

WSR 24-24-068

EMERGENCY RULES

EVERETT COMMUNITY COLLEGE

[Filed November 27, 2024, 3:40 p.m., effective November 27, 2024, 3:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To bring Everett Community College's (college) code of student 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.

The college's board of trustees adopted an emergency rule on July 30, 2024, to amend WAC 132E-122-010 et seq. to comply with changes to federal regulations with respect to sex-based discrimination, commonly referred to as Title IX, that took effect on August 1, 2024. In anticipation of those changes, the college initiated a permanent rule making to amend the code language to align with the emergency provision and explore other changes. The CR-101 preproposal statement of inquiry for the permanent rule making was filed as WSR 24-13-072 on June 14, 2024. This second emergency rule continues the emergency rule originally filed on July 31, 2024, as WSR 24-16-081, without change.

Citation of Rules Affected by this Order: Repealing WAC 132E-122-170, 132E-122-180, 132E-122-190, 132E-122-250, 132E-122-260, 132E-122-370, 132E-122-380, 132E-122-410, 132E-122-420, 132E-122-430, 132E-122-440, 132E-122-450, 132E-122-460, 132E-122-470, 132E-122-480 and 132E-122-490; and amending WAC 132E-122-010, 132E-122-020, 132E-122-040, 132E-122-050, 132E-122-060, 132E-122-070, 132E-122-160, 132E-122-200, 132E-122-210, 132E-122-230, 132E-122-240, 132E-122-270, 132E-122-280, 132E-122-290, 132E-122-300, 132E-122-310, 132E-122-320, 132E-122-330, 132E-122-340, 132E-122-350, 132E-122-360, and 132E-122-400.

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 college has been engaging with the appropriate shared governance processes to adopt changes to its student code of conduct. The deadline for implementing this new rule was August 1, 2024. As such, changes are necessary for implementation before finalization of the code, as outlined in the preproposal statement of inquiry.

In addition to complying with the new final rule, the college is updating its code to address the use of gendered language as petitioned by a resident. Further changes were made to reflect title and position changes, as well as further clarify processes to promote accountability and efficiency. 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 14; 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 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 16, Repealed 2.

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.

Joshua R. Ernst
Vice President
Human Resources and Compliance

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-010 Authority. (1) The Everett Community College (referred to as the "College" or "EvCC") board of trustees, acting pursuant to RCW 28B.50.140(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 instruction and student services)~~) chief student affairs officer or their designee(s). (~~(The)~~) Except in cases involving protected class discrimination, the student conduct officer, or delegate, shall serve as the principal investigator and/or administrator for alleged violations of this code.

(2) The Director of Equal Opportunity and Title IX Programs, also known as the Title IX coordinator, shall serve as the principal investigator and/or administrator for alleged violations of this code as (~~(it pertains to sexual misconduct and)~~) they pertain to protected class discrimination, including sex-based harassment. The (~~(Title IX coordinator)~~) Director of Equal Opportunity & Title IX Coordinator:

(a) Will accept all complaints of (~~(sexual misconduct and)~~) protected class discrimination.

(b) May conduct investigations or assign investigators.

(c) May impose interim remedial measures to protect parties during (~~(investigation proceedings)~~) grievance procedures.

(d) (~~(Will)~~) May make, or designate a qualified decisionmaker to make, findings of fact on completed (~~(sexual misconduct or)~~) protected class discrimination investigations.

(e) Will identify and address any patterns of systemic problems revealed by reports and/or complaints of (~~(sexual misconduct or)~~) protected class discrimination.

~~((3) The college shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate.))~~

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-020 Statement of jurisdiction. (1) The student conduct code shall apply to ~~((student conduct))~~ conduct of students and student organizations that occurs:

(a) On college owned and/or operated premises;
 (b) At or in connection with college sponsored activities; or
 (c) Off-campus or in a noncollege electronic environment when such conduct is deemed to threaten the safety or security or otherwise adversely impacts the college community.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official ~~((Everett Community College (college)))~~ college activities including, but not limited to, residence halls, ~~((foreign))~~ international or domestic travel, activities funded by the associated students, student government, student clubs or organizations, athletic events, ~~((training))~~ trainings, internships, cooperative and distance education, online education, practicum, supervised work experiences, or any other college-sanctioned instructional, social, or club activities.

(3) Students are responsible for their conduct from ~~((notification of acceptance))~~ the time they gain admission to at 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) Student organizations affiliated with the college may also be sanctioned under this code for the conduct of their student members.~~

~~((5))~~ (4) These standards shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending. ~~((The conduct officer or, in matters involving sexual misconduct, the Title IX coordinator has sole discretion, on a case-by-case basis, to determine whether the conduct code will be applied to conduct that occurs off campus.~~

~~((6) Nothing in this subsection shall be construed as being intended to protect any person or class of persons from injury or harm.~~

~~((7) Under this conduct code, the college shall not be required to stay disciplinary action pending any criminal or civil proceeding arising from the same conduct. The disposition of any such criminal or civil proceeding shall not control the outcome of any student disciplinary proceeding.~~

~~((8) Nothing in this conduct code will be construed to deny students their legally and/or constitutionally protected rights.))~~

(5) 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.

(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 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-040 Civility statement. (1) Background.

(a) As members of the EvCC community, we acknowledge our collective intention to create and maintain an environment in which everyone can flourish. This statement on civility and community serves as a reflection (~~(of)~~) of the shared values that inform our daily interactions as a college. It provides a structure for responding to others with respect and without judgment and at the same time gives us all a context for teaching and learning. Students, faculty, administrators, and staff members may differ widely in their specific interests, in the degrees and kinds of experiences they bring to EvCC, and in the functions which they have agreed to perform. The statement is relevant to all EvCC community members, regardless of their professional functions or the setting in which they work, teach, or learn.

(b) The statement on civility and community is not a set of rules that prescribe how we should act in all situations. Conflict and differences of opinion exist within all communities, and values find expression in individual ways. The statement provides community members with a tool to address these differences with respect while informing and enhancing dialogue.

(c) This statement on civility and community is not intended to limit freedom of speech, intellectual or academic freedom.

(d) We honor the right of expression as a hallmark of learning, and we treasure intellectual freedom even when individual or group points of view are controversial or out of favor with prevailing perspectives. Individuals should not feel intimidated, nor be subject to reprisal for, voicing their concerns or for participating in governance or policy making.

(2) Values.

(a)(i) Respect, civility, integrity, honesty.

(ii) Respect, civility, integrity and honesty are not just words; they are intentions that must be present in our interactions with one another. Each member of the EvCC community must feel free and safe to exercise the rights accorded them to voice their opinions in a civil way, as well as to respectfully challenge the uncivil acts of others.

(b)(i) Accountability.

