

WSR 21-21-082

PROPOSED RULES

CENTRAL WASHINGTON UNIVERSITY

[Filed October 18, 2021, 3:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-010.

Title of Rule and Other Identifying Information: Chapter 106-125 WAC, Student conduct code, and WAC 106-08-050 Brief adjudicative proceedings.

Hearing Location(s): On November 23, 2021, at 11:00 a.m., at Central Washington University, 400 East University Way, Barge Hall 304, Ellensburg, WA. Attending remotely by Zoom, join [https://us02web.zoom.us/j/87398503155?pwd=b1FGehZVThjeGNUT08rRFRVeThvZz09,MeetingID87398503155,Passcode498464,OneTapMobile+12532158782,,87398503155#,,,,*498464#US\(Tacoma\)+16699006833,,87398503155#,,,,*498464#US\(SanJose\).Dialbyyourlocation+12532158782US\(Tacoma\),MeetingID87398503155,Passcode498464](https://us02web.zoom.us/j/87398503155?pwd=b1FGehZVThjeGNUT08rRFRVeThvZz09,MeetingID87398503155,Passcode498464,OneTapMobile+12532158782,,87398503155#,,,,*498464#US(Tacoma)+16699006833,,87398503155#,,,,*498464#US(SanJose).Dialbyyourlocation+12532158782US(Tacoma),MeetingID87398503155,Passcode498464).

Date of Intended Adoption: February 18, 2022.

Submit Written Comments to: Kimberly J. Dawson, Rules Coordinator, Office of the President, 400 East University Way, Barge [Hall] 314, Ellensburg, WA 98926-7501, email kimberly.dawson@cwu.edu, fax 509-963-3206, by November 23, 2021.

Assistance for Persons with Disabilities: Contact Kimberly J. Dawson, phone 509-963-2111, fax 509-963-3206, email kimberly.dawson@cwu.edu, by November 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating and clarifying rules relating to student conduct and hearing procedures.

Statutory Authority for Adoption: RCW 28B.35.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Central Washington University, public and government.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joseph Bryant, Bouillon Hall 204, 509-963-1515.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not "significant legislative rules" as defined under RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

October 18, 2021
Kimberly J. Dawson
Rules Coordinator

OTS-3395.1

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-08-050 Brief adjudicative proceedings. (1) The university will conduct brief adjudicative proceedings in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted.

(2) Except as otherwise provided by rule or as determined in a particular case by the university president (or designee), brief adjudicative proceedings shall be used to hear appeals of administrative actions relating to the following matters:

- (a) Parking and traffic citations;
- (b) Outstanding student debts or employee overpayments;
- (c) Student residency determinations;
- (d) Library fines;
- (e) Challenges to contents of student education records;
- (f) ~~((Loss))~~ Removal from student housing or denial of student eligibility ((for participation)) to participate in ((university)) intercollegiate athletics;

(g) Student disciplinary action as defined under the student conduct code, except for a decision referring the matter to the student conduct council, a decision imposing a sanction of conduct suspension in excess of ten instructional days, or a decision imposing a sanction of conduct expulsion; or

(h) Administrative decisions regarding mandatory tuition and/or fee waivers.

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

(4) The administrative 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. Such records shall be maintained as the official record of the proceedings.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-08-050, filed 11/23/15, effective 12/24/15. Statutory Authority: RCW 28B.35.120(12). WSR 91-22-037 (Order CWU AO 68), § 106-08-050, filed 10/31/91, effective 12/1/91.]

OTS-3396.3

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-010 Definitions. The following definitions shall apply for purposes of this student conduct code:

- (1) Advisor of choice. The "advisor of choice" is the person selected by a complainant or respondent to provide informal advice and support at any stage of a disciplinary proceeding under this student

code. Except as otherwise provided in these rules, the role of the advisor of choice does not include representation of a party.

~~((2))~~ **(2) Complainant.** A "complainant" for purposes of this student code means any person who is the alleged victim or target of prohibited student conduct, whether or not such person has made an actual complaint.

~~((2))~~ **(3) Conduct officer.** The "conduct officer" or "student conduct officer" is the university official designated by the university to be responsible for initiating disciplinary action for alleged violations of this code.

