

WSR 21-07-004
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 4, 2021, 9:09 a.m., effective April 4, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is adopting WAC 388-447-0130 What referral to the housing and essential needs (HEN) program rules may the department implement during a state of emergency?, and 388-449-0230 What aged, blind, or disabled (ABD) program rules may the department implement during a state of emergency?, to mitigate impacts ABD and HEN referral program clients and their medical providers during the coronavirus (COVID-19) pandemic and future States of Emergency.

Citation of Rules Affected by this Order: New WAC 388-447-0130 and 388-449-0230.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.09.530, 74.08A.100.

Adopted under notice filed as WSR 20-23-075 on November 16, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: March 3, 2021.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-447-0130 What referral to the housing and essential needs (HEN) program rules may the department implement during a state of emergency? During a declared state of emergency, the department may implement the following rules to help mitigate impacts to clients:

(1) Postpone review of your HEN referral program eligibility beyond the twelve month period if the department determines you are not eligible for the aged, blind, or disabled (ABD) program at the time of your incapacity review. The postponement of this review may occur retroactively to the date the governor declares a state of emergency.

(2) Accept a diagnosis of a medically determinable impairment from a "supplemental medical evidence" source

in subsection (2) of WAC 388-447-0005, or the predictive risk intelligence system (PRISM).

(3) Accept functional medical evidence beyond ninety days of the date of application or incapacity review, or otherwise waive the requirement of WAC 388-447-0010 (3)(c) in its entirety.

(4) Suspend or waive eligibility review requirements detailed in WAC 388-434-0005 for referral to the HEN program.

(5) Suspend or waive mid-certification review requirements detailed in WAC 388-418-0001 for referral to the HEN program.

NEW SECTION

WAC 388-449-0230 What aged, blind, or disabled (ABD) program rules may the department implement during a state of emergency? During a declared state of emergency, the department may implement the following rules to help mitigate impacts to clients:

(1) Postpone review of your ABD cash eligibility beyond the twenty-four month period required in WAC 388-449-0150. The postponement of this review may occur retroactively to the date the governor declares the state of emergency.

(2) Accept a diagnosis of a medically determinable impairment from a "treating medical source" in subsection (2) of WAC 388-449-0010, or the predictive risk intelligence system (PRISM).

(3) Accept functional medical evidence beyond ninety days of the date of application or forty-five days before the month of disability review, or otherwise waive the requirement of WAC 388-449-0015 (3)(e) in its entirety.

(4) Suspend or waive eligibility review requirements detailed in WAC 388-434-0005 for the ABD program.

(5) Suspend or waive mid-certification review requirements detailed in WAC 388-418-0001 for the ABD program.

WSR 21-07-005

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 4, 2021, 10:17 a.m., effective April 4, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This updates the rules for consumption of alcohol in university apartments. It also modifies the restrictions on the service and consumption of alcohol at university sponsored events off campus.

Citation of Rules Affected by this Order: Amending WAC 172-64-010, 172-64-020, 172-64-030, 172-64-040, and 172-64-070.

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

Adopted under notice filed as WSR 21-01-169 on December 21, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 5, 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 26, 2021.

Annika Scharosch
Associate Vice President for
Civil Rights, Compliance
and Enterprise Risk Management

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-010 Policy. Alcoholic beverages may be possessed, sold, served, and/or consumed on university owned or operated property and/or at university sponsored events and activities only as provided for in this chapter.

EWU prohibits the unlawful possession, use, consumption or distribution of alcohol by students, employees, or visitors on university property or during any university-sponsored program or activity, whether held on or off campus. Members of the university community are responsible for complying with these rules as well as all state laws regarding the use, possession and/or distribution of alcohol.

The university will respond to reported or suspected violations of these rules and take appropriate action, up to and including referral to law enforcement agencies for criminal prosecution.

University employees, students, and student organizations are subject to disciplinary action for violations of these rules and associated state laws, local ordinances, and university policies.

AMENDATORY SECTION (Amending WSR 15-14-077, filed 6/29/15, effective 7/30/15)

WAC 172-64-020 Alcohol use in university residence halls. (1) Applicability. This section establishes rules for alcoholic beverages in residence halls that are owned or operated by Eastern Washington University.

(2) General policy. Persons, who are at least twenty-one years old, may possess and consume alcoholic beverages in the privacy of individual residence hall rooms subject to the requirements of this section.

(3) Restrictions.

(a) Consumption of alcoholic beverages is prohibited in any areas of residence halls outside of individual rooms including, but not limited to, hallways, entrances, corridors, lounges, and reception areas.

(b) Doors to individual residence hall rooms must remain closed while alcohol is being consumed.

(c) Kegs, common source containers, and nonalcoholic brews such as "near beer" are prohibited.

(d) Selling or providing alcohol to minors is prohibited.

(e) Alcohol is prohibited in any residence hall room where any student living in the room is under twenty-one years old, regardless of whether the under-age student is present or not.

(f) Alcohol may not be consumed in any room where any person present is under twenty-one years old.

(g) Alcohol may not be consumed in any area designated as alcohol-free housing.

(h) Residents in Brewster Hall or the apartments, who are at least twenty-one years old, may have alcohol in their individual room but not in their common room areas if any of their suitemates are under twenty-one except for approved family housing.

(i) Vendors may not deliver alcohol to residence halls or any other campus area except as provided for in WAC 172-64-090.

(j) Alcohol must not be visible to the public when carried into a residence hall.

(k) Alcohol containers may not be used as decorative pieces in residence halls.

(l) Students shall comply with reasonable requests by university staff to provide identification, proof of age, and/or show contents of a container when requested.

(m) Possession and consumption of alcohol in the privacy of individual residence hall rooms must not infringe on the privacy and peace of other individuals.

(n) Residence hall or housing funds may not be used to purchase alcoholic beverages.

(4) Alcohol-free housing. Per RCW 28B.10.575, the university shall notify all students applying for student housing of the availability of housing where all alcoholic beverage use is prohibited. The university shall accommodate student requests for alcohol-free housing.

(5) Awareness. The university shall distribute to students in university residence halls the process for reporting violations and complaints of alcohol and illegal drug use, the policies and procedures for investigating such complaints, and sanctions that may be applied for violations of the institution's alcohol and illegal drug use policies.