(ii) We value our accountability to one another within our civic, communal and environmental context. Each member of the community shall respect the fundamental rights of others, the rights and obligations of Everett Community College as an institution established by the state of Washington, and individual rights to fair and equitable procedures when the institution acts to protect the safety of its members.

(c) Inclusion. We value diversity in all its forms by engaging in inclusive assessment of, and action in, our workforce selection, in our policies and practices, in our curricular offerings, and in the scope of our services and programs. We actively seek and serve a diverse population of students. As a community, we are made richer by

the variety of experiences and influences that individuals and groups contribute to our institution.

(3) **Collaboration.** We value the struggle to find and create meaningful human connection in our communication by embracing collaboration, respectful disagreement, free and open exchange of diverse ideas, perspectives, opinions and attitudes, and the resolving of differences through due process and a shared commitment to collaboration.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-050 Nondiscrimination statement. (1) Discrimination based on (~~identity~~) protected class in Everett Community College programs, activities, admissions, or hiring is strictly prohibited.

(2) Everett Community College does not discriminate based on, but not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information in its programs, activities, or employment.

(3) Any student, employee, applicant, or visitor who believes that they have been the subject of protected class discrimination should report the incident(s) to the (~~Title IX coordinator~~) director of equal opportunity and Title IX programs, also known as the Title IX coordinator, identified below. If the complaint is against the Title IX coordinator, the incident(s) should be reported to the (~~vice president of administrative services~~) vice president of human resources and compliance.

(~~Title IX coordinator~~) Director of equal opportunity and Title IX programs

425-388-9271
TitleIXcoordinator@everettcc.edu
Olympus Hall Room ((207)) 111
2000 Tower Street
Everett, WA 98201

(~~Vice President of Administrative Services~~) Vice president of human resources and compliance

425-388-9232
(~~vpadmin@everettcc.edu~~)
Olympus Hall Room 116
2000 Tower Street
Everett, WA 98201

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-060 Definitions. For the purposes of this conduct code, the following definitions apply.

~~((1) "Advisor" is a person selected by a complainant or a respondent to provide support and guidance in hearings under this conduct code.~~

~~(2) "Allegation of misconduct" is any report of an alleged violation of this conduct code, which may include, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal report or written statement from a complainant or a third party.~~

~~(3) "Attorney" is a person permitted to practice law in the state of Washington.~~

~~(4) "Business day" means a weekday, including during the summer, and excludes weekends and college holidays, and/or college closures.~~

~~(5) "College community" includes all college students and employees. It also includes guests of and visitors to the college during the time they are present on college premises.~~

~~(6) "College official" is an employee of the college performing their assigned administrative, professional, or paraprofessional duties.~~

~~(7) "College premises" includes all campuses and electronic presences of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, websites, and other property owned, used, or controlled by the college.~~

~~(8) "Complaint" is a description of facts that allege violation of the conduct code.~~

~~(9) "Complainant" is any person who is the alleged victim of prohibited conduct, whether or not such person has made an actual complaint.~~

~~(10) "Conduct officer" or "student conduct officer" is the college official designated by the college to be responsible for initiating disciplinary action for alleged violations of this code.~~

~~(11) "Disciplinary action" means the decision of the designated college official regarding alleged violations of the student code of conduct and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include summary suspension.~~

~~(12) "FERPA" refers to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).~~

~~(13) "Filing and services."~~

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

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

~~(c) "Electronic filing and services." Unless otherwise provided, filing or services may be accomplished by electronic mail.~~

~~(14) "**Hostile environment**" may occur when another's unwelcome conduct of a sexual nature is sufficiently serious such that it substantially limits or denies one's ability to participate in or benefit from educational programs, activities, or employment.~~

~~(15) "**Investigation**" is the process through which the college collects information and otherwise reviews the complaint. As it pertains to reports of sexual misconduct under Title IX, this process includes equal opportunity for all complainants, respondents, and witnesses to participate in the Title IX proceedings, including the opportunity to provide information and/or evidence on their own behalf.~~

~~(16) "**Party**" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct.~~

~~(17) "**Policy violation**" means the violation of any applicable law or college policy governing the conduct of students as members of the college community.~~

~~(18) "**Preponderance of evidence**" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.~~

~~(19) "**Proceedings**" means all processes related to the investigation and adjudication of a disciplinary matter under this conduct code including, but not limited to, investigations, informal and formal hearings, administrative review, and requests for reconsideration of a final order.~~

~~(20) "**Resolution**" is the means by which the complaint is finally addressed. This may be accomplished by using methods which may include counseling, supporting, disciplinary action, or otherwise facilitating the resolution of the complaint. No Title IX complainant will be required to have face-to-face interaction with the respondent in any resolution proceedings.~~

~~(21) "**Respondent**" is any student accused of misconduct under this conduct code.~~

~~(22) "**Service.**" See "**Filing and service.**"~~

~~(23) "**Student**" is 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. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.~~

~~(24) "**Student organization**" is a group of students that has complied with the requirements for college recognition or who otherwise are granted any rights or privileges by the college as a college affiliate. Student organizations include, but are not limited to, athletic teams or clubs, registered student organizations, and college service clubs.~~

~~(25) "**Title IX coordinator**" is the college official designated by the college to be responsible for initiating disciplinary action for allegations of sexual misconduct and discrimination.))~~

(1) "**Advisor**" is a person selected by a complainant or a respondent to provide support and guidance in meetings, interviews, or hearings under this conduct code.

(2) "**Allegation of misconduct**" is any report of an alleged violation of this conduct code, which may include, but is not limited to, a

police report, an incident report, a witness statement, other documentation, or a verbal report or written statement from a complainant or a third party.

(3) "Attorney" is a person permitted to practice law in the state of Washington.

(4) "Day(s)" means business day(s) when the college is under regular operations, excluding weekends, holidays, and campus closures.

(5) "College community" includes all college students and employees. It also includes guests of and visitors to the college during the time they are present on college premises.

(6) "College official" is an employee of the college performing their assigned administrative, professional, or paraprofessional 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) "Complaint" is a description of facts that allege violation(s) of the conduct code.

(9) "Complainant" is any person who is the alleged victim of prohibited conduct, whether or not such person has made an actual complaint. This includes students, employees, or other members of the college community who were participating or attempting to participate in college programs and activities at the time of the alleged violation, and who are directly affected by a claimed violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may file complaints alleging a violation of the student conduct code. In any case involving a report of protected class discrimination, a complainant is afforded certain rights as specified in this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a determination of responsibility or dismissal of their complaint

(c) The right to be accompanied by an advisor, who may be an attorney retained at the complainant's cost.

(10) "Conduct Review Officer" is a college administrator designated by the President and is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(11) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include summary suspension. A written or verbal warning is not disciplinary action.

(12) "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.

(13) "FERPA" refers to the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).

