

Chapter 495C-121 WAC
STUDENT CONDUCT CODE

Last Update: 8/10/21

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

495C-121-230	Supplemental appeal rights. [Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-230, filed 5/19/14, effective 6/19/14.] Repealed by WSR 21-17-056, filed 8/10/21, effective 9/10/21. Statutory Authority: RCW 28B.50.140, United States Department [of] Education 34 C.F.R. Part 106 and chapter 495C-121 WAC.
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PART 1
GENERAL PROVISIONS

WAC 495C-121-010 Definitions. The following definitions shall apply for the purposes of this student conduct code, chapter 495C-121 WAC:

(1) "College" means Clover Park Technical College, College District Twenty-nine.

(2) "College facilities" includes all campuses of the college, wherever located, and all land, buildings, vehicles, equipment, and other real and personal property which are owned, leased, used, or controlled by the college.

(3) "Committee" and "student conduct committee" means the committee which is formed under WAC 495C-121-140 and which hears the matters specified in WAC 495C-121-110.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and then either reviewing or referring an appeal of student disciplinary action in accordance with WAC

495C-121-110 and following sections of this chapter. The president may reassign any and all of the conduct review officer's responsibilities as set forth in this chapter as he/she deems appropriate.

(5) "Day" means a calendar day, except that when a "business day" is specified, business day means a weekday, excluding weekends and college holidays.

(6) "Disciplinary action" is the process by which the student conduct officer, or the committee upon a referral, imposes discipline against a student for violation of WAC 495C-121-050. Disciplinary action does not include instructional decisions and actions which are under the authority of faculty members and instructional administrators, such as determinations of academic credit and grading; any such determinations, and any review or appeal of these, are outside the scope of this chapter.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal discipline, as provided in WAC 495C-121-110 through 495C-121-180.

(8) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. §1232g; 34 C.F.R. Part 99).

(9) "Filing" is delivery of a document to the college official who is designated under this chapter to receive it for the purpose of review of a disciplinary action. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to that official or the official's assistant during regular office hours; or

(b) Sending the document both by first class mail postage prepaid to the official's office and by email to his/her college email address.

(10) "Includes" and "including" means contained as part of a larger described whole or grouping, but these terms are not a limitation and mean "but not limited to."

(11) "President" is the president of the college. The president may delegate any of his or her responsibilities under this chapter as he/she deems appropriate.

(12) "Respondent" is the student against whom disciplinary action is initiated.

(13) "Service" is the delivery of a document or copy of a document to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document both by first class and/or certified mail postage prepaid to the party's last known address and by email to the email address shown in the college's records.

Service is deemed complete either upon hand delivery or when the document has been both deposited in the mail and emailed.

(14) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(15) "Student conduct officer" is a college administrator designated by the president or vice president of student services to be responsible for investigating allegations of student misconduct and taking disciplinary action as provided in WAC 495C-121-100. The president

or vice president of student services may reassign any of the student conduct officer's responsibilities under this chapter as he/she deems appropriate.

(16) "Vice president of student services" is the position which reports directly to the president and which the president assigns overall operational responsibility for this chapter. The president may reassign, or the vice president may delegate, any such responsibility as he/she deems appropriate.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-010, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.10.528 and 28B.50.140(14), delegates to the president the authority to administer student disciplinary actions and appeals. The president may delegate and/or further assign responsibilities related to student discipline to other college officials and positions.

[Statutory Authority: RCW 28B.50.140. WSR 16-06-026, § 495C-121-020, filed 2/22/16, effective 3/24/16; WSR 14-11-070, § 495C-121-020, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-030 Jurisdiction. (1) The student conduct code, chapter 495C-121 WAC, shall apply to student conduct that occurs:

- (a) In or on college facilities;
- (b) At or in connection with college-sponsored activities; or
- (c) Off-campus when in the judgment of the college it adversely affects the college community or the pursuit of its objectives.

(2) This chapter applies to conduct which occurs at all locations where students are engaged in college activities, including foreign or domestic travel, activities funded or sponsored by the associated students, athletic or recreational events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned activities.

