

WSR 25-03-040

PROPOSED RULES

WENATCHEE VALLEY COLLEGE

[Filed January 8, 2025, 12:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-159.

Title of Rule and Other Identifying Information: Amend chapter 132-115W WAC.

Hearing Location(s): On February 26, 2025, at 11:00 a.m. - 12:00 an [p.m.], at Wenatchee Valley College, Van Tassell, 5006, 1300 5th Street, Wenatchee, WA 98801.

Date of Intended Adoption: March 19, 2025.

Submit Written Comments to: Lisa Turner, 1300 5th Street, Wenatchee, WA 98801, email lturner@wvc.edu, beginning February 25, 2025, by March 8, 2025, at 12:00 p.m.

Assistance for Persons with Disabilities: Contact Jenna Floyd, phone 509-682-6854, email jfloyd@wvc.edu, by March 8, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revision of chapter 132W-115 WAC, Student code of conduct, to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment, to comply with rules recently adopted by the United States Department of Education.

Reasons Supporting Proposal: Revision of chapter 132W-115 WAC to meet new federal regulations for Title IX of the Education Amendments of 1972. On April 9, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Statute Being Implemented: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Wenatchee Valley College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dr. Diana Garza, 1300 5th Street, 509-682-6805.

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. Under RCW 34.05.328 (5)(b), the proposed rule changes are exempt from the cost-benefit analysis requirement. The updates to the Title IX regulations are mandated by federal law and do not impose significant costs on state agencies or other entities.

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: Title IX, 20 U.S.C. § 1681 et seq.; failure to comply with Title IX regulations could re-

sult in corrective action by the United States Department of Education.

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency.]

January 8, 2025
Faimous Harrison
President

OTS-6064.1

NEW SECTION

WAC 132W-115-300 Authority. The board, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the chief student services officer or designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132W-115-310 Definitions. The following definitions shall apply for the purposes of this code of student conduct:

(1) **"Assembly"** means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons or group of persons.

(2) **"Board"** means the board of trustees of Wenatchee Valley College.

(3) **"Calendar day"** means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the last day will be the next day which is not a Saturday, Sunday, or holiday. When the period of time prescribed or allowed is less than seven days, Saturdays, Sundays, and holidays are not included in the count.

(4) **"College"** means Wenatchee Valley College and all of its areas, elements, programs and college related activities.

(5) **"College community"** means students, employees, trustees and volunteers.

(6) "**College facilities and college facility**" means and includes any and all real and personal property owned, rented, leased, or operated by the board of Wenatchee Valley College, and shall include all buildings and appurtenances attached thereto and all parking lots and other grounds. College facilities extend to distance education classroom environments, and agencies or institutions that have educational agreement with the college.

(7) "**College official**" includes any person employed by the college performing assigned duties.

(8) "**College premises**" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(9) "**Complainant**" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; and

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(10) "**Conduct review officer**" is a college administrator designated by the president who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(11) "**Controlled substance**" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(a) "**Liquor**" means the definition of liquor as contained within RCW 66.04.010.

(b) "**Drugs**" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.201 through 69.50.212, or a legend drug as defined in RCW 69.41.010.

(12) "**Day**" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.

(13) "**Disciplinary action**" is the process by which the student conduct officer imposes discipline against a student for a violation of the code of student conduct. A written or verbal warning is not disciplinary action.

(14) "**Disciplinary appeal**" is the process by which an aggrieved student party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal from the college are heard by the student conduct committee. Appeals of all other disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

(15) "**Faculty member and instructor**" are any employee of Wenatchee Valley College who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian.

(16) "**Filing**" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first-class mail to the specified college email address and official's office address.

Paper required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(17) "**Group**" means persons who are associated with each other but who have not complied with college requirements for registration or organization.

(18) "**Pregnancy or related conditions**" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(19) "**President**" means the chief executive officer of the college appointed by the board of trustees and is authorized to delegate any and all responsibilities as set forth in the chapter as may be reasonably necessary.

(20) "**Program**" or "**programs and activities**" means all operations of the college.

(21) "**Relevant**" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(22) "**RCW**" means Revised Code of Washington which can be accessed at <https://apps.leg.wa.gov/rcw/>.

(23) "**Remedies**" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(24) "**Respondent**" is the student who is alleged to have violated the student conduct code.

(25) "**Service**" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by both email and by either certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(26) "**Sexual misconduct**" has the meaning ascribed to this term in APPENDIX A - Supplemental Title IX Student Conduct Procedures.

(27) "**Student**" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term, but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered students.

