

WSR 21-20-117

PROPOSED RULES

WESTERN WASHINGTON UNIVERSITY

[Filed October 5, 2021, 7:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-014.

Title of Rule and Other Identifying Information: Chapter 516-21 WAC, Student conduct code, Western Washington University.

Hearing Location(s): On November 16, 2021, at 11:00 a.m. Due to the public health emergency related to the COVID-19 virus pandemic, this public hearing will be held via Zoom (with a call-in option). The link to join the meeting will be available on the rules coordinator's website approximately two weeks before the hearing date at <https://rcps.wwu.edu/2020/08/21/chapter-516-21-wac-student-conduct-code/>.

Date of Intended Adoption: December 10, 2021.

Submit Written Comments to: Jennifer Sloan, Rules Coordinator, 516 High Street, Mailstop 9015, email sloanj2@wwu.edu, by November 16, 2021.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, rules coordinator, phone 360-650-3117, TTY 711, email sloanj2@wwu.edu, by November 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university edited sections and created new sections to update current chapter 516-21 WAC, Student conduct code, to be in compliance with the new United States Department of Education (DOE) Title IX regulations that went into effect in August 2020. Minor housekeeping changes were made as well.

Reasons Supporting Proposal: The new DOE Title IX regulations went into effect, and to maintain compliance with these new regulations, Western Washington University updated existing sections and created new sections to our current chapter 516-21 WAC, Student conduct code. Minor housekeeping changes were made as well. Agencies not in compliance would be at risk of losing federal funding. The university currently has an emergency rule filed to maintain compliance while we complete this permanent rule making.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Statute Being Implemented: 34 C.F.R. Part 106.

Rule is necessary because of federal law, 34 C.F.R. Part 106.

Name of Proponent: Western Washington University, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Michael Sledge, Executive Director, Student Life, 516 High Street, VU544, Bellingham, WA 98225, 360-650-2484.

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

A cost-benefit analysis is not required under RCW 34.05.328. Does not apply to the university.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 34 C.F.R. Part 106, DOE, Title IX regulation updates. If a university is not in compliance, they could risk the loss of federal funding.

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule has no impact on small businesses

October 5, 2021
Jennifer L. Sloan
Rules Coordinator

OTS-2535.6

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-010 Introduction. (~~Western Washington University students enjoy the same basic rights, privileges, and freedoms granted to all members of society. At the same time, acceptance of admission to the university carries with it an obligation to fulfill certain responsibilities and expectations as a member of the Western Washington University community.~~

~~As members of the Western community, students must assume responsibility for their own actions and maintain an environment conducive to academic success. In addition, they are expected to be truthful, respect the rights of others, and abide by all university policies and procedures, as well as all applicable local, state, and federal laws and regulations. All students are responsible for understanding and complying with the responsibilities and expectations set forth in this code both on and off campus.~~

~~The student conduct process is intended to be educational in ensuring that students act in a manner consistent with high standards of scholarship and behavior, while maintaining the safety and well-being of all members of the university community.)~~ The student conduct code is intended to support the mission and values of Western Washington University by promoting integrity, responsibility, and accountability. As a public institution of higher education, the university is committed to maintaining a learning environment that supports student development through fostering community values and promoting holistic well-being for the Western community. As members of this community, students are expected to understand and comply with the student conduct code, as well as other university rules, regulations, procedures, and policies.

The board of trustees of Western Washington University, acting under the authority of RCW 28B.35.120(12) has established the following regulations for student conduct. The responsibility for enforcement of the student conduct code lies with the university president and is delegated to the vice president of enrollment and student services.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-010, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-010, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-020 Definitions. As used in this chapter, the following words and phrases mean:

(1) (~~(Day. Any day, Monday through Friday (excluding holidays), during which university offices are open.)~~) Appeals board. The student conduct appeals board.

(2) **Catalog.** The *Western Washington University General Catalog*.

(3) **Code.** The student conduct code.

(4) (~~(Board. The student conduct appeals board.~~

~~(5))~~) **Conduct hold.** A block placed on a student's official university record at the request of a conduct officer or dean of students. A conduct hold prohibits a student from registering for classes, (~~(requesting)~~) and may prohibit the request of an official transcript, or receiving a degree from the university until the hold has been removed.

(~~(6))~~) (5) **Conduct officer.** A conduct officer or their authorized designee as determined by the dean of students.

(6) **Day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

(7) **Dean of students.** (~~(The dean of students or their authorized designee.)~~) The person designated by the vice president for enrollment and student services for oversight and administration of the code.

(8) **Guest.** Any person who is not a member of the university community, who is on university property or attending an official university function at the invitation and/or hosting of a student.