(14) "Grievance Committee" is a group of college employees appointed by the president and current students appointed by the student

government who shall be trained to hear and serve as decisionmakers in the proceedings listed below. The members of specific committees shall be drawn from this larger Grievance Committee. Members of the Grievance Committee may be called to serve on any committee discussed in this code and may sit on hearing panels for the following issues:

- (a) Student affairs grievance
- (b) academic grievance
- (c) student conduct
- (d) protected class nondiscrimination

(15) "**Investigation**" is the process through which the college collects information and otherwise reviews the complaint. As it pertains to reports of sexual misconduct under Title IX, this process includes equal opportunity for all complainants, respondents, and witnesses to participate in the Title IX proceedings, including the opportunity to provide information and/or evidence on their own behalf.

(16) "**Party**" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of protected class discrimination.

(17) "**Policy violation**" means the violation of any applicable law or college policy governing the conduct of students as members of the college community.

(18) "**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.

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

(20) "**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.

(21) "**Proceedings**" means all processes related to the investigation and adjudication of a disciplinary matter under this conduct code including, but not limited to, investigations, informal and formal hearings, administrative review, and requests for reconsideration of a final order.

(22) "**Program**" or "**Programs and Activities**" means all operations of the College.

(23) "**Relevant**" means related to the allegations of discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged discrimination occurred.

(24) "**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.

(25) "**Resolution**" is the means by which the complaint is finally addressed. This may be accomplished by using methods which may include counseling, supporting, disciplinary action, or otherwise facilitating the resolution of the complaint. No Title IX complainant will be re-

quired to have face-to face interactions with the respondent in any resolution proceedings.

(26) "**Respondent**" is any student who is alleged to have violated the student conduct code. Respondents in cases involving protected class discrimination are afforded certain rights including, but not limited to:

(a) The right to be presumed not responsible for the reported misconduct unless or until a determination of responsibility is reached after completion of the disciplinary process; and

(b) The right to be accompanied by an advisor, who may be an attorney retained at respondent's cost.

(27) "**Service**" means the process by which a document is officially delivered to a Party by electronic transmission to a student or employee college issued email account. If a Party does not have a college issued email account, the College will use the last known personal email account or physical mailing address on record with or provided to the College. Service is deemed complete upon the date that the document is emailed.

(28) "**Spokesperson**" is a person who would, on the behalf of a student approved for this accommodation, address or assist in addressing college officials.

(29) "**Student**" is any person 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. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, as well as current and former students who engage in prohibited conduct between terms of actual enrollment or before awarding of a degree or certificate of completion. 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.

(30) "**Student Conduct Officer**" is a college administrator designated by the president to be responsible for implementing and enforcing this code.

(31) "**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.

(32) "**Student group or organization**" is a group of students that has complied with the requirements for college recognition or who otherwise are granted any rights or privileges by the college as a college affiliate. Student organizations include, but are not limited to, athletic teams, student clubs, and registered student organizations.

(33) "**Supportive measures**" means reasonably available, individualized and appropriate, non-punitive and non-disciplinary 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 grievance and disciplinary procedures, or during any informal resolution process.

(b) For complaints of sex-based harassment specifically, 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 extracurricular 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.

(34) "Title IX Coordinator" means the director of equal opportunity and Title IX programs who is responsible for processing Title IX and protected class complaints and who oversees the resolution processes under the protected class nondiscrimination grievance procedure.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-070 Statement of student rights. (1) As members of the Everett Community College 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 rights are guaranteed to each student within the limitations of statutory law and college policies 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 discrimination, inappropriate and disrespectful conduct, and any and all harassment including (~~sexual~~) sex-based harassment.

(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 conduct code is entitled, upon request, to procedural due process as set forth in the proceedings as outlined in this student code of conduct.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-160 Prohibited student conduct. (~~(Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this sections means "without limitation.")~~) 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, battery, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health and safety of another person or another person's property.)~~) 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 later in 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.

~~((2))~~ (3) **Abuse of the student conduct process.** Abuse of the student conduct process includes:

(a) Knowingly making false allegations of misconduct under this conduct code;

(b) Attempting to coerce a person not to make a report or to participate in proceedings under this conduct code;

(c) Attempting to influence the impartiality or participation of a campus official or party of a campus disciplinary proceeding; or

(d) Influencing or attempting to influence another person to commit an abuse of the student conduct process.

~~((3))~~ **Academic dishonesty.** Any act of academic dishonesty including (~~but not limited to:~~)

(a) **Cheating** (~~(including, but not limited to, intentional use or attempted use of unauthorized material, information, or study aids, misrepresentation of invention or any information such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.)~~) - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) **Plagiarism** (~~(including, but not limited to, presenting or submitting another person's, entities', and/or sources' ideas, words, or other works in an instructional course without assigning proper credit.)~~) - 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) **Unauthorized collaboration** including, but not limited to, intentionally sharing or working together in an academic exercise when such actions are not approved by the course instructor.~~

~~(d) **Academic dishonesty** including, but not limited to, presenting or submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).)~~

(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) **Aiding, solicitation, and attempt.** The following conduct is prohibited:~~

~~(a) Aiding or abetting another student or student organization in the commission of any misconduct prohibited by this conduct code;~~

~~(b) Requesting, hiring, or encouraging another person to commit any act of misconduct prohibited by this conduct code, either intending that the other person commit the misconduct or with the knowledge that the other person intends to commit the misconduct; or~~

~~(c) Attempting to commit any act of misconduct prohibited by this conduct code.)~~

(5) **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, other drug, and tobacco violations.** The unlawful possession, use, distribution, or manufacture of alcohol is prohibited. The conduct officer may elect not to initiate disciplinary action under this subsection against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of alcohol. Generally, no disciplinary action under this subsection will be initiated against a complainant or another reporting student, who admits to the possession or use of alcohol (in violation of this subsection) in connection with an incident of sexual misconduct.~~

~~(6) **Alcohol, other drugs, and tobacco violations.**~~

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

~~(b) **Marijuana.** A marijuana violation includes using, possessing, delivering, selling, or being under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human con-~~

sumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits any possession or use of marijuana on college premises or in connection with college activities.

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

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

(6) **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.

(7) **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 RCW 69.41, or any other controlled substance under RCW 69.50, 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 twenty-five 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) **Computer abuses.** Computer abuses include, but are not limited to:~~

~~(a) Unauthorized use of college computer resources;~~

~~(b) Use of another person's college user name and/or password;~~

~~(c) Use of college computing facilities and resources to interfere with the work of another student, an instructor, or other college official;~~

~~(d) Use of college computing facilities or resources to send intimidating, harassing, or threatening messages;~~

~~(e) Use of a computer or software to interfere with normal operations of the college's computing systems;~~

~~(f) Use of the college's computing facilities or resources in violation of any law, including copyright laws; and
(g) Any violation of the college's computer use policies.)~~

(8) **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, non-consensual recording of sexual activity, and non-consensual distribution of a recording of sexual activity.

