

**WSR 20-24-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-248—Filed November 18, 2020, 2:44 p.m., effective November 19, 2020]

Effective Date of Rule: November 19, 2020.

Purpose: The purpose of this rule is to increase the adult salmon daily limits for the Cowlitz, Lewis, Kalama, Klickitat, and Washougal rivers.

This rule also carries forward emergency rules already in place for the Green, Toutle, and North Fork Toutle rivers.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000S and 220-312-03000U; and amending WAC 220-312-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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.

Reasons for this Finding: This rule is needed to increase daily salmon limits within the Cowlitz, Kalama, Lewis, Washougal, and Klickitat rivers, for the following reasons:

Chinook and coho salmon returns to the Cowlitz Salmon Hatchery have been above levels needed to meet broodstock collection goals for the Cowlitz Hatchery Chinook and coho programs. Modifying coho fisheries on this river will provide additional fishing opportunities while still meeting program goals.

The current return of fall Chinook and coho salmon to the Kalama River has exceeded preseason expectations. Broodstock collection goals for several hatchery programs are on track to be met and additional fish are available for harvest.

Coho salmon returns to the Lewis Hatchery are projected to meet broodstock collection goals for the Lewis Hatchery programs. Modifying coho fisheries will provide additional fishing opportunities while still meeting program and reintroduction goals.

The current return of fall Chinook and coho salmon to the Washougal River has exceeded preseason expectations. Broodstock collection goals for several hatchery programs are on track to be met and additional fish are available for harvest.

The current return of coho salmon to the Klickitat River has exceeded preseason expectations and additional fish are available for harvest.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: November 18, 2020.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-03000U Freshwater exceptions to statewide rules—Southwest.** The provisions of WAC 220-312-030 regarding salmon seasons for Cowlitz River, Kalama River, Green River, Lewis River, Toutle River, North Fork Toutle River, Klickitat River and the Washougal River shall be modified during the dates and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

1) **Cowlitz River (Cowlitz/Lewis Co.):** From the mouth to posted markers below the Barrier Dam: Salmon: Effective November 19 through December 31, 2020:

Daily limit 6. Up to 3 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

2) **Green River (Cowlitz Co.):** From the mouth to Miner's Creek: Salmon: Effective immediately through November 30, 2020:

Daily limit 6. Up to 2 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

3) **Kalama River (Cowlitz Co.):** From the mouth to 1,000 feet below fishway at Kalama Falls Hatchery: Salmon: Effective November 19 through December 31, 2020:

Daily limit 6. Up to 3 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

4) **Klickitat River (Klickitat Co.):**

(a) From the mouth to Fisher Hill Bridge: Salmon: Effective November 19 through January 31, 2021:

Daily limit 6. Up to 3 adults may be retained.

(b) From 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon hatchery: Salmon: Effective November 19 through November 30, 2020:

Daily limit 6. Up to 3 adults may be retained.

5) **Lewis River (Clark/Cowlitz Co.):**

(a) From the mouth to Colvin Creek: Salmon: Effective November 19 through December 31, 2020:

Daily limit 6. Up to 3 adults may be retained, of which no more than 2 may be Chinook. Release all salmon other than Chinook and hatchery coho.

(b) From Colvin Creek to the overhead powerlines below Merwin Dam: Salmon: Effective December 16 through December 31:

Daily limit 6. Up to 3 adults may be retained, of which no more than 2 may be Chinook. Release all salmon other than Chinook and hatchery coho.

6) **Toutle River (Cowlitz Co.):** From the mouth to the forks: Salmon: Effective immediately through November 30, 2020:

Daily limit 6. Up to 2 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

7) **North Fork Toutle River (Cowlitz Co.):** From the mouth to the posted markers below the Fish Collection Facility: Salmon: Effective immediately through November 30, 2020:

Daily limit 6. Up to 2 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

8) **Washougal River (Clark Co.):** From the mouth to the bridge at Salmon Falls: Salmon: Effective November 19 through December 31, 2020:

Daily limit 6. Up to 3 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

**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.

### REPEALER

The following section of the Washington Administrative Code is repealed effective November 19, 2020:

WAC 220-312-03000S Southwest—Freshwater exceptions to statewide rules. (20-233)

The following section of the Washington Administrative Code is repealed effective February 1, 2021:

WAC 220-312-03000U Southwest—Freshwater exceptions to statewide rules. (20-248)

**WSR 20-24-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed November 19, 2020, 8:21 a.m., effective November 21, 2020]

Effective Date of Rule: November 21, 2020.

Purpose: The department is extending emergency amendments to WAC 388-447-0005 What evidence do we consider to determine incapacity?, 388-447-0010 What medical evidence do I need to provide?, 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end?, 388-449-0010 What evidence do we consider to determine disability?, 388-449-0015 What medical evidence do I need to provide?, and 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end?

These amendments are necessary to mitigate impacts (to ABD and HEN referral clients and medical providers) resulting from the ongoing COVID-19 virus (commonly referred to as the "coronavirus") public health crisis.

Citation of Rules Affected by this Order: Amending WAC 388-447-0005, 388-447-0010, 388-447-0110, 388-449-0010, 388-449-0015, and 388-449-0150.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.0052, 74.04.050, 74.04.055, 74.04.057, 74.04.510,

74.04.655, 74.04.770, 74.08.090, 74.08.043, 74.08.335, 74.09.530, 74.08.025, 74.08A.100.

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.

Reasons for this Finding: This subsequent filing is necessary to extend the existing emergency rules filed under WSR 20-16-015, which protect public health, safety, and welfare by mitigating client and medical provider impacts caused by the ongoing COVID-19 pandemic and associated State of Emergency in all Washington counties, as proclaimed by Governor Inslee's "Proclamation by the Governor 20-05."

The department filed notice of its intent to adopt the rules as permanent rules by filing a CR-101 Preproposal statement of inquiry under WSR 20-14-107 on June 30, 2020. A CR-102 Proposed rule making was filed as WSR 20-23-075 on November 16, 2020.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: November 16, 2020.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-05-075, filed 2/20/18, effective 3/23/18)

**WAC 388-447-0005 What evidence do we consider to determine incapacity?** (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

(a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Medical doctor (MD);

(ii) Doctor of osteopathy (DO);

(iii) Doctor of optometry (OD) for visual disorders;

(iv) Doctor of podiatry (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice;

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments;

(ix) Doctor of dental surgery (DDS) or doctor of medical dentistry (DMD) for tooth abscesses or temporomandibular joint (TMJ) disorders; and

(x) Chief of staff of a U.S. Department of Veterans Affairs medical center, or their designee, as authorized in federal law.

(b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Psychiatrist;

(ii) Psychologist;

(iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(iv) Physician assistant (PA) for impairments within their licensed scope of practice;

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning;

(vi) Clinical social worker;

(vii) Mental health professional (MHP); and

(viii) Physician treating you for a mental impairment.

(2) "Supplemental medical evidence" means information from a licensed health professional who can provide supporting documentation for impairments established by an "acceptable medical source" listed in subsection (1) of this section. "Supplemental medical evidence" sources include, but are not limited to:

(a) Naturopath;

(b) Chiropractor;

(c) Physical therapist; and

(d) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

(3) "Other evidence" means information from sources not listed in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical source" in subsection (1) of this section. Sources of "other evidence" may include public and private agencies, schools, family members, friends, caregivers, and employers.

(4) In the event of a declared state of emergency related to COVID-19, the department may accept a diagnosis of a medically determinable impairment from a "supplemental medical evidence" source in subsection (2) of this section or the predictive risk intelligence system (PRISM).

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-447-0010 What medical evidence do I need to provide?** You must provide medical evidence of your impairment(s) and how your impairment(s) affects your ability to perform regular and continuous work activity. Medical

evidence must be in writing and be clear, objective and complete.

(1) Objective evidence for physical impairments means:

(a) Laboratory test results;

(b) Pathology reports;

(c) Radiology findings including results of X-rays and diagnostic imaging scans;

(d) Clinical findings including, but not limited to, ranges of joint motion, blood pressure, temperature or pulse; and documentation of a physical examination; or

(e) Hospital history and physical reports and admission and discharge summaries; or

(f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

(a) Clinical interview observations, including objective mental status exam results and interpretation.

(b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).

(c) Hospital, outpatient and other treatment records related to your current impairments.

(d) Testing results, if any, including:

(i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or

(ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for an incapacity determination must be from a medical professional described in WAC 388-447-0005 and must include:

(a) A diagnosis for the impairment, or impairments, based on an examination performed within five years of application;

(b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-447-0001; and

(c) Documentation of how the impairment, or impairments, is currently limiting your ability to work based on an examination performed within ninety days of the date of application or incapacity review. In the event of a declared state of emergency related to COVID-19, the department may accept functional medical evidence beyond ninety days of the date of application or incapacity review, or otherwise waive this requirement in its entirety.

(4) We consider documentation in addition to objective evidence to support the medical evidence provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) If you can't obtain medical evidence sufficient for us to determine if you are incapacitated without cost to you, and you meet the other eligibility conditions defined in WAC 388-447-0001, we pay the costs to obtain objective evidence based on our published payment limits and fee schedules.

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end?** (1) If we determine you are incapacitated and you meet the eligibility requirements in WAC 388-400-0070, you are eligible for referral to the housing and essential needs (HEN) program for a maximum period of twelve months. This is your incapacity authorization period.

(2) Your HEN referral eligibility stops at the end of your incapacity authorization period unless you provide current medical evidence that demonstrates there was no material improvement in your impairment. No material improvement means that your impairment continues to meet the incapacity criteria detailed in WAC 388-447-0001. In the event of a declared state of emergency related to COVID-19, the department may postpone review of your HEN referral program eligibility beyond the twelve month period if the department determines you are not eligible for the aged, blind, or disabled (ABD) program at the time of your incapacity review. The postponement of this review may occur retroactively to the date the governor declares a state of emergency related to COVID-19.

(3) The medical evidence must meet the criteria defined in WAC 388-447-0010.

(4) We use medical evidence received after your incapacity authorization period has ended when:

- (a) The delay was not due to your failure to cooperate;
- (b) We receive the evidence within thirty days of the end of your incapacity authorization period; and
- (c) The evidence meets the incapacity criteria in WAC 388-447-0001.

(5) Even if your condition has not improved, you aren't eligible for referral to the HEN program when:

- (a) We receive current medical evidence that doesn't meet the incapacity criteria in WAC 388-447-0001; or
- (b) We determine the prior decision that your condition met incapacity requirements was incorrect because:
  - (i) The information we had was incorrect or not enough to show incapacity; or
  - (ii) We didn't apply the rules correctly to the information we had at that time.

AMENDATORY SECTION (Amending WSR 18-05-075, filed 2/20/18, effective 3/23/18)

**WAC 388-449-0010 What evidence do we consider to determine disability?** (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

(a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

- (i) Medical doctor (MD);
- (ii) Doctor of osteopathy (DO);
- (iii) Doctor of optometry (OD) for visual disorders;
- (iv) Doctor of podiatry (DP) for foot and ankle disorders;
- (v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice; and

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments.

(b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

- (i) Psychiatrist;
- (ii) Psychologist;
- (iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;
- (iv) Physician assistant (PA) for impairments within their licensed scope of practice; and

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning.

(2) We accept medical evidence of how your impairment(s) affect your ability to function from "treating medical sources" once a diagnosis of a medically determinable impairment has been established by an "acceptable medical source" listed in subsection (1) of this section. "Treating medical sources" must be licensed to provide healthcare and include, but are not limited to:

- (a) Physician treating you for a mental impairment;
- (b) Clinical social worker;
- (c) Mental health professional (MHP);
- (d) Naturopath;
- (e) Chiropractor;
- (f) Physical therapist; and
- (g) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

(3) "Other evidence" means information from sources not listed in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical source" in subsection (1) of this section. Sources of "other evidence" may include public and private agencies, schools, family members, friends, caregivers, and employers.

(4) In the event of a declared state of emergency related to COVID-19, the department may accept a diagnosis of a medically determinable impairment from a "treating medical source" in subsection (2) of this section or the predictive risk intelligence system (PRISM).

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-449-0015 What medical evidence do I need to provide?** You must give us medical evidence of your impairment(s) and how they affect your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective, and complete.

- (1) Objective evidence for physical impairments means:
- (a) Laboratory test results;

- (b) Pathology reports;
  - (c) Radiology findings including results of X-rays and computer imaging scans;
  - (d) Clinical findings, including but not limited to ranges of joint motion, blood pressure, temperature or pulse, and documentation of a physical examination; and
  - (e) Hospital history and physical reports and admission and discharge summaries; or
  - (f) Other medical history and physical reports related to your current impairments.
- (2) Objective evidence for mental impairments means:
- (a) Clinical interview observations, including objective mental status exam results and interpretation.
  - (b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the diagnostic and statistical manual of mental disorders (DSM).
  - (c) Hospital, outpatient and other treatment records related to your current impairments.
  - (d) Testing results, if any, including:
  - (i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or
  - (ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.
- (3) Medical evidence sufficient for a disability determination must be from a medical professional described in WAC 388-449-0010 and must include:
- (a) A diagnosis for the impairment, or impairments, based on an examination performed by an acceptable medical source defined in WAC 388-449-0010 within five years of application;
  - (b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-449-0005;
  - (c) Documentation of how long a condition has impaired your ability to perform work related activities;
  - (d) A prognosis, or written statement of how long an impairment will impair your ability to perform work related activities; and
  - (e) A written statement from a medical professional (defined in WAC 388-449-0010) describing what you are capable of doing despite your impairment (medical source statement) based on an examination performed within ninety days of the date of application or forty-five days before the month of disability review. In the event of a declared state of emergency related to COVID-19, the department may accept functional medical evidence beyond ninety days of the date of application or forty-five days before the month of disability review, or otherwise waive this requirement in its entirety.
- (4) We consider documentation in addition to objective evidence to support the acceptable medical source or treating provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.
- (5) When making a disability decision, we don't use your report of symptoms as evidence unless objective evidence shows there is an impairment that could reasonably be expected to produce those symptoms.
- (6) We don't use symptoms related to substance abuse or a diagnosis of chemical dependency when determining dis-

ability if we have evidence substance use is material to your impairment(s).

(7) We consider substance use to be material to your impairment(s) if you are disabled primarily because of drug or alcohol abuse or addiction.

(8) If your impairment will persist at least sixty days after you stop using drugs or alcohol, we do not consider substance use to be material to your impairment.

(9) If you can't obtain medical evidence sufficient for us to determine if you are likely to be disabled without cost to you, and you meet the other eligibility conditions in WAC 388-400-0060, we pay the costs to obtain objective evidence based on published payment limits and fee schedules.

(10) We determine the likelihood of disability based solely on the objective information we receive. We are not obligated to accept another agency's or person's decision that you are disabled or unemployable.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end?** (1) The maximum period of eligibility for ABD cash is twenty-four months before we must review additional medical evidence. If you remain on ABD cash at the end of the twenty-four month period, we determine your eligibility using current medical evidence. In the event of a declared state of emergency related to COVID-19, the department may postpone review of your ABD cash eligibility beyond the twenty-four month period. The postponement of this review may occur retroactively to the date the governor declares a state of emergency related to COVID-19.

(2) If your application for SSI is denied:

(a) We review your eligibility for the ABD cash program;

(b) We stop your benefits if you do not provide proof you have filed an appeal with SSA within sixty days of a SSI denial for not being disabled.

(3) We stop your benefits after the final decision on your application for SSI/SSA benefits or if you fail to follow through with any part of the SSI/SSA application or appeals process.

#### WSR 20-24-011

#### EMERGENCY RULES

#### CLARK COLLEGE

[Filed November 19, 2020, 10:48 a.m., effective November 19, 2020, 10:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's code of student conduct to be compliant with federal regulations.

Citation of Rules Affected by this Order: New discipline procedures for cases involving allegations of violation of Title IX; WAC 132N-125-300, 132N-125-305, 132N-125-310, 132N-125-315, 132N-125-320, 132N-125-325, 132N-125-330, 132N-125-335, and 132N-125-340.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Under RCW 34.05.350 the agency for good cause finds 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: Clark College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 0, Repealed 0.

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

Date Adopted: November 18, 2020.

Christina A. Longo  
Interim Vice President  
of Human Resources

## DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF VIOLATION OF TITLE IX

### NEW SECTION

**WAC 132N-125-300 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Clark College's standard disciplinary procedures, WAC 132N-125-005 through 132N-125-225, these supplemental procedures shall take precedence.

### NEW SECTION

**WAC 132N-125-305 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Clark 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 harassment."

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

(1) **Quid pro quo harassment.** A Clark College employee conditioning the provision of an aid, benefit, or service of the college 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 the 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.

#### NEW SECTION

**WAC 132N-125-310 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Clark 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 the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the Clark 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 supplemental procedure does not prohibit Clark College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132N-125-200.

(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.

#### NEW SECTION

**WAC 132N-125-315 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
- (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.

#### NEW SECTION

**WAC 132N-125-320 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 132N-125-125. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

#### NEW SECTION

**WAC 132N-125-325 Rights of parties.** (1) Clark College's student conduct procedures, WAC 132N-125-120, 132N-125-125, 132N-125-130, and 132N-125-200, 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 coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

#### NEW SECTION

**WAC 132N-125-330 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

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

#### NEW SECTION

**WAC 132N-125-335 Initial order.** (1) In addition to complying with WAC 132N-125-135, 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 Clark College's education programs or activities; and
- (h) Describes the process for appealing the initial order to the Clark College president.

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

#### NEW SECTION

**WAC 132N-125-340 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 132N-125-215.

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

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

#### **WSR 20-24-016**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF LICENSING**

[Filed November 19, 2020, 2:43 p.m., effective November 19, 2020, 2:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of licensing is adopting emergency rules to change the requirement that prohibits cosmetology schools from offering more than fifty percent of training online; this requirement will be extended to seventy-five percent to provide schools more flexibility to safely accommodate students and staff during COVID-19.

Citation of Rules Affected by this Order: Amending WAC 308-20-010.

Statutory Authority for Adoption: RCW 18.16.030 and 43.24.023.

Other Authority: Not applicable.

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.

Reasons for this Finding: This emergency change is to limit in-person class training to assist with COVID-19 response efforts.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:



New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 19, 2020.

Damon Monroe  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 20-21-002, filed 10/8/20, effective 11/8/20)

**WAC 308-20-010 Definitions.** (1) "Chemical compounds formulated for professional use only" are those compounds containing hazardous chemicals in a form not generally sold to the public; including but not limited to, bulk concentrates of permanent wave solution, neutralizers, chemical relaxers, oxidizing agents, flammable substances, facial creams, or approved chemical compounds. These compounds must be designated for use on the hair, face, neck, skin, or scalp.

(2) "Monthly student report" are forms provided by the school, approved by the department, preprinted with the school name. The report must include the month, year and daily activities of the student in each subject, (i.e., number of shampoos, haircuts, perms, colors, etc.) within each course (i.e., barbering, manicuring, cosmetology, hair design, esthetics, master esthetics, or instructor-trainee).

(3) "Completed and graduated" is the completion of the school curriculum and the state approved minimum hourly course of training.

(4) "Apprentice salon/shop" is a location certified by the Washington state apprenticeship and training council, that provides training for individuals accepted into the apprenticeship program. Apprentice salon/shops shall not receive payment from the apprentice for training.

(5) "Apprentice trainer" is a person that is currently licensed and in good standing. This person provides training in a licensed shop approved for the apprenticeship program, who must have received journey level training and have held a license in the curriculum for which he or she is providing training for a minimum of three years.

(6) "Journey level training" is the completion of three years working as a licensed cosmetologist, hair designer, barber, manicurist, esthetician, or master esthetician.

(7) "Completion of the apprenticeship training" is the completion of the apprentice salon/shop curriculum that includes the state approved hourly course of training as described in WAC 308-20-080.

(8) "Monthly apprentice report" forms provided by the apprentice shop, approved by the department, printed with the shop name, for use in recording apprentice training hours and activities.