~~((3))~~ **(4) Conduct review officer.** The "conduct review officer" is the university official designated by the university to hear appeals of disciplinary action conducted as brief adjudicative proceedings and to enter final decisions in proceedings heard by the student conduct council.

~~((4))~~ **(5) Consent.** The term "consent" for purposes of this code means knowing, voluntary, and clear permission and agreement, by actual words or conduct, to engage (or to continue engaging) in sexual activity. A person may be incapable of giving consent, or of diminished capacity to consent, by reason of age, threat or intimidation, lack of opportunity to consent, physical or mental impairment, drug or alcohol consumption, unconsciousness, or other cause. A person engages in nonconsensual sexual activity if the person knows, or reasonably should know, that the other person is of diminished capacity to consent or has in any way manifested lack of consent. Intoxication is not a defense against allegations of nonconsensual sexual activity.

(6) Day. The term "day," unless otherwise qualified, means "calendar day." The qualified term "instructional day" means any day within an academic term that the university is open for business, excluding weekends and holidays.

~~((5))~~ **(7) Dean of student success.** The term "dean" or "dean of student success" means the chief student affairs officer of the university and includes any acting or interim dean designated by the president to perform the functions and duties of the dean under this student code.

~~((6))~~ **(8) Disciplinary action.** The term "disciplinary action" means the decision of the designated university official regarding alleged violations of the student code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include a summary suspension.

~~((7))~~ **(9) Filing and service.**

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

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

(c) **Electronic filing and service.** Unless otherwise provided, filing or service may be accomplished by electronic mail.

~~((8))~~ **(10) Party.** A "party" to a disciplinary proceeding under this code includes the student conduct officer and the student re-

spondent, as well as any complainant in a proceeding involving allegations of sexual misconduct or discriminatory harassment.

~~((9))~~ (11) Preponderance of evidence. The term "preponderance of the evidence" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

~~((10))~~ (12) Respondent. A "respondent" is a student against whom disciplinary action is initiated.

~~((11))~~ (13) Service. See "Filing and service."

~~((12))~~ (14) Student. The term "student" includes all persons taking courses at or through the university, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.

~~((13))~~ (15) University premises. "University premises" shall include all campuses and electronic presences of the university, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, web sites, and other property owned, used, or controlled by the university.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-010, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-020 Prohibited student conduct. Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this section means "without limitation."

(1) **Academic dishonesty.** The term "academic dishonesty" for purposes of this student code includes cheating, plagiarism, and fabrication. Nothing in this student code shall be construed as limiting the authority of faculty and academic administrators to assign academic consequences for these or other forms of academic misconduct.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, including collaboration without authority.

(b) **Plagiarism.** 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.** 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 academic assignment.

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

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

(b) **Cannabis/marijuana.** A "cannabis" or "marijuana violation" includes using, possessing, delivering, selling, or being under the influence of ((marijuana)) cannabis or the psychoactive compounds found in ((marijuana)) cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits any possession or use of marijuana on university premises or in connection with university activities.

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

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

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

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

(5) **Failure to comply.** The term "failure to comply" means refusing to obey the lawful directive of a university official or authorized university body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

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

(7) **Harassment.** The term "harassment" or "discriminatory harassment" means unwelcome and objectively offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently ((serious)) severe, pervasive, or persistent as to ((~~deny or limit~~))

have the effect of denying, limiting, or unreasonably interfering with the ability of a student to participate in or benefit from the university's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s). Protected status includes a person's actual or perceived race, color, national origin, gender, disability, or other status protected by law. See "Sexual misconduct" for the definition of "sexual harassment."

(8) **Hazing.** "Hazing" includes 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 the destruction or removal of public or private property or that causes or is likely to cause bodily danger or physical harm, or serious mental or emotional harm, to any student or other person.

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

(10) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of university 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 university trademarks.

(11) **Relationship violence.** The term "relationship violence" includes "domestic violence" and "intimate partner violence."