(3) This chapter applies to conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. This chapter shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

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

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

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-030, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-040 Student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) 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.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The rights of students to be secure in their persons, papers, and effects against unreasonable college searches and seizures are guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of conduct is entitled, upon request, to the procedural due process set forth in this chapter.

[Statutory Authority: RCW 28B.50.140. WSR 16-06-026, § 495C-121-040, filed 2/22/16, effective 3/24/16; WSR 14-11-070, § 495C-121-040, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-050 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit any act of misconduct, which includes, but is not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty, including cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment or requirement.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment or requirement.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment or requirement, or provid-

ing false or deceptive information to an instructor concerning the completion of an assignment or requirement, including submitting for credit without authorization academic work also submitted for credit in another course.

(2) **Other dishonesty.** Any other act of dishonesty, including:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct or complete information, in response to the request or requirement of a college official or employee.

(3) **Obstruction or disruption.** Conduct which significantly obstructs or disrupts any operation of the college, any college meeting, any college class or other activity, any activity authorized to occur at a college facility, or any college-sponsored activity, including obstructing the free flow of pedestrian or vehicular movement or blocking access to or from any college facility or college-sponsored event.

(4) **Assault, abuse, intimidation, etc.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, reckless conduct, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property or which unreasonably disrupts the educational environment. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving an apparent power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(c) Reckless conduct means acts performed with a heightened degree of carelessness or indifference so as to create a significant risk of physical, mental, or emotional harm to another person.

(5) **Cyber misconduct. Cyberstalking, cyberbullying or online harassment.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, texting, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health, safety, or well-being of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications directly or through spyware, sending threatening messages, disrupting electronic communications, sending a computer virus or malware, sending false messages to third parties using another's identity, nonconsensual recording of sexual activity, or nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state, including college facilities;

(b) Any college student, official, employee, or organization; or

(c) Any other member of the college community or a college organization.

Property violation also includes possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Holding, wearing, transporting, storing, or otherwise possessing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon or device which is apparently capable of producing bodily harm, on or in any college facility, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) College-owned knives, tools, etc., that are being used for a legitimate educational purpose as part of a college instructional program;

(c) A student with a valid concealed pistol license may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the pistol is concealed from view;

(d) The president may grant permission to bring such a weapon or device on or into a college facility when he/she determines that it is reasonably related to a legitimate pedagogical purpose, provided that such permission shall be in writing and shall be subject to all terms and conditions incorporated in that writing; and

(e) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

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

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

(a) **Alcohol.** Use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** Use, possession, delivery, sale, or being observably under the influence of marijuana, the psychoactive compounds found in marijuana, or any product containing marijuana or such compounds that is intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college facilities or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed health care practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Use of tobacco, electronic cigarettes or smoking devices, and/or related products on or in any college facility is prohibited, except that such use in a designated smoking area or in a closed private vehicle is permitted when consistent with applicable law and rules. "Related products" include cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** Any act of sexual misconduct, including sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or distribution of such a recording.

(c) Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

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

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual or any other bodily contact in a sexual manner.

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

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

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid,

there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic.

(15) **Retaliation.** Taking adverse action against any individual for reporting, providing information, or otherwise participating in a process for addressing alleged violations of federal, state, or local law, or college policies, including allegations of discrimination or harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college, which includes:

(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 policies or procedures governing the use of such time or resources.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Any nonaccidental conduct that violates, interferes with, or otherwise compromises any law, rule, policy, pro-

cedure, or equipment relating to the safety and security of college facilities or the college community, including tampering with fire safety equipment or triggering false alarms or other emergency response systems.

(19) **Motor vehicle operation.** Operation of any motor vehicle in an unsafe manner or contrary to posted signs or college procedures.

(20) **Violation of laws or policies.** Violation of any federal, state, or local law or regulation, or college rule, policy, or procedure, which regulates the behavior of the college's students, including a parking rule.

