

WSR 25-06-013

EMERGENCY RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed February 20, 2025, 9:34 a.m., effective February 20, 2025]

Effective Date of Rule: February 20, 2025.

Purpose: To bring Bellingham Technical College's (college) student conduct code, chapter 485B-121 WAC, into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: New WAC 495B-121-351, 495B-121-356, 495B-121-361, 495B-121-366, 495B-121-371, 495B-121-376, 495B-121-381, 495B-121-386, and 495B-121-391; and amending WAC 495B-121-235, 495B-121-245, 495B-121-260, 495B-121-265, 495B-121-280, 495B-121-285, 495B-121-286, 495B-121-295, 495B-121-300, 495B-121-310, 495B-121-315, 495B-121-320, 495B-121-325, 495B-121-330, and 495B-121-335.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: On January 9, 2025, a federal district court issued a decision vacating the 2024 updates to the Title IX Education Amendments of 1972. On February 4, 2025, the United States Department of Education issued a Title IX enforcement directive confirming the court's ruling and instructing recipients to revert back to using the 2020 Title IX final rule, effective immediately.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 15, Repealed 0.

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

Date Adopted: February 20, 2025.

Ronda Laughlin
Executive Assistant to the President

RDS-6175.1

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-235 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises;
(b) At or in connection with college programs or 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 employee 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, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time they gain admission to the college through the last day of enrollment or award of any degree certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

(5) The student conduct officer or their designee has sole discretion, on a case-by-case basis, to bring a student conduct proceeding under this code for academic dishonesty. Nothing in this code precludes instructors and/or academic divisions or departments from imposing an academic sanction, 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 integrity policy, the course syllabus, and any applicable program handbook.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violation 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.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-245 Definitions. The following definitions shall apply for the purpose of this student conduct code.

(1) "Board" means the board of trustees of Bellingham Technical College.

(2) "Business day" means a weekday, excluding weekends and college holidays.

(3) "College premises" includes 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.

(4) "Complainant" means the following individuals who (~~are alleged to~~) have been subjected to conduct that would constitute (~~sex discrimination~~) discrimination or harassment:

(a) A student or employee; or

(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 or harassment.

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

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

(7) "Disciplinary appeal" is the process by which an aggrieved party can appeal the discipline imposed or recommended by the student conduct officer or their designee. 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 appealable disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

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

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

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

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

(9) "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 conditions.

(10) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

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

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

(13) "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 or harassment. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that (~~sex~~) discrimination and/or harassment has occurred.

(14) "Respondent" is a student who is alleged to have violated the student conduct code.

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

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

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

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

(16) "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 a "student" for purposes of this chapter.

(17) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(18) "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~~) sexual harassment, occurred while the individual was performing employment-related work.

(19) "Student group" is a student organization including, but not limited to, student clubs and organizations, members of a class or student cohort, and student performance groups.

(20) "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, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to (~~sex-based~~) discrimination and harassment.

(21) "Title IX coordinator" is the administrator responsible for processing complaints (~~(of sex discrimination, including sex-based harassment,)~~) and conducting or overseeing investigations and informal resolution processes in accordance with college policy.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-260 Statement of student rights. As members of the Bellingham Technical College 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 that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including (~~sex-based~~) 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 chapter.

(d) Students have the right to request disability-related accommodations through accessibility resources.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-265 Prohibited student conduct. The college may impose disciplinary sanctions against a student, student group, or a

college-sponsored student organization who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct((7)) which include, but are not limited to, the following:

(1) Abuse of others. Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) Abuse in later life.

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) Academic dishonesty. Any act of academic dishonesty including:

(a) Cheating - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

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

(c) Fabrication - 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) Deliberate damage - Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

(e) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course or dismissal from an academic program. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer or their designee for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(4) Acts of dishonesty. Acts of dishonesty include, but are not limited to:

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

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

(c) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(5) Alcohol. Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic

beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(6) Cannabis, drug, and tobacco violations.

(a) Cannabis. The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(b) 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.

(c) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 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.

(7) Cyber misconduct. Use of electronic communications, including, but not limited to, electronic mail, instant messaging, electronic 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.

(8) Disruption or obstruction. Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian 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.

(9) 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;

(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, ethnicity, creed, color, sex, gender identity or expression, citizenship or immigration status, national origin, age, religion, disability, veteran or milita-

ry status, sexual orientation, genetic information, the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, pregnancy, marital status, or any other characteristic 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.

(10) 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.

(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 their duties, including failure to properly identify oneself to such a person when requested to do so.

(12) 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.