(9) "Online training" means an approved electronic learning environment through a licensed school in which a student is enrolled. Online training may be used for up to ~~(fifty)~~ **seventy-five** percent of the approved course of study.

(10) "Accreditation" is a status granted to a postsecondary school by one or more of the accrediting organizations recognized and approved by the U.S. Secretary of Education. Accreditation is voluntary and does not imply automatic transfer of credits from one postsecondary school to another.

(11) "Admission requirements" means the specific minimum criteria a school must use when accepting a student into the school.

**WSR 20-24-020**

**EMERGENCY RULES**

**DEPARTMENT OF**

**LABOR AND INDUSTRIES**

[Filed November 20, 2020, 8:22 a.m., effective November 20, 2020, 8:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: 2019's Clean Energy Transformation Act amends RCW 82.08.962 and 82.12.962 related to sales and use tax remittances for machinery and equipment used in generating electricity (sections 18 and 19, chapter 288, Laws of 2019, E2SSB 5116). Under the amendments, the sales and use tax remittances are available for certain clean energy projects when certified by the department of labor and industries (department) that the developer of the project complied with specific labor standard requirements and the machinery and equipment is installed on or after January 1, 2020, and completed by December 31, 2029. The department is required to adopt emergency rules to define and set minimum requirements for all labor standards associated with the certification for tax remittance; set requirements for all good faith efforts; and set other requirements to documentation and the certification process.

The emergency rules address:

- Standards for certification for:
  - Procurement from and contracts with women-owned, minority-owned, and veteran-owned businesses;
  - Procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations;
  - Apprenticeship utilization;
  - Preferred entry for workers living in the area where the project is being constructed;
  - Payment of prevailing wages; and
  - Project Labor Agreements and Community Workforce Agreements.
- Requirements and processes related to application, records and documentation, and certification.

An initial emergency rule (WSR 19-24-061) and CR-101 Preproposal statement of inquiry (WSR 19-24-062) were filed on November 27, 2019. A second emergency rule (WSR 20-08-089) was filed on March 27, 2020. A third emergency rule (WSR 20-16-012) was filed on July 23, 2020. This rule making renews the emergency rules while the permanent rule-making process continues. This emergency rule is adopted under new chapter 296-140 WAC, Clean energy labor standards certification. As directed by E2SSB 5116, the department is continuing work on permanent rule making for these requirements.

Citation of Rules Affected by this Order: New WAC 296-140-001, 296-140-002, 296-140-003, and 296-140-004.

Statutory Authority for Adoption: Sections 18 and 19, chapter 288, Laws of 2019; RCW 82.08.962 and 82.12.962; (E2SSB 5116), Laws of 2019.

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.

Reasons for this Finding: See purpose above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: November 20, 2020.

Joel Sacks  
Director

## Chapter 296-140 WAC

### CLEAN ENERGY LABOR STANDARDS CERTIFICATION

#### NEW SECTION

**WAC 296-140-001 Definitions.** (1) "Category 1 clean energy project" means a project to:

(a) Construct a facility capable of generating not less than 1000 watts AC of electricity using any of the following principal sources of power: Fuel cells; wind; biomass energy; geothermal resource; tidal or wave energy; or technology that converts otherwise lost energy from exhaust; or

(b) Construct solar energy systems capable of generating not less than 500 kilowatts AC of electricity.

(2) "Category 2 clean energy project" means a project to construct solar energy systems capable of generating more than 100 kilowatts AC, but no more than 500 kilowatts AC of electricity.

(3) "Community workforce agreement (CWA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the CWA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

(4) "Department" means the department of labor and industries.

(5) "Good faith efforts" means the efforts by the project developer or its designated principle contractor that maximize the likelihood that the project will be built in compliance with the standards for certification. The totality of the circumstances and factors will be reviewed to determine good faith. Good faith efforts are not necessary when the standard requirements have been met.

(6) "Labor hours" means the total hours of laborers, workers, or mechanics receiving an hourly wage who are directly employed by the contractor and all subcontractors working upon the project. Labor hours does not include hours worked by foremen, superintendents, or owners except where the hours worked are counted in satisfying the required apprentice to journey supervision ratio as required by apprenticeship standards.

(7) "Local resident" means Washington laborers, workers, or mechanics receiving an hourly wage who live within fifty miles of the project being constructed unless the project is being constructed in a rural county, then it is defined as Washington workers who live within two hundred miles of the project.

(8) "Minority-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a minority business enterprise (MBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

(9) "Project labor agreement (PLA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the PLA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

(10) "Registered apprentice" means an apprentice registered in an apprenticeship program approved by the Washington state apprenticeship and training council according to chapter 49.04 RCW.

(11) "Rural county" has the same definition as RCW 82.14.370(5).

(12) "Women-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a women business enterprise (WBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

(13) "Veteran-owned business" means a business certified by the Washington state department of veteran affairs under RCW 43.60A.190 or a business considered a veteran-owned business under 38 C.F.R. Part 74.

#### NEW SECTION

**WAC 296-140-002 Labor standard certification for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962.** (1) To qualify for the department certification for the fifty percent tax remittance for a Category 1 clean

energy project, the project must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Have twenty-one percent of the contracts awarded to women-owned businesses, minority-owned businesses, or veteran-owned businesses; or

(ii) Good faith efforts which include, but are not limited to:

(A) Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract;

(D) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;

(E) Apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation and where possible, establishing flexible time frames for performance to encourage participation;

(F) Adequately researching interested subcontractors and their capabilities before rejecting their proposals; and

(G) Not relying on price alone in the selection of subcontractors and considering reasonable quotes from women, minority, and veteran-owned businesses, even if other quotes are less expensive.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the twenty-four month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws.

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals.

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of fifteen percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved

apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of thirty-five percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of twenty percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington Work-Source office in advance of the start of the project or contract;

(B) Requesting the dispatch of local workers through union halls;

(C) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(D) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(E) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

(2) To qualify for the department certification for the seventy-five percent tax remittance for a Category 1 clean energy project, the project must meet the following minimum requirements:

(a) Meet the standards for certification for the fifty percent tax remittance under WAC 296-140-002(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for the department certification for the one hundred percent remittance for a Category 1 clean energy project, the project must have: A signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the fifty per-

cent and seventy-five percent tax remittance under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

#### NEW SECTION

**WAC 296-140-003 Labor standard certification for Category 2 clean energy projects under RCW 82.08.962 and 82.12.962.** To qualify for the department certification for the fifty percent tax remittance for a Category 2 clean energy project, the project must meet the standards for procurement from and contracts with women, minority, or veteran-owned businesses, procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations, apprenticeship utilization, and preferred entry for workers living in the area where the project is being constructed under WAC 296-140-002 (1) and (4).

#### NEW SECTION

**WAC 296-140-004 Application, records and documentation, and certification.** (1) Businesses applying for the department certification must complete an application in a form required by the department prior to the start of the project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) Documentation and evidence to support good faith efforts as necessary; and

(iv) Other records and documentation requested by the department.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

(i) The name, occupational title, and registration number for each registered apprentice;

(ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;

(iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;

(iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;

(v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;

(vi) Documentation and evidence to support good faith efforts as necessary; and

(vii) Other records and documentation requested by the department.

(d) Standard for preferred entry by local workers.

(i) The total number of workers performing labor hours on the project;

(ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;

(iii) Employment records that contain the address of individuals hired to work on the project;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(e) Standard for payment of prevailing wages.

(i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and

(ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.

(f) Records and documents for a standard for a PLA or CWA. A signed copy of the PLA or CWA for the project.

(3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.

(4) For Category 1 clean energy projects seeking certification for the fifty and seventy-five percent tax remittance and Category 2 clean energy projects seeking certification for the fifty percent tax remittance, businesses must submit notice of project completion in a form required by the department. After receiving the notice of competition, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.

(5) For Category 1 clean energy projects seeking certification for the one hundred percent tax remittance, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project.

### WSR 20-24-024

#### EMERGENCY RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed November 20, 2020, 8:55 a.m., effective November 20, 2020, 8:55 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose is to remove the option to serve petitions for judicial review in person at employment security department's (ESD) physical office and add the option to serve petitions for judicial review via email.

Citation of Rules Affected by this Order: Amending WAC 192-04-210 and 192-800-125.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50A.05.060, 34.05.020(19), 34.05.542(4).

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.

Reasons for this Finding: Due to the COVID-19 pandemic, ESD's offices, including offices in the Maple Park Avenue building, are closed to the public to protect the safety of agency staff and to limit the spread of the virus. Due to these closures, petitions for judicial review cannot be physically presented to, or received by, the commissioner's office. However, petitions for judicial review may still be submitted via mail. Additionally, the department is adding the option of filing petitions for judicial review via email.

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

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

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

Date Adopted: November 20, 2020.

Dan Zeitlin  
Employment System Policy Director

AMENDATORY SECTION (Amending WSR 13-05-033, filed 2/12/13, effective 3/15/13)

**WAC 192-04-210 Petitions for judicial review—Service on agency.** Delivery pursuant to RCW 34.05.542(4) shall be deemed to have been made when a copy of the petition for judicial review has been ~~((received by the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA or))~~ received by mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555 or received by email at the commissioner's review office at [cro@esd.wa.gov](mailto:cro@esd.wa.gov).

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

**WAC 192-800-125 When is a petition for review considered delivered to the department?** Delivery under RCW 34.05.542(4) is made when a copy of the petition for judicial review is ~~((received by the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA or))~~ received by mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555 or received by email at the commissioner's review office at [cro@esd.wa.gov](mailto:cro@esd.wa.gov).

### WSR 20-24-026

#### EMERGENCY RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed November 20, 2020, 9:04 a.m., effective November 20, 2020, 9:04 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To permit individuals who are reopening unemployment claims to backdate the reopening date "for the convenience of the department," as that term is defined by WAC 192-110-095 (2)(b).

Citation of Rules Affected by this Order: Amending WAC 192-110-050.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.140.

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.

Reasons for this Finding: In March and April 2020, the employment security department (ESD) saw an unprecedented surge in unemployment claims as a result of restrictions adopted to prevent the spread of COVID-19. After this initial surge, many claimants returned to work over the summer months as restrictions were eased across the state. Then on November 15, 2020, the governor issued Proclamation 20-25.8, which increased restrictions in order to slow the spread of rapidly increasing COVID-19 cases in the state and ensure that hospital and medical systems are not overwhelmed. Therefore, ESD is anticipating a surge in requests by individuals to reopen their initial claims. Under the current version of WAC 192-110-050, ESD cannot backdate a reopening

date unless a claimant shows good cause for not reopening their claim earlier. Permitting ESD to backdate the reopening date "for the convenience of the department" will give ESD the flexibility needed to backdate a reopening date in situations where it is difficult or impossible for ESD to accept a timely application, such as lack of available staff or equipment breakdowns.

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

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

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

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

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

Date Adopted: November 20, 2020.

Dan Zeitlin  
Policy Director

**AMENDATORY SECTION** (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-110-050 How do I reopen my claim?** (1) If you have stopped claiming for more than four consecutive weeks for any reason, you must reopen your claim.

(a) You may reopen your claim:

- (i) By using the department's online services; or
- (ii) By calling the unemployment claims center.

(b) You must reopen your claim **before** the end of the week.

(2)(a) Your claim will be reopened effective on Sunday of the week in which you contact the department to reopen your claim, unless you ask the department to backdate your reopening date to a prior week.

(b) The department (~~((will not))~~) may backdate your reopening date (~~((unless you show good cause for not reopening your claim earlier, except))~~);

(i) For "good cause," as that term is defined by WAC 192-110-095 (2)(a);

(ii) For "the convenience of the department" as that term is defined by WAC 192-110-095 (2)(b); or

(iii) As provided in WAC 192-140-005.

## WSR 20-24-030

### EMERGENCY RULES

### DEPARTMENT OF

### CHILDREN, YOUTH, AND FAMILIES

[Filed November 20, 2020, 12:05 p.m., effective November 20, 2020, 12:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend WAC 110-15-0280 to align with the department of children, youth, and families' (DCYF) emergency administrative hearing rules, chapter 110-03 WAC.

Citation of Rules Affected by this Order: Amending WAC 110-15-0280.

Statutory Authority for Adoption: RCW 43.216.905, 43.216.906.

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.

Reasons for this Finding: DCYF has conflicting WAC regarding an administrative appeal process that impacts the general welfare. Observing the time requirements for notice and comment would be contrary to the public interest.

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

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

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

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

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

Date Adopted: November 20, 2020.

Brenda Villarreal  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-15-0280 Right to request an administrative hearing.** (1) WCCC consumers have a right to request ~~((a hearing under chapter 388-02 WAC))~~ administrative hearings on any action affecting WCCC benefits.

(2) Child care providers may request administrative hearings ~~((under chapter 388-02))~~ WAC only for WCCC overpayments. A provider's burden of proof is a preponderance of the evidence.

(3) To request a hearing, a consumer or provider:

(a) Contacts the ~~((DSHS))~~ DCYF office which sent them the notice; or

(b) Writes to the office of administrative hearings, P.O. Box 42489, Olympia, WA 98504-2489; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers; or

(ii) Twenty-eight days of the date a decision is received for providers.

(4) The office of administrative hearings administrative law judge enters initial or final orders as provided in (~~WAC 388-02-0217~~) chapter 110-03 WAC. Initial orders may be appealed to a DSHS review judge under chapter (~~388-02~~) 110-03 WAC.

(5) To request a hearing under the seasonal child care program, see WAC (~~170-290-3860 and 170-290-3865~~) 110-15-3860 and 110-15-3865.

### WSR 20-24-031

#### EMERGENCY RULES

#### LOWER COLUMBIA COLLEGE

[Filed November 20, 2020, 1:03 p.m., effective November 20, 2020, 1:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule is similar to the emergency rule adopted on August 13, 2020. The college has filed a notice of intent to adopt the rule as a permanent rule on December 16, 2020, and is actively engaging in adopting the permanent rule. This emergency rule is for Lower Columbia College to amend their chapter 132M-125 WAC to meet new federal regulations for Title IX of the Education Amendments of 1972 (Title IX) that specify how recipients of federal financial assistance covered by Title IX, including post-secondary institutions, must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination. These new regulations went into effect August 14, 2020.

Citation of Rules Affected by this Order: New WAC 132M-125-300 through 132M-125-340.

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

Under RCW 34.05.350 the agency for good cause finds 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: New regulations for Title IX that specify how recipients of federal financial assistance covered by Title IX, including postsecondary institutions, must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination went into effect August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: November 18, 2020.

Sue Orchard  
Vice President  
of Student Services

### SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

#### NEW SECTION

**WAC 132M-125-300 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132M-125-005 through 132M-125-225, these supplemental procedures shall take precedence.

#### NEW SECTION

**WAC 132M-125-305 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college 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 the 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.

#### NEW SECTION

**WAC 132M-125-310 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

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

(c) Meets the definition of sexual harassment 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 the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other

disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132M-125-005 through 132M-125-225.

(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.

#### NEW SECTION

**WAC 132M-125-315 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

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

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

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

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

(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.

#### NEW SECTION

**WAC 132M-125-320 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 132M-125-125. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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



NEW SECTION

**WAC 132M-125-325 Rights of parties.** (1) The college's student conduct procedures, WAC 132M-125-125 through 132M-125-130, 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 coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

**WAC 132M-125-330 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

**WAC 132M-125-335 Initial order.** (1) In addition to complying with WAC 132M-125-135, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

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

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

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

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

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

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

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

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

NEW SECTION

**WAC 132M-125-340 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 132M-125-140.

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

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

**WSR 20-24-032****EMERGENCY RULES****DEPARTMENT OF****CHILDREN, YOUTH, AND FAMILIES**

[Filed November 20, 2020, 1:14 p.m., effective November 21, 2020]

Effective Date of Rule: November 21, 2020.

Purpose: Chapter 110-310 WAC, Emergency child care and early learning licensing, establishes emergency child care license requirements.

Citation of Rules Affected by this Order: New WAC 110-310-0001, 110-310-0005, 110-310-0010, 110-310-0015,

110-310-0020, 110-310-0025, 110-310-0030, and 110-310-0035.

Statutory Authority for Adoption: RCW 43.216.065.

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.

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The department of children, youth, and families' (DCYF) ability to issue emergency child care licenses will better ensure a safe and healthy supply of child care services during the pandemic. Chapter 110-310 WAC was adopted on an emergency basis on March 25, 2020, under WSR 20-08-044 and again on July 23, 2020, under WSR 20-16-018. Circumstances changed under Proclamations 20-25 through 20-25.8 "Safe Start - Stay Health[y]" County-by-County Phased Reopening, but conditions prompting the state of emergency declaration still exist and justify the need for the chapter to remain in effect.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 8, Amended 0, Repealed 0.

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

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

Date Adopted: November 20, 2020.

Brenda Villarreal  
Rules Coordinator

#### NEW SECTION

**WAC 110-310-0001 Emergency child care license—Intent and authority.** (1) The department of children, youth, and families (or "the department") was established under chapter 6, Laws of 2017. Chapter **43.216** RCW establishes the department's responsibility and authority to set and enforce licensing requirements and ECEAP standards, including the authority to adopt rules to implement chapter **43.216** RCW.

(2) On February 29, 2020, the governor proclaimed a state of emergency in Washington state in response to the first case of the novel coronavirus disease 2019 (COVID-19). See proclamation by the governor no. 20-05. As of March 11, 2020, the world health organization has classified COVID-19

as a pandemic. See proclamation by the governor no. 20-08. The pandemic spreads easily and rapidly from person-to-person and may result in serious illness or death. See proclamation by the governor no. 20-16.

(3) In response to this pandemic Washington's citizens including, but not limited to, first responders, healthcare workers, retail workers, public works employees, and other professionals in Washington state are working each day to curtail the spread of COVID-19, treat victims of this disease, supply citizens with goods to properly "social distance" themselves from others, and continue the regular operation of everyday services and utilities.

(4) As a result of this pandemic, and under the authority granted to the department under RCW 43.216.065 (2)(c) the department shall issue emergency child care licenses to ensure a safe and healthy supply of child care services during the pandemic.

**Reviser's note:** The unnecessary underscoring 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.

#### NEW SECTION

**WAC 110-310-0005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" shall have the same meaning as described in RCW 43.216.010.

(2) "Department" means the Washington state department of children, youth, and families.

(3) "Early learning" shall have the same meaning as described in RCW 43.216.010.

(4) "Emergency Child Care license" means a license authorized under this chapter that allows a person, firm, partnership, association, or corporation to provide child care in an approved home or residence that is occupied by the licensee, or in an approved facility that is not used as a home or residence.

(5) "Emergency license agreement" means the agreement described in WAC 110-310-0020.

(6) "Enforcement action" shall have the same meaning as described in RCW 43.216.010.

(7) "Seasonal camp" for the purposes of emergency child care licensing and the exemption listed in RCW 43.216.010 (2)(g) means a program of three months' or less duration engaged primarily in recreational or educational activities conducted on a closely supervised basis, owned by any person or persons, organization, association, corporation, or agency of federal, state, county or municipal government, and operated, maintained, or offered for use within the state of Washington either free of charge or by payment of a fee.

#### NEW SECTION

**WAC 110-310-0010 Emergency child care license—License required.** (1) Pursuant to RCW 43.216.250(6), any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's home must be licensed. Individuals and entities that

may be exempt from licensing are described in RCW 43.216.010(2).

(2) Pursuant to RCW 43.216.365, an agency operating without an appropriate license shall be guilty of a misdemeanor. Under RCW 43.216.360 the department may issue a penalty of one hundred fifty dollars per day for each day a family day care home provided care without being licensed and two hundred fifty dollars for each day a child day care center provided care without being licensed.

#### NEW SECTION

**WAC 110-310-0015 Emergency child care license—Application.** (1) To be eligible for an emergency child care license, an applicant must:

- (a) Be at least 18 years of age;
- (b) Submit a paper or electronic application to the department for an emergency child care license; and
- (c) Sign and submit to the department an affidavit stating that upon the issuance of an emergency child care license the applicant will comply with the requirements described in chapter 43.216 RCW, this chapter, and emergency license agreement that is prepared and authorized by the department.

