individual's participation in unwelcome sexual conduct.

((2)) (ii) Hostile environment. Unwelcome sex-based conduct that ((a reasonable person would find to be so severe, pervasive)), based on the totality of the circumstances is subjectively and objectively offensive and is so severe or pervasive that it ((effectively)) limits or denies a ((person equal access to the college's educational programs or activities, or employment)) 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.

((3)) (iii) Sexual ((assault. Sexual assault includes the following conduct:)) violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

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

((b)) (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)) (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 ((eighteen)) 18.

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

~~((4))~~ (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.

~~((5))~~ (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))~~ (I) The length of the relationship;

~~((ii))~~ (II) The type of relationship; and

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

~~((6))~~ (G) Stalking ~~((-))~~ means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for ~~((their))~~ 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 under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(8) "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.

(9) "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.

(10) "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.

(11) "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 21-07-094, filed 3/19/21, effective 4/19/21)

WAC 132C-120-330 ((Title IX)) Sex discrimination—Jurisdiction.

~~((1))~~ These supplemental procedures apply only if the alleged misconduct ~~((~~

~~(a) Occurred in the United States;~~

~~(b) Occurred during a college educational program or activity;~~

and

~~(c))~~ meets the definition of ~~((sexual harassment))~~ "sex discrimination" as that term is defined in ~~((these supplemental procedures.~~

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

~~(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the re-~~

~~quirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132C-120-065.~~

~~(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.)~~ WAC 132C-120-325 and occurs:

(1) On college premises;

(2) At or in connection with college programs or activities; or

(3) 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.

AMENDATORY SECTION (Amending WSR 21-07-094, filed 3/19/21, effective 4/19/21)

WAC 132C-120-335 Sex discrimination—Dismissal and initiation of discipline. (1) ~~((Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.~~

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

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

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

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

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

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

~~(i) The advisors will be responsible for questioning all witnesses on the party's behalf;~~

~~(ii) An advisor may be an attorney; and~~

~~(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.~~

~~(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.)~~ Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.

(2) 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. The disciplinary process for allegations of sex discrimination, including sex-based

harassment, against a student shall be addressed through the student conduct code.

(3) 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.

(4) When a summary suspension is imposed pursuant to WAC 132C-120-200, 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.

(5) 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 finding and 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) 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) The 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. In cases involving allegations of sex-based harassment, the complainant must withdraw their complaint in writing;

(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) 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 service of the written recommendation.

(g) 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.

(h) 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 21-07-094, filed 3/19/21, effective 4/19/21)

WAC 132C-120-340 ~~Sex discrimination—Prehearing procedure.~~ (1)

~~((Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132C-120-122. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.~~

~~(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.~~

~~(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.)~~ 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 relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(2) 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.

(3) 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 WAC 132C-120-122(2), as well as 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 (4) (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.

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

(a) Notice. In addition to all information required to be provided in a prehearing notice pursuant to WAC 132C-120-122(2), the prehearing 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.

AMENDATORY SECTION (Amending WSR 21-07-094, filed 3/19/21, effective 4/19/21)

WAC 132C-120-350 Sex discrimination—Presentation of evidence.

~~((The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) 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.

(2) 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.

(3) 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:

(a) Spousal/domestic partner privilege;

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

(c) Clergy privileges;

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

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

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

(4) 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.

(5) 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.

AMENDATORY SECTION (Amending WSR 21-07-094, filed 3/19/21, effective 4/19/21)

WAC 132C-120-355 Sex discrimination—Initial order. (~~((1) In addition to complying with WAC 132C-120-122, the student conduct committee will be responsible for conferring and drafting an initial order that:~~

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

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

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

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

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

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

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

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

~~(2) The committee chair will serve the initial order on the parties simultaneously.)~~ In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-07-094, filed 3/19/21, effective 4/19/21)

WAC 132C-120-360 Sex discrimination—Appeals. ~~((1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132C-120-139.~~

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

~~(3) President's office shall serve the final decision on the parties simultaneously.)~~ (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 appropriate vice president's office (appeal authority) 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 appeal authority 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 appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority'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 appeal authority shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. This 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 appeal decision must be served simultaneously on all parties and the Title IX coordinator.

(7) The appeal authority shall not engage in an ex parte communication with any of the parties regarding an appeal.