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-030 Alcohol use in private university residences. Persons of legal age may possess, consume, and/or serve alcohol inside university-owned buildings other than residence halls or the apartments when the buildings are being used as private residence, such as (~~university apartments and~~) the University House.

AMENDATORY SECTION (Amending WSR 15-14-077, filed 6/29/15, effective 7/30/15)

WAC 172-64-040 Alcohol use at on-campus events and events off-campus that are sponsored by the university. (1) (~~Applicability~~) **On university property.** This section establishes rules for possessing, consuming, selling, and/or serving alcoholic beverages(~~:~~

~~(a) At events~~) on university-owned or operated property, regardless of whether ~~((the))~~ an event is sponsored by the university and regardless of whether event sponsors are affiliated with the university~~((; and~~

~~(b) At off campus events that are sponsored, in whole or in part, by the university.~~

~~(2) An event is considered to be sponsored by the university when the event is organized and/or staffed by university students or employees or when the event is funded, in whole or in part, by the university).~~

~~((3)) (a) Sponsor requirements. Sponsors of an event((; as described in subsection (1) of this section.)) where alcohol is to be possessed, sold, served and/or consumed, must comply with the following requirements:~~

~~((a)) (i) Obtain written permission from the appropriate official(s) in advance of the event:~~

~~((b)) (A) Student clubs and organizations must obtain permission from the student activities office;~~

~~((c)) (B) For all other requests, sponsors must obtain permission from the vice president for business and finance or designee;~~

~~((d)) (ii) Contact event planning to request a banquet permit or a special occasion license per WAC 172-64-070;~~

~~((e)) (iii) Comply with all Washington state laws, chapter 172-64 WAC, all other university rules and policies; and any additional instructions provided to the event/activity sponsor as a condition of approval;~~

~~((f)) (iv) Ensure Washington state alcohol serving requirements are enforced:~~

~~((g)) (A) Event sponsors must ensure that all persons designated to serve alcohol are at least twenty-one years old and have received alcohol server training((-);~~

~~((h)) (B) Event sponsors must ensure that servers check ID and do not serve alcohol to any person who is under twenty-one years old or who appears intoxicated;~~

~~((i)) (v) Prohibit serving alcohol during normal, university business hours unless an exception has been granted as part of the request under (a)(i) of this subsection;~~

~~((j)) (vi) Prohibit persons from bringing alcoholic beverages into the event unless specifically authorized by the banquet permit or special occasion license;~~

~~((k)) (vii) Prohibit persons from taking alcoholic beverages outside of the approved alcohol use area, except for beer/wine in the original unopened container that is sold or auctioned for off-premises consumption as specifically authorized by a special occasion license;~~

~~((l)) (viii) Provide food or snacks and nonalcoholic beverages at the same place as alcoholic beverages and feature nonalcoholic beverages at least as prominently as alcoholic beverages; ~~(and~~~~

~~(i) For an event on university-owned or operated property.)) (ix) Inform university police of the event and consult with the university police about appropriate security measures ((as provided for in subsection (5) of this section)).~~

~~((4)) The university police shall determine appropriate security measures to be taken for on-campus events where alcohol is to be possessed, consumed, sold, and/or served. University police shall coordinate with the event's sponsor and appropriate university personnel to assist in compliance with state laws and university rules; and~~

~~(x) Gifts, awards, and rewards. Alcoholic beverages may not be provided as gifts or awards to any person as part of any event conducted under a special occasion license.~~

~~(2) **Publicity and advertising of events on campus and off campus.** The following rules apply to any events on university-owned or operated property as well as university-sponsored events off campus.~~

~~(a) Events conducted under a banquet permit are by invitation only and may not be advertised to the public.~~

~~(b) All announcements and advertisements concerning an event including, but not limited to, flyers, notices, posters, banners, tee-shirts and newspaper and radio announcements, must:~~

~~(i) Note the availability of nonalcoholic beverages at least as prominently as the availability of alcoholic beverages;~~

~~(ii) State that proper identification is required in order to be served or sold alcoholic beverages; and~~

~~(iii) Not make reference to the amount of alcoholic beverages available at the event.~~

~~(c) All announcements and advertisements, as well as any promotions of specific alcoholic beverage brands at the event:~~

~~(i) Must not make reference to any form of drinking contest. Drinking contests and similar activities which encourage the rapid and/or excessive consumption of alcoholic beverages are prohibited;~~

~~(ii) Must not portray drinking as a solution to personal or academic problems or as necessary to social, sexual, or academic success; and~~

~~(iii) Must not encourage any form of alcohol abuse or place emphasis on quantity or frequency of consumption.~~

~~((5) Gifts, awards, and rewards. Alcoholic beverages may not be provided as gifts or awards to any person as part of any event conducted under a special occasion license.~~

~~(6) Security measures. The university police shall determine appropriate security measures to be taken for on-campus events where alcohol is to be possessed, consumed, sold, and/or served. University police shall coordinate with the events' sponsor and appropriate university personnel to assist in compliance with state laws and university rules.)) (3) **University-sponsored events off campus.**~~

~~(a) All university-sponsored events involving the consumption of alcohol must take place outside of normal university business hours unless permission is obtained in advance from the vice president for business and finance or designee.~~

~~(b) If a university sponsored event is hosted off campus at the site of a private vendor, individuals may purchase alcohol from the private vendor. The private vendor is responsible for complying with all relevant state and local laws.~~

~~(c) If a university sponsored event is hosted off campus at an employee's private residence, university employees are prohibited from serving or providing alcohol to any university students.~~

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-070 Banquet permits and special occasion licenses. A banquet permit or a special occasion license must be obtained in order to permit alcoholic beverages to be possessed, sold, served, and/or consumed on university owned or operated property and/or at university-sponsored events and activities.

Banquet permits and special occasion licenses have specific rules concerning alcohol serving, sales (including raffles and gifts), event advertising, and related issues as contained in chapters 314-05 and 314-18 WAC.

Event organizers must contact EWU event planning to initiate the process for obtaining a banquet permit or special occasion license. Banquet permits and special occasion licenses are issued by the Washington state liquor ~~((control))~~ and cannabis board.

WSR 21-07-010

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 4, 2021, 11:43 a.m., effective April 4, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This is a new chapter that sets forth information about financial aid, scholarships, and tuition waivers at Eastern Washington University.

Citation of Rules Affected by this Order: New WAC 172-11-010, 172-11-030, and 172-11-040.