(a) **Domestic violence.** The term "domestic violence" means the infliction of physical harm, bodily injury, or assault (or the objectively reasonable fear of such harm, injury, or assault), or stalking, perpetrated against a current or former spouse or intimate partner, current or former cohabitant, a person with whom one shares a child in common, or a person with whom one resides, including roommates.

(b) **Intimate partner violence.** The term "intimate partner violence," also known as dating violence, means the infliction of physical harm, bodily injury, or assault (or the objectively reasonable fear of such harm, injury, or assault), or stalking, perpetrated by a person against another with whom one is or has been in a social relationship of a romantic or intimate nature. The existence of such a relationship will be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

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

~~((12))~~ (13) **Safety violations.** The term "safety violation" includes any nonaccidental conduct that interferes with or otherwise compromises any university policy, equipment, or procedure relating to the health, safety (and), or security of the campus community, in-

cluding tampering with fire safety equipment and triggering false alarms or other emergency response systems.

~~((13))~~ **(14) Sexual misconduct.** The term "sexual misconduct" includes "sexual harassment," "sexual (~~(intimidation)~~) exploitation," and "sexual violence."

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome and objectively offensive conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is directed at a person because of such person's sex or gender and that is sufficiently (~~(serious as to deny or limit, based on sex,)~~) severe, pervasive, or persistent as to have the effect of denying, limiting, or unreasonably interfering with the ability of a student to participate in or benefit from the university's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s).

(b) **Sexual (~~(intimidation)~~) exploitation.** The term "sexual (~~(intimidation)~~) exploitation" incorporates the definition of "sexual harassment" and) exploitation" means (~~(threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking),)~~) taking sexual advantage of another, without consent, for the gratification of oneself or any third person(s). The term includes voyeurism, indecent exposure, (~~(or)~~) the nonconsensual recording of nudity or sexual activity (~~(or)~~) where there is a reasonable expectation of privacy (or the nonconsensual distribution of such recording), inducing another person to engage in sexual activity for payment or other benefit, and knowingly exposing another to a sexually transmitted infection. (~~(Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or to suffer substantial emotional distress.)~~)

(c) **Sexual violence.** The term "sexual violence" (~~(incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, and sexual coercion. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, unconsciousness, or other cause.~~)

~~(14))~~ includes "nonconsensual sexual contact" and "nonconsensual sexual intercourse."

(i) **Nonconsensual sexual contact.** The term "nonconsensual sexual contact" means any nonaccidental touching (including touching with any object) of the intimate parts of another person's body, clothed or unclothed, including a person's mouth, breasts, genital area, and buttocks, without the consent of the other person. The term also includes nonconsensual touching in a sexual manner of one's own intimate body parts, nonconsensual touching of another with one's own intimate body parts, removing another person's clothing without consent, or inducing a person without consent to touch their own or another person's intimate body parts.

(ii) **Nonconsensual sexual intercourse.** The term "nonconsensual sexual intercourse" includes any penetration, however slight, with any body part or object, of another person's mouth, vagina, or anus without the consent of the other person. The term also includes nonconsensual oral sex, with or without penetration.

(15) Stalking. The term "stalking," including cyberstalking, means a course of conduct, directed at a specific person, that involves repeatedly contacting, harassing, or following the person for no legitimate purpose, causing the person to have the same fear for the person's safety, the safety of others, or the security of property that a reasonable person in the same situation would experience under all the circumstances.

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

~~((15))~~ (17) University policy violations. The term "policy violation" means the violation of any ~~((applicable law or))~~ university policy or applicable law governing the conduct of students as members of the university community, including university policies governing nondiscrimination, alcohol and drugs, computer use, copyright, campus health and safety, and parking and traffic.

~~((16))~~ (18) Weapons violations. A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on university premises of any firearm or other dangerous weapon in violation of public law or university policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-020, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-030 Disciplinary sanctions. The university may impose any of the following disciplinary sanctions for violations of this student code. Violations must be proved by a preponderance of the evidence.

(1) **Conduct reprimand.** A "conduct reprimand" is a written notice formally censuring a student for a student code violation and providing notice that a repeated violation will subject the student to more severe disciplinary action.