(2) Pursuant to RCW 43.216.260, an application must include the following information:

- (a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;
- (b) The character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care of children;
- (c) The number of qualified persons required to render the type of care for which an agency seeks a license;
- (d) The health, safety, cleanliness, and general adequacy of the premises to provide for the comfort, care, and well-being of children;
- (e) The provision of necessary care and early learning, including food, supervision, and discipline; physical, mental, and social well-being; and educational and recreational opportunities for those served;
- (f) The financial ability of an agency to comply with minimum requirements established under chapter 43.216 RCW and this chapter; and
- (g) The maintenance of records pertaining to the care of children.

#### NEW SECTION

**WAC 110-310-0020 Licensing rules.** (1) To protect the health and safety of children in care as authorized under this chapter the provider must agree, enter into, and comply with the terms and conditions of an emergency license agreement prepared and authorized by the department.

(2) The Emergency license agreement shall require compliance with the following minimum terms and conditions:

- (a) Compliance with the requirements described in chapter 43.216 RCW;
- (b) Compliance with the requirements described in this chapter;
- (c) Compliance with the background check requirements described in chapter 43.43 RCW, chapter 43.216 RCW, and

the regulations contained in chapter 110-06 WAC that are listed in section (3) of this section;

(d) Compliance with the regulations contained in chapter 110-300 WAC that are listed in section (3) of this section; and

(e) Compliance with all other requirements described in the emergency license agreement.

(3) The licensee must comply with the following regulations contained in chapter 110-06 WAC and chapter 110-300 WAC:

(a) WAC 110-06-0010, 110-06-0020, 110-06-0040, 110-06-0041, 110-06-0041, 110-06-0043, 110-06-0045, 110-06-0050, 110-06-0070, 110-06-0080, 110-06-0090, 110-06-0100, 110-06-0110, 110-06-0115, and 110-06-0120; and

(b) WAC 110-300-0005, 110-300-0147, 110-300-0165, 110-300-0166, 110-300-0175, 110-300-0185, 110-300-0200, 110-300-0205, 110-300-0210, 110-300-0215, 110-300-0221, 110-300-0230, 110-300-0236, 110-300-0240, 110-300-0241, 110-300-0245, 110-300-0260, 110-300-0270, 110-300-0280, 110-300-0281, 110-300-0290, 110-300-0291, 110-300-0295, 110-300-0296, 110-300-0330, 110-300-0331, 110-300-0350, 110-300-0354, 110-300-0420, 110-300-0435, 110-300-0436, 110-300-0440, 110-300-0443, 110-300-0455, 110-300-0475, and 110-300-0485.

**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.

#### NEW SECTION

**WAC 110-310-0025 Denial, modification, suspension, and revocation of an emergency child care license—Right of review.** (1) A license authorized to be issued under this chapter may be denied pursuant to chapter 43.216 RCW, this chapter, and chapter 110-06 WAC.

(2) A license issued under this chapter may be suspended, modified, or revoked if the licensee fails to comply with the requirements contained in chapter 43.216 RCW, this chapter, or chapter 110-06 WAC.

**Reviser's note:** The unnecessary underscoring 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.

#### NEW SECTION

**WAC 110-310-0030 Process for seeking review.** (1) Pursuant to RCW 43.216.250 and RCW 43.216.325, the department is authorized to take enforcement action against an applicant or licensee if the licensee fails to comply with this chapter, chapter 110-06 WAC or chapter 43.216 RCW.

(2) An applicant or licensee has the right to appeal an enforcement action by requesting an adjudicative proceeding (or "hearing") pursuant to the hearing rules codified in chapter 110-03 WAC.

(3) The department must issue a notice of violation to an early learning provider when taking enforcement actions. A notice of violation must be sent certified mail or personal service and must include the following information:

- (a) The reason why the department is taking the action;
- (b) The rules the provider failed to comply with;

- (c) The provider's right to appeal enforcement actions; and  
 (d) How the provider may appeal and request a hearing.

**Reviser's note:** The unnecessary underscoring 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.

#### NEW SECTION

**WAC 110-310-0035 Emergency rules and emergency child care license termination date.** (1) If this chapter is not extended by emergency or permanent rule, this chapter shall expire pursuant to RCW 34.05.350.

(2) If this chapter is not extended by emergency or permanent rule, an emergency child care license issued under this chapter shall expire six months on the date calculated in subsection (1) of this section.

(3) At the department's discretion, an emergency child care license issued under this chapter on or after March 25, 2020 may be extended for a period of time consistent with the requirements described in section (1) of this section; or for one six-month period if this rule becomes permanent under chapter 34.05 RCW.

#### **WSR 20-24-044**

#### **EMERGENCY RULES**

#### **BELLINGHAM TECHNICAL COLLEGE**

[Filed November 23, 2020, 1:25 p.m., effective November 23, 2020, 1:25 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's student conduct code to be compliant with federal regulations.

Citation of Rules Affected by this Order: New Supplemental Title IX Student Conduct Procedures; WAC 495B-121-155, 495B-121-165, 495B-121-175, 495B-121-185, 495B-121-195, 495B-121-205, 495B-121-210, 495B-121-215 and 495B-121-225; and repealing WAC 495B-121-150, 495B-121-160, 495B-121-170, and 495B-121-180.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; 28B.50.130.

Under RCW 34.05.350 the agency for good cause finds 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: Bellingham Technical College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020. An emergency rule extension is requested in order for Bellingham Technical College to comply with all office of the attorney general requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 4; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 0, Repealed 4.

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 23, 2020.

Ronda Laughlin  
 Executive Assistant  
 to the President

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-010 Definitions.** The following definitions shall apply for the purpose of this student conduct code.

(1) "Board" means the board of trustees of Bellingham Technical College.

(2) "College" means Bellingham Technical College.

(3) "Student conduct officer" is a Bellingham Technical College ~~((administrator))~~ employee designated by the president or vice president of student services to be responsible for implementing and enforcing the student conduct code. ~~((The president or vice president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.))~~

(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 for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. ~~((The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.))~~

(5) "The president" is the president of ~~((the))~~ Bellingham Technical College. The president is authorized to:

(a) Delegate any ((and all)) of ((his or her)) 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.

(6) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or ~~((and))~~ an expulsion are heard by the student conduct appeals board. Appeals

of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

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

(9) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

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

(b) By sending the document by email and by certified mail, or first-class mail, to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(10) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

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

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

(13) "Day" ~~((and))~~ means a calendar day, except when a "business day" is specified. "Business day" means a week-day, excluding weekends and college holidays.

(14) ~~("Alcohol" or "alcoholic beverages" means the definition of liquor as contained within RCW 66.04.010 as now law or hereinafter amended.~~

~~(15) "Drugs" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.201 through 69.50.212, or a legend drug as defined in RCW 69.41.010.)~~ A "complainant" is an alleged victim of sexual misconduct.

(15) "Sexual misconduct" has the meaning ascribed to this term in WAC 495B-121-255(13).

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-020 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of Bellingham Technical College the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president

of student services or their designee. ~~((The vice president of student services or))~~ Unless otherwise specified, the student conduct officer, or their delegee shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-040 Prohibited student conduct.** ~~((Prohibited student conduct for which))~~ The college may impose ((sanctions includes, but is)) disciplinary sanctions against a student 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, any of the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

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

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) Other dishonesty. Any other acts of dishonesty. Such acts include, but are not limited to:

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

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

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

(3) Obstruction or ((disruption of)) disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on campus property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) Assault, intimidation, harassment. Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, ((stalking)) or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this ~~((subsection:~~

~~(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.~~

~~(b) Stalking is intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent)) code. "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law, that intentionally humiliates, harms, or intimidates the victim.~~

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

(6) ~~((Attempted or actual damage to, or theft or misuse of, real or personal property or money of:~~

~~(a) The college or state;~~

~~(b) Any student or college officer, employee, or organization; or~~

~~(c) Any other person or organization, or possession of such property or money after it has been stolen.)) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.~~

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

~~(8) ((Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.~~

~~(9)) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:~~

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

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

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission~~((:))~~; or

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

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

~~((i)) 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, except in designated areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems and snuff.~~

(12) Alcohol. Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(13) Marijuana. Being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling, or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(14) Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional.

(15) Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.

(16) Conduct that is disorderly, lewd, or obscene.

(17) Breach of the peace.

~~((l)) Discriminatory action))~~ (10) Alcohol, drug, and tobacco violations.

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

(b) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form,

or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

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

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, or windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. 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, cigars, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems, and snuff.

(11) Lewd conduct. Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) Discriminatory conduct. Conduct which harms or adversely affects any ((student or college employee)) member of the college community because of ((his/her race,)) their race; color((:)); national origin((:)); sensory, mental, or physical disability((:)); use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation((, age, creed, or religion).

(19) Sexual violence. Sexual or gender-based misconduct perpetrated against a person's will or where a person is incapable of giving consent including, but not limited to, rape, sexual assault, sexual battery, gender-based stalking, and sexual coercion, regardless of the relationship between the perpetrator and the victim.

(20) Sexual harassment. Conduct that includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other sexual conduct, including verbal, nonverbal, electronic or social media communication, or physical touching that would substantially interfere with a reasonable person's ability to participate in or benefit from the college's program, or to create an intimidating, hostile, or offensive educational environment.

(21) Other harassment. Conduct that has the purpose or effect of substantially interfering with a reasonable person's work or educational performance or creating an intimidating, hostile or offensive working or educational environment, when such conduct is directed at an individual because of race, national origin, disability, age, religion, sexual orientation, gender or any other legally protected classification.)); gender identity; veteran's status; or any other legally protected classification.

(13) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined

in the supplemental procedures to this code. See WAC 495B-121-330 (supplemental Title IX student conduct procedures).

(a) Sexual harassment. The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

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

(c) Sexual violence. "Sexual violence" is a type of 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. Any actual or attempted 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. 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 bodily contact in a sexual manner.

(iii) 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.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) 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 domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) 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.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For the purposes of this code, "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 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.

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 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; sexual orientation; gender identity; veteran's status, or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

((22)) (15) Retaliation. Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) Misuse of electronic resources. Theft or 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.

((23)) (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.

((24) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

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

(d) Interfering with someone else's proper participation in a proceeding;

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

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(25) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

((26)) (18) Safety violations. ((Safety violation includes any)) Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

((27)) (19) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

((28)) (20) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

((29) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.))

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



student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-050 Disciplinary sanctions and terms and conditions.** ~~(1) The following disciplinary (actions include, but are not limited to, the following sanctions that may be imposed upon students according to the procedure outlined in WAC 495B-121-070 through 495B-121-200.~~

~~(1))~~ sanctions may be imposed upon students found to have violated the student conduct code.

(a) Disciplinary warning((:)). A verbal statement to a student that there is a violation, and that continued violation may be cause for further disciplinary action.

~~((2))~~ (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.

~~((3))~~ (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(s) 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. ~~((A student who is on disciplinary probation may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:~~

~~(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.~~

~~(b) 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.~~

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

(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 action is taken.

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

(a) Restitution((:)). Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an inves-

tigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

~~((5) Disciplinary suspension: Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~(6))~~ (b) 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.

~~((7) Dismissal: The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~(8) Refund of fees: Refund of fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund policy.~~

~~A student suspended on the basis of conduct that disrupted the orderly operation of the campus or any facility of the college may be denied access to all or any part of the campus or other college facility.~~

~~(9))~~ (c) Not in good standing. A student may be deemed "not in good standing" with the college. If so, that student shall be subject to the following restrictions:

(i) Ineligible to hold any 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 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.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-060 Statement of jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:

(a) On Bellingham Technical College premises and facilities((, to conduct that occurs));

(b) At or in connection with college-sponsored activities((, or to off-campus conduct that)); or

(c) Off-campus, and which, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

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

(3) Students are responsible for their conduct from ~~((the time of application for admission))~~ notification of acceptance at the college 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.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-065 Statement of purpose.** (1) Bellingham Technical College is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, it has special expectations regarding the conduct of the various participants in the college community.

(2) Admission to the college carries with it the prescription that the student will conduct ~~((himself or herself))~~ themselves as a responsible member of the college community. This includes an expectation that the student will obey appropriate laws, will comply with the rules of the college and its departments, and will maintain a high standard of integrity and honesty.

(3) Sanctions for violations of college rules or conduct that interferes with the operation of college affairs may be applied by the college, and the college may impose sanctions independently of any action taken by civil or criminal authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

(4) The rules and regulations prescribed in this title shall be observed by guests and visitors while on campus, at all college functions and events, and on or within any other college-controlled or college-owned property. Guests and visitors who willfully refuse to obey college security or other duly designated college authorities to desist from conduct prohibited by such rules and regulations may be ejected from the premises. Refusal to obey such an order may subject the person to arrest under the provisions of the Washington criminal trespass law, in addition to such other sanctions as may be applicable.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-070 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 disciplinary action by serving the respondent with written notice directing ~~((him or her))~~ them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting ~~((his or her))~~ 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.

~~((4))~~ (5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC ~~((495B-121-040))~~ 495B-121-255;

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that the disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reason-

able effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-080 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ~~((twenty-one))~~ ten business days of service ~~((to))~~ of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless the respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

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

(b) Dismissals; and

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

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

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

~~(b) Disciplinary probation;~~

~~(c) Written reprimands; and~~

~~(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions))~~ subject to the procedures outlined in WAC 495B-121-275 through 495B-121-285.

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

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the

complainant an opportunity to intervene as a party to the appeal.

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-090 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which ~~((he or she is))~~ they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, 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))~~ college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon ~~((both of the parties))~~ 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 ~~((twenty-one))~~ ten business days of service~~((s))~~ of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-100 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided ~~((the respondent))~~ a party files a written request for review with the conduct review officer within ~~((twenty-one))~~ ten business days of service of the initial decision.

(2) The president shall not participate in any case in which ~~((he or she is))~~ they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give ~~((each party))~~ 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 decisions 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 president does not make a disposition of the matter within twenty business days after the request is submitted.

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

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-110 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One faculty member or administrative staff member (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrative staff member appointed on a yearly basis shall serve as the chair of the committee and may ~~((take action))~~ act on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

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

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness~~((;))~~; in which they have direct or personal interest, prejudice, or bias~~((;))~~; or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425 (4).

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-120 Appeal—Student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW~~((, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control))~~.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business 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 also continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct pre-hearing 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,))~~ If a request for a document exchange is 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.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

- (a) The conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited with-

out notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of ((his/her)) their choice. A respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at ((his or her)) their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-125 Student conduct appeals committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

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

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that ((he/she)) they select((s)), in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross-examine the other. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-130 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within ~~((twenty))~~ ten business days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall so be identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by ~~((the respondent))~~ a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

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

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-135 Appeal from student conduct committee initial decision.** (1) A ~~((respondent))~~ party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ~~((twenty-one))~~ ten business days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. If necessary, to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will (~~normally~~) be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within (~~forty-five~~) twenty-one business days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) (~~The president may, at his or her discretion, suspend any disciplinary action and/or impose interim sanctions pending review of the merits of the findings, conclusions, and disciplinary actions imposed.~~) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president shall not engage in any "ex parte" communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

**WAC 495B-121-140 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety or welfare of members of the college community; or
- (c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

- (a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that (~~his or her~~) their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(~~(a) The hearing will be conducted as a brief adjudicative proceeding.~~)

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the (~~student~~) respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(g) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

**~~((DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT))~~**

#### NEW SECTION

**WAC 495B-121-275 Brief adjudicative proceedings authorized.** This chapter is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

(1) Student conduct appeals involving the following disciplinary actions:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Written reprimands;
- (d) Any condition or term imposed in conjunction with one of the foregoing disciplinary actions;
- (e) Summary suspensions; and
- (f) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(2) Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

#### NEW SECTION

**WAC 495B-121-290 Brief adjudicative proceedings—Agency record.** The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

### **SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES**

#### NEW SECTION

**WAC 495B-121-325 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-230 through 495B-121-320, these supplemental procedures shall take precedence.

#### NEW SECTION

**WAC 495B-121-330 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college 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 the 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.

#### NEW SECTION

**WAC 495B-121-335 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

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

(c) Meets the definition of sexual harassment 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 the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 495B-121-230 through 495B-121-320.

(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.

#### NEW SECTION

**WAC 495B-121-340 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the Title IX hearing 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); and
- (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.

#### NEW SECTION

**WAC 495B-121-345 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the Title IX hearing committee will send a hearing notice to all parties, in compliance with WAC 495B-121-300. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

#### NEW SECTION

**WAC 495B-121-350 Rights of parties.** (1) The college's student conduct procedures, WAC 495B-121-230 through 495B-121-320 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 coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

#### NEW SECTION

**WAC 495B-121-355 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

- (a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or
- (b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

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



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

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

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

**NEW SECTION**

**WAC 495B-121-360 Initial order.** (1) In addition to complying with WAC 495B-121-310 the Title IX hearing 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, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college educational programs or activities; and
  - (h) Describes the process for appealing the initial order to the college president.
- (2) The committee chair will serve the initial order on the parties simultaneously.

**NEW SECTION**

**WAC 495B-121-365 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 495B-121-315.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction(s) and condition(s) imposed in the initial order are

affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction(s) and/or condition(s).

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

**NEW SECTION**

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
495B-121-010	495B-121-245
495B-121-020	495B-121-230
495B-121-030	495B-121-250
495B-121-040	495B-121-255
495B-121-050	495B-121-260
495B-121-060	495B-121-235
495B-121-065	495B-121-240
495B-121-070	495B-121-265
495B-121-080	495B-121-270
495B-121-090	495B-121-280
495B-121-100	495B-121-285
495B-121-110	495B-121-295
495B-121-120	495B-121-300
495B-121-125	495B-121-305
495B-121-130	495B-121-310
495B-121-135	495B-121-315
495B-121-140	495B-121-320

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 495B-121-150 Supplemental sexual misconduct—Procedures.
- WAC 495B-121-160 Supplemental sexual misconduct—Definitions.
- WAC 495B-121-170 Supplemental complaint process.
- WAC 495B-121-180 Supplemental appeal rights.
- WAC 495B-121-190 Brief adjudicative proceedings authorized.
- WAC 495B-121-200 Brief adjudicative proceedings—Agency record.

~~**((DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT))**~~

**SUPPLEMENTAL TITLE IX STUDENT CONDUCT  
PROCEDURES**

**NEW SECTION**

**WAC 495B-121-155 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-010 through 495B-121-140, these supplemental procedures shall take precedence.

**NEW SECTION**

**WAC 495B-121-165 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college 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 the 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, 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.

**NEW SECTION**

**WAC 495B-121-175 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

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

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

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 495B-121-010 through 495B-121-140.

(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.

NEW SECTION

**WAC 495B-121-185 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the Title IX hearing 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); and
- (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.
- (f) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

**WAC 495B-121-195 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the Title IX hearing committee will send a hearing notice to all parties, in compliance with WAC 495B-121-120. In no event will the hearing date be less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. The 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.

NEW SECTION

**WAC 495B-121-205 Rights of parties.** (1) The college's student conduct procedures, WAC 495B-121-010 through 495B-121-140 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 coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

**WAC 495B-121-210 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

**WAC 495B-121-215 Initial order.** (1) In addition to complying with WAC 495B-121-130, the Title IX hearing 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 deter-

mination 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, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college education programs or activities; and

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

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

#### NEW SECTION

**WAC 495B-121-225 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 495B-121-135.

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

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

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495B-121-150 Supplemental sexual misconduct—  
Procedures.

WAC 495B-121-160 Supplemental sexual misconduct—  
Definitions.

WAC 495B-121-170 Supplemental complaint process.

WAC 495B-121-180 Supplemental appeal rights.

#### **WSR 20-24-048**

#### **EMERGENCY RULES**

#### **HEALTH CARE AUTHORITY**

[Filed November 23, 2020, 3:46 p.m., effective November 23, 2020, 3:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is temporarily removing the requirement to obtain a signature from the medicaid client or the client's designee upon receipt of pharmacy products dispensed and delivered directly to a client.