(21) **Student procedures violations.** Misuse of or failure to follow any of the procedures relating to student complaints or misconduct, including:

(a) Falsification or misrepresentation of information;

(b) Failure to obey a subpoena;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(e) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member or other disciplinary official; or

(f) Failure to comply with any disciplinary action, term, or condition imposed under this chapter.

(22) **Ethical violation.** Ethical violations include, but are not limited to, breach of a generally recognized and published code of ethics or standard of professional practice that governs the conduct of a particular profession, which the student has been specifically informed about and is required to adhere to as a condition of enrolling in a course or participating in an educational program.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: RCW 28B.50.140. WSR 16-06-026, § 495C-121-050, filed 2/22/16, effective 3/24/16; WSR 14-11-070, § 495C-121-050, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-060 Disciplinary sanctions and conditions. (1) **Disciplinary sanctions.** The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(a) Disciplinary warning. An oral statement to a student that there is a violation and that any further violation may be cause for further disciplinary action. Although verbal, the student conduct officer should make a record of the warning. The respondent cannot appeal a disciplinary warning.

(b) Written disciplinary reprimand. A written notice informing a student that he/she has violated one or more terms of the code of conduct and that future misconduct involving the same or similar behavior may result in the imposition of a more severe disciplinary sanction.

(c) Disciplinary probation. A written notice placing specific term(s) and condition(s) upon the student's continued attendance at

the college. Disciplinary probation may be for a limited period of time or for the duration of the student's attendance at the college.

(d) Disciplinary suspension. Temporary revocation of enrollment and termination of student status, for a stated period of time. The student may be prohibited from coming onto any college facility and may be subject to law enforcement action for criminal trespass for violating that prohibition. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) Dismissal. Revocation of enrollment and of all rights and privileges of membership in the college community, and exclusion from college facilities, without any time limitation. There will be no refund of tuition or fees for the quarter in which the action is taken. The student may be subject to law enforcement action for criminal trespass for violating that exclusion. A dismissal may be rescinded only by a written decision of the president, for documented good cause.

(2) **Disciplinary conditions.** Disciplinary conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction under subsection (1) of this section include:

(a) Restitution. Reimbursement for (i) damage to, or theft or misuse of, real or personal property or money, or (ii) injury to persons. This reimbursement may take the form of money, appropriate service, or other compensation.

(b) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation, at the student's expense, by an appropriately certified or licensed professional. The student may choose the professional within the scope of practice and with the professional credentials as specified by the college. The student must 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 the evaluation. If the student has been suspended, the student may remain suspended until the most recent evaluation finds that the student is capable of reentering the college and complying with the college's expectations for conduct.

(c) Restrictions on activities. A student may be subjected to the following restrictions:

(i) Ineligible to hold any college office or position or any office in any student organization;

(ii) Ineligible to participate in any college activity(ies); and/or

(iii) Ineligible to represent the college outside the college community, including at any event or in any form of competition.

(d) Required activities. Assignment of appropriate tasks or responsibilities, or required attendance at an appropriate program, instructional course, or other educational activity, which may be at the student's expense.

(e) Protective or no contact order. An order directing a student to have limited or no contact with any specified student(s), college employee(s), member(s) of the college community, or college facility.

(f) Loss of state funding. A student found to have committed hazing shall forfeit any entitlement to state-funded grants, scholarships, or awards, pursuant to RCW 28B.10.902.

[Statutory Authority: RCW 28B.50.140. WSR 16-06-026, § 495C-121-060, filed 2/22/16, effective 3/24/16; WSR 14-11-070, § 495C-121-060, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-070 Faculty/administrator authority regarding classroom disruption. (1) Faculty members and instructional administrators are authorized to take appropriate action to maintain order and proper conduct in the classroom and the cooperation of students in fulfilling course objectives.

(2) If a faculty member or instructional administrator determines that a student has created a disruption which makes it unreasonably difficult to maintain the learning and teaching environment or the decorum of a class or activity, he/she may suspend that student from the class or activity for up to a total of one day per day of disruption. The faculty member or administrator shall report this suspension to the student conduct officer, who shall have the option, depending on the severity, to treat the suspension as insufficient and also initiate further discipline under this chapter.

