

**STUDENT CONDUCT CODE AND HEARING PROCEDURES**  
*Chapter 495E-110 WAC*

**HEARING PROCEDURES**

**Statement of jurisdiction (WAC 495E-110-050)**

The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. 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.

**Definitions (WAC 495E-110-060)**

The following definitions shall apply for purpose of this student conduct code:

- (1) "Business day" means a week-day, excluding weekends and college holidays.
- (2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.
- (3) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this Chapter as may be reasonably necessary.
- (4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.
- (5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten (10) instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.
- (6) "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.

- (7) “Respondent” is the student against whom disciplinary action is initiated.
- (8) “Service” is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:
  - (a) hand-delivery of the document to the party; or
  - (b) sending the document by 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.
- (9) “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, non-credit courses, on-line courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered “students.”
- (10) “Student conduct officer” is a college administrator designated by the president or vice president of student services to be responsible for implementing and enforcing the student conduct code. The president or vice president of student services is authorized to reassign any and all of the student conduct officer’s duties or responsibilities as set forth in this Chapter as may be reasonably necessary.
- (11) “The president” is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this Chapter as may be reasonably necessary.

#### **Initiation of disciplinary actions (WAC 495E-110-070)**

- (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.
- (2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting the student conduct officer may take disciplinary action based upon the available information.
- (3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student

conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

- (4) The student conduct officer may take any of the following disciplinary actions:
  - (a) Exonerate the respondent and terminate the proceedings.
  - (b) Impose a disciplinary sanction(s), as described in WAC 495E-110-040.
  - (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.

#### **Appeal from disciplinary action (WAC 495E-110-080)**

- (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one (21) 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 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 respondent has been summarily suspended.
- (7) The student conduct committee shall hear appeals from:
  - (a) the imposition of disciplinary suspensions in excess of ten (10) instructional days;
  - (b) dismissals; and
  - (c) discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.
- (8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:
  - (a) suspensions of ten instructional days or less;
  - (b) disciplinary probation;
  - (c) written reprimands; and
  - (d) any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.
- (9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

#### **Brief adjudicative proceedings – initial hearing (WAC 495E-110-090)**

- (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is 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) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the agency's view of the matter and (b) an opportunity to explain the party's view of the matter.
- (3) The conduct review officer shall serve an initial decision upon both the parties within ten (10) days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one (21) days of service of the initial decision, the initial decision shall be deemed the final decision.
- (4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten (10) instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### **Brief adjudicative proceedings – review of an initial decision (WAC 495E-110-100)**

- (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one (21) days of service of the initial decision.
- (2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.
- (3) During the review, the president shall give each party 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 decision and must be served on the parties within twenty (20) days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty (20) days after the request is submitted.
- (5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten (10) instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### **Student Conduct Committee (WAC 495E-110-110)**

- (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 administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.
- (2) The faculty member or administrator shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

- (3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.
- (4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, 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\(4\)](#).

#### **Appeal – student conduct committee (WAC 495E-110-120)**

- (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedures Act, Chapter 34.05 RCW, and by the Model Rules of Procedure, Chapter 10-08 WAC. To the extent there is a conflict between these rules and Chapter 10-08 WAC, these rules shall control.
- (2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in [RCW 34.05.434](#) and [WAC 10-08-040](#) and [10-08-045](#). The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.
- (3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.
- (4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.
- (5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.
- (6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.
- (7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.
- (8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.
- (9) Each party may be accompanied at the hearing by a non-attorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four (4) business days before the hearing, written notice of the attorney's identity and

participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

#### **Student conduct committee hearings – presentations of evidence (WAC 495E-110-130)**

- (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 an decision of default in accordance with [RCW 34.05.440](#).
- (2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.
- (3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with [RCW 34.05.449](#). That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by [RCW 34.05.476](#), which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with [WAC 10-08-190](#).
- (4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.
- (5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.
- (6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with [RCW 34.05.452](#).

#### **Student conduct committee – initial decision (WAC 495E-110-140)**

- (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.
- (2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with [RCW 34.05.461](#) and [WAC 10-08-210](#). The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

- (3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.
- (4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

#### **Appeal from student conduct committee initial decision (WAC 495E-110-150)**

- (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office or designee within twenty-one (21) days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.
- (2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.
- (3) The president shall provide a written decision to all parties within forty-five (45) days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.
- (4) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

#### **Summary suspension (WAC 495E-110-160)**

- (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.
- (2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:
  - (a) Has violated any provision of the code of conduct; and
  - (b) Presents an immediate danger to the health, safety or welfare of members of the college community; or
  - (c) Poses an ongoing threat of 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 that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.
- (5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.
- (6) 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.
- (7) 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.
- (8) If the student 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.
- (9) 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.
- (10) 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.



## **BRIEF ADJUDICATIVE PROCEEDINGS (BAPs) AUTHORIZATION**

### **Brief adjudicative proceedings authorized (WAC 495E-110-210)**

This rule is adopted in accordance with [RCW 34.05.482](#) through [34.05.494](#). Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

- (1) Parking violations.
- (2) Outstanding debts owed by students or employees.
- (3) Use of college facilities.
- (4) Residency determinations.
- (5) Use of library—Fines.
- (6) Challenges to contents of education records.
- (7) Loss of eligibility for participation in institution sponsored athletic events.
- (8) Student conduct appeals involving the following disciplinary actions:
  - (a) suspensions of ten (10) instructional days or less;
  - (b) disciplinary probation;
  - (c) written reprimands;
  - (d) any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
  - (e) appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:
    - (i) dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or
    - (ii) issues a verbal warning to respondent.
- (9) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

### **Brief adjudicative proceedings – agency record (WAC 495E-110-220)**

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

## SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

### NEW SECTION

**WAC 495E-110-230 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 college's standard disciplinary procedures, WAC 495E-110-010 through 495E-110-220, these supplemental procedures shall take precedence.

### NEW SECTION

**WAC 495E-110-240 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 college on an individual's participation in unwelcome sexual conduct.

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

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

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

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

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half

related. Descendant includes stepchildren and adopted children under the age of eighteen.

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

#### NEW SECTION

**WAC 495E-110-250 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

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

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

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 495E-110-030.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdic-

tion and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

**WAC 495E-110-260 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.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

**WAC 495E-110-270 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 495E-110-120. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

NEW SECTION

**WAC 495E-110-280 Rights of parties.** (1) The college's student conduct procedures 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 495E-110-290 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

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

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

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

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

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

**WAC 495E-110-300 Initial order.** (1) In addition to complying with WAC 495E-110-140, the student conduct committee will be responsible for conferring and drafting an initial order that:

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

NEW SECTION

**WAC 495E-110-310 Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495E-110-150.

- (2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).
- (3) The president's office shall serve the final decision on the parties simultaneously.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 495E-110-170 Supplemental sexual misconduct procedures.
- WAC 495E-110-180 Supplemental definitions.

WAC 495E-110-190 Supplemental complaint process.  
WAC 495E-110-200 Supplemental appeal rights.