Citation of Rules Affected by this Order: Amending WAC 182-530-5000.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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.

Reasons for this Finding: In response to the current public health emergency surrounding the outbreak of the coronavirus disease (COVID-19), along with the governor of Washington's emergency proclamations related to COVID-19, this rule making is necessary to immediately allow delivery of pharmacy products without the required signature from the client or the client's designee in order to avoid contact between the client and the delivery person. The current emergency rule, filed under WSR 20-16-049, expires on November 25, 2020. The agency filed a Preproposal statement of inquiry under WSR 20-15-036 to begin the rule-making process and has sent a draft of the rule to stakeholders.

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

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

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

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

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

Date Adopted: November 23, 2020.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-5000 Billing requirements—Pharmacy claim payment.** (1) When billing the medicaid agency for pharmacy services, providers must:

(a) Use the appropriate agency claim form or electronic billing specifications;

(b) Include the actual eleven-digit national drug code (NDC) number of the product dispensed from a rebate eligible manufacturer;

(c) Bill the agency using metric decimal quantities which is the National Council for Prescription Drug Programs (NCPDP) billing unit standard;

(d) Meet the general provider documentation and record retention requirements in WAC 182-502-0020; and

(e) Maintain proof of delivery receipts.

(i) When a provider delivers an item directly to the client or the client's authorized representative, the provider must be able to furnish proof of delivery, including ~~((signature,))~~ the client's name and a detailed description of the item or items delivered.

(ii) When a provider mails an item to the client, the provider must be able to furnish proof of delivery including a mail log.

(iii) When a provider uses a delivery or shipping service to deliver items, the provider must be able to furnish proof of delivery and it must:

(A) Include the delivery service tracking slip with the client's name or a reference to the client's package or packages; the delivery service package identification number; and the delivery address.

(B) Include the supplier's shipping invoice, with the client's name; the shipping service package identification number; and a detailed description.

(iv) Make proof of delivery receipts available to the agency upon request.

(2) When billing drugs under the expedited authorization process, providers must insert the authorization number which includes the corresponding criteria code or codes in the appropriate data field on the drug claim.

(3) Pharmacy services for clients on restriction under WAC 182-501-0135 must be prescribed by the client's primary care provider and are paid only to the client's primary pharmacy, except in cases of:

(a) Emergency;

(b) Family planning services; or

(c) Services properly referred from the client's assigned pharmacy or physician/ARNP.

Reasons for this Finding: In response to the current public health emergency surrounding the outbreak of the coronavirus disease (COVID-19), this rule making is necessary to immediately allow the agency the ability to make specific products for the treatment of cough and cold covered by simply updating publications, rather than by changing WAC. This flexibility is necessary to ensure that when products are determined to have evidence of efficacy in treating COVID-19 or its symptoms, they are made available to clients as a covered benefit as quickly as possible.

The current emergency rule, filed under WSR 20-16-048, will expire on November 25, 2020. The agency filed a Preproposal statement of inquiry under WSR 20-15-034 to begin the permanent rule-making process. The agency subsequently filed its Proposed rule making under WSR 20-23-121, setting a public hearing date of December 22, 2020.

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

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

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

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

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

Date Adopted: November 23, 2020.

Wendy Barcus  
Rules Coordinator

## WSR 20-24-049

### EMERGENCY RULES

#### HEALTH CARE AUTHORITY

[Filed November 23, 2020, 3:47 p.m., effective November 23, 2020, 3:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is replacing the list of covered generic products for the treatment of cough and cold. Under the amended rule, the agency instead covers only those products with a preferred status on the medicaid preferred drug list (PDL) on the date a prescription is dispensed.

Citation of Rules Affected by this Order: Amending WAC 182-530-2000.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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.

AMENDATORY SECTION (Amending WSR 19-22-016, filed 10/25/19, effective 11/25/19)

**WAC 182-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies.** (1) The medicaid agency covers:

(a) Outpatient drugs, including over-the-counter (OTC) drugs, as defined in WAC 182-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 182-530-1050;

(iii) The drug is not excluded from coverage under WAC 182-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 182-530-7500; and

(v) The drug is prescribed by a provider with prescriptive authority. Exceptions to the prescription requirement exist for family planning and emergency contraception in (b) of this subsection.

(b) Family planning drugs, devices, and drug-related supplies per chapter 182-532 WAC and as follows:

(i) OTC family planning drugs, devices, and drug-related supplies without a prescription when the agency determines it necessary for client access and safety;

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 182-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, excluding emergency contraception, when dispensed in a one-year supply only, unless:

(A) A smaller supply is directed by the prescriber;

(B) A smaller supply is requested by the client;

(C) The pharmacy does not have adequate stock.

(c) Vitamins, minerals, and enzymes when prescribed for:

(i) Prenatal vitamins, when prescribed and dispensed to pregnant women;

(ii) A medical condition caused by a clinically documented deficiency;

(iii) A United States Preventive Services Task Force recommendation with an A or B rating;

(iv) Fluoride for clients under age twenty-one; or

(v) A clinically documented medical condition that causes vitamin, mineral, or enzyme deficiencies, and the deficiency cannot be treated through other dietary interventions.

(d) OTC drugs, vitamins, and minerals when determined by the agency to be the least costly therapeutic alternative for a medically accepted indication. All covered OTC products determined to be the least costly therapeutic alternatives for medically accepted indications will be included on the agency's published apple health preferred drug list. This subsection does not apply to products prescribed for the treatment of cough or cold symptoms. See this subsection (1) (h) of this section and WAC 182-530-2100 (1)(b)(v) for coverage of products prescribed for the treatment of cough and cold symptoms.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 182-530-2100; and

(iv) Determined by the agency that a product covered under chapter 182-543 WAC related to durable medical equipment and supplies should be available at retail pharmacies.

(f) Preservatives, flavoring, or coloring agents, only when used as a suspending agent in a compound.

(g) OTC and prescription drugs to promote tobacco/nicotine cessation.

(h) ~~((The following generic products))~~ For the treatment of cough and cold(±

~~(i) Dextromethorphan 15 mg/5 ml liquid or syrup;~~

~~(ii) Dextromethorphan/Guaifenesin 10 mg – 100/5 ml liquid or syrup, including sugar free formulations;~~

~~(iii) Guaifenesin 100 mg/5 ml liquid or syrup;~~

~~(iv) Phenylephrine 10 mg tablets;~~

~~(v) Phenylephrine 2.5 mg/ml liquid or syrup;~~

~~(vi) Pseudoephedrine 30 mg and 60 mg tablets;~~

~~(vii) Pseudoephedrine 15 mg/5 ml liquid or syrup; and~~

~~(viii) Saline 0.65% nasal spray)), only those products included with a preferred status on the medicaid preferred drug list (PDL), as described in WAC 182-530-4100, on the date a client's prescription is dispensed.~~

(2) The agency does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

## WSR 20-24-057

### EMERGENCY RULES

#### BELLEVUE COLLEGE

[Filed November 24, 2020, 9:07 a.m., effective December 1, 2020]

Effective Date of Rule: December 1, 2020.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This required emergency updates to the student conduct code of Bellevue to be compliant with federal regulations. Bellevue College filed a CR-103E on August 11, 2020, and is actively undertaking the appropriate steps to adopt a permanent rule. This renewal will ensure that the emergency rule will remain in effect until the college can finalize the permanent rule.

Citation of Rules Affected by this Order: New Supplemental Title IX Student Conduct Procedures; WAC 132H-126-400, 132H-126-410, 132H-126-420, 132H-126-430, 132H-126-440, 132H-126-450, 132H-126-460, 132H-126-470 and 132H-126-480; and amending WAC 132H-126-040, 132H-126-100, 132H-126-120, 132H-126-130, 132H-126-140, 132H-126-160, 132H-126-170, 132H-126-200, 132H-126-210, 132H-126-300, 132H-126-310, 132H-126-320, 132H-126-330, and 132H-126-340.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 19-01-082, § 132H-126-010, filed December 17, 2018, effective January 17, 2019.

Under RCW 34.05.350 the agency for good cause finds 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: Bellevue College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 15, Repealed 0.

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

Date Adopted: November 4, 2020.

Tracy Biga MacLean  
Associate Director

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-010 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140, delegates to the president of Bellevue College the authority to administer student disciplinary action. Administration of the disciplinary procedures is the responsibility of the provost for academic and student affairs or designee and/or the designated student conduct officer. The student conduct officer shall serve as the principal investigator and administrator for ~~((alleged))~~ reported violations of this code.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-040 Definitions.** The following definitions shall apply for the purposes of this student conduct code:

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

(2) **"College official"** is an employee of the college performing assigned administrative, security, professional, or paraprofessional duties.

(3) **"College premises"** shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, other property owned, used, or controlled by the college, study abroad program, retreat, and conference sites, and college-sponsored and/or college-hosted online platforms.

(4) **"Complainant"** is a student or another member of the college community who is allegedly directly affected by a reported violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving a report of sexual misconduct as defined in this student conduct code, a complainant is afforded certain rights under 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 disciplinary decision; and

(c) The right to be accompanied by a process advisor.

(5) **"Conduct review officer"** is the provost for academic and student affairs or designee or other college administrator designated by the president to be responsible for receiving and reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of

the conduct review officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

~~((5))~~ (6) **"Disciplinary action"** is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

~~((6))~~ (7) **"Disciplinary appeal"** is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings (BAP).

~~((7))~~ (8) **"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email and first class mail to the specified college official's college email and office address.

~~((8))~~ **"Impacted party"** is a student or another member of the college community directly affected by an alleged violation of this student conduct code. The impacted party may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving an allegation of sexual misconduct as defined in this student conduct code, an impacted party is afforded certain rights under 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 an impacted party;~~

~~(b) The right to appeal a disciplinary decision; and~~

~~(c) The right to be accompanied by a process advisor.)~~

(9) **"Process advisor"** is a person selected by a ~~((responding party or an impacted party))~~ respondent or a complainant to provide support and guidance during disciplinary proceedings under this student conduct code.

(10) ~~((Responding party))~~ **Respondent** is a student against whom disciplinary action is initiated. Each ~~((responding party))~~ respondent is 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;

(b) The right to be informed of all orders issued in the ((responding party's)) respondent's disciplinary case;

~~((b))~~ (c) The right to appeal a disciplinary decision; and

~~((c))~~ (d) The right to be accompanied by a process advisor.

(11) **"Service"** is the process by which a document is officially delivered to a party. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail. Unless otherwise provided, service upon a party shall be accomplished by:

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

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

(12) "**Sexual misconduct**" includes prohibited sexual- or gender-based conduct by a student including, but not limited to, sexual harassment, sexual violence, sexual exploitation, indecent exposure, dating violence, or ~~((relationship))~~ domestic violence.

(13) "**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, graduate, or complete courses after the date of ~~((an alleged))~~ a reported violation, 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."

(14) "**Student conduct officer**" is a college administrator designated by the president or provost for academic and student affairs or designee to be responsible for implementing and enforcing the student conduct code. The president or provost for academic and student affairs or designee is authorized to reassign any and all of the student conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(15) "**The president**" is the president of the college. The president is authorized to delegate any and all of their responsibilities, as set forth in this chapter, as may be reasonably necessary.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-100 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits or attempts to commit, or aids, abets, incites, encourages, or assists another person to commit the following acts of misconduct:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Abuse of the student conduct process.**

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

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

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

(3) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) **Cheating.** Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) **Plagiarism.** Taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. May also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Falsifying data, information, or citations in completing an academic assignment. Fabrication also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) **Multiple submissions.** Submitting the same work in separate courses without the express permission of the instructor(s).

(e) **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))~~ (4) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

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

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

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

~~((4))~~ (5) **Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

~~((5))~~ (6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct that 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 electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false emails or texts to third parties using another's identity (spoofing).

~~((6))~~ (7) **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.

(8) **Discriminatory harassment.**



(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged 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.

~~((7))~~ **(9) Disorderly conduct.** Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace.

~~((8))~~ **(10) Disruption or obstruction.** Disruption or obstruction of any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

~~((9))~~ **(11) 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.

**(12) Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

~~((10))~~ **(13) Failure to comply with directive.** Failure to comply with the reasonable direction of a college official 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.

~~((11))~~ **(14) Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or

a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless 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, or duration of the comments or actions.

~~((12))~~ **(15) Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

~~((13))~~ **(16) 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.

~~((14))~~ **(17) Marijuana or other drugs.**

(a) **Marijuana.** The use, possession, growing, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, or the possession of marijuana paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(b) **Drugs.** The use, possession, production, delivery, sale, or being under the influence of any prescription drug or possession of drug paraphernalia, 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.

~~((15))~~ **(18) 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 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 computer time or resources to interfere with someone else's work;

(e) Use of computer time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of computer time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of computer time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

~~((16))~~ **(19) Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of college property or the property of another person. Property, for purposes of this subsection, also includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~((17))~~ **Relationship violence.** The infliction of physical harm, bodily injury, assault, psychological harm, or the fear of imminent physical harm, bodily injury, or assault committed by:

~~(a) The impacted party's current or former spouse;~~

~~(b) Current or former cohabitant;~~

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

~~(d) A person who has been in a romantic or intimate relationship with the impacted party. Whether such a relationship exists will be gauged by the length, type, and frequency of interaction.~~

~~((18))~~ **(20) Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported ~~((an alleged))~~ a violation of this code or college policy, provided information about ~~((an alleged))~~ a reported violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

~~((19))~~ **(21) Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures (e.g., failing to evacuate during a fire alarm), or interfering with or otherwise compromising any college equipment relating to the safety and security of the campus community including, but not limited to, tampering with fire safety or first-aid equipment, or triggering false alarms or other emergency response systems.

~~((20))~~ **(22) Sexual exploitation.** Taking nonconsensual or abusive sexual advantage of another for the ~~((responding party's))~~ respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

(a) Invading another person's sexual privacy;

(b) Prostituting another person;

(c) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;

(d) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;

(e) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film

another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;

(f) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or

(g) Causing the nonconsensual indecent exposure of another person, as defined by subsection (13) of this section.

~~((21))~~ **(23) Sexual harassment.** Unwelcome sexual- or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual- or gender-based nature that is sufficiently severe, persistent or pervasive as to:

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

(b) Alter the terms or conditions of employment; or

(c) Create an intimidating, hostile, or offensive environment for other campus community members.

~~((22))~~ For sexual harassment prohibited under Title IX, refer to WAC 132H-126-410.

**(24) Sexual violence.** A type of sexual harassment that includes nonconsensual intercourse, nonconsensual sexual contact, and sexual coercion.

(a) Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity.

(i) Effective consent cannot result from force, or threat of physical force, coercion, dishonesty, or intimidation.

(ii) Physical force means someone is physically exerting control of another person through violence. Physical force includes, but is not limited to, hitting, kicking, and restraining.

(iii) Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.

(iv) 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.

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

(b) **Nonconsensual sexual intercourse.** 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.

(c) **Nonconsensual sexual contact.** 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.

(d) **Sexual coercion.** Unreasonably pressuring another for sexual contact. When ~~((an impacted party))~~ a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.

~~((23))~~ (e) **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.

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

~~(25)~~ **Stalking.** ~~((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.))~~ 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. 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.

~~((24))~~ (26) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products is prohibited 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. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

~~((25))~~ (27) **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. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

~~((26))~~ (28) **Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy (e.g., restroom or residence hall room).

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

~~((27))~~ (29) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or

other college rules or policies, including on-campus housing policies and college traffic and parking rules.

~~((28))~~ (30) **Weapons.**

(a) Possessing, holding, wearing, transporting, storing, or exhibiting any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(i) Commissioned law enforcement personnel; or

(ii) Legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued concealed weapons permits may store their weapons in vehicles parked in accordance with RCW 9.41.050 on campus provided the vehicle is locked and the weapon is concealed from view.

(c) The president or delegate may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to any terms or conditions incorporated therein.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-120 Initiation of disciplinary action.**

(1) Any member of the college community may file a complaint against a student for possible violations of the student conduct code.

(2) Upon receipt, a 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) **Student on student sexual misconduct.** The college's Title IX coordinator or designee shall investigate complaints or other reports of ~~((alleged))~~ sexual misconduct by a student against a student.

(b) **Sexual misconduct involving an employee.** The college's human resource office or designee shall investigate complaints or other reports of sexual misconduct in which an employee is either the ~~((impacted or responding party))~~ complainant or respondent.

(c) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for student disciplinary action.

(d) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done in compliance with federal and state laws and without unreasonably risking the health, safety, and welfare of the ~~((impacted party))~~ complainant or other members of the college community.

(3) 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 ~~((responding party))~~ respondent or through alternative dispute resolution proceedings involving the ~~((impacted party))~~ complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the ~~((impacted party))~~ complainant and the ~~((responding party))~~ respondent.

(b) If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.

(4) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the student conduct officer may initiate disciplinary action against the ~~((responding party))~~ respondent.

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

(b) The student conduct officer, prior to initiating disciplinary action in cases involving allegations of sexual misconduct, will make a reasonable effort to contact the ~~((impacted party))~~ complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the ~~((responding party))~~ respondent if the allegations of sexual misconduct are found to have merit.

(5) All disciplinary actions will be initiated by a student conduct officer. If that officer is the subject of a complaint initiated by the ~~((responding party))~~ respondent or the ~~((impacted party))~~ complainant, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities.

(6) A student conduct officer shall initiate disciplinary action by serving the ~~((responding party))~~ respondent with written notice directing them to attend a disciplinary meeting.

(a) The notice shall briefly describe the factual allegations, the provision(s) of the student conduct code the ~~((responding party is alleged))~~ respondent is reported to have violated, the range of possible sanctions for the ~~((alleged))~~ reported violation(s), and it will specify the time and location of the meeting.

(b) At the disciplinary meeting, the student conduct officer will present the allegations to the ~~((responding party))~~ respondent, and the ~~((responding party))~~ respondent shall be afforded an opportunity to explain what occurred.

(c) If the ~~((responding party))~~ respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(7) Within ten days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the ~~((responding party))~~ respondent, the student conduct officer shall serve the ~~((responding party))~~ respondent with a written decision setting forth the facts and conclusions supporting the 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 if the student conduct officer, based on information presented at the disciplinary meeting, concludes that additional investigation is necessary. If the period is extended, the student con-

duct officer will notify the ~~((responding party))~~ respondent, and the ~~((impacted party))~~ complainant in cases involving allegations of sexual misconduct, of this extension, the reason(s), and the anticipated extension time frame.

(8) A student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the ~~((responding party))~~ respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), with or without condition(s), as described in WAC 132H-126-110.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the ~~((responding party))~~ respondent.

(9) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the ~~((responding party))~~ respondent, will serve a written notice informing the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent, including disciplinary suspension or dismissal of the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the ~~((impacted party))~~ complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

**AMENDATORY SECTION** (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-130 Appeal from disciplinary action.** (1) The ~~((responding party))~~ 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 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 ~~((responding party))~~ respondent is seeking review.

(3) The parties to an appeal shall be the ~~((responding party))~~ respondent and the student conduct officer. If a case involves allegations of sexual misconduct, ~~((an impacted party))~~ a complainant also has a right to appeal a disciplinary decision or to intervene in the ~~((responding party's))~~ respondent's appeal of a disciplinary decision to the extent the disciplinary decision, sanctions or conditions relate to allegations of sexual misconduct against the ~~((responding party))~~ respondent.

(4) A ~~((responding party))~~ 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 the ~~((responding party))~~ respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals regarding:

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

(b) Dismissals; and

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

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

(a) Residence hall dismissals;

(b) Residence hall suspensions;

(c) Suspensions of ten instructional days or less;

(d) Disciplinary probation;

(e) Written reprimands;

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

(g) Appeals by ~~((an impacted party))~~ a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to the ~~((responding party))~~ respondent.