(9) **Member of the university community.** Any person who is a student, university official, registered volunteer or who is otherwise employed or contracted by the university. Any question regarding a person's status in a particular situation for purposes of this code shall be determined by the dean of students.

(10) **Official university function.** Any live or virtual activity, on or off campus, that is initiated, sponsored, or supervised by any entity of Western Washington University.

(11) **Preponderance of evidence.** Defined as "more likely than not," the standard of responsibility that is used when determining whether a violation of the student conduct code has occurred.

(12) **Reasonable person similarly situated.** The standard of a reasonable person taking into consideration any particularized circumstances, perspectives, and identities of the complainant within the context of the alleged conduct/incident.

(13) **Retaliation.** Retaliation includes, but is not limited to, intimidation, threats, harassment, and/or other adverse action taken against any student or other person for filing a complaint or participating in a university investigation or student conduct proceeding in good faith.

(14) Sexual violence. Sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

(15) Student. Any person who:

- (a) Has been formally admitted to the university;
- (b) Is enrolled in one or more classes at the university, including nonmatriculated international students attending language institutes or foreign study programs;
- (c) Is participating in a certificate, degree, distance learning, or professional enrichment program, through extended education and summer programs;
- (d) Is participating in a university-sponsored study abroad program;
- (e) Was enrolled in a prior quarter or summer session at the university and is eligible to continue enrollment in the quarter or summer session that immediately follows; or
- (f) Withdrew from the university after an alleged violation of the code, for conduct that occurred while they were enrolled in or participating in a program offered by the university.

~~((13))~~ (16) Title IX. Title IX refers to any behavior covered under federal regulation and investigated by Western's office of civil rights and Title IX compliance. Definitions and regulations related to alleged violations of Title IX begin in WAC 516-21-191.

(17) Title IX committee. The student conduct committee that hears cases under Title IX. The committee consists of at least a chair, and may include faculty and/or staff, and is responsible for conferring and drafting an initial conduct order as described in WAC 516-21-298.

(18) University. Western Washington University and all associated programs, including those offered online and/or at off-campus program sites.

~~((14))~~ (19) University official. Any person employed or contracted by the university, who is performing assigned teaching, administrative, or professional responsibilities. University officials may be full- or part-time, and may include student staff members.

~~((15))~~ (20) University property. All land, buildings, facilities, electronic presences, and other property that is owned, used, leased, or controlled by Western Washington University wherever located. University property also includes computer systems, virtual programs and platforms, and adjacent streets and sidewalks.

~~((16))~~ (21) WAC. An abbreviation for the Washington Administrative Code.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-020, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-020, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-030 Jurisdiction. (1) The student conduct code applies to all conduct that occurs on university property or in connection with any official university function.

(2) (~~Western Washington University does not act as a policing agent for students when they are off campus. However, the university reserves the right to take action if a student's conduct is determined to adversely affect a substantial university interest.~~) Student conduct that occurs off campus may be subject to the student conduct code when it:

(a) Adversely affects the safety or well-being of any member of the university community; or

(b) Adversely affects the pursuit of the university's vision, mission, or values; or

(c) Involves academic work or any records, documents, or identifications of the university.

In determining whether to exercise jurisdiction over such conduct, a conduct officer shall consider the seriousness of the alleged offense, the risk of harm involved, and whether the alleged complainant(s) are members of the university community. Any question of interpretation or application of jurisdiction shall be referred to the dean of students for final determination.

(3) Students are responsible for their conduct from the time they have confirmed their enrollment at Western through the awarding of their degree. This includes conduct that occurs before classes begin, after classes end, and during periods between actual terms of enrollment. Students who are found to be in violation of the code may be subject to sanctions under the code.

(4) A student with a pending conduct violation may not avoid the conduct process by withdrawing from the university. In these circumstances, either:

(a) The university will proceed with the conduct process and, if so, the respondent will be provided with a continued opportunity to participate; and/or

(b) A conduct hold ((will)) may be placed on the student's official record, preventing them from registering for classes, requesting an official transcript, or receiving a degree from the university. This hold will remain in place until the student has met with the conduct officer to discuss the alleged conduct violation(s).

(5) The code applies to the conduct of any student employee whose position is conditioned upon their student status.

(6) Sanctions against student organizations are decided by procedures established by the university administrative unit governing that organization's recognition. Conduct proceedings against individual member(s) of a student organization can be initiated under this code, independent of any departmental action(s) taken against the student organization.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-030, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-030, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

WAC 516-21-040 Student responsibility for guests. (1) Guests and visitors on university property or at official university func-

tions are expected to (~~comply with~~) follow all university policies and procedures, as well as all applicable local, state, and federal laws and regulations.

