

WSR 24-16-132
PROPOSED RULES

WESTERN WASHINGTON UNIVERSITY

[Filed August 6, 2024, 1:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-034.

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

Hearing Location(s): On September 10, 2024, at 2:00 p.m. Western Washington University (WWU) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance <https://wwu-edu.zoom.us/j/84928492849>. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: October 18, 2024.

Submit Written Comments to: Jennifer Sloan, 516 High Street, Mailstop 9044, email sloanj2@wwu.edu, beginning April 23, 2024, by September 9, 2024.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, phone 360-650-3117, email sloanj2@wwu.edu, by August 30, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WWU is updating the rules regarding standards of conduct for students, chapter 516-21 WAC.

Reasons Supporting Proposal: WWU is modifying, clarifying, and updating WWU's standards of conduct for students to clarify the student conduct process based on lessons learned and Washington State University's recent code review.

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

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

Name of Proponent: WWU, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael Sledge, Executive Director, Student Life, 516 High Street, Mailstop 9006, 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. WWU does not consider this rule to be a significant legislative rule and is not making significant amendments to a policy or regulatory program.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 6, 2024
Jennifer L. Sloan
Rules Coordinator

OTS-5672.1

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-010 Introduction. 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 wellness 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 ((øf)) for enrollment and student services.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

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

- (1) ~~((**Appeals board.** The student conduct appeals board.~~
(2-)) **Catalog.** The *Western Washington University General Catalog*.
- ((+3)) (2) **Code.** The student conduct code.
- (3) **Conduct board.** The persons designated by the dean of students to consider a conduct matter, typically for a full hearing but may also be convened for an appeal. Conduct board members are experienced and were provided appropriate training specific to their role.
- (4) **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, and may prohibit the request of an official transcript, or receiving a degree from the university until the hold has been removed.
- (5) **Conduct officer.** A conduct officer or their authorized designee as determined by the dean of students. Conduct officers include conduct board members and all receive appropriate training as required for decision makers under Title IX regulations.
- (6) **Day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.
- (7) **Dean of students.** 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) **Shuttle diplomacy.** Resolution without direct contact between parties.

(16) **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.

~~((16))~~ (17) **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))~~ 516-21-291. How the university responds to and addresses discrimination on the basis of sex (including sex-based characteristics, sex-based stereotypes, pregnancy and related conditions, gender identity, or sexual orientation), and related retaliation are governed by state and federal laws, regulations, and court rulings in addition to university policy under POL-U1600.02 and POL-U1600.04. To the extent this code conflicts with state or federal law, state or federal law shall take precedence.

(18) **University.** Western Washington University and all associated programs, including those offered online and/or at off-campus program sites and includes those properties identified in subsection (20) of this section.

(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.

(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.

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

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-030 Jurisdiction. (1) General. The student conduct code applies to all student conduct that occurs on university property or in connection with any official university function including university-sponsored activities and transit to/from university functions or activities.

(2) Off-campus conduct. In addition to subsection (1) of this section, 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) Online conduct. The student conduct code applies to behavior conducted online, via electronic mail, text message, or other electronic means, subject to subsections (1) and (2) of this section.

(5) International and national study programs. Students who participate in any university-sponsored or sanctioned international or national study program must observe the following rules and regulations:

(a) The laws of the host country and/or state;

(b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(c) Any other agreements related to the student's study program;
and

(d) These standards of conduct.

(6) 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 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) and may include completion of conduct process.

~~((5))~~ (7) The code applies to the conduct of any student employee whose position is conditioned upon their student status.

~~((6))~~ (8) 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.

(9) Recognized or registered student organizations that violate university policies and the standards of conduct are subject to sanctions. A recognized or registered student organization may be held accountable for the behavior of its officers, members, or guests when the university demonstrates that:

(a) The organization or its officers should have foreseen that behavior constituting a violation was likely to occur, yet failed to take reasonable precautions against such behavior;

(b) A policy or practice of the organization was responsible for a violation; or

(c) The behavior constituting a violation was committed by, condoned by, or involved multiple organization officers, members, or guests.