(2) **Conduct probation.**

(a) The term "conduct probation" means a specified period of time during which a student's continued enrollment will be conditioned on the student's compliance with specified requirements or restrictions. The probation may be for a limited term or may extend for the duration of the student's attendance at the university, depending on the nature and seriousness of the code violation(s). The sanction of conduct probation may be imposed in the form of a deferred suspension.

(b) Conditions placed on a student's continued enrollment may include, without limitation, any one or more of the following requirements or restrictions:

(i) Compliance with applicable standards of conduct under the student code and university policies;

(ii) Restitution, defined as payment of compensation for damage or loss caused to the university or any person as a result of the student's misconduct, or the assessment of such fines as may be authorized under specific university policies for violations of those policies;

(iii) Restrictions on the student's contact with specified individuals or groups, which may include an order that the student refrain from having any communication with the specified persons;

(iv) Restrictions on the student's access to specified university premises and/or limitations on the student's participation in university activities, which may include removal from or reassignment of student housing or denial of eligibility to participate in intercollegiate athletics;

(v) A requirement that the student receive education or participate in training relating to the student's misconduct, which may include other educational sanctions assigned for the purpose of facilitating student development and learning as deemed appropriate to the offense;

(vi) A requirement that the student be professionally evaluated by a qualified health care provider who is approved by the university and who is authorized by the student to discuss the evaluation with designated university officials, together with a requirement that the student comply with treatment recommendations relating to the student's ability to maintain appropriate standards of conduct.

(c) A student's failure to comply with the conditions of the conduct probation may result in further disciplinary action including, but not limited to, disciplinary suspension or permanent dismissal.

(3) **Conduct suspension.** A "conduct suspension" means a temporary dismissal from the university and the suspension of student status for a specified period of time with no refund of tuition or fees. Reenrollment following a disciplinary suspension may be conditioned on any of the requirements or restrictions that may apply to a conduct probation.

(4) **Conduct dismissal.** The term "conduct dismissal" means permanent expulsion from the university with no refund of tuition or fees and may include an order trespassing the student from university premises. A sanction of conduct dismissal shall be recorded on the student's academic transcript.

(5) **Other sanctions.** The following additional sanctions for student code violations may be imposed as required or permitted by law or university policy.

(a) **Athletics eligibility.** A student athlete found in violation of WAC 106-125-020 (2)(c), relating to drug violations, shall be ineligible to participate in university athletics pursuant to RCW 69.41.340. Eligibility to participate in intercollegiate athletics may be denied based on violations of other student conduct prohibited under WAC 106-125-020.

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

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-030, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-040 Disciplinary action—Initiation. (1) The student conduct officer will initiate disciplinary action by serving the student respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations or the issues involved, the specific conduct code provision(s) the respondent is alleged to have violated, and the range of possible sanctions for such violations(s).

(2) At the disciplinary meeting, the student conduct officer will review the allegations with the respondent and will afford the respondent an opportunity to respond. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.

(3) In a proceeding involving allegations of sexual misconduct or discriminatory harassment, the student conduct officer prior to taking disciplinary action will afford the complainant an opportunity to discuss the results of any investigation and the possible sanctions and/or conditions that could be imposed for the complainant's protection if the sexual misconduct or discriminatory harassment allegations are found to be substantiated.

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

(a) The conduct officer may dismiss the proceeding upon finding the allegations to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review, except as provided in proceedings involving allegations of sexual misconduct or discriminatory harassment.

(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 106-125-030. Such sanction(s) shall be subject to review on appeal as provided in this student code.

(c) The conduct officer may refer the matter for disciplinary action by the student conduct council. Such referral shall be in writing, to the attention of the dean of student success, with a copy served on the respondent (and any complainant in a proceeding involving allegations of sexual misconduct or discriminatory harassment). The decision to refer shall not be subject to appeal or further review.

(5) Within (~~ten~~) 10 days of the initial disciplinary meeting, the conduct officer will serve the respondent (and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations) with a written decision either dismissing or referring the matter or imposing disciplinary sanctions. If sanctions are imposed, the written decision will specify the conduct code provision(s) found to have been violated, will describe the facts and conclusions supporting the sanction(s), and will provide notice of any appeal rights.