(2) Students who invite guests into their campus residence hall or apartment, or to official university functions open only to Western students, are responsible for the behavior of their guests. As a result, a student may be held responsible for any alleged violation(s) of the code committed by their guests. See also WAC 516-24-001 Conduct of campus guests and visitors.

[Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-040, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-055 Amnesty. (1) In situations involving intoxication, alcohol poisoning, or drug-related medical issues, students are encouraged to seek swift medical assistance for themselves and others without fear of penalty. Students requesting and receiving medical assistance in these situations (~~will~~) are not typically (~~be~~) subject to the student conduct process. This policy refers to isolated incidents and does not excuse students who repeatedly or flagrantly violate the alcohol or drug policy, nor does it preclude action arising from other violations of the code. Western will consider the positive impact of reporting a situation when determining any course of action.

(2) Complainants and witnesses who in good faith report sexual violence will not be subject to alcohol or drug violations of the code occurring at or near the time of the sexual violence unless their own conduct placed another person's health or safety at risk. Without imposing sanctions, Western may initiate educational remedies regarding alcohol or drug use.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-055, filed 2/15/17, effective 3/18/17.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-060 Conduct that harms or threatens health or safety. Conduct that harms, attempts to harm, or threatens the health or safety of any member of the Western community by any means (e.g., in person, through a third party, online) (~~, or others on university property or in connection with any official university function, is a violation of the code~~). This includes, but is not limited to:

(1) Physical assault.

(2) Any threat(~~r~~) stated or implied, to the health, safety or well-being of others.

(3) Any contact or communication of a threatening nature that intimidates, harasses, and would cause a reasonable person similarly situated to fear for their safety or well-being.

(4) Intoxication or impairment through the use of alcohol or other substances to the point that a student is unable to exercise care for their own safety or well-being.

(5) Sexual violence including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-060, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-060, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-070 Disruptive behavior. Behavior that substantially disrupts, disturbs, or interferes with the ability of students to learn or their on-campus living environment or the ability of university officials to perform their assigned duties is a violation of the code. Disruptive behavior includes, but is not limited to:

Any behavior that substantially disrupts, disturbs, or interferes with:

- (1) Classroom activities or other educational pursuits;
- (2) Official university activities or functions including, but not limited to, ceremonies, meetings, office functions, performances, or athletic events;
- (3) Pedestrian or vehicular traffic; or
- (4) The preservation and protection of university property and/or the personal property of members of the university community.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-070, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-070, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-115 Discrimination and discriminatory harassment. Discrimination or discriminatory harassment is prohibited on the basis of ~~race (sex, sexual orientation, gender identity/expression, religion, age, color, creed, national or ethnic origin, physical, mental, or sensory disability (including disability requiring the use of a trained service animal), marital status, genetic information, and/or veteran status),~~ ethnicity, color, national origin, age, citizenship or immigration status, pregnancy, use of protective leave, genetic status, sex, sexual orientation, gender identity, gender expression, marital status, creed, religion, veteran or military status, disability or the use of a trained guide dog or service animal by a person with a disability; and as defined in Western Washington University policy POL-U1600.02 and POL-U1600.04, which prohibit discrimination,

sexual harassment, and sexual misconduct. Anyone (~~(complainant)~~) fil-
ing or involved in a complaint of discrimination is protected against
retaliation.

(1) Sexual harassment is a violation of the code. Sexual harass-
ment is any unwelcome conduct of a sexual nature including unwelcome
sexual advances, requests for sexual favors, or other verbal, nonver-
bal, electronic, or physical conduct of a sexual nature, when:

(a) It has a tangible impact on a student's education including,
but not limited to, classroom experiences, academic grades, living en-
vironment, participation in a university activity; or

(b) It is sufficiently severe (~~(and/or)~~), persistent and perva-
sive to interfere with a member of the university community's ability
to work, study, or participate in their regular activities, or benefit
from the university's programs or activities and creates a hostile en-
vironment.

(2) Gender-based harassment includes nonsexual acts of verbal,
nonverbal, or physical aggression, intimidation, or hostility based on
a person's gender or nonconformity with gender stereotypes, and is a
violation of the code. Gender-based harassment violates this code when
it is sufficiently severe and/or pervasive, such that it denies or
limits another's ability to work, study, participate in, or benefit
from the university's programs or activities.