(10) Relationship between student conduct process and other legal processes. The university is not required to stay a student conduct proceeding pending any criminal or civil proceeding, nor must the disposition of any such criminal or civil proceeding control the outcome of any student conduct proceeding.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

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) is a violation of the code. This includes, but is not limited to:

(1) Physical assault.

(2) Any threat 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.

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

WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment). Harassment is conduct by any means that is severe or pervasive. It is of such a nature that it would cause a reasonable person in the complainant's position substantial emotional distress and undermine their ability to work, study, or participate in their regular life activities or participate in the activities of the university. Harassment causes the complainant substantial emotional distress and undermines the complainant's ability to work, study, or participate in the complainant's regular life activities or participate in the activities of the university and harassment is a violation of the code.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-115 Discrimination and discriminatory harassment. Discrimination or discriminatory harassment is prohibited on the basis of race, 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 (including service animals in training) 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 filing or involved in a complaint of discrimination is protected against retaliation.

(1) Sexual harassment is a violation of the code. Sexual harassment is any unwelcome conduct of a sexual nature including unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, 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 environment, participation in a university activity; or

(b) It is sufficiently severe, persistent and pervasive 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 environment.

(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, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination. Sexual violence is a violation of the code.

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

WAC 516-21-120 Hazing. Hazing, defined as any act that, as an explicit or implicit condition for initiation or admission into, affiliation with, or continued membership in a group or organization, endangers the health, safety, or well-being of any member of the university community, is a violation of the code. Examples of hazing include, but are not limited to:

(1) Requiring the consumption of any food, alcohol, drug, or other substance.

(2) Requiring forced participation in physical activities, including calisthenics, exercise, or other games or activities that entail physical exertion.

(3) Creation of excessive fatigue including requiring exposure to weather elements or to other physically or emotionally uncomfortable situations, (~~including~~) such as sleep deprivation, confinement in small spaces, physical bondage, and/or taking a student to an outlying area and dropping them off.

(4) Requiring conduct that can be reasonably expected to embarrass another, including the performance of public stunts or activities such as scavenger hunts or other degrading or humiliating activities.

(5) Requiring anything that would be illegal under city, state, or federal law, or in violation of any university policies or procedures, including the code.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-240 Student conduct ((system)) process. (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 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, 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 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) 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 and staff. 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 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 board in matters requiring a full hearing.~~

~~(3) Conduct officers, ((the appeals)) conduct board, ((the Title IX committee,)) and the dean of students or authorized designees have full authority to administer a decision under the code.~~

~~(4) Consolidation. In any student conduct matter in which there are common issues or parties, the conduct officer or presiding officer may decide to consolidate the proceedings. This decision is within the sole discretion of the conduct officer or presiding officer.~~

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

WAC 516-21-250 Student rights in the conduct process. Alleged violations of the code will be resolved through the student conduct process, respecting fairness and due process for all involved parties.

(1) A student accused of violating the code, known as the respondent, has certain rights in the conduct process. These include the right to:

(a) Receive prior written notice to attend meetings with a conduct officer or hearings with an appeals board ((delivered via email to the student's official university email account));

(b) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;

(c) Be accompanied through the conduct process by an advisor of their choice and at their own expense. A respondent should select as an advisor a person who is not involved in the same complaint and whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay;