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

(10) In cases involving allegations of sexual misconduct, the ~~((impacted party))~~ complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the ~~((responding party))~~ respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a ~~((responding party))~~ respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the ~~((responding party))~~ respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the ~~((impacted party))~~ complainant of the appeal and provide the ~~((impacted party))~~ complainant an opportunity to intervene as a party to the appeal.

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

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-140 Conduct hold on student records.** (1) A student conduct officer or other designated college official may place a conduct hold on the student's record if the student is the ~~((responding party))~~ respondent in a pending complaint of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the college until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The hold will remain in place until lifted by the student conduct officer or other designated college official with authority to do so.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-160 Interim measures.** (1) After receiving a report of ~~((alleged))~~ sexual misconduct or other serious student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with ~~((an impacted party, a responding party))~~ a complainant, a respondent, a reporting party, other specified persons, and/or a specific student organization;

(b) Reassignment of on-campus housing;

(c) Changes to class schedules, assignments, or test schedules;

(d) Modified on-campus employment schedule or location;

(e) Restrictions on access to portions of campus including, but not limited to, on-campus housing; or

(f) Alternative safety arrangements such as campus safety escorts.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. The student conduct officer may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until the student receives notice they have been lifted or modified from the student conduct officer.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this student conduct code.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-170 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a ~~((responding party))~~ 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 reasonable basis to believe that the ~~((responding party))~~ respondent:

(a) Has violated a provision of the student conduct code; 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 ~~((responding party))~~ 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 ~~((responding party))~~ respondent within two business days of the oral notice.

(4) The written notice shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law ~~((allegedly))~~ reportedly violated;

(b) The date, time, and location when the ~~((responding party))~~ respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the ~~((responding party))~~ respondent may physically access the campus or communicate with members of the campus community. If the ~~((responding party))~~ respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter or remain on college premises has been withdrawn and that the ~~((responding party))~~ respondent shall be considered to be trespassing and subject to arrest for criminal trespass if the ~~((responding party))~~ respondent enters the college campus. The ~~((responding student))~~ respondent may be authorized to access college premises for the limited purpose of meeting with the student conduct officer, the conduct review officer, or to attend a disciplinary hearing. All such meetings and hearings shall be confirmed in writing in advance and the ~~((responding party))~~ respondent entering college premises shall be required to produce the written permission to a college official on request.

(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 ~~((responding party))~~ respondent shall be afforded an opportunity to explain why the summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the ~~((responding party))~~ respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the ~~((impacted party))~~ complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the ~~((responding party))~~ respondent. The college will also provide the ~~((impacted party))~~ complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-200 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which they are ~~((an impacted party))~~ 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) 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 parties 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 twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the matter is an appeal by the ~~((responding party))~~ respondent, or the ~~((impacted party))~~ complainant in the case of sexual misconduct, the conduct review officer may affirm, reverse, or modify the disciplinary sanctions and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanctions or conditions as authorized herein. 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 expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(5) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the ~~((responding party))~~ respondent, will serve a written notice upon the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-210 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the ~~((responding party))~~ respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which they are ~~((an impacted party))~~ a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to determine whether the findings or 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, include a brief statement of the reasons for the decision and typically must be served on the parties within twenty days of the request for review. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted without a response from the president.

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

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the ~~((responding party))~~ respondent, will serve a written notice upon the ~~((impacted party))~~ complainant informing the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-300 Student conduct committee.** (1) The student conduct committee shall consist of six members:

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

(b) Two faculty members appointed by the president;

(c) Two administrative staff members, other than an administrator serving as a student conduct or conduct review officer, appointed by the president prior to the beginning of the academic year for alternating two-year terms.

(2) One of the administrative staff members shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The administrative staff members shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

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

(4) Members of the student conduct committee shall not participate in any case in which they:

- (a) Are ~~((an impacted party))~~ a complainant or witness;
- (b) Have direct or personal interest, prejudice, or bias; or
- (c) Have acted previously in an advisory capacity.

(5) Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-310 Student conduct committee—Prehearing.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven 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.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

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

(5) The committee chair may provide to the committee members in advance of the hearing copies of: (a) The conduct officer's notice of discipline, or referral to the committee; and (b) the notice of appeal, or any response to referral, by the

~~((responding party))~~ respondent or, in a case involving allegations of sexual misconduct, the ~~((impacted party))~~ complainant. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

(7) The student conduct officer, upon request, shall provide reasonable assistance to the ~~((responding party))~~ respondent and ~~((impacted party))~~ complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications necessary to maintain 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.

(9) All parties may be accompanied at the hearing by a ~~((nonattorney))~~ process advisor of their choice.

(10) The ~~((responding party))~~ respondent, in all appeals before the committee, and the ~~((impacted party))~~ complainant, in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own expense. The ~~((responding))~~ respondent and/or ~~((impacted party))~~ complainant will be deemed to have waived the right to be represented by an attorney unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer.

(11) The committee will ordinarily be advised by an assistant attorney general. If the ~~((responding party))~~ respondent and/or the ~~((impacted party))~~ complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened, assistant attorney general.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-320 Student conduct committee—Presentation of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

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

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any

party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving ~~((allegations))~~ reports of sexual misconduct, the ~~((responding and the impacted parties))~~ respondent and complainant shall not directly question or cross-examine one another. Attorneys for the ~~((responding and impacted parties))~~ respondent and complainant are also prohibited from directly questioning opposing parties absent express permission from the committee chair. Subject to this exception, all cross-examination questions by the ~~((responding and impacted parties))~~ respondent and complainant shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf. All cross-examination questions submitted to the chair in this manner shall be memorialized in writing and maintained as part of the hearing record.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-330 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the conclusion of the hearing or the committee's receipt of closing arguments, whichever is later, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanctions or conditions, if any, as authorized in the student conduct code. If the matter is an appeal by the ~~((responding party))~~ respondent or the ~~((impacted party))~~ complainant in the case of sexual misconduct, the committee may affirm, reverse, or modify the disciplinary sanctions and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanctions or conditions as authorized



herein. The notice will also inform the ~~((responding party))~~ respondent of their appeal rights.

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

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee will make arrangements to have a written notice served on the ~~((impacted party))~~ complainant informing the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent, including suspension or dismissal of the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights. This notice shall be served on the ~~((impacted party))~~ complainant on the same date as the initial decision is served on the ~~((responding party))~~ respondent. The ~~((impacted party))~~ complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-340 Student conduct committee—Review of an initial decision.** (1) A ~~((responding party, or an impacted party))~~ respondent, or a complainant in a case involving allegations of sexual misconduct, who is aggrieved by the findings or conclusions issued by the student conduct committee may request a review of the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision or a written notice. Failure to file a timely appeal request within this time frame constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to those issues and arguments raised in the notice of appeal. As part of the review process, the president may ask the nonappealing party(ies) to respond to the arguments contained in the notice of appeal.

(3) The president shall provide a written decision to all parties within thirty days after receipt of the notice of appeal or receipt of the response from nonappealing parties, whichever is later. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the ~~((responding party))~~ respondent, shall serve a written notice informing the ~~((impacted party))~~ complainant of the final decision. This notice shall inform the ~~((impacted~~

party)) complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the ~~((responding party))~~ respondent for the ~~((impacted party's))~~ complainant's protection, including suspension or dismissal of the ~~((responding party))~~ respondent.

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

## SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

### NEW SECTION

**WAC 132H-126-400 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132H-126-100 through 132H-126-340, these supplemental procedures shall take precedence.

### NEW SECTION

**WAC 132H-126-410 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college 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 the 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.

#### NEW SECTION

**WAC 132H-126-420 Title IX jurisdiction.** (1) This supplemental procedure applies only if the reported misconduct:

(a) Occurred in the United States;

(b) Occurred during a 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 the college exercised substantial control over both the respondent and the context in which the reported 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 supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, chapter 132H-126 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.

#### NEW SECTION

**WAC 132H-126-430 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

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

(b) Identify the reported 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 reported violation(s); and

(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 their 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; and

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

#### NEW SECTION

**WAC 132H-126-440 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 132H-126-310. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

#### NEW SECTION

**WAC 132H-126-450 Rights of parties.** (1) The student conduct code of Bellevue College, chapter 132H-126 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 coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

#### NEW SECTION

**WAC 132H-126-460 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

(a) Is asked or offered to prove someone other than the respondent committed the reported 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.

#### NEW SECTION

**WAC 132H-126-470 Initial order.** (1) In addition to complying with WAC 132H-126-330, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

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

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

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

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

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

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

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

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

#### NEW SECTION

**WAC 132H-126-480 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 132H-126-340.

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

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

#### **WSR 20-24-060**

#### **EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed November 24, 2020, 9:50 a.m., effective November 28, 2020]

Effective Date of Rule: November 28, 2020.

Purpose: The department is extending the emergency rules listed below to assure [ensure] long-term care programs are not significantly impeded during the hiring process due to inability to access the tuberculosis (TB) testing required as a

part of the hiring process. This will help to increase the number of long-term care workers necessary to provide essential services to some of Washington's most vulnerable adults during the outbreak of COVID-19. The situation continues that currently clinics providing TB testing are short of staff and have limited availability throughout the state. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state.

The department filed a CR-101 Preproposal statement of inquiry as WSR 20-16-069 on July 29, 2020, to begin the permanent rule-making process. In addition, under the rule development phase of rule making, the department is in discussion about adding language to the regulations to account for the timeline in which COVID-19 led to the suspension of rules.

Citation of Rules Affected by this Order: Repealing WAC 388-76-10265, 388-76-10285, 388-78A-2484, and 388-107-0490; and amending WAC 388-76-10290(1), 388-78A-2480(1), 388-78A-2485(1), 388-101D-0650(1), 388-101D-0660(3), and 388-107-0460(1).

Statutory Authority for Adoption: RCW 70.128.040, 71A.12.030; chapters 18.20, 70.97 RCW.

Other Authority: Chapters 70.128, 71A.12, 74.34 RCW.

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.

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Although the state has a phased reopening plan, the situation continues that currently clinics providing TB testing are short of staff and have limited availability throughout the state. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 4.

Date Adopted: November 19, 2020.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

**WAC 388-76-10290 Tuberculosis—Positive test result.** When there is a positive result to tuberculosis skin or blood testing the adult family home must:

(1) ~~((Ensure that the person has a chest X-ray within seven days;~~

(2)) Ensure each resident or employee with a positive test result is evaluated for signs and symptoms of tuberculosis; and

((3)) (2) Follow the recommendation of the person's health care provider.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

**WAC 388-78A-2480 Tuberculosis—Testing—Required.** ~~((1) The assisted living facility must develop and implement a system to ensure each staff person is screened for tuberculosis within three days of employment.~~

(2)) For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any assisted living facility employee or temporary employee of the assisted living facility, excluding volunteers and contractors.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

**WAC 388-78A-2485 Tuberculosis—Positive test result.** When there is a positive result to tuberculosis skin or blood testing the assisted living facility must:

(1) ~~((Ensure that the staff person has a chest X-ray within seven days;~~

(2)) Ensure each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and

((3)) (2) Follow the recommendation of the resident or staff person's health care provider.

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

**WAC 388-101D-0650 What must a group training home do to detect and manage tuberculosis?** To detect and manage tuberculosis, a group training home must:

(1) ~~((Ensure each employee has a tuberculin test no more than three days after beginning to work with clients unless otherwise exempt under this chapter;~~

(2)) Implement policies and procedures that comply with tuberculosis standards set by the Centers for Disease Control and Prevention and applicable state laws;

~~((3))~~ (2) Comply with the Washington Industrial Safety and Health Act (WISHA) standards for respiratory protection; and

~~((4))~~ (3) Comply with chapter 296-842 WAC requirements to protect the health and safety of clients who may come into contact with people who have infectious tuberculosis.

**AMENDATORY SECTION** (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

**WAC 388-101D-0660 When is a group training home employee not required to complete a tuberculin test?** (1) A group training home employee is not required to complete a tuberculin test if the employee:

(a) Has documentation of an FDA-approved tuberculin test with negative results from within the last twelve months;

(b) Has documentation of a positive FDA-approved tuberculin test with documented evidence of:

(i) Adequate therapy for active disease; or

(ii) Completion of treatment for latent tuberculosis infection preventive therapy;

(c) Self-reports a history of positive test results under subsection (2) or (3) of this section.

(2) If a group training home employee self-reports a history of positive test results with chest X-ray results from the last twelve months, the employee must:

(a) Provide a copy of the normal X-ray results to the group training home; and

(b) Be evaluated for signs and symptoms of tuberculosis.

~~(3) ((If a group training home employee self-reports a history of positive test results without chest X-ray results, the employee must:~~

~~(a) Be referred to a medical provider;~~

~~(b) Complete a chest X-ray within seven days; and~~

~~(c) Be cleared by a medical professional before returning to work if the X-ray is abnormal and consistent with tuberculosis.~~

(4)) A group training home volunteer working less than four hours a month is exempt from tuberculin test requirements.

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0460 Tuberculosis (TB)—Testing—Required.** The enhanced services facility must:

~~((1) Develop and implement a system to ensure staff have TB testing upon employment or starting service; and~~

(2)) Ensure that staff have an annual risk assessment completed using the Washington state department of health approved criteria.

#### **REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10265 Tuberculosis—Testing—Required.

WAC 388-76-10285 Tuberculosis—Two step skin testing.

WAC 388-78A-2484 Tuberculosis—Two step skin testing.

WAC 388-107-0490 Tuberculosis (TB)—Two-step skin testing.

#### **WSR 20-24-061**

##### **EMERGENCY RULES**

##### **DEPARTMENT OF**

##### **SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed November 24, 2020, 9:56 a.m., effective November 28, 2020]

Effective Date of Rule: November 28, 2020.

Purpose: The department is extending emergency amendments to WAC 388-484-0006 TANF/SFA time limit extensions, that add a temporary assistance for needy families time limit extension hardship category related to impacts of the COVID-19 pandemic (commonly known as the "coronavirus").

Citation of Rules Affected by this Order: Amending WAC 388-484-0006.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; chapters 74.08A and 74.12 RCW.

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.

Reasons for this Finding: This filing is necessary to extend existing emergency rules filed under WSR 20-09-001 and 20-16-082, which protect public health, safety, and welfare by providing relief in response to health and economic impacts of COVID-19. The department filed notice of its intent to adopt the rule as a permanent rule by filing a CR-101 Preproposal statement of inquiry under WSR 20-15-122, followed by the CR-102 Proposed rule-making notice filed as WSR 20-20-072. A public hearing was held on November 10, 2020.

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

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

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

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

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

Date Adopted: November 23, 2020.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-05-046, filed 2/13/20, effective 3/15/20)

**WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?**

After you receive sixty or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

**(2) Who is eligible for a hardship TANF/SFA time limit extension?**

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least sixty-five years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for thirty-two hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless as described in RCW 43.185C.010 (12); or

(vii) A resident of Washington state during a declared state of emergency related to COVID-19.

**(3) Who reviews and approves a hardship time limit extension?**

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension

will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

**(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?**

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

**(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?**

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

**(6) How long will a hardship TANF/SFA time limit extension last?**

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b) (iii), (iv), (v), or (vi) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

**WSR 20-24-074**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-250—Filed November 24, 2020, 3:48 p.m., effective November 24, 2020, 3:48 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close recreational crab seasons in Marine Area 2 between a true west line from Point Chehalis and true west line from the Queets River, including the waters of Marine Area 2-2.

Citation of Rules Affected by this Order: Amending WAC 220-330-040.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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.

Reasons for this Finding: This emergency rule is needed because test results from the Washington department of health show that crab tested in the area between the Point Chehalis and the Queets River are not safe for human consumption. Levels of domoic acid, detected through routine testing, have exceeded the federally established action level. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 24, 2020.

Kelly Susewind  
 Director

**NEW SECTION**

**WAC 220-330-04000T Crab—Areas and seasons**

Notwithstanding the provisions of WAC 220-330-040 effective Immediately, until further notice, recreational crab seasons in waters of Marine Area 2 and 2-2 shall be modified as follows. All other provisions of WAC 220-330-040 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) Effective immediately until further notice, it is unlawful to fish for Dungeness crab in waters of Marine Area

2 between a true west line from Point Chehalis (46°53.18) and true west line from the Queets River (47°31.70), including the waters of Marine Area 2-2 Grays Harbor.

(2) Effective immediately it is unlawful to set, maintain, operate, or possess in those waters listed in subsections (1) of this section, any baited or unbaited shellfish pots or ring nets for any reason.

**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.

**WSR 20-24-075**  
**EMERGENCY RULES**  
**HIGHLINE COLLEGE**

[Filed November 24, 2020, 4:07 p.m., effective November 24, 2020, 4:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's student conduct code to be compliant with federal regulations.

Citation of Rules Affected by this Order: New Supplemental Title IX Student Conduct Procedures; WAC 132I-125-505, 132I-125-515, 132I-125-525, 132I-125-535, 132I-125-545, 132I-125-555, 132I-125-565, 132I-125-575, and 132I-125-585.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Under RCW 34.05.350 the agency for good cause finds 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: Highline College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which took effect on August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 0, Repealed 0.

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

Date Adopted: November 23, 2020.

Aaron Reader  
Vice President  
of Student Services

**SUPPLEMENTAL DISCIPLINE PROCEDURES  
FOR CASES INVOLVING TITLE IX SEXUAL  
HARASSMENT**

NEW SECTION

**WAC 132I-125-505 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132I-125-010 through 132I-125-300, these supplemental procedures shall take precedence.

NEW SECTION

**WAC 132I-125-515 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college 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 the 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.

NEW SECTION

**WAC 132I-125-525 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

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

(c) Meets the definition of sexual harassment 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 the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, chapter 132I-125 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.

#### NEW SECTION

**WAC 132I-125-535 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the 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.

#### NEW SECTION

**WAC 132I-125-545 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 132I-125-270. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

#### NEW SECTION

**WAC 132I-125-555 Rights of parties.** (1) The college's student conduct procedures, WAC 132I-125-200, 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 coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

#### NEW SECTION

**WAC 132I-125-565 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

- (a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or
- (b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

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

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

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

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

#### NEW SECTION

**WAC 132I-125-575 Initial order.** (1) In addition to complying with WAC 132I-125-290, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;

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

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

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

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

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

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

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

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

#### NEW SECTION

**WAC 132I-125-585 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 132I-125-300.

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

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

### **WSR 20-24-076**

#### **EMERGENCY RULES**

#### **HIGHLINE COLLEGE**

[Filed November 24, 2020, 4:18 p.m., effective December 13, 2020]

Effective Date of Rule: December 13, 2020.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency repeal of the college's Title IX policy and procedures to be compliant with federal regulations. We request an extension for the emergency repeal of the existing WAC because the language no longer aligns with the new regulations. The college is currently completing the process for permanent rule making. Updated Title IX policy and procedures have been adopted locally.

Citation of Rules Affected by this Order: Amending WAC 132I-300-010 and 132I-300-020.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Under RCW 34.05.350 the agency for good cause finds 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: Highline College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which took effect on August 14, 2020, and expire on December 12, 2020. The college has begun the necessary steps to permanently repeal the Title IX WAC but this process will not be complete by the time the emergency rule expires.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 23, 2020.

Summer Korst  
Executive Director  
of Human Resources

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

**WAC 132I-300-010 Statement of policy.** (~~The college provides equal opportunity in education and employment and does not discriminate on the basis of race, color, national origin, age, disability, sex, sexual orientation, marital status, creed, religion, or status as a veteran of war as required by Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, RCW 49.60.030 and their implementing regulations. Prohibited sex discrimination includes sexual harassment (unwelcome sexual conduct of various types).~~

~~Sexual harassment is a form of sex discrimination. It occurs in a variety of situations which share a common element: The inappropriate introduction of sexual activities or comments into the work or learning situation, the creation of relationships of unequal power and/or elements of coercion, such as requests for sexual favors as a criterion for granting work, study, or grading benefits. Sexual harassment may also involve relationships among peers of repeated sexual advances or demeaning verbal behavior resulting in a harm-~~

ful effect on a person's ability to study or work in the academic setting. In addition, third parties may submit claims if a sexual relationship unfairly confers preferential treatment to participant(s) in the relationship.) (1) Highline College recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments Act of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, Highline College has enacted and adopted the Title IX grievance procedure for receiving and investigating sexual harassment allegations arising during education programs and activities. Any individual found responsible for violating Highline College's Title IX policy is subject to disciplinary action up to and including dismissal from the Highline College educational programs and activities and/or termination of employment.