(3) Sexual violence includes sexual assault, dating violence, do-
mestic violence, and stalking or any other type of sexual misconduct
or gender-based discrimination.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C.
1681-1688. WSR 17-05-100, § 516-21-115, filed 2/15/17, effective
3/18/17.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective
3/18/17)

WAC 516-21-140 Drugs and paraphernalia. Except as permitted by
law and university policy, the possession, use, cultivation, manufac-
turing, packaging, distribution, or provision of a controlled or ille-
gal substance or the possession of drug paraphernalia while on univer-
sity property or at an official university function is a violation of
the code. This code violation also includes the intentional misuse or
distribution of prescription drugs or inhalants; including volatile,
aerosols, gases, and nitrites. See also *Policy Concerning Alcohol and
Other Drugs* in the appendices section of the university catalog.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C.
1681-1688. WSR 17-05-100, § 516-21-140, filed 2/15/17, effective
3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C.
1681-1688. WSR 12-01-021, § 516-21-140, filed 12/9/11, effective
1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-150 Interfering with ((the conduct)) a university complaint process. Interfering with ((the conduct)) a university complaint process is a violation of the code. This includes, but is not limited to:

- (1) Giving a false report or claim;
- (2) Attempting to influence the impartiality of ((witnesses or)) any decision maker including appeals board member(s);
- (3) Participating in or encouraging retaliation against a complainant or witness;
- (4) Threatening, harassing, or intimidating complainants or witnesses;
- (5) Disrupting or interfering with the orderly conduct of a hearing or meeting; and
- (6) Failing to comply with any sanction(s) imposed as the result of a code violation.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-150, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-150, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-180 Sexual misconduct. Sexual misconduct is a violation of the code and includes nonconsensual sexual contact, sexual exploitation, and sexual violence (sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination). See also WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment), WAC 516-21-115 Discrimination or discriminatory harassment, WAC 516-21-060 Conduct that harms or threatens, WAC 516-21-188 Stalking, WAC 516-21-184 Dating violence, and WAC 516-21-186 Domestic violence.

(1) Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, actual words or conduct demonstrate clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Silence or passivity is not consent. Consent is ongoing and can be withdrawn at any time. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity;

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to obtain consent from another. When an individual makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a

certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail, extortion, or a position of power to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate their unwillingness to engage in sexual activity; or

(c) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if they cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or they lack the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(2) Sexual assault is attempted or actual nonconsensual penetration, no matter how slight, of the vagina or anus by any body part or object; or of another's vagina, anus, or mouth by a penis. Sexual assault is also nonconsensual sexual contact or any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (genitals or genital area, breast, or buttock (clothed or unclothed)). This includes any intentional bodily contact of one's own intimate area with another person.

(3) Sexual exploitation occurs when a person takes nonconsensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above.

(4) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

(5) Sexual misconduct represents a range of behaviors; it can occur between strangers or acquaintances, including individuals involved in an intimate or sexual relationship. Sexual misconduct can be committed by individuals or groups of individuals directed to one or more people and can occur between people of the same or different sex. See also *University Policy U1600.04 Preventing and Responding to ((Sex Discrimination, Including Sexual Misconduct)) Sexual Harassment Under Title IX*.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-180, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-180, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-184 Dating violence. Conduct by a student who is or has been in a romantic or intimate relationship with another that intentionally or recklessly causes bodily injury or places another in reasonable fear of ((serious)) bodily injury is a violation of the code. The nature of the relationship is determined by the length, type, and frequency of interaction between them. Sexual violence includes sexual assault, dating violence, domestic violence, and stalk-

ing or any other type of sexual misconduct or gender-based discrimination.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-184, filed 2/15/17, effective 3/18/17.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-186 Domestic violence. Conduct by a student (~~(who is a current or former spouse or intimate partner (including between two people that share a child in common) that intentionally or recklessly causes bodily injury, or causes another to be in reasonable fear of serious bodily injury is a violation of the code)~~) with whom the victim shares a child in common, who is cohabitating with or has cohabitated with another as a spouse or a person situated to a spouse by law with another that includes physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking. Sexual violence includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-186, filed 2/15/17, effective 3/18/17.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-190 Student violation of the law. Students are expected to abide by all local, state, and federal laws while on campus or at official university functions. Failure to comply with these laws is a violation of the code.

~~((While Western does not act as a policing agent for students when they are off campus, the university reserves the right to take action if a student's conduct is determined to adversely affect a substantial university interest as set forth in WAC 516-21-030 Jurisdiction.))~~ Western reserves the right to take action if a student's off-campus conduct is determined to adversely affect the safety or well-being of any member of the university community or the pursuit of the university's vision, mission, or values as set forth in WAC 516-21-030 Jurisdiction.