(13) 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, or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious 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. Examples of hazing include, but are not limited to:

(a) 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;

(b) Humiliation by ritual act;

(c) Striking another person with an object or body part;

(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(14) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

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

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

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

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

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

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

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

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

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

(i) Failure to comply with the college's electronic use policy.

(16) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, theft, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(17) 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.

(18) Safety violations. Nonaccidental reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment, triggering false alarms or other emergency response systems.

(19) 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))~~ (b) Sexual violence. "Sexual violence" is a type of discrimination and harassment and includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) Nonconsensual sexual intercourse is any 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 (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))~~ is consensual sexual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.

(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, 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 un-

der 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:

(I) Fear for ((the person's)) their safety or the safety of others; or

(II) To suffer substantial emotional distress.

~~((b) Consent. For purposes of this code "consent"))~~ (c) Consent means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) 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.

(iii) 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.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

~~((c) 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, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.))~~

(20) 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.

(21) 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 housing,))~~ traffic~~((,))~~ and parking rules.

(22) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college

campus, and during college programming and activities, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view;

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission; or

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

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-280 Initiation of disciplinary action. (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) 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.

(b) Hazing by student groups. A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer or designee for disciplinary action.

(4) If a student conduct officer or designee determines that a complaint appears to state a violation of the student conduct code, the student conduct officer or designee will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the parties.

~~((a) Informal dispute resolution shall not be used to resolve sex discrimination complaints without written permission from both the complainant and the respondent.~~

~~(b))~~ If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer or designee has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer or designee may initiate disciplinary action against the respondent.

~~(6) ((Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.~~

~~(7))~~ All disciplinary actions will be initiated by the student conduct officer or their designee. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

~~((8))~~ (7) The student conduct officer or their designee shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

~~((9))~~ (8) At the meeting, the student conduct officer or designee 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 or designee may take disciplinary action based upon the available information.

(9) The student conduct officer or designee, prior to taking discipline action in a case involving allegations of sexual harassment, 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 harassment are found to have merit.

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

(11) The student conduct officer or designee may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC ~~((495B-121-265))~~ 495B-121-270 and 495B-121-275; 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.

(12) In cases involving allegations of sex discrimination, the student conduct officer (~~or their designee, 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 or their designee 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 or their designee for good cause.~~

~~(a) The complainant and respondent may either accept the student conduct officer's or their designee'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 may be verbal or written, but must be clearly communicated to the student conduct officer or their designee.~~

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

~~(e) In cases involving sex discrimination, the student conduct officer or designee 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 complaint'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 or their designee, the student conduct officer's or their designee'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 or their designee'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) If respondent is found responsible for engaging in sex discrimination, the Title IX coordinator or their designee 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.) will, on the same date the disciplinary decision is served on the respondent,~~

serve a written notice informing the complainant whether the allegations of sex discrimination were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the parties of their appeal rights. If disciplinary sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-285 Appeal from disciplinary action. (1) (~~Except as specified for cases involving allegations of sex-based harassment, as set forth in WAC 495B-121-280,~~) 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 student conduct code shall be stayed pending appeal, unless the respondent has been summarily suspended.

(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation; and

(c) Written reprimands; and

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

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

(a) Disciplinary suspensions in excess of 10 instructional days;

(b) Dismissals; and

(c) (~~Sex discrimination, including sex-based harassment cases;~~ and

~~(d))~~ Discipline cases referred to the committee by the student conduct officer or their designee, a conduct review officer, or the president.

(9) In cases involving allegations of sexual harassment, 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 harassment complaint; or

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

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

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

(12) The college may, in its sole discretion, contract with an administrative law judge or other qualified person(s) to act as the conduct review officer, authorized to exercise any or all duties of the conduct review officer.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-286 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 495B-121-265 (~~((13))~~).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization or association is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) 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.

(c) Student groups that knowingly permit 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.

(d) Student groups found responsible for violating the student conduct code, 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.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-295 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a con-

duct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

(a) An opportunity to be informed of the 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 the respondent and the student conduct officer within 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 10 business days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual harassment, 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 harassment were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

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

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-300 Brief adjudicative proceedings—Review of an 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 10 business days of service of the initial decision.

(2) The president shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decisions and must be served on the parties within 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 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual harassment, 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 harassment 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.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-310 Student conduct committee. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One administrative employee (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative employee appointed on a yearly basis shall serve as the chair of the committee and may act on preliminary hearing matters prior to convening the committee.

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness; 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 pursuant to RCW 34.05.425(4).