(2) Application of this Title IX grievance procedure WAC 1321-300-020 is restricted to allegations of "sexual harassment," as that term is defined in 34 C.F.R. Part 106.30. Nothing in this procedure limits or otherwise restricts Highline College's ability to investigate and pursue discipline based on alleged violations of other federal, state, and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in Highline College's code of student conduct, employment contracts, employee handbooks, and collective bargaining agreements.

(3) Any employee, student, applicant, or visitor who believes that they have been the subject of sexual harassment should report the incident or incidents to Highline College's Title IX coordinator identified below. If the complaint is against that Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

(4) Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at incident reporting form.

#### **TITLE IX/EEO Coordinator**

Title: Title IX Coordinator

Office: Human Resources, Building 99, Room 200

Phone: 206-592-3812

(5) The responsibilities of the Title IX/EEO coordinator or designee include:

(a) Accepting and processing all Title IX reports, referrals, and formal complaints.

(b) Executing and submitting a formal complaint when appropriate and necessary.

(c) Handling requests for confidentiality.

(d) Determining during the grievance procedure:

(i) Whether a formal complaint should be dismissed either in whole or in part, and if so;

(ii) Providing notice to both parties about why dismissal was necessary or desirable; and

(iii) Referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

(e) Maintaining accurate records of all complaints, reports, and referrals, and retaining investigation files, complaints, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.

(f) Assigning and overseeing investigations.

(g) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation.

(h) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this grievance procedure.

(i) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other college administrators.

(6) Individuals experiencing harassment or discrimination also have the right to file a formal grievance with government authorities:

Equal Employment Opportunity Commission

909 First Avenue, Suite 400

Seattle, WA 98104-1061

www.eeoc.gov

Washington State Human Rights Commission

1511 Third Avenue, Suite 921

Seattle, WA 98101

www.hum.wa.gov

Office for Civil Rights

U.S. Department of Education

915 Second Avenue

Seattle, WA 98171-1099

www.ed.gov

(7) In the event that an incident involves alleged misconduct by the Title IX/EEO coordinator, reports should be made directly to the vice president of human resources.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

**WAC 1321-300-020 Discrimination and sexual harassments complaints—Procedure.** ((1) Any student or employee who believes that he or she has been the subject of discrimination or sexual harassment, should report the incident or incidents to the chief human resources officer, the administrator so designated by the college president, hereafter referred to as the CHRO. If the complaint is against that official, the complainant should report the matter to the president's office for referral to an alternate designee. The college encourages the timely reporting of any incident(s) of discrimination or sexual harassment.

(2) All reports of incident(s) will be forwarded to the CHRO for coordination and a determination on how to process the complaint.

(3) The student or employee who files a complaint alleging discrimination or sexual harassment (the complainant) may submit a brief written statement of allegations to the CHRO. If the complainant does not submit a written statement, the CHRO shall prepare a statement of facts which is approved by the complainant. That statement will be forwarded as well to the subject of the complaint, who may choose to submit a response.

(4) The CHRO shall appoint a college employee to investigate the complaint. The CHRO shall inform the complainant and respondent(s) of the appointment.

(5) The college representative shall conduct an investigation based upon the written statement submitted by the complainant and, if applicable, respondent(s). If the complainant did not file a written statement, the representative shall conduct an investigation based upon the statement prepared by the CHRO.

(6) The college representative shall conduct a thorough investigation. The investigation shall include, but is not limited to, providing the complainant and the respondent the opportunity to state their positions, interviewing witness, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally thirty days.

(7) At the conclusion of the investigation the college representative shall set forth his or her findings and recommendations in writing. The representative shall send a copy of the findings and recommendations to the CHRO.

(8) The CHRO shall consider the findings and recommendations of the representative. The CHRO shall determine whether disciplinary action may be appropriate. If the CHRO so recommends, he or she will consult with the respondent's appointing authority regarding possible personnel action. These options may include voluntary training/counseling, development of a remediation plan, or formal discipline. The CHRO shall advise the complainant and respondent of the college's decision.

(9) If the CHRO and respondent's appointing authority determine that disciplinary actions should be instituted against an employee the applicable provisions of employee rights and responsibilities shall be followed. These provisions include but are not limited to, state and federal constitutional and statutory provisions, rules Washington office of financial management, collective bargaining agreements, and college policies.

(10) If the CHRO determines that disciplinary action should be instituted against a student, the applicable provisions of the college student code shall be followed.

(11) If the CHRO determines that disciplinary action is not appropriate and the complainant disagrees, the complainant may appeal, in writing, to the president.

(12) The procedures regarding complaints of discrimination shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to sexual harassment will be provided a copy of this policy and procedure.)) (1) **Purpose.**

Highline College recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor

the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Education Amendments Act of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, Highline College has enacted the Highline College Policy XXXX - Discrimination, Harassment and Retaliation and adopted the following Title IX grievance procedure for receiving and investigating sexual harassment allegations arising during educational programs and activities. Any individual found responsible for violating the college's Title IX policy is subject to disciplinary action up to and including dismissal from the college's educational programs and activities and/or termination of employment.

Application of this Title IX grievance procedure is restricted to allegations of "sexual harassment," as that term is defined in 34 C.F.R. Part 106.30. Nothing in this procedure limits or otherwise restricts the college's ability to investigate and pursue discipline based on alleged violations of other federal, state and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in the college's code of student conduct, employment contracts, discrimination, harassment and retaliation policy, and collective bargaining agreements.

**(2) Definitions.**

For purposes of this Title IX grievance procedure, the following terms are defined as follows:

(a) **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 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.

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

(b) **Complainant** - An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(c) **Respondent** - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(d) **Formal complaint** - A writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the college conduct an investigation.

(e) **Educational program or activity** includes locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by the college.

(f) **Grievance procedure** - The process the college uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sexual harassment.

(g) **Supportive measures** are nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent regardless of whether the complainant or the Title IX coordinator has filed a formal complaint. Supportive measures restore or preserve a party's access to the college's educational programs and activities without unreasonably burdening the other party, as determined through an interactive process between the Title IX coordinator and the party. Supportive measures include measures designed to protect the safety of all parties and/or the college's educational environment and/or to deter sexual harassment or retaliation. Supportive measures may include, but are not limited to: (i) Counseling and other medical assistance; (ii) extensions of deadlines or other course-related adjustments; (iii) modifications of work or class schedules; (iv) leaves of absence; (v) increased security or monitoring of certain areas of campus; and (vi) imposition of orders prohibiting the parties from initiating contact with one another in housing or work situations at Highline College as well as at college-sponsored events or activities. Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis. If supportive measures are not provided, the Title IX coordinator must document in writing why this was clearly reasonable under the circumstances.

(h) **Summary suspension** means an emergency suspension of a student respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 132I-125-350.

(i) **Sexual harassment** - For purposes of these Title IX grievance procedures, sexual harassment occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

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

(ii) **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 the college's educational programs or activities or college employment.

(iii) **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 intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(E) **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.

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

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

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

(aa) The length of the relationship;

(bb) The type of relationship; and

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

(G) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(I) Fear for their safety or the safety of others; or

(II) Suffer substantial emotional distress.

(j) **Title IX administrators** are the Title IX coordinator, Title IX investigators, the student conduct manager, student conduct committee members, deputy Title IX coordinator, deputy safety coordinator, hearing officer, employee disciplinary officer, and college-provided advisors assigned to the parties by the college during Title IX disciplinary proceedings.

(k) **Title IX coordinator** is responsible for processing Title IX complaints and conducting and/or overseeing formal investigations and informal resolution processes under this grievance procedure. Among other things, the Title IX coordinator is responsible for:

(i) Accepting and processing all Title IX reports, referrals, and formal complaints.

(ii) Executing and submitting a formal complaint when appropriate and necessary.

(iii) Handling requests for confidentiality.

(iv) Determining during the grievance procedure:

(A) Whether a formal complaint should be dismissed either in whole or in part, and if so;

(B) Providing notice to both parties about why dismissal was necessary or desirable; and

(C) Referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

(v) Maintaining accurate records of all complaints, reports, and referrals, and retaining investigation files, complaints, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.

(vi) Assigning and overseeing investigations.

(vii) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to educational programs and activities and are protected from further discrimination or retaliation.

(viii) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this grievance procedure.

(ix) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other college administrators.

**(3) Principles for Title IX grievance procedure.**

(a) Respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the grievance and disciplinary processes.

(b) Before imposing discipline, the college is responsible for gathering and presenting evidence to a neutral and unbiased decision maker establishing responsibility for a Title IX violation by a preponderance of the evidence.

(c) The college shall treat both the complainant and respondent equitably by providing complainant with remedies against respondent who has been found responsible for sexual harassment through application of the institution's Title IX grievance and applicable Title IX disciplinary procedures and by providing respondent with Title IX procedural safeguards contained in this Title IX grievance procedures and in the applicable Title IX disciplinary procedures.

(d) The investigator shall base investigation results on all relevant evidence, including both exculpatory and inculpatory evidence.

(e) Formal and informal resolutions will be pursued within reasonably prompt time frames with allowances for temporary delays and extensions for good cause shown. The Title IX coordinator or designee will respond to reports of sexual harassment within three business days. It is expected that complaints addressed through an informal process will be resolved within ninety days. It is expected that complaints addressed through the formal investigation and hearing process will be resolved in one hundred five days. Grounds for temporary delay include, but are not limited to, breaks in the academic calendar, unusual circumstances where employees are unable to work on campus, weather conditions, a natural disaster, or lack of participation from the complainant or respondent. Good cause supporting a request for an extension includes, but is not limited to: A college party, a party's advisor or a witness being unavailable, concurrent law enforcement activity, the need for language assistance or accommo-

ation of disabilities, or unforeseen circumstances causing the Title IX coordinator to be unavailable for more than three business days during the grievance process. Both parties will receive written notice of any temporary delay or extension for good cause with an explanation of why the action was necessary.

(f) A respondent found responsible for engaging in sexual harassment may receive discipline up to and including dismissal from the college. A description of other possible disciplinary sanctions and conditions that may be imposed against students can be found in WAC 132-125-125.

An employee found responsible for sexual harassment may receive discipline up to and including dismissal from employment. A description of possible disciplinary sanctions and conditions that may be imposed against employees can be found at Supplemental Title IX Employee Disciplinary Hearing Procedures, Article 806 of the Highline College Education Association (HCEA) Bargaining Agreement, and Article 27 of the Washington public employees association (WPEA) bargaining agreement.

In proceedings against an employee respondent, the parties may appeal the employee disciplinary decision to the president pursuant to the Supplemental Title IX Employee Disciplinary Procedures.

(g) Title IX administrators may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client and attorney work product privileges;

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

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

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

(vi) Other legal privileges identified in RCW 5.60.060.

**(4) Title IX administrators - Free from bias - Training requirements.**

(a) Title IX administrators shall perform their duties free from bias or conflicts.

(b) Title IX administrators shall undergo training on the following topics:

(i) The definition of sexual harassment under these procedures;

(ii) The scope of the college's educational programs and activities;

(iii) How to conduct an investigation;

(iv) How to serve impartially without prejudgment of facts, conflicts of interest or bias;

(v) Use of technology used during any investigation or hearing;

(vi) The relevance of evidence and questions; and

(vii) Effective report writing.

(c) All Title IX administrator training materials shall be available on the college's Title IX web page.

**(5) Filing a complaint.**

Any employee, student, applicant, or visitor who believes that they have been the subject of sexual harassment should report the incident or incidents to the college's Title IX coordinator identified below. If the complaint is against that Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at incident reporting form.

Name: Summer Korst  
Title: Title IX Coordinator  
Office: Human Resources, Building 99, Room 200  
Email: skorst@highline.edu  
Phone: 206-592-3812

**(6) Confidentiality.**

(a) The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as college policies and procedures. Although the college will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(b) The Title IX coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged sexual harassment. If a complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- (i) The seriousness of the alleged sexual harassment;
- (ii) The age of the complainant;
- (iii) Whether the sexual harassment was perpetrated with a weapon;

(iv) Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;

(v) Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and

(vi) Whether relevant evidence about the alleged incident can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

(c) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will

notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this grievance procedure.

(d) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible.

**(7) Complaint resolution.**

The Title IX resolution processes are initiated when the Title IX coordinator's office receives a written complaint alleging that a respondent(s) sexually harassed a complainant and requesting that the college initiate an investigation (a formal complaint). A formal complaint must be either submitted by the complainant or signed by the Title IX coordinator on behalf of the complainant. Formal complaints submitted to the Title IX coordinator may be resolved through either informal or formal resolution processes. The college will not proceed with either resolution process without a formal complaint.

For purposes of this Title IX grievance procedure, the complainant must be participating in or attempting to participate in a college education program or activity at the time the formal complaint is filed.

**(a) Informal resolution.**

Under appropriate circumstances and if the impacted and responding parties agree, they may voluntarily pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegations involve a mandatory reporting situation, an immediate threat to the health, safety or welfare of a member of the college community, or in cases where an employee is alleged to have sexually harassed a student.

If an informal resolution is appropriate, the impacted party and the responding party may explore remedies or resolution through:

(i) Guided conversations or communications conducted by the Title IX coordinator/HRO representative or a mutually agreed upon third party;

(ii) Structured resolution process conducted by a trained mediator; or

(iii) Voluntarily agreed on alterations to either or both of the parties' work or class schedules or student housing arrangements.

If the parties agree to an informal resolution process, the college will commence the process within ten days after the parties agree to this option and conclude within ninety days of beginning that process, subject to reasonable delays and extensions for good cause shown. The informal process is voluntary. Either the impacted or responding party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the impacted and responding party voluntarily resolve a report, the college will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the report has been closed.

**(b) Formal resolution.**

Formal resolution means that the complainant's allegations of sexual harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigator will issue a report of the investigation findings. Upon completion of the investigation, the investigator will submit the final investigation report to the appropriate disciplinary authority to determine whether disciplinary proceedings are warranted.

**(8) Emergency removal.**

If a student respondent poses an immediate threat to the health and safety of the college community or an immediate threat of significant disruption to college operations, the college's student conduct officer may summarily suspend a respondent pursuant to WAC 132-125-350, pending final resolution of the allegations. Nothing in this grievance procedure prohibits the college from placing nonstudent employees on administrative leave pending final resolution of the allegations.

**(9) Investigation notices.**

Upon receiving a formal complaint and determining that allegations comport with Title IX claims, the college will provide the parties with the following notices containing the following information:

(a) Notice of formal and informal resolution processes. A description of the college's grievance resolution procedures, including the informal resolution procedure.

(b) The investigator will serve the respondent and the complainant with a notice of investigation in advance of the initial interview with the respondent to allow the respondent sufficient time to prepare a response to the allegations and to inform the complainant that the college has commenced an investigation. The investigation notice will:

(i) Include the identities of the parties (if known), a description of the conduct alleged constituting Title IX sexual harassment, and the time and location of the incident (if known).

(ii) Confirm that the respondent is presumed not responsible for the alleged conduct and that the college will not make a final determination of responsibility until after the grievance and disciplinary processes have been completed.

(iii) Inform parties that they are both entitled to have an advisor of their own choosing, who may be an attorney.

(iv) Inform parties they have a right to review and inspect evidence.

(v) Inform parties about student conduct code provisions and employment policies that prohibit students and employees from knowingly submitting false information during the grievance and disciplinary processes.

(c) Amended investigation notice. If during the course of the investigation, the college decides to investigate Title IX sexual harassment allegations about the complainant or respondent that are not included in the investigation notice, the college will issue an amended notice of investigation to both parties that includes this additional information.

(d) Interview and meeting notices. Before any interview or meeting with a party about Title IX allegations, the college shall provide the party with a written notice identifying the date, time, location, participants, and purpose of the interview or meeting with sufficient time, at least five days, for the party to prepare for the interview or meeting.

**(10) Investigation process - Dismissal.**

(a) Mandatory dismissal - The Title IX coordinator will dismiss the Title IX allegations, if during the course of a formal investigation under the Title IX grievance process, the investigator determines that the alleged misconduct in the formal complaint:

(i) Does not meet the definition of sexual harassment under Title IX, even if proved; or

(ii) Did not occur in the context of a college educational program or activity; or

(iii) Occurred outside the United States.

(b) Discretionary dismissal - The college may dismiss a Title IX claim in whole or in part, if:

(i) The complainant notifies the Title IX coordinator in writing that they would like to withdraw the formal complaint in whole or in part;

(ii) Respondent is no longer enrolled with or employed by the college; or

(iii) Specific circumstances prevent the college from gathering evidence sufficient to complete the investigation of the Title IX allegations in whole or in part.

(c) The Title IX coordinator will provide both parties written notice if Title IX allegations are dismissed with an explanation for the dismissal.

(d) Mandatory or discretionary dismissal of a Title IX claim does not preclude the college from investigating and pursuing discipline based on allegations that a respondent violated other federal or state laws and regulations, college conduct policies, and/or other codes and contractual provisions governing student and employee conduct.

**(11) Investigation process - Consolidation of formal complaints.**

When multiple sexual harassment allegations by or against different parties arise out of the same facts or circumstances, the college may consolidate the investigation of formal complaints, provided consolidation can be accomplished in compliance with confidentiality protections imposed by the Family Educational Records and Privacy Act (FERPA). This includes instances in which complainant and respondent have lodged formal complaints against one another or when allegations of sexual assault are lodged by a single complainant against multiple respondents, or when multiple complainants lodge sexual assault complaints against single or multiple respondents.

**(12) Investigation process - Required procedures.**

During the investigation, the investigator:

(a) Will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence.

(b) Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact specific determination that a party poses a threat to the health, safety or welfare of another party and/or witnesses or when contact with a party and/or witness is prohibited by court order. A college-imposed no contact shall be no broader than is necessary to protect the threatened party or witness and must provide the impacted party or their advisor with alternative



means of gathering and presenting relevant evidence from the protected witness and/or party.

(c) Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, to any grievance related meeting or interview. Advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney representing a party must enter a notice of appearance with the Title IX coordinator and the investigator at least five days before the initial interview or meeting they plan to attend, so that the college can secure its own legal representation, if necessary.

(d) The investigator will provide both parties and their respective advisors with an equal opportunity to review the draft investigation report and to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in the formal complaint, including inculpatory or exculpatory evidence, regardless of its source, as well as evidence the investigator does not intend to rely in the final investigation report. After disclosure, each party will receive ten days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a party fails to submit a written response within ten days, the party will be deemed to have waived their right to submit comments and the investigator will finalize the report without this information.

(e) The investigator will forward the final report to the Title IX coordinator, who distributes the report and evidence to the parties, as well as the disciplinary authority responsible for determining whether pursuing disciplinary action is warranted.

**WSR 20-24-077**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 19-249—Filed November 24, 2020, 5:41 p.m., effective November 30, 2020]

Effective Date of Rule: November 30, 2020.

Purpose: Amend commercial sea urchin harvest rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000Y; and amending WAC 220-340-750.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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.

Reasons for this Finding: This emergency rule opens harvest of red sea urchins in sea urchin management Districts 1, 2, 3, and 4.

Red sea urchins are managed with stock assessments, and a technical committee periodically reviews the total allowable catch regarding sustainability. Several areas closed to harvest have been established within the primary harvest

districts. Harvestable surpluses of red sea urchins exist in Districts 1, 2, 3, and 4 under current management guidelines.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 24, 2020.

Kelly Susewind  
Director

**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.

**NEW SECTION**

**WAC 220-340-75000Z Commercial sea urchin fisheries.** Notwithstanding the provisions of WAC 220-340-750, effective November 30, 2020, until further notice:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1; District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23A; District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude; District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude; District 6; and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(3) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 1; District 2; and District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude; and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(4) The maximum cumulative landings for green sea urchins and red sea urchins for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Fishery weeks are Monday's through Sunday's.