Proceedings under the code may be carried out prior to, simultaneously, or following civil or criminal proceedings in the courts. ~~((Since))~~ Due to the standard of proof under the code (preponderance of evidence) ~~((differs))~~ differing from that of criminal law, decisions made through the student conduct process are not subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced by a court of law.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-190, filed 2/15/17, effective

3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-190, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-195 Notification of criminal arrest. Failure by the student to notify the (~~dean of students~~) office of student life of any off-campus felony arrest, or when the arrest is for an offense that is violent, weapons-related, involves kidnapping, or requires that the student register as a sex offender by any legal authority within the U.S., within five calendar days of release from custody is a violation of the code. The university may send a letter to the student requiring that they make an appointment for an interview. During this interview, the dean of students or their designee shall discuss with the student:

- (1) The facts involved in the student's arrest;
- (2) The student's obligation to keep the university informed of the progress of any criminal charge(s);
- (3) The student's obligation to advise the university of the final disposition of any criminal charge(s); and
- (4) Whether the behavior falls under jurisdiction of the student code.

The university will cooperate with law enforcement and other agencies administering a corrective or rehabilitative program for the student. See also *POL-U5620.02 Notifying Campus Community About Sex and Kidnapping Offenders*.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-195, filed 2/15/17, effective 3/18/17.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-230 Sanctions. Sanctions (~~(serve many purposes including, but not limited to, educating students about the seriousness of their actions; reinforcing the high standards of scholarship and behavior expected of Western students; promoting student development; and maintaining the safety and well-being of members of the university community. When a student admits responsibility or is found in violation of the code, a conduct officer or dean of students may impose one or more of the sanctions listed in this section. This list of sanctions is not meant to be exclusive. Other sanctions, designed or intended to enhance the educational value of conduct proceedings, may be applied in a given case)~~) are intended to facilitate student learning, promote personal and community development, and maintain the safety of the university community. When a student accepts responsibility or is found in violation of the code, a conduct officer may impose one or more of the sanctions listed in this section. This list of sanctions is not meant to be exclusive. Other sanctions may be applied in each case at the conduct officer's discretion.

(1) **Warning.** A formal written notice to the student that a violation of the code has occurred, and that further violations may result in additional sanctions under the code.

(2) **Conditional status.** A probationary status imposed for a specific period of time, during which the student must demonstrate conduct that ~~((conforms to))~~ meets university ~~((standards))~~ expectations. Conditions restricting the student's privileges or eligibility for activities may be imposed. Violations of any conditions specified in the notice of conditional status or violations of any other university policies or regulations during the period of the sanction, may result in additional sanctions under the code.

(3) **Loss of privileges.** A student may be denied specific privileges ~~((i.e.))~~ e.g., participation in specific activities, restriction from specific areas of campus, etc.) on a temporary or permanent basis. Violations of any conditions specified in the notice of loss of privileges or violations of any other university policies or regulations during the period of the sanction, may result in additional sanctions under the code.

(4) **Restriction from contacting others ("no contact" order).** A student may be restricted from direct or indirect physical, verbal, or electronic contact with another person and/or group. Indirect or direct contact made with another person or group while a "no contact" order is in place may result in additional sanctions under the code.

(5) **Educational activities.** A student may be required to engage in educational activities related to violation(s) of the code. Such activities may include, but are not limited to, required attendance at educational programs, community service, conducting research projects, writing assignments, and/or meeting with campus officials.

(6) **Assessment, counseling, or treatment programs.** A student may be required to participate in an assessment, counseling, and/or treatment program (at the student's expense), to address substance abuse, anger issues, or other issues or types of behaviors that pose a threat to the safety or well-being of others.

(7) **Restitution.** A student may be required to provide compensation for loss, damage, or injury resulting from a violation of the code. Restitution may take the form of monetary or material replacement or appropriate service to repair or otherwise compensate for the loss, damage, and/or injury caused.

(8) **Parental notification.** Parents may be notified of conduct findings when a student under the age of twenty-one is found responsible for violations involving alcohol and/or drugs. When possible, students whose parents are to be notified will be informed before such notification occurs and given an opportunity to initiate contact with their parents.

(9) **Campus residence hall or apartment relocation.** A student's on-campus living arrangements may be transferred to another residence hall or apartment.

(10) **Termination of university residences agreement.** A student may be removed from their campus residence hall or apartment and their housing agreement terminated.

(11) **Suspension from the university.** A student may be removed from the university for a designated period of time, after which the student will be eligible to return. While suspended, the student is trespassed from all university facilities and prohibited from participating in official university functions. Specific conditions for readmission to the university may be imposed (e.g., counseling, completion of substance abuse treatment, etc.).