~~((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 shall 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(s), to act as presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.))~~

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-315 Student conduct committee—Prehearing. (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 business days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and may also continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

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

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

- (a) The conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer or their designee, upon request, shall provide reasonable assistance to the ~~((respondent and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer or designee no less than three business days in advance of the hearing. The student conduct officer or their designee shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witness to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision))~~ parties 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 proce-

dural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the student's expense.

(10) For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the ~~((college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing. The committee will ordinarily be advised by an assistant attorney general or their designee))~~ parties are entitled to an advisor of their choosing, who may be an attorney. If the respondent and/or complainant is represented by an attorney, the student conduct officer or their designee may also be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals.

(a) Notice. The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer, or designee, shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer, their designee, or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of ~~((sex-based))~~ sexual harassment, the following additional procedures apply:

(a) Notice. In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged ~~((sex-based))~~ sexual harassment;

- (ii) That the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial student conduct committee;
- (iii) That they may have an advisor of their choice, who may be an attorney, assist them during the hearing;
- (iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and
- (v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.
- (b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.
- (c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant has not otherwise identified an advisor to assist during the hearing.
- (d) Evidence. In advance of the hearing, the student conduct officer or their designee shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.
- (e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer, their designee, or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.
- (f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.
- (g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-320 Student conduct committee—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~~) location.

(3) The chair shall cause the hearing to be recorded by a method that they select, 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 or designee (unless represented by an assistant attorney general) shall present the college's case.

(6) All testimony shall be given under oath or affirmation. (~~Except as otherwise provided in this section,~~) 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. In such circumstances, the chair will determine whether the 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) The chair must determine whether any proposed question is relevant and not otherwise impermissible prior to the question being posed; 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 questions 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 in all cases 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.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-325 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the committee chair shall permit the parties to make closing arguments in whatever form, written or verbal, the committee 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 20 calendar days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall so be identified.

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

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their attorney, if any. The notice will inform the parties of their appeal rights. 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 (~~sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator~~) sexual harassment, 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 parties informing the parties whether the allegations of sexual harassment were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent, including suspension or dismissal of the respondent. The parties may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to the respondent. The notice will also inform the parties of their appeal rights.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-330 Student conduct committee—Review of initial decision. (1) Any party (~~, including a complainant in sex-based harassment cases,~~) who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall provide a written decision to all parties and their attorneys, if any, within 20 calendar days after receipt of the notice of appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of (~~sex-based~~) sexual harassment, the (~~president's decision must be served simultaneously on~~

the complainant, respondent, and Title IX coordinator)) 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 harassment 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.

(7) The president shall not engage in any "ex parte" communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-335 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety or welfare of members of the college community; or
- (c) Poses an ongoing threat of 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 business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

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

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

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

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

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion

of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

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

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

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

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

(6) In cases involving allegations of (~~sex-based~~) sexual harassment, 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.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 495B-121-351 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-230 through 495B-121-345, these supplemental procedures shall take precedence. Bellingham Technical 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 495B-121-356 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids,

abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily 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 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, RCW 26.55.010.

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

NEW SECTION

WAC 495B-121-361 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" includes locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This also includes any building owned or controlled by a student organization that is officially recognized by the college.

NEW SECTION

WAC 495B-121-366 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); and

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

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

(ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and

(f) Explain that if the party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 495B-121-371 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 WAC 495B-121-315. 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 495B-121-376 Rights of parties. (1) The college's student conduct procedures, WAC 495B-121-230 through 495B-121-345 and this supplemental procedure shall apply equally to all parties.

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

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

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

NEW SECTION

WAC 495B-121-381 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 questions based on lack of relevance.

(a) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(b) 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:

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

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

(2) 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.

(3) 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 communications and attorney work product privilege;
- (c) Clergy privileges;
- (d) Medical or mental health providers and counselor privileges;
- (e) Sexual assault and domestic violence advocate privileges; and
- (f) Other legal privileges set forth in RCW 5.60.060 or federal law.

NEW SECTION

WAC 495B-121-386 Initial order. (1) In addition to complying with WAC 495B-121-325, 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 terms or conditions imposed against the respondent, if any;
 - (g) Describes to what extent, if any, the complainant is entitled to remedies designed to restore or preserve the complainant's equal access to the college educational programs or activities; and
 - (h) Describe the process for appealing the initial order to the college president.
- (2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 495B-121-391 Appeals. (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or in part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 calendar days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain arguments as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president or designee will promptly serve a copy of the appeal on all nonappealing parties,

who shall have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or designee. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the response to the other parties.

(3) Parties receiving a copy of the responses shall have five business days in which to submit a written reply addressing issues raised in the response to the president's office.

(4) The president or their designee, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions terms and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions terms and conditions.

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

(6) All administrative decisions reached through this process shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.