**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.

### REPEALER

The following section of the Washington Administrative Code is repealed effective November 30, 2020:

WAC 220-340-75000Y Commercial sea urchin fisheries.  
(20-234)

**WSR 20-24-080**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**

[Filed November 25, 2020, 9:35 a.m., effective November 26, 2020]

Effective Date of Rule: November 26, 2020.

Purpose: WAC 246-10-109 and 246-11-080, third emergency rule responding to the coronavirus disease 2019 (COVID-19) pandemic. Amending the procedural rules applicable to adjudicative proceedings conducted by the department of health (department) and health professions boards and commissions in order to facilitate filing and serving documents during the restrictions put in place by the governor in response to the pandemic. Chapter 246-10 WAC applies to all adjudicative proceedings conducted by the department. Chapter 246-11 WAC applies to adjudicative proceedings conducted by health professions boards and commissions having disciplining authority under the Uniform Disciplinary Act, chapter 18.130 RCW.

This emergency rule is similar to the emergency rule filed on July 28, 2020, as WSR 20-16-055 and on March 30, 2020, as WSR 20-08-096. This emergency rule will continue to allow for the option of e-filing documents and recognizes that the parties may agree with the department's adjudicative clerk's office (ACO) to electronic service of documents, including notices of hearing, initial orders, and final orders. The rule includes clarifications regarding the use of electronic filing. It removes the options of filing with the department's ACO by hand delivery, and serving documents on a party or a party's designated representative by personal service. It retains the options of filing documents by mailing hard copies to or faxing to ACO, or serving a party by mail or fax, but removes the requirement to mail copies at the same time as faxing them.

Citation of Rules Affected by this Order: Amending WAC 246-10-109 and 246-11-080.

Statutory Authority for Adoption: RCW 43.70.040 and 34.05.220 (1)(a).

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.

Reasons for this Finding: In response to COVID-19, the department continues to take action to help prevent the spread of COVID-19, follow social distancing practices, and respond to the governor's proclamations. This emergency rule continues to include the options of e-filing, and recognizes that the parties can agree to electronic service of documents, which can be better options to help prevent the spread of COVID-19. It includes clarification regarding how to electronically file documents. It retains the options of mailing hard copies to or faxing to ACO, or serving a party by mail or fax. This emergency rule removes the options of hand delivering documents to ACO or personally serving documents on a party or a party's designated representative. Hand delivery of documents can defy the principles of social distancing practices, and can put individuals at risk of spreading COVID-19. The buildings at the department continue to be temporarily closed, making hand delivery difficult. The emergency rules filed as WSR 20-16-055 on July 28, 2020, will expire on November 25, 2020. To continue to help prevent the spread of COVID-19 and safely continue the essential functions of the agency during these unprecedented times, it is necessary to file a third emergency rule to allow for continued electronic filing and service of documents.

The department has filed a CR-101 (WSR 20-15-095) and anticipates permanently adopting these emergency rules, or something similar in early 2021.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: November 20, 2020.

Jessica Todorovich  
Chief of Staff  
for John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 18-18-050, filed 8/29/18, effective 9/29/18)

**WAC 246-11-080 Filing and service of documents.**  
(1) For purposes of this section "document" means pleadings, briefs, exhibits, orders, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law, documents must be filed by:

(i) ~~((Hand delivery to the adjudicative clerk's office; (ii) First class, registered, or certified mail; (or (iii) (ii) Fax transmission (where copies are mailed simultaneously); or~~

(ii) Electronic mail sent to ACOfax@doh.wa.gov.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

(i) ~~((Personal service; (ii) First class, registered, or certified mail; (or (iii) (ii) Fax transmission (where copies are mailed simultaneously)).~~

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

(i) ~~((Personally served; (ii) Properly stamped, addressed, and deposited in the United States mail; or~~

((iii) (ii) Successfully transmitted by fax (and properly stamped and addressed copies are deposited in the United States mail)).

(d) A party may prove service by filing in compliance with this chapter any of the following:

(i) An acknowledgment of service; or

(ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree with the adjudicative clerk's office to service of documents via electronic mail, including notices of hearing, initial orders, and final orders.

(6) The adjudicative clerk's office will serve documents via electronic mail in cases in which all parties have agreed to electronic service.

**AMENDATORY SECTION** (Amending WSR 18-18-049, filed 8/29/18, effective 9/29/18)

**WAC 246-10-109 Filing and service of documents.**

(1) For purposes of this section "documents" means plead-

ings, briefs, exhibits, orders, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law, documents must be filed by:

(i) ~~((Hand delivery to the adjudicative clerk's office; (ii) First class, registered, or certified mail; (or (iii) (ii) Fax transmission (where copies are mailed simultaneously); or~~

(ii) Electronic mail sent to ACOfax@doh.wa.gov.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

(i) ~~((Personal service; (ii) First class, registered, or certified mail; or ((iii) (ii) Fax transmission (where copies are mailed simultaneously)).~~

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

(i) ~~((Personally served; (ii) Properly stamped, addressed, and deposited in the United States mail; or~~

((iii) (ii) Successfully transmitted by fax (and properly stamped and addressed copies are deposited in the United States mail)).

(d) A party may prove service by filing in compliance with this chapter any of the following:

(i) An acknowledgment of service; or

(ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree with the adjudicative clerk's office to service of documents via electronic mail, including notices of hearing, initial orders, and final orders.

(6) The adjudicative clerk's office will serve documents via electronic mail in those cases in which all parties agree to electronic service.

**WSR 20-24-081**  
**EMERGENCY RULES**  
**STATE BOARD OF HEALTH**

[Filed November 25, 2020, 9:37 a.m., effective November 29, 2020]

Effective Date of Rule: November 29, 2020.

Purpose: WAC 246-101-017, Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting. The Washington state board of health has adopted a second emergency rule to continue to designate COVID-19 as a notifiable condition and extends reporting requirements for health care providers, health care facilities, laboratories, and local health jurisdictions to report race, ethnicity, and other demographic data for cases of COVID-19. The rule establishes what testing and demographic data need to be reported as well as the timing and mechanism of reporting. The rule allows for certain waivers by a local health officer.

This emergency rule will continue to require specific data elements to be reported with COVID-19 test results. This rule is more closely aligned with United States Department of Health and Human Services (HHS) laboratory data reporting guidance and reflects reporting requirements that can more reasonably be collected through the current public health reporting structure. The existing emergency rule incorporates HHS guidance and also requires reporting of additional data beyond what is included in guidance, including components such as the patient's race and ethnicity using disaggregated reporting categories, the patient's primary language and emergency contact phone number, and responses to "ask on order entry" questions. This emergency rule will take effect upon the expiration of the existing emergency rule.

Citation of Rules Affected by this Order: New WAC 246-101-017.

Statutory Authority for Adoption: RCW 43.20.050 (2) (f).

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: The immediate adoption of a rule designating COVID-19 as a notifiable condition, and requiring the reporting of race, ethnicity, and other demographic data by health care providers, health care facilities, laboratories, and local health jurisdictions related to cases of COVID-19 is necessary to comply with federal law and related guidance. Immediate adoption of this rule is necessary for the preservation of the public health, safety and general welfare of the state of Washington during this pandemic.

Public Law 116-136, § 18115(a), the Coronavirus Aid, Relief, and Economic Security (CARES) Act, requires "every laboratory that performs or analyzes a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19" to report the results from each such test to the secretary of HHS. In addition, the statute authorizes the secretary to prescribe the form and manner, and timing and

frequency, of such reporting. On June 4, 2020, the Secretary of HHS finalized and published guidance on COVID-19 CARES Act reporting requirements. The guidance required that all data be reported through existing public health data reporting methods. Of these requirements, demographic information such as the patient's age, race, ethnicity, and sex must be collected and reported to state or local public health departments using existing reporting channels in accordance with state law or policies.

The existing emergency rule for COVID-19 reporting requires regulated entities to report additional data beyond what is included in HHS guidance. The requirement to report responses to the "ask on order entry" questions, as well as the requirement to report more granular race and ethnicity data than what is required by the Centers for Disease Control and Prevention, have raised concerns regarding the burden of reporting and the inability to collect such data through the current public health reporting structure. The revised requirements adopted in this new emergency rule address the concerns raised and are more closely aligned with HHS reporting guidance.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 1, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 9, 2020.

Michelle A. Davis  
Executive Director

NEW SECTION

**WAC 246-101-017 Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting.** (1) Designating coronavirus disease 2019 (COVID-19), and the novel coronavirus (SARS-CoV-2) that causes it, as a notifiable condition, and requiring the reporting of race and ethnicity and other essential data by health care providers, health care facilities, laboratories, and local health departments related to cases of COVID-19 are necessary to ensure that public health agencies receive complete notice of COVID-19 cases and to address racial and ethnic inequities in morbidity and mortality among individuals with the disease. This rule is also necessary to align with the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and the U.S. Department of Health and Human Services laboratory data reporting requirements for COVID-19 testing, which require reporting of COVID-19 data to the appropriate state or local health department and the U.S. Department of Health and

Human Services, and further, that any person or entity ordering a diagnostic or serologic test, collecting a specimen, or performing a test should make every reasonable effort to collect complete demographic information and include such data when ordering a laboratory test to enable the entities performing the test to report these data to state and local public health departments. In the midst of this global pandemic, immediate adoption of a rule requiring notice of novel coronavirus (SARS-CoV-2) as a notifiable condition and reporting of race, ethnicity, and other essential data is necessary for the preservation of public health, safety, and general welfare.

(2) For the purpose of this section:

(a) "Animal case" means an animal, alive or dead, with a diagnosis of novel coronavirus (SARS-CoV-2) made by a veterinarian licensed under chapter 18.92 RCW, veterinary medical facility licensed under chapter 18.92 RCW, or veterinary laboratory as defined under chapter 16.70 RCW based on clinical criteria, or laboratory criteria, or both.

(b) "Health care facility" means:

(i) Any assisted living facility licensed under chapter 18.20 RCW; birthing center licensed under chapter 18.46 RCW; nursing home licensed under chapter 18.51 RCW; hospital licensed under chapter 70.41 RCW; adult family home licensed under chapter 70.128 RCW; ambulatory surgical facility licensed under chapter 70.230 RCW; private establishment licensed under chapter 71.12 RCW; or enhanced service facility licensed under chapter 70.97 RCW; and

(ii) Clinics or other settings where one or more health care providers practice.

(c) "Immediately" means without delay, twenty-four hours a day, seven days a week.

(d) "Secure electronic data transmission" means electronic communication and accounts developed and maintained to prevent unauthorized access, loss, or compromise of sensitive information including, but not limited to, secure file transfer, secure facsimile, a health information exchange authorized under RCW 41.05.039, and the secure electronic disease surveillance system.

(e) "Secure electronic disease surveillance system" means the secure electronic data transmission system maintained by the department and used by local health departments to submit notifications, investigation reports, and outbreak reports under this chapter.

(f) Patient's ethnicity shall be identified by the patient and reported using one of the following categories:

(i) Hispanic or Latino;

(ii) Non-Hispanic or Latino;

(iii) Unknown; or

(iv) Asked, but unknown.

(g) Patient's race shall be identified by the patient and reported using one or more of the following categories:

(i) American Indian or Alaska Native;

(ii) Asian;

(iii) Black or African American;

(iv) Native Hawaiian or Other Pacific Islander;

(v) White;

(vi) Unknown; or

(vii) Asked, but unknown.

(h) Ask on order entry questions are:

(i) Is this the patient's first test of any kind for novel coronavirus (SARS-CoV-2)? (yes, no, unknown);

(ii) Is the patient employed in health care with direct patient contact? (yes, no, unknown);

(iii) Is the patient symptomatic as defined by the Centers for Disease Control and Prevention (CDC)? (yes, no, unknown). If yes, then provide date of symptom onset (mm/dd/yyyy);

(iv) Is the patient hospitalized for novel coronavirus (SARS-CoV-2) at the time of testing? (yes, no, unknown);

(v) Is the patient in the intensive care unit (ICU) for novel coronavirus (SARS-CoV-2) at the time of testing? (yes, no, unknown);

(vi) Is the patient a resident in a congregate care or living setting (including, but not limited to, nursing homes, residential care for people with intellectual and developmental disabilities, psychiatric treatment facilities, group homes, board and care homes, homeless shelter, foster care, correctional facilities, and temporary worker housing)? (yes, no, unknown); and

(vii) Is the patient pregnant? (yes, no, unknown).

(3) Unless a health care facility has assumed the notification duties of the principal health care provider under subsection (8) of this section, or a laboratory director in a health care facility where laboratory point of care testing occurs under a certificate of waiver as described in WAC 246-338-020 has fulfilled the laboratory notification requirements as described in subsection (10) of this section, the principal health care provider shall submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department via secure electronic data transmission using a file format or template specified by the department:

(a) Within twenty-four hours of receiving a laboratory confirmed positive test result; and

(b) Following the requirements of this section, WAC 246-101-105, and WAC 246-101-120; excluding the requirements in WAC 246-101-105(10).

(4) The local health officer may waive or partially waive subsection (3) or (5) of this section, or both if the local health officer determines individual case reports of novel coronavirus (SARS-CoV-2) submitted by health care providers or health care facilities are not needed and are not promoting public health for any reason including, but not limited to, the local health department being unable to process the volume of case reports. The local health officer shall notify health care providers and health care facilities upon their determination.

(5) A health care facility shall submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department via secure electronic data transmission using a file format or template specified by the department:

(a) Within twenty-four hours of receiving a laboratory confirmed positive test result; and

(b) Following the requirements of this section, WAC 246-101-305, and WAC 246-101-320; excluding the requirement in WAC 246-101-305(4).

(6) Health care providers and health care facilities shall provide the local health department with the information identified in Column A of Table 1 in this section for individ-

ual case reports concerning novel coronavirus (SARS-CoV-2).

(7) Health care providers and health care facilities may provide the local health department with responses to ask on order entry questions under subsection (2)(h) of this section for individual case reports concerning novel coronavirus (SARS-CoV-2).

(8) A health care facility may assume the notification requirements established in this section for a health care provider practicing within the health care facility.

(9) A health care facility shall not assume the notification requirements established in this section for a laboratory that is a component of the health care facility.

(10) A principal health care provider is not required to submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department when the provider practices in a health care facility where laboratory point of care testing occurs under a certificate of waiver as described in WAC 246-338-020 and the laboratory director has fulfilled the laboratory notification requirements under subsections (14), (15), and (16) of this section.

(11) Health care providers and health care facilities shall provide the laboratory with the information identified in Column A of Table 1 in this section for each test ordered for novel coronavirus (SARS-CoV-2).

(12) Health care providers and health care facilities may provide the laboratory with responses to ask on order entry questions under subsection (2)(h) of this section for each test ordered for novel coronavirus (SARS-CoV-2).

(13) For specimens associated with novel coronavirus (SARS-CoV-2) sent to a laboratory outside of Washington state, health care providers, health care facilities, and laboratories shall provide the out-of-state laboratory with a copy of chapter 246-101 WAC if they arrange for the out-of-state laboratory to report the test results consistent with WAC 246-101-105 (5)(a), 246-101-205 (1)(f)(i), or 246-101-305 (1)(e) (i) to the local health department as required under this subsection.

(14) A laboratory director shall submit individual laboratory reports of positive, negative, and indeterminate test results for novel coronavirus (SARS-CoV-2) to the local health department via secure electronic data transmission using a file format or template specified by the department:

(a) Within twenty-four hours; and

(b) Following the requirements of this section, WAC 246-101-205, and WAC 246-101-230; excluding the requirements in WAC 246-101-205(3).

(15) A laboratory director shall provide the information identified in Column B of Table 1 in this section to the local health department with each novel coronavirus (SARS-CoV-2) laboratory report.

(16) A laboratory director may provide the local health department with responses to ask on order entry questions under subsection (2)(h) of this section with each novel coronavirus (SARS-CoV-2) laboratory report.

(17) A laboratory director, upon request by the local health department or the department, shall submit novel coronavirus (SARS-CoV-2) presumptive positive isolates or, if no isolate is available, the specimen associated with the presumptive positive result to the Washington state public health

laboratories within two business days of request. Specimens shall be sent to:

Washington State Public Health Laboratories  
Washington State Department of Health  
1610 N.E. 150th Street  
Shoreline, WA 98155

(18) If the local health department or the department requests a specimen under subsection (17) of this section, a laboratory director shall provide the Washington state public health laboratories with the information identified in Column C of Table 1 in this section with each specimen submitted.

(19) When referring a specimen to another laboratory for a test for novel coronavirus (SARS-CoV-2), a laboratory director shall provide the reference laboratory with the information identified in Column D of Table 1 in this section for each test referral.

(20) When referring a specimen to another laboratory for a test for novel coronavirus (SARS-CoV-2), a laboratory director may provide the reference laboratory with responses to ask on order entry questions under subsection (2)(h) of this section with each test referral.

(21) The department of agriculture shall submit individual case reports for each animal case of novel coronavirus (SARS-CoV-2) to the department via secure electronic data transmission using a file format or template specified by the department within twenty-four hours of being notified of the animal case.

(22) The department of agriculture shall call the department and confirm receipt immediately after submitting a case report for each animal case of novel coronavirus (SARS-CoV-2).

(23) When the department of agriculture submits information under subsection (21) of this section, the department shall:

(a) Consult with the department of agriculture on all animal cases; and

(b) Notify the local health department of animal cases submitted to the department.

(24) A local health department shall, using a secure electronic disease surveillance system:

(a) Notify the department immediately upon receiving a case report of positive, negative, or indeterminate test results for novel coronavirus (SARS-CoV-2); and

(b) Submit individual investigation reports of novel coronavirus (SARS-CoV-2) to the department immediately upon completing the case investigation.

(25) Notifications required under subsection (24)(a) of this section must include the information identified in Column E of Table 1 in this section.

(26) Investigation reports required under subsection (24)(b) of this section must include the information identified in Column F of Table 1 in this section.

(27) A local health department may submit responses to ask on order entry questions under subsection (2)(h) of this section with each notification required under subsection (24) (a) of this section and each investigation report required under subsection (24)(b) of this section.

(28) A local health department shall immediately reassign cases to the department upon determining the patient who is the subject of the case:

- (a) Is a resident of another local health department; or
- (b) Resides outside Washington state.

(29) A local health department, upon consultation with the department, may forward novel coronavirus (SARS-CoV-2) individual laboratory or case reports submitted by laboratories, health care providers, and health care facilities to the department for data entry and processing.

(30) The local health officer or the state health officer may request additional information of epidemiological or public health value when conducting a case investigation or

otherwise for prevention and control of a specific notifiable condition.

(31) Health care providers, health care facilities, laboratories, and the department of agriculture may provide, via secure electronic data transmission using a file format or template specified by the department, additional health information, demographic information, or infectious or noninfectious condition information than is required under this section to the department, local health department, or both when it determines that the additional information will aid the public health authority in protecting the public's health and preventing the spread of novel coronavirus (SARS-CoV-2).