(12) **Deferred suspension.** A student may receive a notice of deferred suspension from the university, with a provision that they are allowed to remain enrolled contingent on meeting specific conditions. Failure to meet any condition(s) specified in the notice of deferred suspension will result in immediate suspension from the university.

(13) **Expulsion from the university.** A student may be permanently separated from the university. A student who has been expelled is not eligible for readmission.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-230, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-230, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-240 Student conduct system. (1) The vice president for enrollment and student services is responsible for administration of the code. Supervision of the code has been delegated by the vice president to the dean of students.

(2) A conduct officer(s) shall be appointed and supervised by the dean of students or their authorized designee. A conduct officer has the authority to consider complaints, make findings, and administer sanctions for violations of the code. In complaints alleging (~~dis-~~ ~~crimination or sexual violence, which includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, an investigation and written report of findings from Western Washington University's equal opportunity office (or their designee) will be provided to a conduct officer in lieu of the conduct officer's investigation)) a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes nonconsensual sexual intercourse, non-consensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a referral to the Title IX committee.~~

(3) Appeal board members shall be appointed to consider appeals of a conduct officer's findings and sanctions. Appeal board members shall include a pool of the following:

(a) Four faculty members, appointed by the faculty senate; and
 (b) (~~Six student members, appointed by the associated students board of directors and/or residence hall association. Student board members must:~~

~~(i) Have a cumulative grade point average above 2.0;~~
~~(ii) Not currently be under an active sanction of the conduct code or have had previous conduct violations during the current academic year; and~~
~~(iii) Be confirmed by the dean of students; and~~

(e)) Four staff members, generally but not exclusively from the division of enrollment and student services, confirmed by the dean of students.

(4) An appeals board shall be composed of five members and any three persons constitute a quorum of a board. Generally, an appeals board will be comprised of faculty((~~r~~)) and staff(~~(, and students, but in some instances may only be comprised of members from two of the three groups)~~). The dean of students, or their designee, will appoint a chair from this pool for each board. Board members may not have been involved in consideration of the complaint((~~r~~)) or involved in the complaint. Board members must be properly trained in accordance with state and/or federal guidance. The dean of students or their designee will have final authority to approve all of those serving on a board. The dean of students, or their designee, will work to ensure that any board is balanced and representative.

(5) A staff member appointed by the dean of students may advise the appeals board on technical details of the code and its procedures.

(6) Conduct officers, the appeals board, the Title IX committee, and the dean of students or authorized designees have full authority to administer a decision under the code.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-240, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-240, filed 12/9/11, effective 1/9/12.]

NEW SECTION

WAC 516-21-245 Interim measures. After receiving a complaint of misconduct, the dean of students may implement interim measures intended to safeguard a member, or members, of the Western community. An interim measure will be as minimally restrictive as possible and will remain in place until the complaint is resolved. Interim measures can include administrative no-contact orders, trespass orders, or similar directives. Notices for interim measures are made in writing and will include how an objection can be raised.

[]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-270 Proceedings for violations of the code. (1) Any member of the university community may file a complaint against a student for a violation of the student conduct code. A complaint should be made in writing to the office of student life. Additionally, information received from any source (police report, third party, online, etc.) may be considered a complaint.

(2) After a consideration of the complaint, a conduct officer may take any of the following actions:

(a) Review the complaint, investigate and make a finding whether the code was violated and impose sanction(s);

(b) Terminate the proceeding and enter a finding that there is no violation of the code and/or that the respondent is not responsible for the alleged conduct violation; or

(c) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises.

(3) In complaints alleging (~~(discrimination and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, complaints should be made to Western Washington University's equal opportunity office. An investigation and written report of findings from Western Washington University's equal opportunity office)~~) a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes non-consensual sexual intercourse, nonconsensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a finding as to whether the code was violated and impose sanction(s).

(4) Any student charged by a conduct officer with a violation of the student code is provided at least three days written notice of the student's meeting date, time and location. Any request to extend the time and/or date of the conduct officer meeting should be addressed to the conduct officer. The written notice shall include:

(a) A brief summary of the complaint, including the sections of the code allegedly violated;

(b) The approximate time and place of the alleged behavior that forms the factual basis for the charge of violation;

(c) The time, date, and place of the meeting;

(d) A copy of, or link to, the code.

(5) The respondent and complainant (if applicable) are notified in writing of the determination made by the conduct officer, including the basis for any findings and sanctions. The notice includes information regarding the right to request an appeal.

(6) All notifications under the code are delivered by electronic mail to the students' university email account. Any notifications sent via regular U.S. mail (for instance, to students not currently enrolled) may be sent to the party's last known address or the address on file with the university registrar. Students are responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in the code begin the date the notification is sent via electronic means.