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

Adopted under notice filed as WSR 21-01-170 on December 21, 2020.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 3, 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 26, 2021.

Annika Scharosch
Associate Vice President for
Civil Rights, Compliance
and Enterprise Risk Management

Chapter 172-11 WAC

FINANCIAL AID, SCHOLARSHIPS AND WAIVERS

NEW SECTION

WAC 172-11-010 Authority. Pursuant to the authority granted by RCW 28B.35.120 and chapter 28B.15 RCW, the board of trustees of Eastern Washington University has established the following regulations regarding registration.

NEW SECTION

WAC 172-11-030 Financial aid and scholarship information. Federal, state, and private financial aid applications and information about scholarships may be obtained from:

Eastern Washington University
Financial Aid & Scholarships Office
102 Sutton Hall
333 Eagle Lane
Cheney, WA 99004

Federal and state aid will be awarded in accordance with applicable federal and state laws and regulations.

NEW SECTION

WAC 172-11-040 Waiver of tuition. (1) The board of trustees is authorized to grant tuition waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. A number of these statutes authorize, but do not require, the board of trustees to grant waivers for different categories of students and provide waivers of different fees. For waivers that are authorized but not required by state law, the board of trustees delegates to the president or designee the authority to implement voluntary tuition waivers. The permissive waivers that EWU has implemented are identified below. A list of permissive waivers and mandatory waivers is available from EWU's financial aid and scholarships office. These waivers may be modified at any time. Eligibility is based on the term for which the student is seeking a waiver and both the waiver and eligibility criteria may be subsequently modified or revoked with or without notice to a student. Awarding of a waiver for one term is not a guarantee that the waiver will be awarded in a subsequent term.

(2) Even if EWU has implemented a permissive waiver, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to all students who may be eligible under the terms of the laws due to funding limitations and enrollment strategies. The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiative to modify enrollment demand for specific programs, and management decisions regarding the array of academic programs offered. The university may choose not to exercise the full funding authority granted

under RCW 28B.15.910 and may limit the total funding available under RCW 28B.15.915.

(3) Pursuant to RCW 28B.15.910, EWU adopts the following tuition waivers with the following limitations. These limitations are in addition to any limitations set forth in state or federal law.

(a) RCW 28B.15.014(1);

(b) RCW 28B.15.014(2). Waivers under this subsection for the nonresident tuition fee differential shall be restricted to three quarters within the first year from the employee's initial date of employment with EWU. The employee must be employed on or before the first day of the quarter for which the waiver is requested;

(c) RCW 28B.15.544. Applicants must meet initial enrollment and academic eligibility requirements available on the financial aid office's website;

(d) RCW 28B.15.556. Limitations are included in specific student exchange agreements;

(e) RCW 28B.15.558. All waivers authorized by RCW 28B.15.558 shall be subject to additional limitations as determined by the university. The details of EWU's program of tuition waivers for state, teachers and other certificated instructional staff, and K-12 classified staff are set forth in EWU Policy 409-04. As authorized by RCW 28B.15.558(5), waivers may be awarded to eligible EWU employees before considering waivers for eligible persons who are not employed by EWU. These waivers are not available for self-support courses or individualized instruction;

(f) RCW 28B.15.615;

(g) RCW 28B.15.621(2). This waiver is limited to Washington residents who are enrolled full-time and pursuing their first undergraduate degree and is only a partial waiver. Information about eligibility for this waiver is available on the financial aid office's website. To qualify as an eligible veteran or National Guard member, the person seeking the waiver must provide proof of domicile in Washington state and either a DD Form 214 or other documentation establishing they meet the criteria in RCW 28B.15.621(8);

(h) RCW 28B.15.740 (1) and (2); and

(i) RCW 28B.70.050.

(4) Any waivers identified in subsection (3) of this section only apply to the operating portion of tuition for state supported courses or programs, unless otherwise required by law. They do not apply to self-support courses or programs.

(5) Additional procedures and requirements for the waivers identified in subsection (3) of this section may be included in EWU policies. EWU may offer additional waivers at its discretion under RCW 28B.15.915.

(6) Information about fee waivers is available from Student Financial Services, 202 Sutton Hall, Cheney, WA 99004, phone 509-359-6372.

Purpose: The agency is adopting these rules to implement the requirements of SHB 2728 (66th legislature, 2020 regular session). SHB 2728 requires the agency to assess and collect costs to operate and administer the partnership lines established by that legislation.

Citation of Rules Affected by this Order: New WAC 182-110-0100, 182-110-0200, 182-110-0300, 182-110-0400, and 182-110-0500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 71.24.061, 71.24.062.

Adopted under notice filed as WSR 21-03-074 on January 19, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental 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 5, Amended 0, 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 5, Amended 0, Repealed 0.

Date Adopted: March 4, 2021.

Wendy Barcus
Rules Coordinator

Chapter 182-110 WAC

PARTNERSHIP ACCESS LINE AND PSYCHIATRIC CONSULTATION LINE

NEW SECTION

WAC 182-110-0100 General. (1) The Washington state health care authority (authority), the University of Washington department of psychiatry and behavioral sciences, and Seattle children's hospital administer the partnership access lines described in RCW 71.24.061, relating to mental health services for children and the treatment of depression in pregnant women and new mothers.

(2) The authority and the University of Washington department of psychiatry and behavioral sciences administer the psychiatric consultation line described in RCW 71.24.062 to give certain providers on-demand access to psychiatric and substance use disorder clinical consultation for adult patients.

(3) The authority or its designee:

(a) Determines the administrative costs for each program identified in subsections (1) and (2) of this section;

(b) Calculates the proportion of clients that are covered by programs administered under chapter 74.09 RCW; and

(c) Collects a proportionate share of program costs that are not for covered lives from the assessed entities under con-

WSR 21-07-013

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed March 4, 2021, 3:45 p.m., effective April 4, 2021]

Effective Date of Rule: Thirty-one days after filing.

tract with the authority as medicaid managed care organizations.

NEW SECTION

WAC 182-110-0200 Definitions. For the purposes of this chapter:

- (1) "Assessed entity" means:
- (a) Health carriers, as defined in RCW 48.43.005;
 - (b) Self-funded multiple employer welfare arrangements, as defined in RCW 48.125.010; and
 - (c) Employers or other entities that provide health care in Washington, including self-funding entities or employee welfare benefit plans.
- (2) "Covered lives" means a Washington resident who is covered by an assessed entity, including an enrollee, subscriber, policyholder, beneficiary of a group plan, or person covered by any other health plan.