- (d) Remain silent or decline to respond to any question(s) during any conduct meeting or hearing;
- (e) Review information relied upon by the conduct officer or appeals board in making a determination;
- (f) Receive written notification of the findings, decision, and basis for each ~~((r))~~ delivered ~~((via email to the student's official university email account,))~~ within seven business days of the date of the final meeting with a conduct officer, or ~~((ten))~~ 10 business days of the date of a hearing with an appeals board;
- (g) Request an appeal of a decision by a conduct officer, as described in WAC 516-21-280 Basis for appeal;
- (h) Request a review of an appeal, as described in WAC 516-21-280 Basis for appeal; and
- (i) Waive any of the rights contained in this section.
- (2) An individual who has filed a complaint alleging violence or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, known as the complainant, has certain rights in the conduct process. These include the right to:
- (a) Receive prior written notice to attend meetings with a conduct officer or hearings with an appeals board ~~((delivered via email to the student's official university email account));~~
- (b) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;
- (c) Be accompanied through the conduct process by an advisor of their choice and at their own expense. A complainant should select as an advisor a person who is not involved in the complaint and whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay;
- (d) Remain silent or decline to respond to any question(s) during the conduct meeting;
- (e) Review information relied upon by the conduct officer or appeals board in making a determination;
- (f) Receive written notification of the findings, decision and basis for each, delivered ~~((via email to the complainant's official university email account,))~~ within seven business days of the date of the respondent's final meeting with a conduct officer or ~~((ten))~~ 10 business days of the date of a hearing with an appeals board;
- (g) Request an appeal of a decision by a conduct officer, as described in WAC 516-21-280 Basis for appeal;
- (h) Request a review of an appeal, as described in WAC 516-21-280 Basis for appeal; and
- (i) Waive any of the rights contained in this section.
- (3) For incidents involving sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, complainants shall have the following additional rights:
- (a) To be notified of the availability of counseling, academic support, and general assistance and support resources, both on campus and in the surrounding community;
- (b) Have past behavior unrelated to the alleged behavior excluded; the conduct officer, appeals board chair, or dean of students will make a final determination regarding such behavior if in question;

- (c) To be free from questioning about their sexual history involving anyone other than the respondent;
 - (d) Submit an oral or written impact statement to the conduct officer, and/or appeals board, and/or dean of students (if applicable), for consideration;
 - (e) To request an administrative no contact order against the respondent(s) during the conduct process;
 - (f) To have alternative accommodations to avoid being in the physical presence of the respondent during the conduct process; and
 - (g) Be free of any form of retaliation. Complainants should report any retaliation that occurs for further action. See *POL-U1600.02 Ensuring Equal Opportunity and Prohibiting Discrimination and Retaliation*.
- (4) Respondents and complainants have the right to request reasonable accommodations through Western's disability access center, and to have the reason for such requests be kept private from another involved party.

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

WAC 516-21-260 Procedures for immediate interim suspension. In consultation with university officials, the dean of students may suspend a student from the university on an immediate interim basis, pending criminal proceedings, or a medical evaluation, and/or action through the student conduct process.

- (1) An interim suspension may only be imposed when the dean of students has cause to believe that the student:
 - (a) Has violated the student conduct code; and
 - (b) Poses an immediate danger to the safety or security of the university community; and/or
 - (c) Poses an ongoing threat of serious disruption or interference with the normal operations of the university.
- (2) During the interim suspension, a student may be denied access to university activities and privileges, including access to classes, university property, and/or campus residence halls and apartments.
- (3) A student suspended from the university on an interim basis shall be notified in writing of the terms of the interim suspension. The notice, which shall be delivered via email (~~to the student's official university account~~) and in person if possible, shall include the alleged violation(s), the circumstances, reasons, and terms of the interim suspension, and the time, date and location of a meeting to discuss the interim suspension.
- (4) The interim suspension meeting shall occur no fewer than three business days and no more than seven business days from the date that the notification is sent. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon. The purpose of the interim suspension meeting is for the student to have an opportunity to demonstrate why the terms specified in the interim suspension notice should not continue, or why the suspension should be less restrictive.
- (5) Cases of interim suspension are given priority through the student conduct process. The interim suspension will remain in effect until a final decision has been made on the pending code violation(s) or until the dean of students determines that the reasons for imposing

the interim suspension no longer exist or are not supported by available evidence.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

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))) and make a determination to resolve it through a brief hearing or full hearing, and communicate that decision to the relevant parties;~~

(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))~~ complaint, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises; or

(d) A conduct officer may resolve a matter by agreement/alternative dispute resolution. Agreements may be reached directly or through alternative dispute resolution including, but not limited to, shuttle diplomacy or mediation. When resolution of a matter is reached by agreement or alternative dispute resolution, the agreement must be in writing and signed by the parties and the conduct officer. In the agreement, the parties must be advised in writing that:

(i) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and

(ii) If any party decides not to sign the agreement, and the matter proceeds to a hearing, neither the agreement nor a party's refusal to sign will be used against either party in the student conduct process. Complaints alleging conduct covered by Title IX are not subject to agreement/alternative dispute resolution through the student conduct process.