(3) The suspension of up to one day per day of disruption shall not be subject to any further appeal or review. However, any further discipline imposed by the student conduct officer shall be processed in accordance with this chapter.

(4) Any suspension initiated by a faculty member or instructional administrator under this section will not affect any student grading that is based directly on attendance.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-070, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-080 Disciplinary records. (1) Records of a disciplinary proceeding under this chapter are disciplinary records which must be maintained by the office of the vice president of student services separately from student academic records and in accordance with applicable state records retention requirements.

(2) Disciplinary records are confidential to the extent required by applicable laws, including the Family Educational Rights and Privacy Act. To the extent permitted by such laws, the respondent, or if a minor, the student's parent, may review his/her disciplinary records, obtain a copy of such records upon payment of any lawful charges for duplication, and/or authorize disclosure of such records.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-080, filed 5/19/14, effective 6/19/14.]

PART 2 DISCIPLINARY PROCEDURES

WAC 495C-121-100 Initiation of disciplinary action. (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate possible 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 specific apparent misconduct under WAC 495C-121-050, and the range of possible disciplinary sanc-

tions, and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may impose disciplinary sanction(s) and conditions based upon the available information.

(3) Within ten days of the scheduled initial disciplinary meeting, and after considering the information obtained by investigation and any information presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, the consequences if a student fails to satisfy any disciplinary condition(s) which are being imposed, and a notice of the respondent's appeal rights, if any, with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following actions:

(a) Terminate the proceeding, with any appropriate exoneration of the respondent or counseling or advice to the respondent. The respondent cannot appeal a termination of the proceedings;

(b) Specify misconduct under WAC 495C-121-050 which he/she finds to have occurred and impose disciplinary sanction and/or condition(s), as described in WAC 495C-121-060; or

(c) Refer the matter directly to the student conduct committee for a hearing and imposition of such disciplinary sanction and/or condition(s) as the committee deems appropriate. Such referral shall be to the attention of the chair of the committee with a copy served on the respondent.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-100, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-110 Appeals and referrals—Routing. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to file a timely notice of appeal constitutes a waiver of the right to appeal, and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) Except as provided in WAC 495C-121-230 or elsewhere in these rules, the parties to an appeal shall be the respondent and the student conduct officer.

(4) On appeal, the student conduct officer bears the burden of establishing the factual elements of the alleged misconduct by a preponderance of the evidence, i.e., that it is more likely than not that the respondent engaged in the alleged misconduct.

(5) Imposition of a disciplinary sanction and conditions shall be stayed during an appeal, except for a summary suspension that has been imposed under WAC 495C-121-190.

(6) The student conduct committee shall hear:

(a) Appeals from disciplinary suspensions in excess of ten instructional days, and any related disciplinary condition(s);

(b) Appeals from dismissals, and any related disciplinary condition(s); and

(c) Cases referred by the student conduct officer, the conduct review officer, or the president.

(7) Appeals from the following disciplinary sanctions and related disciplinary conditions shall be reviewed through a brief adjudicative proceeding:

(a) Written disciplinary reprimands, and any related disciplinary condition(s);

(b) Disciplinary probation, and any related disciplinary condition(s); and

(c) Disciplinary suspensions of ten instructional days or less, and any related disciplinary condition(s).

(8) Except as provided elsewhere in these rules, disciplinary warnings and terminations of proceedings are final actions and are not subject to appeal.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-110, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-120 Brief adjudicative proceedings—Initial hearing and decision.

(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/she is a witness, has direct or personal interest, prejudice, or bias, or has previously provided significant advice or direction to the student conduct officer.

(2) Before making a decision, the conduct review officer shall schedule an informal hearing to provide each party an opportunity (a) to be informed of the agency's view of the matter, and (b) to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the parties within ten days of the scheduled hearing. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek review under WAC 495C-121-130.