NEW SECTION

WAC 182-110-0300 Registration requirements. (1) An assessed entity must register with the authority or its designee and provide the required contact information. Reporting entities must comply with the authority's or its designee's processes for registering and submitting data, as outlined in the data submission guide published on the authority's or its designee's website.

(2) Reregistration is required only if there is a change in the contact information previously provided. Assessed entities are responsible for maintaining current and accurate contact information with the authority or its designee.

(3) Failure to register and provide or maintain accurate contact information with the authority or its designee may result in an assessed entity's inability to submit required data in compliance with this chapter.

NEW SECTION

WAC 182-110-0400 Data reporting. (1) Beginning July 1, 2021, no later than the end of forty-five calendar days after the end of each calendar quarter, an assessed entity must submit to the authority or its designee, in the required format, the total number of Washington resident covered lives for each calendar month from the prior quarter.

(2) An assessed entity must immediately notify the authority or its designee if it identifies a covered lives reporting error.

(3) Each assessed entity must collect and maintain the data in a manner consistent with applicable state and federal health information privacy laws.

(4) Failure to report accurate data to the authority or its designee may result in an assessed entity's inability to maintain compliance with this chapter.

NEW SECTION

WAC 182-110-0500 Assessment. Each assessed entity receives a quarterly invoice for its share of the total amount of program costs that are for the proportion of the entity's covered lives. Entities must timely send payment to fund the

partnership access lines described in RCW 71.24.061 and the psychiatric consultation line described in RCW 71.24.062.

WSR 21-07-019
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-15—Filed March 5, 2021, 1:11 p.m., effective April 5, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Washington department of fish and wildlife (WDFW) reclassified the Oregon vesper sparrow as endangered in WAC 220-610-010 Wildlife classified as endangered species. The estimated population of the Oregon vesper sparrow in Washington is approximately three hundred birds, with most (~75%) of them on a single site, Joint Base Lewis-McChord's 91st Division Prairie.

We have classified the Oregon vesper sparrow as endangered in the state of Washington under WAC 220-610-010. With this change it will include the additional regulation and enforcement of wildlife classified as endangered identified in RCW 77.15.120. WDFW will be working on a recovery plan for the species according to WAC 220-610-110.

Citation of Rules Affected by this Order: Amending WAC 220-610-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020.

Adopted under notice filed as WSR 21-01-187 on December 21, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, 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 12, 2021.

Larry M. Carpenter, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 19-13-013, filed 6/7/19, effective 7/8/19)

WAC 220-610-010 Wildlife classified as endangered species. Endangered species include:

Common Name	Scientific Name
<u>Oregon vesper sparrow</u>	<u><i>Pooecetes gramineus affinis</i></u>
pygmy rabbit	<i>Brachylagus idahoensis</i>

Common Name	Scientific Name
fisher	<i>Pekania pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
killer whale	<i>Orcinus orca</i>
sei whale	<i>Balaenoptera borealis</i>
fin whale	<i>Balaenoptera physalus</i>
blue whale	<i>Balaenoptera musculus</i>
humpback whale	<i>Megaptera novaeangliae</i>
North Pacific right whale	<i>Eubalaena japonica</i>
sperm whale	<i>Physeter macrocephalus</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
Columbian sharp-tailed grouse	<i>Tympanuchus phasianellus columbianus</i>
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>Charadrius nivosus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
western pond turtle	<i>Clemmys marmorata</i>
leatherback sea turtle	<i>Dermochelys coriacea</i>
mardon skipper	<i>Polites mardon</i>
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>
Oregon spotted frog	<i>Rana pretiosa</i>
northern leopard frog	<i>Rana pipiens</i>
Taylor's checkerspot	<i>Euphydryas editha taylora</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
Tufted puffin	<i>Fratercula cirrhata</i>
North American lynx	<i>Lynx canadensis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
Loggerhead sea turtle	<i>Caretta caretta</i>
Yellow-billed cuckoo	<i>Coccyzus americanus</i>
Pinto abalone	<i>Haliotis kamtschatkana</i>

of health repealed the AIDS prevention and education requirements rules from chapter 246-12 WAC also in support of ESHB 1551. These rules detailed the definitions, acceptable education and training, and documentation requirements for health professionals and employees concerning AIDS.

ESHB 1551 repeals statutes concerning AIDS education and training for emergency medical personnel, health professionals, and health care facility employees in an effort to help reduce stigma towards people living with HIV by not singling out AIDS as an exceptional disease that requires specific training and education separate from other health conditions. The requirement for physical therapists and physical therapist assistants to specifically complete seven hours of AIDS education and training prior to being issued a license is repealed.

Citation of Rules Affected by this Order: Repealing WAC 246-915-110.

Statutory Authority for Adoption: RCW 18.74.023.

Other Authority: ESHB 1551 (chapter 76, Laws of 2020).

Adopted under notice filed as WSR 20-20-103 on October 5, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental 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 0, Amended 0, 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 1.

Date Adopted: March 8, 2021.

Kathryn L. Dale, PT
Board Chair

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-915-110 AIDS education and training.

WSR 21-07-021

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed March 8, 2021, 11:09 a.m., effective April 8, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The board of physical therapy is repealing WAC 246-915-110 AIDS education and training, in support of ESHB 1551 (chapter 76, Laws of 2020). The department

WSR 21-07-039

PERMANENT RULES

CRIMINAL JUSTICE

TRAINING COMMISSION

[Filed March 10, 2021, 2:09 p.m., effective April 10, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To update the contact information regarding public records.

Citation of Rules Affected by this Order: Amending WAC 139-02-040 and 139-02-050.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 20-22-014 on October 22, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, 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: March 10, 2021.

Derek Zable
Government Affairs
and Records Officer

AMENDATORY SECTION (Amending WSR 09-13-066, filed 6/16/09, effective 7/17/09)

WAC 139-02-040 Public records officer. (1) The Washington state criminal justice training commission is the state training academy for law enforcement and corrections professionals. The Washington state criminal justice training commission's campus is located in Burien, WA at 19010 1st Avenue South. The Washington state criminal justice training commission has a fiscal office in Lacey, WA located at 3060 Willamette Drive N.E.