(28) "**Student conduct committee**" refers to a committee that hears appeals related to sanctions imposed on a student, including a suspension or expulsion, due to inappropriate behavioral conduct or actions. The academic regulations committee hears appeals related to academic/instructional issues such as plagiarism, cheating, or other nonbehavioral classroom conduct. The student conduct committee does not typi-

cally review these cases unless a sanction of suspension or expulsion is imposed (i.e., repeat academic dishonesty behavior or other egregious cases).

(29) "**Student conduct officer**" is a college administrator designated by the president or chief student services officer to be responsible for implementing and enforcing the code of student conduct.

(30) "**Student employee**" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education; and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(31) "**Student group**" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(32) "**Supportive measures**" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(33) "**Student organization**" means any number of students who have met the college's formal requirements of clubs or organizations.

(34) "**Title IX coordinator**" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

(35) "**Visitors**" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

(36) "**WAC**" means Washington Administrative Code which can be accessed at <https://apps.leg.wa.gov/wac/>.

NEW SECTION

WAC 132W-115-315 Jurisdiction. (1) The code of student conduct shall apply to student conduct by students or student groups that occurs:

(a) On college premises;

(b) At or in connection with college-sponsored activities; or

(c) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to locations in which students are engaged in college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132W-115-320 Students abroad. Students who participate in any college-sponsored or sanctioned international program shall observe the following:

(1) The laws of the host country;

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

(3) Any other agreements related to the student's program in another country; and

(4) Wenatchee Valley College's code of student conduct.

NEW SECTION

WAC 132W-115-325 Student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive

to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this procedure.

(d) Any student undergoing a conduct hearing process is entitled to receive a written summary of the results and findings of the hearing.

NEW SECTION

WAC 132W-115-330 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes using or any attempt to use, give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person, or artificial intelligence, in completing an academic assignment. Plagiarism may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(e) The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic sanctions, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic regulations committee procedures, the course syllabus, and any applicable program handbook.

(2) **Other dishonesty.** Any other acts of dishonesty, such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(c) Any activity which inhibits or interferes with the orderly operation of the college or the ability of students and/or college personnel to perform their functions in an orderly environment or assisting or encouraging another person to engage in such conduct.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. See college policy 500.450 violence in the workplace.

(5) **Bullying is severe or pervasive physical or verbal (written or oral) abuse.** For purposes of this code, bullying is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms or intimidates the victim.

(6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, email, instant messaging, online bulletin boards, applications (apps), and social media sites to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(7) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedes-

trian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(8) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

(9) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(10) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee or organization;

(c) Any other member of the college community, visitors, or organization;

(d) Possession of such property or money after it has been stolen; or

(e) Property, which includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(11) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of duties, including failure to properly identify oneself to such a person when requested to do so.

(12) **Weapons.** The possession, carrying or discharge of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon capable of producing bodily harm is prohibited on the college campus and during college programming and activities, (including, but not limited to, shot guns, pistols, air guns, pellet guns, and paint-ball guns), whether loaded or unloaded, is prohibited on Wenatchee Valley College owned or controlled property, unless otherwise authorized in this provision and subject to the following exceptions (see college 000.270 weapons on campus policy and 1000.270 weapons on campus procedure):

A simulated firearm, or weapon may be authorized and permitted for educational purposes in connection with Wenatchee Valley College related research, teaching or theatrical production, (e.g., stage play

or film production, or rehearsals). Any person seeking to bring a firearm or other weapon onto campus for purposes directly related to a class or other educational activity must obtain prior written authorization from the president or designee. The president or designee shall review any such request and may establish conditions to the authorization. Any permission shall be in writing and subject to such terms or conditions incorporated into the written permission. Any person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Wenatchee Valley College.

(13) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(14) **Hazing.** Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college-sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing. Hazing includes, but is not limited to, any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student or other person attending Wenatchee Valley College. Consent is no defense to hazing. The term does not include customary athletic events or other similar contests or competitions. Hazing is also a misdemeanor, punishable under state law.

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

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies or procedures.

(b) **Cannabis.** The use, possession, delivery, sale, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of cannabis, feder-

al law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, production, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff. The college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products. See college policy 000.240 tobacco free campus policy.

(16) **Lewd conduct.** Conduct which is lewd, obscene, or indecent.

(17) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community and/or visitors because of race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See college policy 000.330 discrimination and discriminatory harassment.

(18) **Sexual misconduct.** The term sexual misconduct includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See APPENDIX A - Supplemental Title IX Student Conduct Procedures.

(a) **Sexual harassment.** The term sexual harassment means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term sexual intimidation incorporates the definition of sexual harassment and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any

object 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.

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

(iii) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(iv) **Statutory rape.** Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.

(v) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under 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.