(6) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the decision will state whether such allegations were substantiated and will describe any sanctions or conditions imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-040, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-045 Appeal and review procedures—General. The following general rules apply to appeals or requests for further administrative review of disciplinary action at any stage of a student disciplinary proceeding.

(1) **Parties.** The parties to an appeal or review proceeding shall be the respondent, any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations, and the student conduct officer.

(2) **Filing of appeals.**

(a) **Appeal periods.** An appeal or request for review of disciplinary action must be filed with the designated university official within the applicable time period as further specified in these rules.

(b) **Contents of appeal.** A party's written notice of appeal or request for review must explain why the party disagrees with the disciplinary decision and what relief or remedy the party is requesting. The appeal or request for review must address one or more of the following grounds:

(i) **Insufficient evidence.** The disciplinary action taken was not supported by a preponderance of the evidence.

(ii) **New evidence.** New evidence not available at the time the disciplinary action was taken should result in a different outcome.

(iii) **Procedural or other error.** The disciplinary action was taken in violation of prescribed procedures or was based on an erroneous interpretation or application of the student conduct code.

(iv) **Disproportionate outcome.** The disciplinary action taken was not proportionate to the student conduct violation(s) alleged.

(c) **Failure to appeal.** The failure of a party to file a timely appeal or request for review at any stage of the proceeding waives that party's right to appeal. However, in a proceeding involving sexual misconduct or discriminatory harassment allegations, if any party appeals, the university official receiving the appeal or request for review will notify the other parties and will afford each party the opportunity to participate in the appeal or review proceeding.

(3) **Effect of appeal - Stay.** The implementation of disciplinary action imposing a conduct suspension of any length (~~or imposing a~~), removal from student housing, or conduct expulsion shall be stayed pending the time for filing an appeal and the conclusion of disciplinary proceedings. Other disciplinary sanctions shall not be stayed.

(4) **Reviewing authority.**

(a) Appeals of disciplinary action taken by the student conduct officer will be heard by the conduct review officer or student conduct council as further provided in these rules.

(b) Appeals of disciplinary action taken by the conduct review officer in a brief adjudicative proceeding will be heard by the dean of student success (or designee) as further provided in these rules.

(c) Appeals of disciplinary action (~~(recommended)~~) imposed by the student conduct council will be heard by the conduct review officer as further provided in these rules.

(5) **Ex parte communications.** Reviewing authorities (the conduct review officer, student conduct council members, and the dean) may not communicate with any of the parties regarding an appeal without providing notice and an opportunity for all parties to participate.

(6) **Disqualification.** Reviewing authorities may not participate in a proceeding in which they:

(a) Are a complainant or witness;

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

(c) Have previously acted in the same proceeding in another capacity.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-045, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-050 Disciplinary action—Appeals. (1) Respondent.

The student respondent may appeal the disciplinary action of the student conduct officer in accordance with the following rules:

(a) The respondent may appeal disciplinary action imposing a conduct reprimand, conduct probation, (~~(or)~~) conduct suspension not in excess of (~~(ten)~~) 10 days, removal from student housing, or denial of eligibility to participate in intercollegiate athletics by filing a written notice of appeal with the conduct review officer within (~~(ten)~~) 10 days of service of the disciplinary decision.

(b) The respondent may appeal disciplinary action imposing a conduct suspension in excess of (~~(ten)~~) 10 days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within (~~(twenty)~~) 20 days of service of the disciplinary decision.

(2) **Complainant.** The complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations may appeal the disciplinary action of the student conduct officer with respect to such allegations in accordance with the following rules:

(a) The complainant may appeal disciplinary action dismissing the proceeding or imposing a conduct reprimand, conduct probation, or conduct suspension not in excess of (~~(ten)~~) 10 days by filing a written notice of appeal with the conduct review officer within (~~(ten)~~) 10 days of service of the disciplinary decision.

(b) The complainant may appeal disciplinary action imposing a conduct suspension in excess of (~~(ten)~~) 10 days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within (~~(twenty)~~) 20 days of service of the disciplinary decision.