(2) Any person wishing to request access to public records of the Washington state criminal justice training commission, or seeking assistance in making such a request, should contact the public records officer of the Washington state criminal justice training commission:

Public Records Officer
Washington State Criminal Justice Training Commission

MS: TB-35
19010 1st Avenue South
Burien, WA 98148
Phone: 206-835-7300
(Fax: 206-835-7924)

Email: ((publicrecords@cjte.state.wa.us)) Recordsrequests@cjtc.wa.gov

Information is also available at the Washington state criminal justice training commission's website at ((www.cjte.state.wa.us)) cjtc.wa.gov.

(3) The public records officer will oversee compliance with the act, but another Washington state criminal justice training commission staff member may process the request. Therefore, these rules will refer to the public records officer

or designee. The public records officer or designee and the Washington state criminal justice training commission will provide the fullest assistance to requestors; create and maintain for use by the public and Washington state criminal justice training commission officials an index to public records of the Washington state criminal justice training commission; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Washington state criminal justice training commission.

AMENDATORY SECTION (Amending WSR 09-13-066, filed 6/16/09, effective 7/17/09)

WAC 139-02-050 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the Washington state criminal justice training commission; 8:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. Records must be inspected at the offices of the Washington state criminal justice training commission.

(2) **Records index.** An index of public records is available for use by members of the public. The index includes a list of current manuals of the Washington state criminal justice training commission, a current list of laws, other than those listed in chapter 42.56 RCW, that exempts or prohibits disclosure of specific information or records, and current Washington Administrative Code agency rules. The index may be accessed online at ((www.cjte.state.wa.us)) cjtc.wa.gov or at the Washington state criminal justice training commission in Burien.

(3) **Organization of records.** The Washington state criminal justice training commission maintains its records in a reasonably organized manner and takes reasonable actions to protect records from damage and disorganization. A requestor shall not take Washington state criminal justice training commission records from Washington state criminal justice training commission offices without the permission of the public records officer or designee. Records may be available on the Washington state criminal justice training commission website at ((www.cjte.state.wa.us)) cjtc.wa.gov. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or obtain copies of public records of the Washington state criminal justice training commission shall make the request in writing using the Washington state criminal justice training commission request form, or by letter, ((fax)) or email addressed to the public records officer. Each request should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and/or an email address; and
- Identification of the public records adequate for the public records officer or designee to locate the records.

(b) If requestors wish to inspect rather than obtain copies of records, they must indicate this preference in their

requests. Pursuant to WAC 139-02-070, standard photocopies are provided at fifteen cents per page, plus postage.

WSR 21-07-044
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 11, 2021, 8:29 a.m., effective April 11, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Deferred compensation program (DCP) distributions, to clarify distribution rules for DCP customers who return to covered employment.

Citation of Rules Affected by this Order: Amending WAC 415-501-485.

Statutory Authority for Adoption: RCW 41.50.030 and 41.50.050.

Adopted under notice filed as WSR 21-04-141 on February 3, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, 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: March 10, 2021.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 20-17-006, filed 8/5/20, effective 9/5/20)

WAC 415-501-485 How do I obtain a distribution?

Distribution from the plan is governed by Internal Revenue Code Sections 401 (a)(9) and 457(d); the treasury regulations interpreting these sections; and these rules to the extent they are not inconsistent with the Internal Revenue Code. The options for distribution are available from the department's designated record keeper.

(1) **Date of distribution.** You may choose the date on which to begin distribution from your deferred compensation account, subject to the requirements in (a) through (c) of this subsection.

(a) **Earliest date.** You may not begin distribution prior to your termination of employment, with the following exceptions:

(i) A distribution for an unforeseeable emergency under WAC 415-501-510;

(ii) A voluntary in-service distribution under subsection (4) of this section;

(iii) A distribution from funds that were rolled into the deferred compensation account (may be subject to tax penalties); or

(iv) An in-service distribution in any calendar year in which you will reach age seventy and one-half or more.

(b) **Latest date.** You must begin distribution on or before April 1st of the calendar year following the latter of:

(i) The calendar year in which you reach age seventy-two; or

(ii) The calendar year in which you retire.

(c) If you do not choose a distribution date, the department will begin distribution according to the minimum distribution requirements in IRC Section 401 (a)(9).

(2) **Method of distribution.** Payment options include a lump sum payment, partial lump sum payment, ~~(periodic)~~ installment payments, or an annuity purchase.

Beginning at age seventy-two or when you terminate employment, whichever comes later, payment must be in an amount to satisfy minimum distribution requirements in IRC Section 401 (a)(9).

(3) **Voluntary in-service distribution at any age.** You may choose to withdraw the total amount payable to you under the plan while you are employed if the following three requirements are met:

(a) Your entire account value does not exceed five thousand dollars;

(b) You have not previously received an in-service distribution; and

(c) You have made no deferrals during the two-year period ending on the date of the in-service distribution.

(4) **Unforeseeable emergencies.** See WAC 415-501-510.

(5) **Rehire.** If you ~~((begin to receive distributions))~~ submit an immediate lump sum or partial distribution request and the request is received in good order prior to being rehired, your distribution will be processed even if you become rehired with a DCP employer. If you are receiving installment payments or have requested to receive installment payments and then return to employment with a DCP employer, ~~((distributions))~~ your payments from your DCP account will cease. You may request a distribution when you are again eligible consistent with these rules.

WSR 21-07-047
PERMANENT RULES
UNIVERSITY OF WASHINGTON

[Filed March 11, 2021, 2:54 p.m., effective April 11, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The university edited sections and created new sections to update current chapter 478-121 WAC, Student conduct code for the University of Washington, in order to be in compliance with the updates from United States Department of Education Title IX regulations that went into effect on August 14, 2020.

Citation of Rules Affected by this Order: New WAC 478-121-600, 478-121-605, 478-121-610, 478-121-615, 478-

121-620, 478-121-625, 478-121-630, 478-121-635, 478-121-640, 478-121-645, 478-121-650, 478-121-655, 478-121-660, 478-121-665, 478-121-670, 478-121-675, 478-121-680 and 478-121-685; and amending WAC 478-121-020, 478-121-040, and 478-121-100.

Statutory Authority for Adoption: RCW 28B.20.130.

Other Authority: 34 C.F.R. Part 106.