(vi) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(19) **Protected status** includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." See also college's discrimination and discriminatory harassment policy 000.330 and sexual harassment/Title IX policy 000.340.

(20) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies.

Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, code of student conduct provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying or ostracism.

(21) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly-situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, dating violence, and stalking.

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

(B) **Nonconsensual sexual contact** (fondling) is 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** is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) **Statutory rape (rape of a child)** is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, or stalking or any other conduct prohibited under RCW 10.99.020, 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.

(F) **Dating violence** is 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:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(22) **Title IX Retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during

a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(23) **Theft or misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's technology acceptable use policy (700.150 acceptable use, authorized user policy).

(24) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(25) **Safety violations.** Safety violations include any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the college community and/or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(26) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college traffic and parking rules.

(27) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major. These ethics codes must be distributed to students as part of an educational program, course or sequence of courses and the student must be informed that a violation of such ethics codes may subject the student to disciplinary action by the college.

In addition to initiating discipline proceedings for violation of the code of student conduct, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132W-115-335 Corrective action, disciplinary sanctions, terms and conditions. (1) The following disciplinary sanctions may be

imposed upon students found to have violated the code of student conduct. Depending upon the misconduct, more than one sanction may be imposed. Other than college dismissal or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's academic record, but are part of the student's disciplinary record. Violation of any term or condition of any disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violations may be cause for further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from all college campuses and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Educational sanction.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed not in good standing with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **Restitution or monetary fine.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, monetary fine or other compensation.

(e) **Hold on transcript or registration.** This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold will be released.

(f) **Revocation of admission or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of standards of conduct for students in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(g) **Withholding degree.** The college may withhold awarding a degree otherwise earned until the completion of the process set forth in this section, including the completion of all sanctions imposed.

(h) **No trespass order.** A student may be restricted from college property and/or college-sponsored activities based on the violation.

(i) **Residence hall suspension or termination.** Removal from a residence hall for a specified period or permanently. Conditions may be imposed before a student is permitted to return to a residence hall.

(j) **No contact directive.** An order directing a student to have no contact with a specified member of the college community, visitor, or a particular college facility.

NEW SECTION

WAC 132W-115-340 Hazing sanctions. (1) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or non-profit, the individual directors of the corporation may be held individually liable for damages.

(2) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(3) Any student group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(4) Any student group found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding

of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

NEW SECTION

WAC 132W-115-345 Hearing procedures—Initiation of disciplinary action. (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(2) The student conduct officer, or designee, shall initiate disciplinary action by serving the respondent with written notice directing the student to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the code of student conduct the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

Sex discrimination, including sex-based harassment. The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(3) The student conduct officer, prior to taking disciplinary action in a case involving sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within 10 days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific code of student conduct provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s) as described in WAC 132W-115-335; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) The complainant and respondent will have three business days to notify the Title IX coordinator, in writing, of any objection to the continuation, modification, or termination of any supportive measures. Any objection will be reviewed within three business days by a

neutral impartial employee, who will review the investigation report, student conduct officer's recommendation, confer with the Title IX coordinator or their designee, complainant and respondent, as appropriate, and determine whether to continue, modify, or terminate the supportive measures.

(j) If the respondent is found responsible for engaging in sex discrimination, it is determined that a violation of the student conduct code occurred, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

NEW SECTION

WAC 132W-115-350 Appeal—Appeal from disciplinary action. (1)

Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132W-115-345(6), the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, complainant if any, and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the code of student conduct shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of 10 days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of 10 days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this section, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

NEW SECTION

WAC 132W-115-355 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias, or in which previous actions have been taken in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the respondent and the student conduct officer within 10 calendar days of the completion of the informal hearing. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights. See APPENDIX A - Supplemental Title IX Student Conduct Procedures.

(5) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of 10 days, or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132W-115-360 Brief adjudicative proceedings—Review of initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within 21 calendar days of service of the initial decision.

(2) The president shall not participate in any case in which involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias, or in which previous actions have been taken in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reason for the decision and must be served on the parties within 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within 20 calendar days after the request is submitted.

(5) If the president, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 days, or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132W-115-365 Student conduct committee. (1) The student conduct committee shall consist of five members appointed by the president or designee:

- (a) Two full-time students appointed by ASWVC/ASWVCO;
- (b) One full-time classified staff member;
- (c) One faculty member; and
- (d) One administrator (other than an administrator serving as a student conduct officer or conduct review officer).