~~((8) **Creating a public nuisance in neighboring communities.** In furtherance of the college's interest in maintaining positive relationships with its surrounding communities, the college shall have the authority to hold students accountable under this conduct code for misconduct within any residential or commercial communities adjacent to a college campus as follows:~~

~~(a) A student or a student organization may be subject to disciplinary proceedings if the college is made aware that the student or student organization has been contacted by a law enforcement agency regarding, and is determined to have engaged in, conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses including, but not limited to: Creating a public nuisance due to noise, residential disturbance, intentional destruction of property, urinating in public, or criminal trespass.~~

~~(b) A first minor violation under (a) of this subsection will not subject the student or student organization to disciplinary sanctions under this conduct code; however, the student or student organization may receive a letter regarding the expectations of college community members as residents in the area. This letter shall constitute a warning that repeated misconduct under this subsection may result in the imposition of disciplinary sanctions.~~

~~(c) A second violation of this subsection will result in the initiation of disciplinary proceedings under this conduct code.)~~

(9) **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) **Discrimination.** Discrimination is unfavorable treatment of a person based on that person's identity as described in the nondiscrimination policy (WAC 132E-122-050). **Sex discrimination** is conduct which harms or adversely affects any member of the college community because of their sex, actual or perceived sexual orientation, gender identity or expression, parental, family or marital status, or pregnancy.)~~

(10) **Discriminatory harassment.** ((Discriminatory harassment is language or conduct directed at a person because of the person's identity 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 the person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.)

(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) 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.

~~((11) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the college. The term includes disorderly conduct, breach of the peace, violation of local or college noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of college investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.~~

~~(12) **Domestic violence.** Domestic violence includes:~~

~~(a) The infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a family or household member. Family or household members include:~~

~~(i) A current or former spouse or intimate partner;~~

~~(ii) A person with whom the person shares a child in common;~~

~~(iii) A person with whom one is cohabitating or has cohabitated;~~

~~or~~

~~(iv) A person with whom one resides including a roommate, suite-mate, or housemate.~~

~~(b) Sexual assault of one family or household member by another family or household member; or~~

~~(c) Stalking, as defined under sexual misconduct below, of one family or household member by another family or household member.)~~

~~((13) **Ethics**)) (11) **Ethical violations.** ((An ethics violation includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or college policy relating to the ethical use of college resources.)) 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.~~

~~((14))~~ (12) Failure to comply with directive. Failure to comply (means refusing to obey the lawful directive of a college official or authorized college body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.) 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.

~~((15) False or deceptive conduct.~~ The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of college records, furnishing false or misleading information to the college, falsely claiming an academic credential, or falsely accusing any person of misconduct.

~~(16) Gender-based harassment.~~ Gender-based harassment is a form of sex-based harassment and refers to unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature.

~~(17) Harassment.~~

~~(a) Harassment means unwelcome and offensive conduct including verbal, nonverbal, or physical conduct that is directed at a person because of their membership of a protected identity under this student code of conduct. Unwelcome and offensive conduct is considered harassment when:~~

~~(i) It is sufficiently serious as to deny or limit the ability of a student to participate in or benefit from the college's educational program; or~~

~~(ii) That creates an intimidating, hostile, or offensive environment for any campus community members.~~

~~(b) Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of harassment include, but are not limited to, the following:~~

~~(i) Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership of a protected identity.~~

~~(ii) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership of a protected identity.~~

~~(iii) Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to the person's membership of a protected identity.~~

~~(c) Protected identities under this student code of conduct (as cited in the nondiscrimination policy, WAC 132E-122-050) include, but are not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information.)~~

(13) 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 perform-

ance, 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.

~~((18))~~ (14) 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) Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person. Hazing activities may include, but are not limited to, encouraging or promoting the abuse of alcohol; striking another person whether by use of any object or any part of one's body; causing someone to experience excessive fatigue or physical and/or psychological shock; and causing someone to engage in degrading or humiliating games or activities that create a risk of serious mental, emotional, and/or physical harm.~~

~~(b) Consent of a victim or victims is not a defense to an allegation of hazing.~~

~~(c) Hazing does not include generally accepted practice, training, and conditioning activities, or activities reasonably designed to test a participant's ability to meet eligibility requirements for established athletic events such as intramural or club sports, intercollegiate athletics, or other similar contests or competitions.)~~

(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.

(15) 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.

(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.

~~((19) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.))~~

~~((20))~~ (17) **Property ((violations)) violation.** ((The term "property violation" includes the theft, misappropriation, unauthorized use or possession, 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.)) Damage to, theft from, misappropriation of, unauthorized use or possession of, vandalism, or other non-accidental damaging or destruction of college property, including vending machines, 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.

~~((21))~~ (18) **Retaliation.** ((The term "retaliation" means harming, threatening, intimidating, coercing or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.)) 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, investigat-

ing, or addressing allegations or violations of federal, state or local law, or college policies.

~~((22))~~ (19) Safety violations. ~~((The term "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.))~~ Non-accidental, 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.

~~((23) Sexual misconduct. Sexual misconduct includes committing, or aiding, soliciting, or attempting the commission of, the following prohibited conduct: Sexual harassment, sexual intimidation, sexual violence and quid pro quo.~~

~~(24) Sexual harassment. Sexual harassment includes, but is not limited to, 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, based on sex:~~

~~(a) The ability of a student to participate in or benefit from the college's educational program; or~~

~~(b) That creates an intimidating, hostile, or offensive environment for any campus community member(s).~~

~~Examples of behaviors that may rise to the level of sexual harassment include, but are not limited to:~~

~~(i) Physical assault.~~

~~(ii) A pattern of behaviors that is unwelcome and severe, persistent, or pervasive, resulting in unreasonable interference with the work or educational environment, and may include, but is not limited to, the following:~~

~~(A) Comments of a sexual nature;~~

~~(B) Sexually explicit statements, questions, jokes, or anecdotes;~~

~~(C) Unnecessary or undesirable touching, patting, hugging, kissing, or brushing against an individual's body;~~

~~(D) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences;~~

~~(E) Persistent, unwanted attempts to change a professional relationship to an amorous relationship;~~

~~(F) Subtle propositions for sexual activity or direct propositions of a sexual nature;~~

~~(G) Uninvited letters, emails, telephone calls, or other correspondence referring to or depicting sexual activities.~~

~~(25) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or to suffer substantial emotional distress.~~

~~(26) Sexual violence. Sexual violence incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including dating violence, domestic violence, nonconsensual intercourse (rape), nonconsensual sexual contact (sexual assault), and~~

stalking. 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, unconsciousness, or other cause.

(a) "Consent" is 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.

(b) "Dating violence" means violence by a person who has been in a romantic or intimate relationship with that person. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(c) "Domestic violence" includes asserted violent misdemeanor and felony offenses committed by the person's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence laws, or anyone else protected under domestic or family violence law.

