

WSR 21-07-068

EMERGENCY RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed March 16, 2021, 1:06 p.m., effective March 16, 2021, 1:06 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.; RCW 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 assistant 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 4; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 0, Repealed 4.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: March 16, 2021.

Rhonda Laughlin
Executive Assistant
to the President

OTS-2580.3

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 weekday, 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 60.50.212, 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).

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-010, filed 3/30/16, effective 4/30/16.]

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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-020, filed 3/30/16, effective 4/30/16.]

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

~~((10)) (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.~~

~~((11) 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 to-~~

~~bacco, 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.~~

~~(18) 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((τ)); national origin((τ)); sensory, mental, or physical disability((τ)); 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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-040, filed 3/30/16, effective 4/30/16.]

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 investigation 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 re-entering 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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-050, filed 3/30/16, effective 4/30/16.]

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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-060, filed 3/30/16, effective 4/30/16.]

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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-065, filed 3/30/16, effective 4/30/16.]

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 condi-

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

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-070, filed 3/30/16, effective 4/30/16.]

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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-080, filed 3/30/16, effective 4/30/16.]

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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-090, filed 3/30/16, effective 4/30/16.]

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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-100, filed 3/30/16, effective 4/30/16.]

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 ~~((r))~~ i in which they have direct or personal interest, prejudice, or bias ~~((r))~~ i 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).

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-110, filed 3/30/16, effective 4/30/16.]

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 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,~~) 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 without 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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-120, filed 3/30/16, effective 4/30/16.]

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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-125, filed 3/30/16, effective 4/30/16.]

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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-130, filed 3/30/16, effective 4/30/16.]

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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-135, filed 3/30/16, effective 4/30/16.]

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.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-140, filed 3/30/16, effective 4/30/16.]

~~((DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MIS-
CONDUCT))~~

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 PROCEDURESNEW 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.

OTS-2518.2

~~((DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MIS-CONDUCT))~~ 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 re-

spondent 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 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 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.