(2) The administrator shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a hearing panel consisting of a quorum of three members of the committee, so long as one member is the chair. Committee action may be taken upon a majority vote of all committee members presiding over the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

NEW SECTION

WAC 132W-115-370 Student conduct committee—Appeal. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request, filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of the imposition of discipline, or referral to the committee; and

(b) The notice of appeal, or any response to referral, by the respondent. If doing so; however, the chair should remind the members that these pleadings are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, wheth-

er the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper ex parte communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. A respondent, or complainant in a case involving allegations of sexual misconduct, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132W-115-375 Student conduct committee hearings—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

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

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

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

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask

questions of the parties and witnesses, or allow questions to be asked directly of any party or witness by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

NEW SECTION

WAC 132W-115-380 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to

propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within 30 calendar days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the code of student conduct were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial decision shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or condition(s), if any, as authorized in the code of student conduct. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction(s) and/or condition(s) imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or condition(s) as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president, subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132W-115-385 Student conduct committee—Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a written notice of appeal with the president's office within 10 days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The written notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal.

(3) The president shall provide a written decision to the respondent and the student conduct officer within 30 calendar days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) Per RCW 34.05.455, the president shall not engage in any improper ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132W-115-390 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation and/or formal disciplinary procedure is pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of student conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community or visitors; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two calendar days of the oral notice.

(4) The written notification shall be entitled notice of summary suspension and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the code of student conduct or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the college premises or communicate with members of the college community and visitors. If the respondent has been trespassed from the college premises, a notice against trespass shall be included that warns the respondent that his or her privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college premises other than for a scheduled meeting with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sex discrimination, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

NEW SECTION

WAC 132W-115-395 Classroom misconduct and authority to suspend for no more than one day. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) from a single class or related activity for the remainder of that day if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity or the learning and teaching environment. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct officer may set conditions for the student upon return to the class or activity.

NEW SECTION**WAC 132W-115-400 Brief adjudicative proceedings—College record.**

The college record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review consistent with RCW 34.05.476. These records shall be maintained as the official record of the proceedings.

APPENDIX A—SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURESNEW SECTION

WAC 132W-115-410 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. § 106. To the extent these supplemental hearing procedures conflict with the Wenatchee Valley College's standard disciplinary procedures, WAC 132W-115-335 and 132W-115-345, these supplemental procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

NEW SECTION

WAC 132W-115-415 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140 (13) and Title IX of the Education Act Amendments of 1972, 20 U.S.C. § 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

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

(a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any

object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

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

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

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

(4) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132W-115-420 TITLE IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an educational program or activity is defined as locations, events, or circumstances over which the college exercised substantial control over both the re-

spondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1) (a) through (c) of this section, have not been met.

(4) Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's code of student conduct.

(5) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132W-115-425 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the 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) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132W-115-430 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with 1400.110 code of student conduct procedure, WAC 132W-115-345. In no event will the

hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132W-115-435 Rights of parties. (1) The college's code of student conduct procedure and this supplemental procedure shall apply equally to all parties.

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

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

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132W-115-440 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

(2) **Questions or evidence** about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(3) **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.

(4) **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 132W-115-445 Initial order. (1) In addition to complying with WAC 132W-115-355, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
 - (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
 - (c) Makes findings of fact supporting the determination of responsibility;
 - (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
 - (e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;
 - (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
 - (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and
 - (h) Describes the process for appealing the initial order to the college president.
- (2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132W-115-450 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132W-115-385 from student conduct committee initial decision.

(2) The president or designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The president's office shall serve the final decision on the parties simultaneously.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132W-115-010	Purpose of the disciplinary system.
WAC 132W-115-020	Jurisdiction and authority for student discipline.
WAC 132W-115-030	Violations of law and college regulations.
WAC 132W-115-040	Student participation.
WAC 132W-115-050	Demand for identification.
WAC 132W-115-060	Free movement on campus.
WAC 132W-115-070	Standards of classroom behavior.
WAC 132W-115-080	Code of conduct.
WAC 132W-115-090	Civil disturbances.
WAC 132W-115-100	Disciplinary process.
WAC 132W-115-110	Procedures for resolving disciplinary violations.
WAC 132W-115-120	The academic regulations committee (ARC) and serious disciplinary violations.
WAC 132W-115-130	Procedural guidelines for hearings involving serious disciplinary violations.
WAC 132W-115-140	Disciplinary terms.
WAC 132W-115-150	Loss of eligibility in college activities and athletics.
WAC 132W-115-160	Student groups and organizations.
WAC 132W-115-170	Appeals.
WAC 132W-115-180	Transcript notations.
WAC 132W-115-190	Refunds and access.
WAC 132W-115-200	Readmission after suspension or dismissal.
WAC 132W-115-210	Reestablishment of academic standing.
WAC 132W-115-220	Reporting, recording and maintaining records.