(d) "Nonconsensual sexual intercourse (rape)" 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.

(e) "Nonconsensual sexual contact (sexual assault)" is any intentional sexual contact, however slight, with any object, by a person upon another person that is without consent and/or by force. "Sexual contact" includes any touching of another person for the purposes of sexual gratification, or any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ, of another person.

(f) "Stalking" means intentional and repeated harassment, following of, or otherwise surveilling 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.

(i) The person being harassed or followed is placed in reasonable fear that the stalker intends to injure the person, another person, or property of the person or of another person.

(ii) "Reasonable fear" is a fear that a reasonable person in the same situation would experience under most circumstances.

(27) Quid pro quo. Quid pro quo occurs when an individual in a position of real or perceived authority conditions the recipient of a benefit upon granting sexual favors. Examples of conduct that may qualify include:

(a) Persistent comments or questions of a sexual nature.

- ~~(b) A supervisor who gives an employee a promotion or special privileges in exchange for sexual favors.~~
- ~~(c) Sexually explicit statements, questions, jokes, or anecdotes.~~
- ~~(d) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.~~
- ~~(e) Remarks of a sexual nature about an individual's clothing, body, or speculation about previous sexual experiences.~~
- ~~(f) Persistent, unwanted attempts to change a professional relationship to a romantic relationship.~~
- ~~(g) Direct or indirect propositions for sexual activity.~~
- ~~(h) Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.~~
- ~~(28) Sexual exploitation. Sexual exploitation includes:~~
 - ~~(a) Taking nonconsensual or abusive advantage of another for one's own sexual benefit, or for the sexual benefit of anyone other than the one being exploited;~~
 - ~~(b) Compelling another by threat or force to engage in sexual conduct or activity;~~
 - ~~(c) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings of a private and sexual nature where such transmission, publication, or distribution is without the consent of the subject(s) and is likely to cause emotional distress to the subject(s);~~
 - ~~(d) Taking or making photographs, films, or digital images of the private body parts of another person without that person's consent;~~
 - ~~(e) Causing or attempting to cause the impairment of another person to gain nonconsensual sexual advantage over that person;~~
 - ~~(f) Prostituting another person;~~
 - ~~(g) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity; or~~
 - ~~(h) Taking, making, or directly transmitting nonconsensual video or audio recordings of sexual activity.)~~

(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 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) **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) **Statutory Rape (Rape of a Child)** is non-forcible 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 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) **Sexual Exploitation.** An act or a failure to act that involves a member of the College community taking non-consensual, unjust, humiliating, or abusive sexual advantage of another, either for the individual's own advantage or to benefit anyone other than the person being exploited. Sexual advantage may include, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third Parties to observe private sexual acts; disclosing, causing to be disclosed or threatening to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed; engaging in voyeurism, and intentionally exposing another to a sexually transmitted infection.

((29) **Theft.** Theft is the taking of property or services without express permission of the owner. This includes, but is not limited to, taking, possessing, or aiding another to take university property or services, or property belonging to members of the university community.))

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

(31) **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.

~~(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.~~

~~(32) **Vandalism.** Vandalism includes maliciously damaging or misusing university property, or the property of any member of the university community.~~

~~(33) **Violation of disciplinary sanctions.** The violation of any term or condition of any final disciplinary order issued under this conduct code, or the failure to complete a disciplinary sanction in the specified time frame, may be grounds for additional disciplinary action.~~

(22) **Unauthorized disclosure.** Distributing or otherwise making public materials created or produced during the grievance procedures except as required by law or as expressly permitted by the College, or publicly disclosing a Party's identifiable information without consent. Unauthorized Disclosures may also be considered Retaliation.

~~((34)) (23) **Violation of ((law)) other laws or policies.** ((Any conduct that would constitute a violation of any federal, state, or local criminal law may be the subject of disciplinary proceedings under this conduct code.)) Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college housing, traffic, and parking rules.~~

~~((35)) **Weapons ((violations)).** ((A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on college premises of any firearm or other dangerous weapon in violation of public law or college policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160. Examples include, but are not limited to:~~

~~(a) Firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities are not permitted on campus premises, except for authorized campus purposes, or unless prior written approval has been obtained from the director of campus safety and security, or any other college official designated by the president.~~

~~(b) Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instrument used in the propulsion of shot, shell, bullets, or other harmful objects by:~~

~~(i) The action of gunpowder or other explosives;~~

~~(ii) The action of compressed air; or~~

~~(iii) The power of springs or other forms of propulsion.~~

~~(c) The exhibition or display of a replica or a dangerous weapon prohibited under this subsection is also prohibited if done in a manner, and at a time or place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.))~~

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.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-200 ((Disciplinary sanctions.)) Corrective action, disciplinary sanctions, terms and conditions. ((Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the student code of conduct hearing procedures.

(1) ~~Warning. A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.~~

(2) ~~Reprimand. Notice in writing that the student has violated one or more terms of the college's conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.~~

(3) ~~Probation. Formal action placing specific conditions and restrictions upon the student's continued attendance and/or enrollment, and/or participation in college programs or activities, depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student is subject to a deferred disciplinary sanction and 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 and/or enrollment at the college.~~

(4) ~~Suspension. Dismissal from the college and from the student status for a stated period of time. There may be no refund of tuition or fees for the quarter in which the action is taken.~~

(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 sanction is taken.~~

(6) ~~Other sanctions. The following additional sanctions for conduct code violations may be imposed as required or permitted by law or college policy.~~

~~(a) Athletic eligibility. A student athlete found in violation of WAC 132E-122-160, relating to drug violations, shall be ineligible to participate in college athletics pursuant to RCW 69.41.340.~~

~~(b) Parental notification. The college reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.)~~

~~(1) 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.~~

~~(f) The college shall have authority to revoke a degree or other certificate or completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate.~~

~~(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.

(h) **Residence hall suspension or termination.** Removal from a residence hall for a specified period or permanently. Conditions may be imposed before a student is permitted to return to a residence hall.

(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.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-210 ((Terms and conditions.)) Hazing sanctions.

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

~~(1) **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.~~

~~(2) **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 approved by the college. The student will sign all neces-~~

sary 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. A student may not return to campus if the evaluation indicates that the student is not capable of functioning within the college community, or if the evaluation lacks information for the college to make reasonable accommodations, or until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

~~(3) **No contact/trespass 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 for a stated period of time.)~~

(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 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.