(3) In complaints alleging 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, 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))~~ make determinations regarding which code prohibitions may have been violated, and whether to resolve the matter through a brief hearing or full hearing.

(4) Brief hearings. The majority of student conduct matters are resolved through a brief hearing with a conduct officer. Such a hearing is a brief adjudication conducted in accordance with the Washington state Administrative Procedure Act chapter 34.05 RCW and allows the conduct officer to review available information, hear the relevant parties' views, make a determination, and assign sanctions.

(5) Full hearings. Full hearings are conducted by a conduct board and are used in matters in which the respondent faces possible suspension or expulsion; generally, a final investigation report from Western Washington University's office of civil rights and Title IX compliance are resolved through full hearings. Full board hearings are conducted in accordance with the Washington state Administrative Procedure Act.

(6) 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 (five days for full hearings). 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))~~ (7) The respondent and complainant (if applicable) are notified in writing of the determination made by the conduct officer or board, including the basis for any findings and sanctions. The notice includes information regarding the right to request an appeal.

~~((6))~~ (8) 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))~~ (9) 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))~~ (10) A conduct officer's or board'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))~~ (11) Evidence is relevant if it tends to make existence of a fact more or less probable. A conduct officer, ~~((appeal))~~ conduct board chair, or dean of students shall have the discretion to determine admissibility of evidence.

~~((10))~~ (12) 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))~~ (13) 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.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-280 Basis for appeal. (1) A student found in violation of the code may appeal the conduct officer's or board'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 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))~~ 10 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. However, interim measures (e.g., administrative no-contact orders, trespass, loss of privileges) may continue.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

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 may 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 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.~~

~~(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 will review the available documentation including the appeal, any investigation report, the board's decision, and recordings. Any involved person (e.g., respondent, witnesses, complainant) may be called to meet if necessary and at the discretion of 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))~~ 10 days.

(7) If there is no request for appeal received by the dean of students within ~~((ten))~~ 10 days, the decision of the conduct officer is considered final. If there is no request for review within five days (or ~~((ten))~~ 10 days of an appeals board decision), the decision is considered final.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

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 and determine if other prohibitions of the code were violated.

(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))~~ serve 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.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-295 Prehearing procedure under Title IX. (1)

Upon receiving the disciplinary notice, the ~~((chair of the student))~~ conduct ~~((committee))~~ board will send a full hearing notice to all parties, in compliance with WAC 516-21-250. In no event will the hearing date be set less than ~~((ten))~~ 10 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 full 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.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

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))~~ one will ~~((appoint an advisor of))~~ be appointed at Western Washington University's choosing on the party's behalf at no expense to the party.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

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))~~ conduct board 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))~~ conduct board 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))~~ conduct board 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.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

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))~~ board 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))~~ conduct board chair will serve the initial conduct order on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

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)(e).))~~ Appeals of initial conduct orders under Title IX ~~((move directly to the review stage of the student conduct code's proceedings))~~ will be considered by the dean of students.

(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 22-01-075, filed 12/10/21, effective 12/11/21)

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 as applicable with state and federal laws. Conduct records prepared by a conduct officer, the ~~((appeals))~~ conduct board, ~~((the Title IX committee))~~ and/or the dean of students:

(a) Will be held in the 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.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-340 Revision of the code. The code shall be reviewed every five years or more often, if needed (~~((, by a committee which shall include students, faculty, and staff))~~). Student conduct code revisions will receive the most significant community deliberation including attempts to solicit feedback from Western students, internal policy control groups, and Washington Administrative Code reviews which includes a public hearing. The office of student life is responsible for completing periodic reviews of state and federal legislation, and community feedback, to make recommendations for changes to the code. 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.*