(3) If no appeal is filed within the applicable time period, the disciplinary action of the student conduct officer shall be final.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-050, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-055 Conduct review hearings—Initial decision. (1) Conduct review officer - Authority.

(a) The conduct review officer will hear a respondent's appeal of disciplinary action imposing a conduct reprimand, conduct probation, ~~((ten))~~ conduct suspension not in excess of ~~((ten))~~ 10 days, removal from student housing, or denial of eligibility to participate in intercollegiate athletics.

(b) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the conduct review officer will hear a complainant's appeal of disciplinary action dismissing the sexual misconduct or discriminatory harassment allegations or imposing, with respect to such allegations, a conduct reprimand, conduct probation, or conduct suspension not in excess of ~~((ten))~~ 10 days.

(c) The conduct review officer shall have the same authority as the student conduct officer to dismiss a proceeding, to impose a disciplinary sanction of conduct reprimand, conduct probation, or conduct suspension not in excess of ~~((ten))~~ 10 days, or to refer the matter for disciplinary action by the student conduct council.

(2) **Appeal hearing.** Appeals heard by the conduct review officer will be conducted as informal administrative hearings consistent with the rules for "brief adjudicative proceedings" under RCW 34.05.482 and WAC 106-08-050. The review officer shall provide each party an opportunity to explain the party's view of the matter.

(3) **Initial decision - Service.**

(a) Within ~~((ten))~~ 10 days of consideration of the appeal, the conduct review officer will serve an initial decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. The initial decision will explain the reasons for the decision and will provide notice of any right to request further administrative review.

(b) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the initial decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(c) A decision by the conduct review officer to refer the appeal to the student conduct council is not subject to further administrative review.

(4) **Initial decision - Request for review.** The respondent (or any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations) may request administrative review of the initial decision by filing a written request for review with the dean of student success within ~~((twenty-one))~~ 21 days of service of the in-

initial decision. If no request for review is filed, the initial decision of the conduct review officer shall be final.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-055, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-060 Conduct review hearings—Review of initial decision. (1) Requests for review of the initial decision of the conduct review officer will be heard by the dean of student success (or designee). The dean shall have the same authority on review as the conduct review officer to take disciplinary action.

(2) The dean will review the hearing record and will afford the parties the opportunity to file written statements explaining their views of the matter. The dean may make any inquiries necessary to ascertain whether the proceeding should be referred to the student conduct council for a formal hearing.

(3) Within (~~twenty~~) 20 days of the date for the parties to submit written statements, the dean will serve a written review decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. The review decision will explain the reasons for the decision and will provide a notice that judicial review may be available.

(4) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the review decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(5) The review decision of the dean (or designee) shall be final.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-060, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-070 Student conduct council. (1) The student conduct council shall consist of three (~~students and two faculty members selected from a panel of eight full-time students and six faculty members holding the rank of assistant professor or above who are appointed to the panel in accordance with procedures established respectively by student government and the faculty senate~~) university employees appointed by the university president or president's designee. The conduct council members will be (~~randomly~~) selected by the council advisor subject to availability and qualification in accordance with WAC 106-125-045(6). Additional (~~students and faculty~~) university employees may be selected to serve as alternate council members.

(2) The student conduct council shall elect a chair to preside over the hearing, and the dean of student success shall appoint a non-voting staff member as council advisor to convene and otherwise advise and assist the council.

(3) The student conduct council will hear appeals of disciplinary action imposing a conduct suspension in excess of ~~((ten))~~ 10 days or a conduct dismissal. The council will hear such other matters as may be referred to the council by the student conduct officer, conduct review officer, or dean of student success. The council shall have the authority to ~~((recommend dismissing))~~ dismiss a proceeding or to ~~((recommend imposing))~~ impose any of the disciplinary sanctions under WAC 106-125-030.

(4) Proceedings of the student conduct council shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and by the model rules of procedure (chapter 10-08 WAC), as supplemented by these rules.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-070, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-075 Student conduct council—Prehearing procedure.

(1) The conduct council chair or advisor shall cause all parties to be served 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 or advisor may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown.