(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 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-230 Standard of burden of proof. The applicable standard of proof in all disciplinary hearings (including those involving ~~((sexual misconduct))~~ protected class discrimination and appeals) is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for a violation of this conduct code, the conduct officer, Title IX coordinator, conduct review officer, student conduct committee, or ~~((vice president of instruction and student services))~~ must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of misconduct.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-240 Initiation of disciplinary action (~~(—Non-Title IX.)~~) (~~((1) Written notice. The conduct officer will initiate disciplinary action by serving the respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations, the specific conduct code provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violation(s), and specify the time and location of the meeting.~~

~~(2) Disciplinary meeting. At the disciplinary meeting, the conduct officer will review the allegations with the respondent and, consistent with "Brief Adjudicative Proceedings" under RCW 34.05.482, will afford the respondent an opportunity to respond and provide any other information or evidence. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.~~

~~(3) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or arguments presented by the respondent, the conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific code of conduct 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.~~

~~(4) Following written notice and a disciplinary or investigation meeting, the conduct officer will take any of the following actions:~~

~~(a) Dismiss the proceeding upon finding the allegation(s) to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review.~~

~~(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 132E-122-200. Such sanction(s) shall be subject to review on appeal as provided in this student code.~~

~~(c) Refer the matter for disciplinary action by the student conduct committee. Such referral shall be in writing, to the attention of the committee chair, with a copy served to the respondent. The decision to refer shall not be subject to appeal or further review.)~~

(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) Protected class discrimination, including sex-based harassment. The College's director of equal opportunity and Title IX programs or designee shall review, process, and, if applicable, investigate complaints or other reports of protected class discrimination, including sex-based harassment. Allegations of discrimination, including sex-based harassment, by a student shall be addressed through the protected class nondiscrimination policy and associated grievance procedures and 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 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 attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(10) Within ten 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 actions:

(a) Dismiss the case if

(i) Insufficient evidence exists to demonstrate responsibility for the alleged infraction;

(ii) The college is unable to identify a respondent after taking reasonable steps to do

so;

(iii) Respondent is not participating in the college's educational programs or activities;

(iv) The reporting party has voluntarily withdrawn any or all of the allegations in the complaint;

(b) Exonerate the respondent and terminate the proceedings.

(c) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132E-122-200; or

(d) 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-based harassment, the student conduct officer shall review the investigation report provided by the director of equal opportunity and Title IX programs, and within five business days refer the matter to the student conduct committee.

(a) Upon receipt of the student conduct committee's decision, the director of equal opportunity and Title IX programs 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 protected class nondiscrimination grievance procedure.

(b) If the respondent is found responsible for engaging in sex-based harassment, the director of equal opportunity and Title IX programs 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 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-270 ((Appeals—All cases.)) Appeal from Disciplinary Action. ((The following general rules apply to appeals of disciplinary action at any stage of the student disciplinary proceeding.

(1) ~~Parties.~~ The parties to an appeal shall be the respondent, and complainant in a proceeding involving sexual misconduct allegations, and the designated appeal authority.

(2) ~~Filing appeals.~~

(a) ~~Appeal periods.~~ The respondent may appeal a disciplinary action by filing a written notice of appeal with the designated college

official within ten business days of services of the conduct officer's decision.

~~(b) **Contents of appeal.** A party's written notice of appeal must clearly state the reason(s) for the appeal or request for review and provide any relevant information to support the appeal.~~

~~(c) **Issues that may be raised on an appeal.** The issues that may be raised on an appeal include: New information, contradictory information, and information indicating that the party was not afforded due process.~~

~~(d) **Failure to appeal.** The failure of a party to file a timely appeal at any stage of the proceeding waives that party's right to appeal.~~

~~(e) **Cases involving allegations of sexual misconduct.** The complainant and respondent have equal appeal rights in cases involving allegations of sexual misconduct, including filing an appeal, notice of appeal, participation in any appeal proceedings, and notification of appeal outcome.~~

~~(3) **Notification of appeal.** In proceedings involving allegations of sexual misconduct, if any party appeals, the designated appeal authority will notify the other party(ies) of such. Each party shall be afforded the opportunity to participate in the appeal proceedings.~~

~~(4) **Effect of appeal — Stay.** The implementation of disciplinary action imposing a suspension of any length or imposing expulsion shall be stayed pending the time for filing an appeal and the conclusion of disciplinary proceedings. Other disciplinary sanctions shall not be stayed.~~

~~(5)(a) **Appeal authorities.** Appeals of disciplinary action taken by the conduct officer shall be submitted to and heard by the student conduct committee (EMAIL, 2000 Tower Street, Everett, WA 98201).~~

~~(b) Appeals of disciplinary action taken by the student conduct committee shall be submitted to and heard by the vice president of instruction and student services (gmiulli@everettec.edu, 2000 Tower Street, Everett, WA 98201).~~

~~(6) **Ex parte communications.** Appeal authorities may not communicate with any of the parties regarding an appeal without first providing notice of the filed appeal and an equal opportunity for all parties to participate.~~

~~(7) **Disqualification.** Appeal authorities may not participate in a proceeding in which they:~~

~~(a) Are a respondent, complainant, or witness.~~

~~(b) Have a direct or personal interest, prejudice, or bias; or~~

~~(c) Have acted previously in another capacity.~~

~~(8) The student conduct committee shall conduct full adjudicative hearings arising from appeals from:~~

~~(a) The imposition of disciplinary suspension in excess of ten instructional days;~~

~~(b) Dismissals; and~~

~~(c) Discipline cases referred to the committee by the conduct officer, the conduct review officer, or vice president.~~

~~(9) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:~~

~~(a) Suspension of ten instructional days or less;~~

~~(b) Disciplinary probation;~~

~~(c) Written reprimand; and~~

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

~~(10) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.~~

~~(11) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the 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 disciplinary warning.)~~

(1) Except as specified for cases involving allegations of protected class discrimination, as set forth in WAC 132E-122-240(12), the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within fifteen business 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. Appeals may be based upon:

(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 student conduct officer had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(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 ten 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) protected class discrimination, and

(d) disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the chief student affairs office.

(9) Appeals of disciplinary action taken by the student conduct committee shall be submitted to and heard by the chief student affairs officer (studentconduct@everettcc.edu, 2000 Tower Street, Everett, WA 98201).

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-280 Participation of advisors and attorneys. (1)

Each party involved in (~~sexual misconduct proceedings~~) disciplinary meeting, interview, or hearing may appear alone or with another person of their choice to advise and assist them during any conduct proceeding, including meetings, interviews, and hearings.

(2) Any advisor who accompanies the complainant, respondent, or witness may provide support or guidance but may not speak, represent, or advocate on their behalf during (~~sexual misconduct proceedings with the exception of full adjudication proceedings (WAC 132E-122-290 through 132E-122-350)~~) proceedings unless otherwise indicated herein. An advisor has an exclusively non-speaking role, and may not otherwise present evidence, argue, or assert any right on behalf of the party they advise.

(3) An advisor may not delay, disrupt, or otherwise interfere with proceedings.

