

WSR 22-01-188

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed December 20, 2021, 1:49 p.m.]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The university filed and completed the expedited rule-making process on December 7, 2021.

WAC 478-121-600(2) states Part VII, which contains WAC 478-121-675(1), applies "only when 34 C.F.R. Part 106 is deemed enforceable by law and/or by United States courts." Accordingly, pursuant to this provision and the Cardona decision, portions of WAC 478-121-675(1) no longer apply to proceedings under Part VII or any other part of the university's student conduct code.

The purpose is to remove information that no longer applies to proceedings under Part VII of chapter 478-121 WAC.

Citation of Rules Affected by this Order: Amending WAC 478-121-675(1).

Statutory Authority for Adoption: RCW 28B.20.130.

Adopted under notice filed as WSR 21-20-123 on October 5, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: December 9, 2021.

Barbara Lechtanski
Director of University
Policy and Rules Office

OTS-3375.1

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-675 Evidence. (1) (~~If a party or witness does not submit to questioning or cross-examination at the hearing, the hearing officer cannot rely on any statement of that party or witness in reaching a determination regarding responsibility.~~) The hearing officer may not draw an inference about determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions or submit to cross-examination. This subsection does not apply to allegations of prohibited conduct under Part II of this code, WAC 478-121-103 through 478-121-173. (~~The term~~

~~"statement" does not include statements that constitute verbal conduct.)~~)

(2) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence about a party's sexual behavior are offered to prove that someone other than the respondent committed the sexual conduct alleged by the complainant or such questions or evidence concern specific incidents of the parties' prior sexual behavior and such information is relevant to determine the presence or absence of consent.

(3) Except as otherwise provided in this section, evidence may be considered if, in the judgment of the hearing officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of such reasonably prudent person's affairs. The relevance of evidence will be determined by the hearing officer at a hearing. The hearing officer may exclude from consideration evidence that is not relevant. Statements of personal opinion or general reputation about a party or witness are generally not considered to be relevant. Evidence that is duplicative of other evidence is generally not considered to be relevant.

(4) An investigator or hearing officer may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has voluntarily waived the privilege in writing. An investigator or hearing officer also may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent.

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-675, filed 3/11/21, effective 4/11/21.]