Adopted under notice filed as WSR 21-02-075 on January 5, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 18, Amended 3, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 18, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 18, Amended 3, 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: March 11, 2021.

Barbara Lechtanski
Director of the University
Policy and Rules Office
State Rules Coordinator
for the UW

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-020 General application of the student conduct code. This conduct code applies to all students from the time of admission through the actual conferral of a degree, including any period between terms of enrollment.

The disciplinary sanctions specified in WAC 478-121-210, up to and including suspension or dismissal, may be imposed on any student or student organization found responsible for prohibited conduct set forth in WAC 478-121-100 through 478-121-173, WAC 478-121-605, and as described in relevant university policies.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-040 Jurisdiction of the university. (1) The scope of the university's jurisdiction includes reports that prohibited conduct occurred:

(a) On any university premises or in connection with any university-sponsored program or activity, regardless of the location of the program or activity; or

(b) Off campus (i.e., conduct that does not occur on university premises or in the context of a university-sponsored program or activity) where: The university reasonably determines that the conduct adversely affects a university interest or, has continuing adverse effects or may create a hostile

environment on university premises or in the context of a university-sponsored program or activity.

(2) Nothing in this conduct code shall be construed to limit academic action that may be taken by schools, colleges, or programs against a respondent based on an established violation of this conduct code that demonstrates a failure to meet the academic and/or professional standards of the school, college, or program.

(3) If a respondent withdraws from the university (or fails to reenroll) while a conduct proceeding is pending, the university may move forward with the conduct proceeding and, if so, the respondent will be provided with a continued opportunity to participate.

(4) Under regulations established by the United States Department of Education, 34 C.F.R. Part 106, the prohibited conduct defined in WAC 478-121-605 must be addressed as provided under Part VII of this code, not as provided under Parts II through V, if, and only if: It is alleged to have occurred in a university education program or activity, and it is against a person in the United States.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-100 General application. Prohibited conduct under this code includes, but is not limited to, the prohibited conduct described in WAC 478-121-100 through 478-121-173, WAC 478-121-605, and relevant university policies. For additional interpretation of prohibited conduct, see *Student Governance and Policies*, chapter 209, student conduct policy for academic misconduct and behavioral misconduct, and chapter 210, student conduct policy for discriminatory and sexual harassment, intimate partner violence, sexual misconduct, stalking, and retaliation (~~and chapter 209, student conduct policy for academic misconduct and behavioral misconduct~~)).

PART VII

COMPLIANCE WITH DEPARTMENT OF EDUCATION FEDERAL REGULATIONS REGARDING SEXUAL HARASSMENT

NEW SECTION

WAC 478-121-600 Scope of Part VII. The United States Department of Education federal regulations, 34 C.F.R. Part 106, establish a definition of "sexual harassment" that includes all of the prohibited conduct listed under WAC 478-121-605 (Department of Education federal regulations prohibited conduct or EDFR prohibited conduct). The conduct listed under WAC 478-121-605 is prohibited conduct under this code and is subject to the procedures set forth under Part VII of this code if, and only if:

(1) The EDFR prohibited conduct occurs in a university education program or activity; and

(2) The EDFR prohibited conduct is against a person in the United States.

EDFR prohibited conduct that does not meet both of these requirements or is reported by a person who is not eli-

gible to file a formal complaint under WAC 478-121-625 is subject to Parts II through V of this code.

For the purposes of Part VII of this code, "education program or activity" includes locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the EDFR prohibited conduct occurred and also includes any building owned or controlled by a recognized student organization. Part VII only applies to formal complaints made on or after August 14, 2020, and only when 34 C.F.R. Part 106 is deemed enforceable by law and/or by United States courts.

NEW SECTION

WAC 478-121-605 Department of Education federal regulations prohibited conduct (sexual harassment). Department of Education federal regulations (EDFR) define "sexual harassment" as conduct on the basis of sex that satisfies one or more of the following, which are referred to collectively under this code as "EDFR prohibited conduct":

(1) EDFR hostile environment sexual harassment. EDFR hostile environment sexual harassment is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity.

(2) EDFR sexual assault. EDFR sexual assault includes a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Specifically, EDFR sexual assault means one or more of the following:

(a) The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the complainant.

(b) The oral or anal sexual intercourse with a complainant, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(c) The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of a complainant, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(d) The touching of the private body parts of a complainant (e.g., buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(e) Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Washington law.

(f) Sexual intercourse with a person who is under the statutory age of consent of Washington.

(3) EDFR dating violence. EDFR dating violence is an act or acts of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship

will be determined based on the length and type of relationship as well as the frequency of interaction between the individuals involved in the relationship.

(4) EDFR domestic violence. EDFR domestic violence is an act or acts of violence committed by a current or former intimate partner of the complainant, by a person with whom the complainant shares a child in common, or by a person who is cohabitating with or has cohabitated with the complainant as an intimate partner.

(5) EDFR stalking. EDFR stalking is engaging in a course of conduct directed at a complainant that would cause a reasonable person to fear for the complainant's safety or the safety of others, including the safety of the respondent, or would cause a reasonable person to suffer substantial emotional distress.

(a) For the purposes of this section, "course of conduct" means two or more acts including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Stalking also includes cyberstalking such as through electronic media, the internet, social networks, blogs, cell phones, or text messages.

(b) For the purposes of this section, "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

NEW SECTION

WAC 478-121-610 Consent for purposes of EDFR prohibited conduct. Consent means that at the time of and throughout the sexual contact, there are words or conduct that reasonably communicate freely given agreement between or among the persons engaging in the sexual contact.

(1) Consistent with WAC 478-121-150, consent cannot be obtained when force or threat is used to gain consent; consent cannot be obtained where the respondent knew or reasonably should have known the complainant was incapacitated; and consent cannot be given or granted by a person who is under the statutory age of consent in accordance with the criminal code of Washington, chapter 9A.44 RCW, Sex offenses. A respondent's use of alcohol or drugs is not a valid defense to a charge of EDFR sexual assault, and a respondent will be held to the standard of a reasonable sober person in evaluating whether the respondent knew or reasonably should have known the complainant was incapacitated.