(4) (~~An accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's documented disability warrants such an accommodation.~~) If a Party needs language assistance or reasonable accommodations due to a qualifying disability in order to fully and meaningfully participate in these procedures, access requests must be made five days prior to any meeting, interview, or live hearing by contacting the Student Conduct Office at 425-388-9271 or studentconduct@everettcc.edu.

(5) (~~**Notice of attorney advisor.** Anyone who plans to have an attorney present during a conduct proceeding must notify the conduct officer (awilliams@everettcc.edu or 425-388-9282) Title IX coordinator (TitleIXcoordinator@everettcc.edu or 425-388-9271), or chair of the student conduct committee (email address or phone number) of this intent four business days in advance of the scheduled sexual misconduct proceeding.~~) An attorney advising a party must enter a notice of appearance with the college at least five days before the initial interview, meeting, or live hearing they plan to attend, so the college can secure its own legal representation, if necessary. This notification can be made to the student conduct officer (studentconduct@everettcc.edu or 425-388-9258), Title IX coordinator (TitleIXcoordinator@everettcc.edu or 425-388-9271), or chair of the student conduct committee, as applicable.

(6) When scheduling procedural meetings and/or interviews, the college will make reasonable efforts to accommodate an advisor. However, the availability of individuals directly involved in the proceedings, including the personnel assigned to the matter, as well as the expectation to promptly complete the proceedings may, in the (~~campus constituent~~) college's discretion, take priority when determining the date and time for the proceedings.

(7) Advisors should not disclose details of their interactions with their advisees to institutional officials or decisionmakers, unless there is an emergency or a health and safety concern.

(8) Everett Community College, which includes any official acting on behalf of the college, has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. Advisors who are disruptive, disrespectful, or refuse to follow college policy or procedures will be removed. The college has the right to take appropriate steps to ensure compliance with college policy and proce-

dures, including by placing limitations on the advisor's ability to participate in future meetings and proceedings.

(9) Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Everett Community College. Unauthorized disclosures may also be considered retaliation. The college may restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by privacy expectations.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-290 Brief adjudicative proceeding—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~~) conduct review officer 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.

(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 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~~) fifteen business 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 ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-300 Brief adjudicative proceedings—Review of initial decision.

(1) An initial decision is subject to review by the (~~(vice president of instruction and student services)~~) chief student affairs officer, provided a party files a written request for review

with the conduct review officer within ~~((ten))~~ fifteen business days of service of the initial decision.

(2) The ~~((vice president of instruction and student services))~~ chief student affairs officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the ~~((vice president of instruction and student services))~~ chief student affairs officer shall give ~~((each party))~~ 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 ~~((business))~~ 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 ~~((vice president of instruction and student services))~~ chief student affairs officer does not make a disposition of the matter within twenty business days after the request is submitted.

(5) If the ~~((vice president of instruction and student services))~~ chief student affairs officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten 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 vice president of instruction and student services, 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 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-310 ((Full adjudicative)) Live hearing process— Student conduct committee. (1) The student conduct committee shall consist of ~~((three))~~ five members ~~((appointed by the president in consultation with student and faculty leadership))~~, pulled from the larger grievance committee:

(a) ~~((A full-time student))~~ Two students appointed by the student government;

(b) ~~((A full-time faculty member))~~ Two faculty members appointed by the president; and

(c) ~~((A full-time exempt administrative staff member who shall serve as chair of the committee))~~ One administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president who shall serve as chair of the committee

and presiding officer for all committee proceedings and may take action on preliminary hearing matters prior to convening the committee.

~~((2) The student conduct committee will hear appeals of disciplinary action imposing a conduct suspension in excess of ten days or a conduct dismissal.~~

~~(3) The committee will hear such other matters as may be referred to the committee by the conduct officer, Title IX coordinator, conduct review officer, or vice president of instruction and student services. The committee shall have the authority to recommend dismissing a proceeding or to recommend imposing any of the disciplinary sanctions under WAC 132E-122-200.~~

~~(4) 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), as supplemented by these rules.)~~

(2) 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.

(3) 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.

(4) 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.

(5) 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 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-320 ~~Full adjudicative process—Prehearing procedure.~~) Student conduct committee—Prehearing ~~((1) The student conduct committee chair shall serve all parties with written notice of the hearing date, time, and location not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 132E-122-270.~~

~~The chair may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown.~~

~~(2) The student conduct committee chair is authorized to conduct prehearing conferences and to make prehearing decisions concerning the forms and extent of any discovery, issuance of protective orders, and similar procedural matters.~~

~~(3) The student conduct committee chair may direct the parties prior to the hearing to submit to the chair a list of witnesses and copies of exhibits that the parties reasonably expect to present to the committee.~~

~~(a) The student conduct committee chair shall then provide copies of the submitted list of witnesses and of exhibits to the other party(ies), concurrently.~~

~~(b) Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.~~

~~(4) The student conduct committee chair in advance of the hearing may provide committee members with copies of:~~

~~(a) Any notice of disciplinary action or referral to the committee; and~~

~~(b) Any notice of appeal filed by the respondent or any complainant.~~

~~However, such "pleadings" shall not be regarded as evidence of any facts they may allege.~~

~~(5) Consistent with WAC 132E-122-260, any party may be accompanied at the hearing by an advisor or attorney of the party's choice.~~

~~(6) A respondent or any complainant may be represented by an attorney at such party's own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, the attorney files and serves a notice of appearance to the student conduct committee chair (EMAIL, 2000 Tower Street, Everett, WA 98201).~~

~~(7) If the respondent or complainant is represented by an attorney, the conduct officer may be represented by the college's assistant attorney general.~~

~~(8) The student conduct committee may itself be advised in any proceeding by an independently assigned assistant attorney general who shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.))~~

(1) Proceedings of the student conduct committee shall be governed by the Administrative Procedures Act, Chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than ten business 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 business 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 ex-

clusion 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 twenty-four 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 five 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 protected class 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 paragraph 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 paragraph 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) Privacy. 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 paragraph 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) that the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;

(iii) that 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 forty-eight 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 twenty-four 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 forty-eight 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) Privacy. 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,

ted 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 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-330 ~~((Full adjudicative process—Hearing procedure.))~~ **Student conduct committee—Presentation of evidence** (1)
~~((Should a party fail to attend))~~ 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 ((an order)) of default in accordance with RCW 34.05.440.