**Table 1**

**Required Reporting for Health Care Providers, Health Care Facilities, Laboratories, and Local Health Departments**

	<b>Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:</b>	<b>Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:</b>	<b>Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:</b>	<b>Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:</b>	<b>Column E: Local health department notifications to the department must include:</b>	<b>Column F: Local health department investigation reports to the department must include:</b>
Patient's name	X	X	X	X	X	X
Patient's notifiable condition	X				X	X
Patient's date of birth, or if not available, patient's age	X	X	X	X	X	X
Patient's sex	X	X	X	X	X	X
Patient's ethnicity, using the categories described in subsection (2)(f) of this section	X	X	X	X	X	X
Patient's race, using the categories described in subsection (2)(g) of this section	X	X	X	X	X	X
Patient's full physical address including zip code	X	X	X	X	X	X
Patient's telephone number	X	X	X	X	X	X

	<b>Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:</b>	<b>Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:</b>	<b>Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:</b>	<b>Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:</b>	<b>Column E: Local health department notifications to the department must include:</b>	<b>Column F: Local health department investigation reports to the department must include:</b>
Initial notification source					X	X
Patient's diagnosis of disease or condition	X					
Pertinent laboratory data	X					
Test ordered, using harmonized LOINC codes provided by the CDC		X	X	X	X*	X*
Date test ordered		X	X	X	X*	X*
Device identifier		X	X		X*	X*
Type of specimen tested	X	X	X	X	X*	X*
Specimen source, using appropriate SNOMED-CT, or equivalently detailed laboratory local codes, or a specimen-specific LOINC code for test performed		X	X	X	X*	X*
Date of specimen collection	X	X	X	X	X	X
Date specimen received by reporting laboratory		X	X		X*	X*
Accession number or specimen ID		X	X		X*	X*
Test performed and result, using appropriate LOINC and SNOMED codes, as defined by the Laboratory in Vitro Diagnostics (LIVD) Test Code Mapping for SARS-CoV-2 tests provided by the CDC		X	X		X*	X*



	<b>Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:</b>	<b>Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:</b>	<b>Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:</b>	<b>Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:</b>	<b>Column E: Local health department notifications to the department must include:</b>	<b>Column F: Local health department investigation reports to the department must include:</b>
Test result date		X	X		X*	X*
Condition symptom onset date (preferred), or alternatively, diagnosis date						X
Ordering health care provider's name	X	X	X	X	X	X
Ordering health care provider's National Provider Identifier (as applicable)	X	X	X	X	X	X
Ordering health care provider's telephone number	X	X	X	X	X	X
Ordering health care provider's address including zip code	X	X	X	X	X	X
Name and telephone number of the person providing the report	X					
Performing laboratory's name		X	X		X*	X*
Performing laboratory's CLIA number, if known		X	X		X*	X*
Performing laboratory's zip code		X	X		X*	X*
Performing laboratory's phone number		X	X		X*	X*
Date local health department was notified					X	X
Hospitalization status of the patient						X

	<b>Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:</b>	<b>Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:</b>	<b>Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:</b>	<b>Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:</b>	<b>Column E: Local health department notifications to the department must include:</b>	<b>Column F: Local health department investigation reports to the department must include:</b>
Whether the patient died during this illness						X
Source or suspected source						X

\* Local health departments are not required to submit this information if the notification came from a health care provider or health care facility. All other information indicated in Columns E and F is still required in these instances.

**WSR 20-24-088  
EMERGENCY RULES  
DEPARTMENT OF  
CHILDREN, YOUTH, AND FAMILIES**

[Filed November 25, 2020, 1:27 p.m., effective November 27, 2020]

Effective Date of Rule: November 27, 2020.

Purpose: Encourage petitions for administrative review of initial orders and petitions for judicial review of final agency orders to be served by United States mail or email on either the secretary of the department of children, youth, and families (DCYF) or the DCYF board of appeals instead of personal delivery while state agency buildings are closed to the public in response to the COVID-19 pandemic.

Citation of Rules Affected by this Order: Amending WAC 110-03-0530 and 110-03-0590.

Statutory Authority for Adoption: RCW 34.05.220 and 43.216.065.

Other Authority: Proclamations of the Governor 20-05 and 20-25.

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.

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to

and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-25 established the "Safe Start - Stay Healthy" County-by-County Phased Reopening plan that prohibits government buildings from opening to the public until such time as approved by the state department of health. Emergency WAC 110-03-0530 and 110-03-0590 were adopted on an emergency basis on July 29, 2020, under WSR 20-16-079. Circumstances have since changed under Proclamations 20-25 through 20-25.8 "Safe Start - Stay Healthy" County-by-County Phased Reopening, but conditions prompting the state of emergency declaration still exist and justify the need for emergency rules to remain in effect.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, 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 2, Repealed 0.

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

Date Adopted: November 25, 2020.

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

**WAC 110-03-0530 Requesting review of the initial order.** (1) A party must file the review request (petition for review) in writing and it must:

(a) Clearly identify the parts of the initial order with which the party disagrees; and

(b) Clearly present arguments and refer to evidence in the record supporting the party's position.

(2) The petition for review must be filed with the BOA and the party requesting review must serve copies on the other parties and their representatives and OAH at the same time the petition is filed.

(3)(a) The petition for review must be filed with the BOA at the address stated in the instructions for obtaining review sent with the initial order or using the following contact information appropriate to the method of filing used:

(i) Mailing address:  
DCYF Board of Appeals  
P.O. Box 40982  
Olympia, WA 98504-0982

~~((Physical address:  
DCYF Board of Appeals  
1115 Washington Street Southeast  
Olympia, WA 98504))~~

(ii) Fax: 360-586-5934; or

(iii) The petition or other documents related to your case may be sent to the DCYF BOA using secure email. Call the BOA prior to sending documents by email to request access to the secure email portal.

(b) This information is current as of the effective date of these rules; however, parties should file documents using the address or fax information received with the initial order if it is different from the information provided here.

(4) The DCYF board of appeals can be contacted by phone at: 360-902-0278.

**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 20-02-031, filed 12/19/19, effective 1/19/20)

**WAC 110-03-0590 Judicial review.** (1) Judicial review is the process of appealing a final agency order to a superior court.

(2) Any party, except DCYF, may appeal a final order by filing a written petition for judicial review in superior court pursuant to RCW 34.05.514 that meets the requirements of RCW 34.05.546. The petition must be properly filed and served, as required by RCW 34.05.542, within thirty calendar days of the date the review judge serves the final order in the

case. However, as provided by RCW 34.05.470, if a petition for reconsideration has been properly filed, the thirty day period does not commence until the agency disposes of the petition for reconsideration. Copies of the petition must be served on DCYF, the office of the attorney general, and all other parties at the same time the petition is filed.

(3) To serve DCYF, a copy of the petition must be delivered to the secretary of DCYF or to the DCYF BOA.

(a) The petition ~~((must))~~ may be ~~((hand delivered or))~~ mailed with proof of receipt to:

DCYF Office of the Secretary  
P. O. Box 40982

Olympia, WA 98504-0982; or

~~((a) The physical location of the secretary is:~~

~~DCYF Office of the Secretary  
1500 Jefferson Street Southeast  
Olympia, WA 98501~~

~~The mailing address of the secretary is:~~

~~DCYF Office of the Secretary  
P.O. Box 40975~~

~~Olympia, WA 98504-0975~~

~~Fax: 360-586-5934))~~

(b) The petition and other documents related to your case may be sent to the DCYF BOA using secure email. Call the BOA prior to sending documents by email to request access to the secure email portal.

(4) The ~~((physical location))~~ telephone number, fax number, and mailing address for the DCYF BOA are as stated in WAC 110-03-0530.

~~((4))~~(5) Service on the office of the attorney general and other parties of a copy of the petition for judicial review may be made at the following locations:

(a) The office of the attorney general may be served personally or by delivery at:

Office of the Attorney General  
7141 Cleanwater Drive S.W.  
Tumwater, WA 98501

The mailing address of the office of the attorney general is:

Office of the Attorney General  
P.O. Box 40124  
Olympia, WA 98504-0124

(b) Each party must be served at each party's address of record.

~~((5))~~(6) A party may file a petition for judicial review only after it has exhausted administrative remedies, as provided under RCW 34.05.534.

~~((6))~~(7) Filing a petition for judicial review of a final order does not stay the effectiveness of the final order.

**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.

**WSR 20-24-089**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed November 25, 2020, 1:34 p.m., effective November 27, 2020]

Effective Date of Rule: November 27, 2020.

Purpose: During the COVID-19 pandemic, relieve the department of children, youth, and families from (1) in-person contact for the purpose of receiving or fulfilling public records requests, copying public records, or allowing inspection of public records; and (2) the requirement to respond to a request for public records within five days of receiving the request.

Citation of Rules Affected by this Order: Amending WAC 110-01-0100 and 110-01-0200.

Statutory Authority for Adoption: RCW 43.216.065; and chapter 42.56 RCW.

Other Authority: Proclamations of the Governor 20-05 and 20-28.

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.

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-28 amends Proclamation 20-05 and directs state agencies to limit personal contact through social distancing and limit person-to-person contact. Proclamation 20-28 waives and suspends any in-person contact related to public records requests and the requirement that a state agency respond to requests within five days of receipt. WAC 110-01-0100 and 110-01-0200 were amended on an emergency basis on March 31, 2020, under WSR 20-08-123 and July 29, 2020, under WSR 20-16-074. Proclamation 20-28.13 was issued on November 12, 2020, and relieves state agencies from complying with provisions of the Public Records Act that involve in-person contact through December 7. This change in circumstances makes it necessary for the emergency rules filed under WSR 20-08-123 to remain in force.

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

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

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

Date Adopted: November 25, 2020.

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-01-0100 Availability of public records.** Pursuant to proclamation 20-28 and any subsequent proclamation, or other gubernatorial or legislative action suspending the requirements of RCW 42.56.080, .090, or .100, public inspection is not permitted. ~~((Public records are available for inspection and copying during the department's normal business hours, Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays. A department staff person must be present at all times when a record is being inspected. Appointments are not required, but significantly help the department provide prompt and efficient service. Some department records may be stored in other locations, in computer storage systems, or the state records warehouse, and may take time to identify and gather. Other records may be exempt from disclosure. Original records cannot be removed from the inspection location. If required by law, department staff must redact information in a record before making it available for inspection. Department staff will make copies of records on request.))~~

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-01-0200 How the department responds to public records requests.** The department will respond to public record requests in a reasonable amount of time given the unique circumstances of the COVID-19 pandemic. ((Within five business days of receiving the request,)) When the department receives a request for records, the department will either:

- (1) Provide the record;
- (2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;
- (3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or
- (4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that the department relied upon in its denial.

At his or her discretion, the public records officer may send the requested records by email, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

**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.

**WSR 20-24-090**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed November 25, 2020, 2:01 p.m., effective November 27, 2020]

Effective Date of Rule: November 27, 2020.

Purpose: Modify the early achievers quality rating and improvement system requirements during the COVID-19 pandemic. More specifically, remove the deadline by which a provider must enroll in the program and the requirement to reach quality rating levels. Child care and early learning providers who participate in working connections and seasonal child care must still enroll in the early achievers program, follow its operating guidelines, submit attendance records electronically, and renew their facility ratings every three years.

Citation of Rules Affected by this Order: Amending WAC 110-15-0125 and 110-15-3750.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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.

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. The emergency amendments to WAC 110-15-0125 and 110-15-3750 address these challenges by waving and suspending some of the regulatory system requirements that delay child care providers from making child care available to the children of essential staff who are from low-income families who require child care services during the COVID-19 pandemic. WAC 110-15-0125 and 110-15-3750 were amended on an emergency basis on March 30, 2020, under WSR 20-08-098 and July 29, 2020, under WSR 20-16-072. Proclamation 20-31.9 was issued on November 10, 2020, and continues through December 7 the relief granted to providers from meeting certain early achievers program deadlines. This change in circumstances makes it necessary for the emergency rules filed under WSR 20-08-098 to remain in force.

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

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

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

Date Adopted: November 25, 2020.

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-15-0125 Approved child care providers.**

(1) In-home/relative providers. To be approved to receive benefits under the WCCC program, an in-home/relative provider must comply with the applicable requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(2) Licensed providers.

(a) To be approved to receive payment under the WCCC program, a licensed provider must comply with the requirements of this chapter, chapter 43.216 RCW, ~~((and))~~ chapter ~~((s))~~ 110-06, and chapter 110-300 ~~((, 110-300A, 110-300B, and))~~ or 110-305 WAC.

(b) A provider who cares for a child who is a Washington resident in a state that borders Washington must:

- (i) Be licensed to provide care in the bordering state;
- (ii) Comply with the bordering state's licensing regulations;

(iii) Comply with the electronic attendance requirements contained in WAC 110-15-0126.

(c) The lesser of the following will be paid to a qualified, licensed child care provider in a state that borders Washington:

- (i) The provider's private pay rate for that child; or
- (ii) The DCYF maximum WCCC subsidy daily rate for the DCYF region where the child resides.

(d) A licensed provider in a state that borders Washington that receives WCCC subsidy payment to care for a child who is a Washington resident is not required or eligible to participate in the early achievers program or to receive quality improvement awards, tiered reimbursements, or other awards and incentives associated with the early achievers program.

(3) Certified providers. To be approved to receive payment under the WCCC program, a certified provider must comply with the certification requirements contained in this chapter, chapter 43.216 RCW, ~~((and))~~ chapter ~~((s))~~ 110-06, and chapter 110-300 ~~((, 110-300A, 110-300B, and))~~ or 110-305 WAC. Certified providers include:

- (a) Tribal child care facilities that meet the requirements of tribal law;
- (b) Child care facilities on a military installation;
- (c) Child care facilities operated on public school property by a school district; and

(d) Seasonal day camps that contract with DCYF to provide subsidized child care.

(4) ~~((Early achievers program requirements for licensed and certified child care providers that))~~ To be eligible to receive WCCC payments, licensed or certified Early Achiever program participants who receive their first WCCC payment on or after July 1, 2016 must:

(a) ~~((A licensed or certified child care provider that first receives a WCCC subsidy payment on or after July 1, 2016, for providing nonschool age child care must complete the following activities to be eligible to receive additional WCCC payments:~~

~~((i))~~ Enroll in the early achievers program; and ~~((within thirty days of receiving the first WCCC subsidy payment. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;~~

~~(ii) Complete level 2 activities in the early achievers program within twelve months of enrollment. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive DCYF subsidy payments for providing nonschool age child care;~~

~~(iii) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. A licensed or certified provider that fails to meet this requirement within thirty months of enrollment in the early achievers program, must complete remedial activities with DCYF and rate at a level 3 or higher within six months of beginning remedial activities. A licensed or certified provider that fails to rate at a level 3 or higher within six months of beginning remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care; and~~

~~((iv))~~ (b) Renew their facility rating every three years ~~((and maintain a rating level 3 or higher))~~. If a licensed or certified provider fails to renew their facility rating ~~((or maintain a rating level 3 or higher))~~, the licensed or certified provider will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

~~((b))~~ (c) Licensed and certified providers must comply with the provisions for participation as outlined in the early achievers operating guidelines. Failure to comply with these guidelines may result in a licensed or certified provider's loss of DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(5) ~~((Early achievers program requirements for licensed and certified child care providers that received a WCCC payment on or between July 1, 2015, and June 30, 2016:~~

~~(a))~~ A licensed or certified child care provider that received a WCCC subsidy payment on or between July 1, 2015, and June 30, 2016, ~~((for providing nonschool age child care, must complete the following activities to be eligible to receive additional WCCC subsidy payments:~~

~~(i) Enroll in the early achievers program by August 1, 2016. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;~~

~~(ii) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who failed to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for nonschool age child care; and~~

~~(iii) Rate at a level 3 or higher in the early achievers program by December 31, 2019. A licensed or certified provider that fails to meet this requirement by December 31, 2019, must complete remedial activities with DCYF and rate at a level 3 or higher by June 30, 2020. A licensed or certified provider that fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.~~

~~(b) Licensed and certified providers))~~ must renew their facility rating every three years. ~~((and maintain a rating level 3 or higher))~~. If a licensed or certified provider fails to renew their facility rating ~~or maintain a rating level 3 or higher,~~ ~~licensed or certified providers))~~ they will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(6) If a licensed or certified child care provider receiving WCCC subsidy payment for providing nonschool age has successfully completed all level 2 activities and is waiting to be rated, the licensed or certified provider may continue to receive WCCC subsidy payments ~~((pending the successful completion of the level 3 rating activity))~~.

(7) DCYF-contracted seasonal day camps must have a contract with DEL to provide subsidized child care.

**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 material occurred in the copy filed by the Department of Children, Youth, and Families and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-15-3750 Eligible child care providers.** To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter ~~((43-215))~~ 43.216 RCW and ~~((170-295, 170-296A, or 170-297))~~ chapters 110-300 or 110-305 WAC;

(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

(a) The provider's private pay rate for that child; or  
(b) The state maximum child care subsidy rate for the ~~((DSHS))~~ DCYF region where the child resides; or

(3) Exempt from licensing but certified by ~~((DEL))~~ DCYF, such as:

(a) Tribal child care facilities that meet the requirements of tribal law;

(b) Child care facilities on a military installation; and  
(c) Child care facilities operated on public school property by a school district.

(4) ~~((New child care providers, as defined in WAC 170-290-0003, who are))~~ To be eligible to receive a state subsidy payment, an agency as defined in RCW 43.217.010 that is

subject to licensure, or ~~((are certified))~~ a person or facility authorized to receive state subsidy ~~((as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC))~~ under chapter 43.216 RCW, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:

(a) Enroll in the early achievers program; ~~((within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(i) Out of state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~(ii) Out of state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.))~~

(b) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care; and

~~(c) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(d) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and~~

~~(e))~~ (c) Maintain an up to date rating by renewing their facility rating every three years ~~((and maintaining a rating level 3 or higher))~~. If a provider fails to renew their facility rating ~~((or maintain a rating level 3 or higher))~~, they will lose eligibility to receive state subsidy payments nonschool age child care.

(5) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter ~~((43.215))~~ 43.216 RCW ~~((and as described by chapter 170-295, 170-296A, or 170-297 WAC))~~, who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:

~~(a) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(i) Out of state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~(ii) Out of state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other~~

~~awards and incentives associated with participation in early achievers.~~

~~(b) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019;~~

~~(d) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and~~

~~(e) Maintain an up to date rating by renewing their facility rating every three years ((and maintaining a rating level 3 or higher)). If a provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), they will lose eligibility to receive state subsidy payments nonschool age child care.~~

(6) If a child care provider ~~((serving nonschool age children, as defined in WAC 170-290-0003, and))~~ receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy. ~~((pending the successful completion of the level 3 rating activity.))~~

**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 material occurred in the copy filed by the Department of Children, Youth, and Families and appear in the Register pursuant to the requirements of RCW 34.08.040.

## WSR 20-24-102

### EMERGENCY RULES OLYMPIC COLLEGE

[Filed November 30, 2020, 4:39 p.m., effective November 30, 2020, 4:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and took effect on August 14, 2020, requiring emergency updates to the college's student conduct code to be compliant with federal regulations. This seeks to extend the emergency rule to enable the completion of permanent rule making.

Citation of Rules Affected by this Order: New WAC 132C-120-320, 132C-120-325, 132C-120-330, 132C-120-335, 132C-120-340, 132C-120-345, 123C-120-350, 132C-120-355 and 132C-120-360; and repealing chapter 132C-285 WAC.

Statutory Authority for Adoption: RCW 28B.50.140.

Under RCW 34.05.350 the agency for good cause finds 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: Federal Title IX regulations require this be implemented by August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: November 17, 2020.

Martin Cavalluzzi  
President

## SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

### NEW SECTION

**WAC 132C-120-320 Order of precedence.** These supplemental procedures apply to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Olympic College's standard disciplinary procedures, WAC 132C-120-010 through 132C-120-315 these supplemental procedures shall take precedence.

### NEW SECTION

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

For purposes of these supplemental procedures, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college 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 the 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.

### NEW SECTION

**WAC 132C-120-330 Title IX jurisdiction.** (1) These supplemental procedures apply only if the alleged misconduct:

(a) Occurred in the United States;



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

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

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132C-120-065.

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

#### NEW SECTION

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

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

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the complainant and the respondent are entitled to be accompanied by their chosen advisors during the hearing and that:
  - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
  - (ii) An advisor may be an attorney; and
  - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

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

#### NEW SECTION

**WAC 132C-120-340 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132C-120-122. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

#### NEW SECTION

**WAC 132C-120-345 Rights of parties.** (1) The college's student conduct procedures, WAC 132C-120-010 through 132C-120-315 and these supplemental procedures 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 coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

#### NEW SECTION

**WAC 132C-120-350 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

- (a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or
- (b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

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

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

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

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

#### NEW SECTION

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

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

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

#### NEW SECTION

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

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are

affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

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