(4) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or a dismissal, he/she shall refer the matter to the student conduct committee for a disciplinary hearing.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-120, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-130 Brief adjudicative proceedings—Review of initial decision.

(1) A party may obtain review of an initial decision by the president, by filing a written request for review with the conduct review officer within twenty-one days of service of the initial decision. That officer shall promptly forward the request to the president. If no timely request for review is filed, the initial decision shall become the final decision.

(2) The president shall not participate in any case in which he/she is a witness, has direct or personal interest, prejudice, or bias, or has previously provided significant advice or direction.

(3) During the review, the president shall give each party an opportunity to file a written statement explaining their view of the matter and shall make any inquiries to the parties which are necessary to ascertain whether the discipline should be modified or whether the proceedings should be referred to the student conduct committee for a hearing.

(4) The president shall serve a written decision on review on all parties within twenty days of the later of the filing of the request for review or any deadline for parties' explanatory statements. A request for review may be deemed to have been denied if the president does not serve a decision within those twenty days. The decision shall include a brief statement of its reasoning. The president's decision shall be the final college action in the matter, and shall include notice of any right to request reconsideration and of the right to seek judicial review under chapter 34.05 RCW.

(5) If the president, upon review, determines that the respondent's conduct may warrant imposition of a dismissal or a disciplinary suspension of more than ten instructional days, he/she shall refer the matter to the student conduct committee for a disciplinary hearing.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-130, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-140 Student conduct committee—Formation. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between this chapter and chapter 10-08 WAC, this chapter shall control.

(2) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government to terms of up to one academic year;

(b) Two faculty members appointed by the president to terms of up to two academic years, beginning in alternating years;

(c) One faculty member or administrator, other than an administrator serving as a student conduct or conduct review officer, appointed as chair by the president for a term of up to two academic years.

Members may be reappointed for subsequent terms. Any member may be replaced by the appointing authority for the remainder of the term for good cause shown.

(3) The faculty member or administrator appointed as chair may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(4) A member of the student conduct committee shall not participate in any case in which he/she is a party, complainant, or witness, has direct or personal interest, prejudice, or bias, or has previously provided significant advice or direction. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

(5) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-140, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-150 Student conduct committee—Prehearing proceedings. (1) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. 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.

(2) The chair may conduct prehearing conferences and/or make prehearing decisions concerning the simplification of issues, the extent and form of any discovery, issuance of protective orders, and similar procedural matters.

(3) Discovery will be available as determined by the chair and in accordance with RCW 34.05.446. Upon request, the chair shall provide reasonable assistance to a party in obtaining relevant and admissible evidence that is within the college's control.

(4) The chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline or referral to the committee, and (b) the notice of appeal. If doing so, however, the chair should remind the members that these documents are not evidence of any facts they may allege.

(5) Upon request filed at least five business days before the hearing by any party, or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) Communications between a committee member and any other non-member hearing participant regarding any issue in the proceeding, other than communications necessary to procedural aspects of maintaining an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-150, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-160 Student conduct committee—Hearings. (1) Upon the failure of any party to attend or participate in a hearing, the chair may either:

(a) Proceed with the hearing; or

(b) Serve a default order in accordance with RCW 34.05.440.

(2) The committee will ordinarily be advised by an assistant attorney general.

(3) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A party other than the student conduct officer may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the chair, with a copy to the student conduct officer. If such a party is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened, assistant attorney general.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee. Evidence shall be admitted or excluded in accordance with RCW 34.05.452. All testimony shall be given under oath or affirmation.

(5) The hearing will ordinarily be closed to the public, in light of the Family Educational Rights and Privacy Act. However, if all parties agree on the record to open some or all of the proceedings, 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.

(6) The chair shall afford opportunity to all parties to present their cases, and shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(7) The chair shall assure maintenance of the record of the proceeding which is required by RCW 34.05.476. This record shall be available upon request by any party for inspection and copying, except as limited by FERPA.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-160, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-170 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration. Only evidence presented at the hearing will be considered by the committee.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial order shall include:

(a) Findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of WAC 495C-121-050 were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(b) A determination on appropriate disciplinary sanction and/or disciplinary conditions, if any. The committee may affirm, reverse, modify, or supplement any disciplinary sanction and/or disciplinary condition(s) imposed by the student conduct officer.