(2) For the purposes of determining whether consent was present:

(a) Consent cannot solely be inferred from silence, passivity, or a lack of resistance, and relying on nonverbal communication alone may violate the code;

(b) Consent cannot be inferred merely from an existing or previous dating or sexual relationship;

(c) Even in the context of a relationship, there must be mutual consent to engage in sexual contact;

(d) Past consent alone is not sufficient to imply future consent;

(e) Consent given to one person does not constitute consent given to another person;

(f) Consent to one sexual act does not constitute consent to other sexual acts; and

(g) Consent can be withdrawn at any time, and once consent is withdrawn and reasonably communicated, sexual contact must stop immediately.

(3) As used in the definition of consent, incapacity means an individual lacks the ability to understand the facts, nature, extent, or implications of the sexual contact for any reason including, but not limited to, being asleep, unconscious, unaware that the sexual contact is occurring, mentally or physically impaired due to an intellectual or other disability, or mentally or physically incapacitated due to the effects of alcohol or other drugs.

(a) When assessing whether the respondent "knew or reasonably should have known" the complainant was incapacitated, indicators of incapacitation include, but are not limited to, stumbling, falling down, an inability to stand or walk on the complainant's own, slurred speech or incoherent communication, an inability to focus the complainant's eyes or confusion about what is happening around the complainant, combativeness, emotional volatility, incontinence, passing out, or vomiting.

(b) A failure to exhibit any of these behaviors, however, does not necessarily mean that a person is capable of giving consent or is not incapacitated.

NEW SECTION

WAC 478-121-615 Additional definitions. For the purposes of Part VII of this code and where a respondent is charged with prohibited conduct defined under WAC 478-121-605:

(1) Complainant. Complainant is an individual who is alleged to be the victim of conduct that could constitute EDFR prohibited conduct.

(2) Formal complaint. Formal complaint is a document filed by a complainant or signed by the university's Title IX coordinator alleging EDFR prohibited conduct against a respondent and requesting that the university investigate the allegation of EDFR prohibited conduct. When filed by a complainant, the formal complaint must contain the complainant's physical or digital signature or otherwise indicate that the complainant is the person filing the formal complaint.

(3) Hearing advisor. Hearing advisor refers to the person who may accompany a complainant or respondent to any part of the investigation or hearing outlined in Part VII of this code. At a hearing, a complainant and a respondent must have a hearing advisor to conduct oral cross-examination on that party's behalf. This hearing advisor may or may not be an attorney, as defined in WAC 478-121-050(1). If a party does not choose a hearing advisor prior to a hearing, the university will provide a hearing advisor of the university's choice to conduct cross-examination on behalf of the party at the hearing. One hearing advisor and one support advisor are the only persons a party is permitted to bring with them to any part of the investigation or hearing. Hearing advisors and support advisors may be referred to collectively as "advisors."

(4) Hearing officer. Hearing officer is the individual delegated authority by the university to preside over the hearing and act as the decision-maker to reach a determination about responsibility. The hearing officer may simultaneously preside over a hearing under this Part VII of this code and a full adjudicative proceeding, consistent with WAC 478-121-400 through 478-121-427.

(5) Investigator(s). Investigator is an individual delegated authority by the university to provide written notification of a formal complaint, interview witnesses, gather documentation, and prepare the investigative report.

(6) Party or parties. Party or parties refers to a complainant and/or respondent.

(7) Respondent. Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute EDFR prohibited conduct. A respondent must be a student as defined in WAC 478-121-050(14).

(8) Support advisor. Support advisor refers to a person who may accompany a party to any part of the investigation or hearing outlined in this Part VII of this code. If a party has both a support advisor and hearing advisor, the support advisor's ability to communicate with the hearing officer and other party and the other party's advisors at a hearing will be limited. One support advisor and one hearing advisor are the only persons a party is permitted to bring with them to any part of the investigation or hearing. Support advisors and hearing advisors may be referred to collectively as "advisors."

(9) Supportive measure. Supportive measures are non-disciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the university's education programs and activities without unreasonably burdening the respondent, including measures designed to deter EDFR prohibited conduct or protect the safety of all parties or the university's educational environment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

NEW SECTION

WAC 478-121-620 Reporting EDFR prohibited conduct. (1) Any person may report EDFR prohibited conduct in person, by mail, by telephone, or by electronic mail, using the contact information listed on the website for the university's Title IX coordinator, or designee, or by any other means that results in the Title IX coordinator receiving the person's verbal or written report. The person reporting may, but need not, be the person alleged to be the victim of conduct that could constitute EDFR prohibited conduct.

(2) Upon receipt of a report as provided under subsection (1) of this section, the Title IX coordinator, or designee, will promptly contact the complainant to discuss the availability

of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

NEW SECTION

WAC 478-121-625 Formal complaint. (1) Only a complainant or the university's Title IX coordinator may file a formal complaint. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a university education program or activity. The authority to initiate conduct proceedings provisions outlined in WAC 478-121-215 (1) and (2) do not apply to Part VII of this code.

(2) A complainant may file a formal complaint with the Title IX coordinator or designee in person, by mail, or by electronic mail at the address provided on the Title IX coordinator's website.

(3) Upon receipt of a formal complaint, the university will, at a minimum, provide the following written notice to the known parties:

(a) The allegations potentially constituting EDFR prohibited conduct, including the identities of the parties involved in the incident, if known, the conduct allegedly constituting EDFR prohibited conduct, and the date and location of the alleged incident, if known;

(b) Information regarding the university's grievance process for formal complaints, including the parties' right to be accompanied by a hearing advisor and support advisor and to inspect and review evidence; and

(c) An explanation regarding presumptions regarding nonresponsibility and good-faith filing.

(4) The university may consolidate formal complaints where allegations of EDFR prohibited conduct arise out of the same facts or circumstances. The university may also join or consolidate any complaint alleging prohibited conduct under Part II of this code with a formal complaint if the allegations arise out of or relate to the same facts or circumstances. Should the university consolidate a formal complaint under Part VII with allegations of prohibited conduct under Part II, the university may elect to hold one hearing to consider all allegations. During such a hearing, the university may adhere to the process described in Parts II through V to the extent feasible for allegations of prohibited conduct outlined in Part II and to the process described in Part VII for allegations of EDFR prohibited conduct. Where these processes conflict, Part VII will be followed.

NEW SECTION

WAC 478-121-630 Dismissal of a formal complaint.