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

(3) The council chair or advisor may direct the parties prior to the hearing to exchange lists of potential witnesses and copies of exhibits that the parties reasonably expect to present to the council. Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.

(4) The council chair or advisor in advance of the hearing may provide council members with copies of (a) any notice of disciplinary action (or referral to the council) and (b) any notice of appeal filed by the respondent (or any complainant). However, such "pleadings" shall not be regarded as evidence of any facts they may allege.

(5) Any party may be accompanied at the hearing by ~~((a nonattorney))~~ an advisor of the party's choice. A respondent (or any complainant) may be represented by an attorney at such party's own cost, but will be deemed to have waived that right unless, at least four instructional days before the hearing, the attorney files and serves a notice of appearance. If the respondent (or complainant) is represented by an attorney, the student conduct officer may be represented by the university's assistant attorney general.

(6) The student conduct council may itself be advised in any proceeding by an independently assigned assistant attorney general who

shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-075, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-080 Student conduct council—Hearing procedure. (1)

Upon the failure of any party to attend or participate in a hearing, the student conduct council may either:

(a) Proceed with the hearing; or

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

(2) Council hearings shall be closed to the public, unless all parties (including any complainant) agree on the record that all or parts of the proceeding may be open. The council chair shall determine any extent to which the hearing will be open. The chair may exclude from the hearing any person who disrupts the proceeding.

(3) The council advisor shall cause the hearing to be recorded pursuant to RCW 34.05.449 by a method the advisor selects. Other recording shall be permitted in accordance with WAC 10-08-190. The advisor shall maintain the official record of the proceeding that is required by RCW 34.05.476. Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.

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

(5) The student conduct officer (or assistant attorney general) shall present the case for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence.

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

(7) The respondent and a complainant in any proceeding involving sexual misconduct or discriminatory harassment allegations shall not directly question or cross-examine one another. All questions shall be directed to the council chair, who will act as an intermediary and pose questions on behalf of the parties. The council chair may reframe questions as to form or exclude questions on the grounds of relevance or privilege.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-080, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-085 Student conduct council—((Recommended)) Initial decision. (1) At the conclusion of the hearing, the student conduct

council shall permit the parties to make closing arguments in whatever form the council wishes to receive them. The council may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within (~~twenty~~) 20 days following the later of the conclusion of the hearing or the receipt of closing arguments, the student conduct council shall issue (~~a recommended~~) an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The (~~recommended~~) decision shall contain findings on relevant issues of fact, conclusions concerning which, if any, provisions of the student code were found to be violated, and any (~~recommended~~) sanction(s) imposed. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The council chair shall cause the (~~recommended~~) initial decision to be served on the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. In a proceeding involving sexual misconduct or discriminatory harassment allegations, the decision will state whether (~~the sexual misconduct~~) such allegations were substantiated and will describe any sanctions or conditions (~~recommended~~) imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(4) The council advisor, upon receipt of a timely filed appeal, shall promptly transmit the council's (~~recommended~~) initial decision and the record of the proceedings for review by the conduct review officer who shall enter a final decision. If no appeal is timely filed, the initial decision of the student conduct council shall be the final decision.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-085, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

WAC 106-125-090 Student conduct council—(~~Review~~) Appeal of (~~recommended~~) initial decision. (1) The (~~recommended~~) initial decision of the student conduct council will be reviewed on appeal by the conduct review officer. The conduct review officer shall have the same authority on review as the student conduct officer to take disciplinary action.

(2) The review by the conduct review officer will be limited to the hearing record made before the student conduct council. The conduct review officer will afford all parties the opportunity to file written statements explaining why they agree or disagree with the council's (~~recommended~~) initial decision. The conduct review officer may notify the parties that the review will be limited to reviewing the specific issues raised by the parties.

(3) The conduct review officer will serve a written decision upon all parties (including the complainant in any proceeding involving sexual misconduct or discriminatory harassment allegations) within (~~twenty~~) 20 days of the date for the parties to submit written

statements. The decision will adopt or modify the conduct council's ((recommended)) initial decision and will provide a notice that reconsideration and/or judicial review may be available.