(c) A statement that the initial order will become final unless a party seeks review of that decision in accordance with WAC 495C-121-180.

(3) The chair shall cause copies of the initial decision to be served on the parties, including any legal counsel of record. The committee chair shall also promptly transmit the record of the committee's proceedings and a copy of its decision to the president.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-170, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-180 Student conduct committee—Review of initial decision. (1) A party who is aggrieved by the committee's initial decision may obtain review of that decision by filing a notice of appeal with the president within twenty-one days after it was served on that party. If no timely notice of appeal is filed, the initial decision shall become the final decision.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged, and must contain an argument why the appeal should be granted.

(3) The president may ask for additional argument from the parties on the issues raised in the notice of appeal. The president's review will ordinarily be limited to those issues, and shall be restricted to the committee hearing record. The president shall not engage in ex parte communication with any of the parties regarding the appeal.

(4) The president shall serve a written decision on review on all parties within forty-five days after receipt of the notice of appeal. The decision shall include appropriate findings and conclusions. Unless it remands the case to the committee for further proceedings or gives a right to request reconsideration, the president's decision shall be the final college action in the matter and shall include notice of the right to seek judicial review under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-180, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-190 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college facilities and denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation, disciplinary procedures, and/or an appeal are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe, i.e., there are reasonable grounds for believing, that the respondent has committed misconduct under WAC 495C-121-050 and that either:

(a) The situation involves an immediate danger to the public health, safety, or welfare which requires immediate college action; or

(b) The student's behavior poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) A summary suspension shall be effective when the respondent receives written or oral notice of that suspension. If oral notice is given, a written notification must be served on the respondent within two business days of the oral notice. 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 misconduct and specification of the provisions of WAC 495C-121-050 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 college facilities or communicate with members of the college community. If the respondent is prohibited from entering college facilities, he/she may be given a notice against trespass which warns that his/her privilege to enter college facilities has been withdrawn, subject to any specified exceptions such as an invitation to meet with the student conduct officer or conduct review officer or to attend a scheduled disciplinary hearing, and that he/she shall be considered to be trespassing and subject to arrest for criminal trespass for any violation.

(4) The hearing before the conduct review officer shall be scheduled as soon as practicable after service of the notice of summary suspension. If the respondent fails to appear at the scheduled time, the conduct review officer may order that the summary suspension remain in place. During the summary suspension hearing, the issues shall be:

(a) Whether the requirements under subsection (2) of this section are satisfied; and

(b) Whether the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or should be less restrictive in scope.

(5) As soon as practicable following the hearing, the conduct review officer shall issue, and serve on the respondent and student conduct officer, a written decision which addresses the issues at the hearing. The conduct review officer shall also provide information about the decision, to the extent legally permissible under FERPA, to all persons and offices who may be bound or protected by it.

(6) The respondent may request a de novo review of the summary suspension hearing decision by the student conduct committee. The review will be scheduled promptly. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-190, filed 5/19/14, effective 6/19/14.]

PART 3

SUPPLEMENTAL PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

WAC 495C-121-200 Supplemental definitions. The following supplemental definitions apply in student disciplinary matters involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct.

(2) "Sexual misconduct" has the meaning ascribed to this term in WAC 495C-121-050.

(3) "Title IX compliance officer" is the college position designated by the president as having the primary direct responsibilities related to Title IX, 20 U.S.C. §§ 1681-88.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-200, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-210 Supplemental sexual misconduct procedures.

Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Clover Park Technical College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of sexual misconduct. The supplemental procedures provided for in WAC 495C-121-210 through 495C-121-270 shall supplement the other procedural requirements of this chapter and will govern all student conduct proceedings regarding alleged acts of sexual misconduct. In the event of a conflict between the supplemental procedure and other requirements of this chapter, the requirements of the supplemental procedure shall control.