(7) Upon written request to the dean of students' office, staff will be available to the respondent and complainant (if applicable) to assist in understanding the student conduct process.

(8) A conduct officer's determinations and findings are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the respondent violated the code.

(9) Evidence is relevant if it tends to make existence of a fact more or less probable. A conduct officer, appeal board chair, or dean of students shall have the discretion to determine admissibility of evidence.

(10) If respondent or complainant (if applicable) to whom notice of a meeting or hearing has been sent does not appear before a conduct officer or appeals board, the complaint may be considered in their absence, and the conduct officer or appeals board may issue a decision based upon that information.

(11) If any provision of this code is invalidated by court order or operation of law, the affected provision of the code will no longer apply.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-270, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-270, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-280 Basis for appeal. (1) A student found in violation of the code may appeal the conduct officer's findings and/or the sanctions imposed. For incidents involving violence and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, a complainant may also request an appeal. An appeal may be requested for any reason including:

(a) The proceedings were not conducted in conformity with prescribed procedures and significantly impacted the outcome of the student conduct process;

(b) The sanctions imposed are substantially disproportionate to the violation(s) committed;

(c) The decision reached did not properly consider the information presented; and/or

(d) New information becomes available that was unavailable at the time of the original meeting(~~(7)~~) and could substantially impact the original decision. A summary of this new information and its potential impact must be included. The dean of students or designee may then refer the complaint to the conduct officer for further action as appropriate.

(2) The appeal must be submitted by the respondent or complainant (if applicable) in writing to the dean of students within ten days of the decision. The appeal must state, as clearly and concisely as possible, the reason for the appeal.

(3) Appeals of a finding that resulted, or may have resulted, in suspension or expulsion are considered by an appeals board. All other appeals are considered by the dean of students.

(4) No sanction will begin while an appeal or request for review is pending(~~(7-except)~~). However, interim ((sanctions such as)) measures (e.g., administrative no-contact orders, trespass, ((ete)) loss of privileges) may continue.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-280, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-280, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-290 Appeal procedures. (1) Appeals can be made by the respondent (or complainant in incidents involving violence and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination) and must be made to the dean of students.

(2) The dean of students or their designee reviews the appeal.

(3) Where new information, unavailable at the time of the original meeting, that could substantially impact the original decision, is received, the dean of students or designee may then refer the complaint to the conduct officer for further action as appropriate. The dean of students or their designee may, at their discretion, refer the complaint to a different conduct officer for reconsideration.

(4) In appeals in which the possible or recommended sanction is not expulsion or suspension as determined by the conduct officer, a designee of the dean of students will consider the appeal and hold an informal meeting, giving each party an opportunity to be informed of the conduct officer's view of the matter and to explain their view of the matter.

(5) In appeals in which the possible or recommended sanction is expulsion or suspension as determined by the conduct officer, an appeals board considers the appeal.

(a) The appeals board will provide the respondent and complainant (if applicable) with five days' notice of an appeals hearing date, time and location. An appeal by respondent or complainant will be shared with the other party (parties).

(b) The appeals board meets (~~in private~~) confidentially and reviews the complaint, the results of the subsequent investigation and its findings, and the conduct officer's decision. The board provides an opportunity for respondent and complainant (if applicable) to share information and the board may call witnesses. The appeals board then deliberates in private.

(c) The chair of the appeals board will ensure that appropriate procedures and due process are in place for any respondent(s) and/or complainant(s), including:

(i) Only one official recording of the meeting is made and no other cameras or recording devices are allowed;

(ii) All written materials are shared with any respondent(s) and/or complainant(s);

(iii) Any respondent(s) and/or complainant(s) may be accompanied through the appeals board by an advisor of their choice and at their own expense;

(iv) Any respondent(s) and/or complainant(s) may make brief opening and closing statements;

(v) Any limits on questioning, including no direct questioning between any complainant and respondent; and

(vi) All witnesses and involved parties are sworn in under oath.

(d) After any appeal, the respondent and complainant (if applicable) may request that a decision be reviewed by the dean of students. This request for review must be made in writing within ten days of the written outcome of an appeal. The dean of students will review the written documentation only; any involved person (e.g., respondent, witnesses, complainant) may be called to meet if necessary and at the discretion of the dean of students.

~~((d))~~ (e) During limited times during the year, such as break periods and summer quarter, when board members are unavailable, an interim board may be appointed by the dean of students.

(6) Respondent and complainant (if applicable) will be informed of the outcome of reviews and/or appeals simultaneously and in writing within ten days.