~~(2) ((The student conduct committee chair shall cause the hearing to be recorded pursuant to RCW 34.05.449 by a method the chair selects.))~~ 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 student conduct committee chair shall maintain the official record of the proceeding that is required by RCW 34.05.476.~~

Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.)) 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 ((student conduct committee)) chair shall preside at the hearing and shall 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 and shall bear the burden of establishing the alleged violations by a preponderance of the evidence)).~~

~~(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.~~

~~((7) All evidence shall be admitted or excluded in accordance with RCW 34.05.452.~~

~~(8) In proceedings involving allegations of sexual misconduct, the respondent and complainant, or their advisor or attorney representatives, 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 behalf of the parties.~~

~~(9) In proceedings involving allegations of sexual misconduct, the respondent and complainant shall not be required to be in the same room at the same time (i.e., through use of closed circuit TV or use of other similar technology).~~

~~(10) In proceedings involving allegations of sexual misconduct, college officials shall make arrangements to reasonably assure that respondents and complainants will not be in the same room at the same time when arriving to, departing from, and during any breaks of the student conduct committee proceedings.)~~

(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, questions will be submitted to the chair by the parties, who will then ask questions of the parties and witnesses.

(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 party 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 party.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-340 ~~((Full adjudicative process—Decision.))~~ **Student conduct committee—Initial decision** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments, written or verbal in whatever form the committee wishes to receive them.

The committee may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within ~~((twenty))~~ fifteen days following the conclusion of the hearing or the committee's receipt of closing arguments, the student conduct committee shall issue a decision in accordance with RCW 34.05.461 and WAC 132E-122-160 and 132E-122-200. 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 found to be violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

~~((a) The decision shall contain findings on:~~

~~(i) All material issues of fact, except for cases involving sexual misconduct;~~

~~(ii) Conclusions concerning which, if any, provisions of the conduct code were found to be violated; and~~

~~(iii) Any sanction(s).~~

~~(b) Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.~~

~~(3) The student conduct committee chair shall, within twenty days of the conclusion of the hearing, serve the decision to the respondent, the student conduct officer, and any complainant in a proceeding involving allegations of sexual misconduct, concurrently.~~

~~The recommended decision letter shall include notification that the review will be limited to reviewing the specific issues raised by the parties during the full adjudication proceedings.~~

~~(4) In a proceeding involving allegations of sexual misconduct, the review decision letter will explain the reasons for modifying any recommended disciplinary action with respect to such allegations.~~

~~(5) The decision will state whether the alleged misconduct was substantiated and will describe any sanctions or conditions imposed.~~

~~The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential information not relating to sexual misconduct allegations.))~~ (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.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-350 ~~((Full adjudicative proceedings—Student conduct committee appeal.))~~ **Student conduct committee Appeal of initial decision.** (1) ~~((A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee))~~ Any party may appeal the committee's ((initial)) decision to the ((vice president of instruction and student services by filing a notice of appeal to the vice president of instruction and student services within ten business days of services of the committee's initial decision)) chief student affairs officer office within fifteen business days of services of the committee-s 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 vice president may ask for additional briefing from the parties on issues raised on appeal. The vice president of instruction and student services' 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 vice president of instruction and student services shall provide a written decision to the respondent and the student conduct officer within twenty days after receipt of the notice of appeal. The vice president of instruction and student services' 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 vice president of instruction and student services, 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) In cases involving allegations of sexual misconduct, the complainant will have the same appeal rights as the respondent.))~~ (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

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, decisionmaker, student conduct officer, or director of equal opportunity and Title IX programs 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 chief student affairs officer or a designee will promptly serve a copy of the appeal on all non-appealing parties, who will have ten 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 chief student affairs officer 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 chief student affairs officer shall serve a written decision on all parties and their attorneys, if any, within fifteen days after receipt of the appeal. The chief student affair officer'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 chief student affairs officer's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-360 Summary suspension (~~(—Purpose and proceeding)~~).

~~((1) Summary suspension is exclusion from classes or other privileges, services and activities. A student shall be summarily suspended if the chief student affairs officer or designee has cause to believe that the student:~~

- ~~(a) Has violated any provision of this chapter; and/or~~
- ~~(b) Presents an imminent danger either to themselves, other persons on the campus, or to the educational process.~~

~~(2) Summary suspension is appropriate only where subsection (1)(b) of this section can be shown, either alone or in conjunction with subsection (1)(a) of this section. The chief student affairs officer or designee shall enter an order served by certified and regular mail at the student's last known address, or shall be personally served on the student.~~

~~(3) The procedures for a summary suspension hearing shall be considered an emergency adjudicative proceeding and shall be conducted as soon as possible and, if feasible, within five business days. It is the student's responsibility to schedule the hearing. The chief stu-~~

~~dent affairs officer or designee may, upon the request of the student, schedule the hearing at a time later than five business days. The chief student affairs officer or designee shall preside over the meeting. The student may appear alone or with another to advise and assist them as they appear before the appropriate college official(s). Any person who accompanies the student may provide support or guidance to the student, but may not speak, represent, or advocate for the student before the college official. An accommodation of a spokesperson (a person who would address the college official(s)) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the chief student affairs officer or designee. The chief student affairs officer or designee shall, at the summary suspension proceeding, determine whether there is probable cause to believe that continued suspension is necessary and/or whether other disciplinary action is appropriate.~~

~~(4) The chief student affairs officer or designee may continue to enforce the suspension of the student from the college and/or may impose other disciplinary action if, after the summary suspension hearing, the chief student affairs officer or designee finds that the student against whom the specific violations are alleged has in fact committed one or more of said violations and:~~

~~(a) Summary suspension is necessary for the safety of the student, other campus community members, or to restore order to the campus; and~~

~~(b) The violation(s) by the student are grounds for disciplinary action per the provisions of this code.)) (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-based harassment, 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 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-400 Readmission after dismissal. (1) Any student expelled (dismissed) from the college may submit a written petition to the chief student affairs officer or designee requesting readmission. Such petition must include how any conditions imposed by the chief student affairs officer or designee or student conduct committee have been met. Decisions by the chief student affairs officer or designee regarding a petition for readmission shall be reviewed by the president.

(2) If the chief student affairs officer or designee suspends or expels a student from a college program that has a readmission policy and procedure, the program's readmission policy and procedures will be followed and the readmission committee will review, as part of their deliberations, the chief student affairs officer's or designee's recommendation/_conditions of readmission concerning the student's readmission to the program.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132E-122-170	Reporting—Sexual misconduct and discrimination.
WAC 132E-122-180	Confidentiality and right to privacy.
WAC 132E-122-190	Retaliation is prohibited.
WAC 132E-122-250	Initiation of Title IX proceedings.
WAC 132E-122-260	Interim measures.
WAC 132E-122-370	Summary suspension—Notice.
WAC 132E-122-380	Summary suspension—For failure to appear.
WAC 132E-122-410	Order of precedence.
WAC 132E-122-420	Prohibited conduct under Title IX.
WAC 132E-122-430	Title IX jurisdiction.
WAC 132E-122-440	Initiation of Title IX proceedings.
WAC 132E-122-450	Prehearing procedure.
WAC 132E-122-460	Rights of parties.
WAC 132E-122-470	Evidence.
WAC 132E-122-480	Initial order.
WAC 132E-122-490	Title IX appeals.