For purposes of this supplemental procedure, "sexual misconduct" encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Clover Park Technical College's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

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

(b) Nonconsensual sexual contact. 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. 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.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

[Statutory Authority: RCW 28B.50.140, United States Department [of] Education 34 C.F.R. Part 106 and chapter 495C-121 WAC. WSR 21-17-056, § 495C-121-210, filed 8/10/21, effective 9/10/21. Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-210, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-215 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Clover Park Technical College educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section, have not been met. Dismissal under this Title IX supplemental procedure does not prohibit the college from pursuing other disciplinary action based on in situations where the allegations against the respondent, if true, would constitute violations of other provisions of the college's student conduct code, chapter 495C-121 WAC.

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

[Statutory Authority: RCW 28B.50.140, United States Department [of] Education 34 C.F.R. Part 106 and chapter 495C-121 WAC. WSR 21-17-056, § 495C-121-215, filed 8/10/21, effective 9/10/21.]

WAC 495C-121-220 Supplemental complaint process. With respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX compliance officer shall investigate, or assure investigation of, complaints or other reports of alleged sexual misconduct by a student. The investigation will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for possible disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue the mediation at any time. Mediation shall not be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process such complaints.

[Statutory Authority: RCW 28B.50.140, United States Department [of] Education 34 C.F.R. Part 106 and chapter 495C-121 WAC. WSR 21-17-056, § 495C-121-220, filed 8/10/21, effective 9/10/21. Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-220, filed 5/19/14, effective 6/19/14.]

WAC 495C-121-225 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX compliance officer, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

- (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
- (ii) An advisor may be an attorney; and
- (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[Statutory Authority: RCW 28B.50.140, United States Department [of] Education 34 C.F.R. Part 106 and chapter 495C-121 WAC. WSR 21-17-056, § 495C-121-225, filed 8/10/21, effective 9/10/21.]

WAC 495C-121-235 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 495C-121-150. In no event will the hearing date be set less than ten days after the Title IX compliance officer provides the final investigation report to the parties.

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

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

[Statutory Authority: RCW 28B.50.140, United States Department [of] Education 34 C.F.R. Part 106 and chapter 495C-121 WAC. WSR 21-17-056, § 495C-121-235, filed 8/10/21, effective 9/10/21.]

WAC 495C-121-240 Rights of parties. (1) Clover Park Technical College's student conduct procedures, chapter 495C-121 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX compliance officer will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

[Statutory Authority: RCW 28B.50.140, United States Department [of] Education 34 C.F.R. Part 106 and chapter 495C-121 WAC. WSR 21-17-056, § 495C-121-240, filed 8/10/21, effective 9/10/21.]

WAC 495C-121-250 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: RCW 28B.50.140, United States Department [of] Education 34 C.F.R. Part 106 and chapter 495C-121 WAC. WSR 21-17-056, § 495C-121-250, filed 8/10/21, effective 9/10/21.]

WAC 495C-121-260 Initial order. (1) In addition to complying with chapter 495C-121 WAC, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
- (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
- (c) Makes findings of fact supporting the determination of responsibility;
- (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
- (e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;
- (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
- (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Clover Park Technical College's educational programs or activities; and
- (h) Describes the process for appealing the initial order to the college president.

(2) The chair of the student conduct committee will serve the initial order on the parties simultaneously.

[Statutory Authority: RCW 28B.50.140, United States Department [of] Education 34 C.F.R. Part 106 and chapter 495C-121 WAC. WSR 21-17-056, § 495C-121-260, filed 8/10/21, effective 9/10/21.]

WAC 495C-121-270 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495C-121-080.

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

(3) President's office shall serve the final decision on the parties simultaneously.

[Statutory Authority: RCW 28B.50.140, United States Department [of] Education 34 C.F.R. Part 106 and chapter 495C-121 WAC. WSR 21-17-056, § 495C-121-270, filed 8/10/21, effective 9/10/21.]