(4) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the review decision will explain the reasons for modifying any ((recommended)) disciplinary action imposed with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(5) The decision of the conduct review officer shall be final.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-090, filed 11/23/15, effective 12/24/15.]

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 106-125-200 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. § 106 (the "Title IX Final Rule"). To the extent these supplemental hearing procedures conflict with the university's standard disciplinary procedures, WAC 106-125-005 through 106-125-090, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 106-125-201 Revocation by operation of law. If any portion of the Title IX Final Rule is stayed or held invalid by a court of law, then the invalidated elements of the policy will be deemed revoked as of the publication date of the opinion or order.

[]

NEW SECTION

WAC 106-125-205 Prohibited conduct under Title IX. Pursuant to RCW 28B.35.120(12) and Title IX of the Education Act Amendments of 1972, 20 U.S.C. § 1681, the university 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 student employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment harassment.** Hostile environment harassment, defined as 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 university'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 18.

(d) **Statutory rape.** Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

(4) **Domestic violence.** Domestic violence, defined as 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 or intimate partner violence.** Dating or intimate partner, defined as 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.** The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable

person to fear for such person's safety or the safety of others, or suffer substantial emotional distress.

[]

NEW SECTION

WAC 106-125-210 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a university educational program or activity;
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure; and
- (d) At the time of filing a formal complaint, the complainant was participating or attempting to participate in the educational program or activity.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the university 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 university.

(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 (d) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the university from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the student conduct code under WAC 106-125-020.

(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 106-125-215 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 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 council 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 university will appoint the party an advisor of the university's choosing at no cost to the party, if the party fails to do so; and
- (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 106-125-220 Student conduct council. For purposes of this supplemental Title IX procedure, the student conduct council shall consist of three university employees appointed by the university president (or designee) in accordance with WAC 106-125-070. The university may request an administrative law judge (ALJ) from the office of administrative hearings or other trained hearing officer to serve as the presiding officer in conducting the Title IX hearing.

[]

NEW SECTION

WAC 106-125-225 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct council will send a hearing notice to all parties, in compliance with WAC 106-125-075. In no event will the hearing date be set less than 10 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 conduct council 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 university intends to offer the evidence at the hearing.

[]

NEW SECTION

WAC 106-125-230 Rights of parties. (1) The university's student conduct council hearing procedures, WAC 106-125-075, 106-125-080, and 106-125-085, and this supplemental procedure shall apply equally to all parties.

(2) The university 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 university's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

WAC 106-125-235 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) The conduct council chair shall review all questions for relevance and shall explain on the record the chair's reasons for excluding any question based on lack of relevance. Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(2) 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.

(3) Unless this rule is abrogated by operation of law pursuant to WAC 106-125-201, if a party or witness does not submit to cross-examination during the live hearing, the conduct council must not rely on any statement by that party or witness in reaching a determination of responsibility.

(4) Except as abrogated by operation of law pursuant to WAC 106-125-201, the conduct council may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(5) The conduct council 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 106-125-240 Initial decision.** (1) In addition to complying with WAC 106-125-085, the student conduct council will be responsible for conferring and drafting an initial decision 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 conduct council'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 university's education programs or activities; and
 - (h) Describes the appeal process for review of the conduct council's decision by the university's conduct review officer under WAC 106-125-090.
- (2) The conduct council chair will serve the initial decision on the parties simultaneously.

[]

NEW SECTION

- WAC 106-125-245 Appeal of initial decision.** (1) The parties shall have the right to appeal the initial decision of the student conduct council in accordance with the appeal procedures and timelines under WAC 106-125-045.
- (2) The initial decision of the student conduct council shall be reviewed on appeal by the conduct review officer in accordance with this section and the appeal procedures under WAC 106-125-090.
- (3) The conduct review officer will prepare a written review decision determining whether the grounds for appeal have merit, providing the rationale for this conclusion, and determining whether the disciplinary sanction(s) and condition(s) imposed in the initial deci-

sion are affirmed, vacated, or modified, and, if modified, setting forth any new disciplinary sanction(s) or condition(s).

(4) The conduct review officer shall serve the conduct review decision on the parties simultaneously.

(5) The decision of the conduct review officer shall be final.

[]