(7) If there is no request for appeal received by the dean of students within ten days, the decision of the conduct officer is considered final. If there is no request for review within five days (or ten days of an appeals board decision), the decision is considered final.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-290, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-290, filed 12/9/11, effective 1/9/12.]

NEW SECTION

WAC 516-21-291 Order of precedence under Title IX. 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 Western Washington University's standard disciplinary procedures, WAC 516-21-240 and 516-21-270, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 516-21-292 Jurisdiction under Title IX. (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Western Washington University 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 Western Washington University exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Western Washington University.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a), (b), and (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Western Washington University from pursuing other disciplinary action based on allegations that the respondent violated other provi-

sions of Western Washington University's student conduct code, chapter 516-21 WAC.

(4) If the Title IX coordinator determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Title IX coordinator 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 516-21-293 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, Western Washington University may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) Quid pro quo harassment. A Western Washington University employee conditioning the provision of an aid, benefit, or service of Western Washington University 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 Western Washington University's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 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 who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(a) The length of the relationship;

(b) The type of relationship; and

(c) 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 516-21-294 Initiation of discipline under Title IX. (1)

Upon receiving the Title IX final investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

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

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

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

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

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) Western Washington University will appoint the party an advisor of Western Washington University'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 516-21-295 Prehearing procedure under Title IX. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 516-21-250. 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 student conduct officer.

(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 Western Washington University intends to offer the evidence at the hearing.

[]

NEW SECTION

WAC 516-21-296 Rights of parties under Title IX. (1) Western Washington University's student conduct procedures, WAC 516-21-250 and 516-21-270 and this supplemental procedure shall apply equally to all parties.

(2) Western Washington University bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor who will conduct all questioning on the party's behalf. 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 Western Washington University's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

WAC 516-21-297 Evidence under Title IX. 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) 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.

(5) 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 516-21-298 Initial conduct order under Title IX. (1) In addition to complying with WAC 516-21-250 and 516-21-270, the student conduct committee will be responsible for conferring and drafting an initial conduct order that:

(a) Identifies the allegations of sexual harassment;

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

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

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

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

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

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Western Washington University's educational programs or activities; and

(h) Describes the process for appealing the initial conduct order.

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

[]

NEW SECTION

WAC 516-21-299 Appeals under Title IX. (1) The parties shall have the right to request a review from the initial conduct order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to request a review will be subject to the same procedures and time frames set forth in WAC 516-21-290 (5) (c). Appeals of initial conduct orders under Title IX move directly to the review stage of the student conduct code's proceedings.

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

(3) The vice president of enrollment and student services or their delegate shall serve the final decision on the parties simultaneously.

[]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-310 Confidentiality of conduct proceedings and records. (1) The confidentiality of all conduct proceedings and records will be maintained in compliance with the student records policy((~~r~~)) as (~~well as all~~) applicable with state and federal laws. Conduct records prepared by a conduct officer, the appeals board, the Title IX committee, and/or the dean of students:

(a) Will be held in the (~~dean of students~~) office of student life for six years, except in cases of suspension, interim suspension, or expulsion, which are permanent records; and

(b) Will not be shared with any member of the public, except upon the informed written consent of the student(s) involved or as stated in the student records policy, or as required by law or court order. This includes, but may not be limited to:

(i) Information disclosed in conformance with exceptions to the prior written consent requirement of the Family Educational Rights and Privacy Act (FERPA) and implementing regulations found at 34 C.F.R. Sec. 99.

(ii) Files subjected to public records requests as required by state law.

(iii) In cases involving any crime of violence or a nonforcible sex offense where the complainant is deceased, final results of any disciplinary proceeding may be shared with the complainant's next of kin, upon their written request.

(2) The conduct officer's findings may be shared with the complainant, as required by law, in cases involving violence as defined

by FERPA or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

(3) The findings may also be shared with university officials involved in the completion or supervision of the sanction and/or the student. See also chapter 516-26 WAC, Student records.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-310, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-310, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-340 Revision of the code. The code shall be reviewed every five years or more often, if needed, by ~~((the committee on the student conduct code. The))~~ a committee ~~((on student rights and responsibilities))~~ which shall include students, faculty, and staff. Once recommendations are complete, they will be forwarded to the vice president for enrollment and student services. See also POL-U1000.11 *Developing and Maintaining University Provisions of the Washington Administrative Code.*

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-340, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-340, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

WAC 516-21-350 Referenced policies and regulations in the code. Policies or regulations referenced in the code are available, upon request, in the ~~((dean of students))~~ office of student life.

[Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-350, filed 12/9/11, effective 1/9/12.]