

WAC 172-121-130 Appeals. (1) Basis: Appeals following a brief hearing or full hearing may be filed by the respondent under this section. In cases of sexual misconduct, interpersonal violence, or a Title IX complaint, the complainant may also file an appeal following dismissal of a complaint or a full hearing. Appeals of interim restrictions are governed by WAC 172-121-140. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures that affected the outcome of the matter.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority, or the director of SRR's decision to not proceed with a hearing, was based on the information presented and that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information that was not reasonably available at the time the determination finding responsibility or dismissal was made that could affect the outcome of the matter. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(f) The Title IX coordinator, investigator, or hearing authorities had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(2) Filing: Appeals may be filed following a brief hearing, full hearing, or dismissal of a complaint, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within 10 business days from service of the council's decision following a full hearing or dismissal of a complaint, or within 21 calendar days from service of a decision from a brief hearing conducted by the CRO;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(c) In cases of sexual misconduct or interpersonal violence, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days.

(3) Stay of sanctions: Sanctions go into effect immediately after the hearing decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed with SRR within five calendar days of the decision. The request for the stay will be reviewed by the CRO or presiding officer who presided over the hearing. The stay may be granted in part or in its entirety, at the discretion of the CRO/presiding officer. The decision will be communicated to the respondent and, for sexual miscon-

duct and interpersonal cases, the complainant. This decision is not subject to appeal.

(4) Appeal authorities:

(a) For dismissal of a complaint, appeals are determined by the dean of students.

(b) For brief hearings, appeals are determined by the dean of students or designee.

(c) For full hearings, appeals are determined by the vice president for student affairs or designee.

(5) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(6) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(7) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the hearing authority. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be issued within 30 calendar days of the appeal authority receiving all necessary documentation.

(8) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(9) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(10) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the respondent, and, in cases of sexual misconduct or interpersonal violence, notify the complainant, with a brief written statement setting forth the outcome of the appeal. The notification shall also inform the recipient that judicial review of the decision may be available under chapter 34.05 RCW.

(11) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code.

Judicial review of the university's decision may be available under chapter 34.05 RCW.

(12) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

[Statutory Authority: RCW 28B.35.120(12). WSR 23-01-027, § 172-121-130, filed 12/9/22, effective 1/9/23; WSR 20-19-046, § 172-121-130, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-130, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-130, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-130, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-130, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-130, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-130, filed 5/20/09, effective 6/20/09.]