(1) Mandatory dismissal. In accordance with the Department of Education federal regulations, the university will dismiss a formal complaint for purposes of Title IX and its implementing regulations if the alleged conduct:

(a) Would not constitute EDFR prohibited conduct even if proved;

(b) Did not occur in the university's education program or activity;

(c) Did not occur against a person in the United States; or
(d) Was alleged by or in respect to a complainant who is not participating in or attempting to participate in a university education program or activity.

If dismissal occurs under this subsection (1) of this section, the university may pursue a conduct proceeding under other parts of this code.

(2) Discretionary dismissal. The university may dismiss the formal complaint, or any allegations therein, for the purposes of Title IX and its implementing regulations, if at any time during the investigation or hearing:

(a) A complainant notifies the university's Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any specific allegations in the formal complaint;

(b) The respondent is no longer an enrolled university student; or

(c) Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or any allegations made in the formal complaint.

(3) Notice. Upon a dismissal required or permitted under this section, the university will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

(4) Consequences of dismissal. Dismissal of a formal complaint does not preclude the university from investigating alleged misconduct under Part II or adjudicating such alleged misconduct under Parts III through V of this code.

(5) Appeal. If the university dismisses a formal complaint, the parties have a right to appeal, as described in WAC 478-121-635.

NEW SECTION

WAC 478-121-635 Appeal from a dismissal of a formal complaint. (1) A party may appeal a dismissal of a formal complaint or dismissal of any allegations in a formal complaint on any of the following bases:

(a) Procedural irregularity affected the outcome of the matter;

(b) New evidence that was not reasonably available at the time the dismissal was made; and/or

(c) A university official involved in the dismissal of the formal complaint had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter.

If one of the grounds is to consider newly discovered evidence, that evidence must be provided with the appeal.

(2) An appeal must be submitted in writing to the investigator within five business days of the notice of dismissal of formal complaint. The appeal is the party's opportunity to provide the party's position regarding why the appeal should be granted, and it must identify at least one of the grounds outlined in subsection (1) of this section.

(3) When an appeal is received, the university will:

(a) Notify both parties in writing that the appeal was received, of the name of the individual(s) who will be decid-

ing the outcome of the appeal, and when the nonappealing party's response is due;

(b) Provide the nonappealing party an opportunity to submit a written statement within five business days of receipt of notice of the appeal. This is the nonappealing party's opportunity to respond to the appeal;

(c) Consider the available evidence, which may include, but is not limited to, any summaries of interviews conducted by the investigator, evidence gathered by or provided to the investigator, and/or any newly discovered evidence;

(d) Issue a written decision describing the result of the appeal and rationale for such result; and

(e) Provide the written decision simultaneously to both parties.

(4) Communications with the individual(s) deciding the appeal, except for communications related to procedural aspects of maintaining an orderly process, must be made in the presence of, or with a copy to, all other parties, advisors (if any), and the investigator(s). Any communications not following such a procedure will be placed on the record, and others will be given an opportunity to respond.

(5) Appeals of a dismissal of a formal complaint may be decided by a single individual, and such appeals will be decided within five business days of the deadline for the nonappealing party's response.

NEW SECTION

WAC 478-121-640 Informal resolution. If a formal complaint has been filed and parties have received notice of the allegations, the university may facilitate an informal resolution process consistent with RCW 34.05.060. Parties will be informed of the informal resolution process, including circumstances where the parties would be precluded from resuming a formal complaint based on the same allegations. Before an informal resolution process can proceed, both parties must provide voluntary, written consent to the process. A party has the right to withdraw from an informal resolution process at any time prior to agreeing to a resolution. If a party withdraws from such informal resolution process, the investigation or adjudication process resumes.

NEW SECTION

WAC 478-121-645 Emergency removal. The university may remove a respondent from the university's educational programs or activities on an emergency basis pursuant to WAC 478-121-237. Such emergency removal must be based on a belief the alleged EDFR prohibited conduct poses an immediate threat to the physical health, safety, or welfare of any student or other individual(s).

NEW SECTION

WAC 478-121-650 Investigation. (1) After a formal complaint is filed, the university will commence an investigation. Throughout the investigative process, including meetings with an investigator, a party may be accompanied by a hearing advisor and/or a support advisor. During the investigation, a party's hearing advisor and/or support advisor may provide advice to the party but may not speak on behalf of the

party. The initial interview of a respondent will be scheduled to allow time for the respondent to prepare a response following receipt of the notice of formal complaint.

(2) During an investigation, parties may present witnesses as well as other inculpatory and exculpatory evidence for the investigator to consider. Parties will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint so that each party may meaningfully respond to the evidence prior to the conclusion of the investigation.

(3) Prior to completion of the investigative report, the university will send to each party and the party's advisors, if any, the evidence subject to inspection and review. The parties will have at least ten calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report.

(4) At least ten calendar days prior to the hearing, the investigator will provide the parties with the final investigative report and all evidence gathered during the investigation. The final investigative report and all evidence related to the allegations will be included in the record for the hearing.

(5) No later than at the conclusion of the investigation, the investigator will notify the hearing officer that it is appropriate to commence a hearing to consider the allegations contained in the formal complaint. Such notification is consistent with a conversion to full adjudicative proceeding, as described in WAC 478-121-205, and consistent with RCW 34.05.413 through 34.05.476.

NEW SECTION

WAC 478-121-655 Hearings. (1) The hearing officer, or designee, will set the time and place of the hearing and give ten or more calendar days' notice to all parties and the investigator. At the hearing officer's discretion, any or all parties, witnesses, and other participants, such as advisors and investigator(s), may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other.

(2) Communications with the hearing officer, except for communications related to procedural aspects of maintaining an orderly process, must be made in the presence of, or with a copy to, all other parties, advisors (if any), and the investigator(s). Any communications not following such a procedure will be placed on the record, and other parties, hearing advisor(s), or investigator(s) will be given an opportunity to respond.

(3) Prior to the hearing, the hearing officer, upon a self-initiated motion or upon request of the parties, may request that the parties, advisors (if any), and the investigator(s) engage in a meeting or meetings to consider:

- (a) Simplification of issues;
- (b) Necessity of amending notices, if any;
- (c) The possibility of obtaining stipulations;
- (d) Limitations on the number of witnesses and/or which witnesses will testify at the hearing;
- (e) Procedural matters; and/or
- (f) Other matters that may aid in the disposition or settlement of the proceeding.

If such a prehearing meeting(s) is held, it may occur in person, by telephone conference, or by other technological means as determined by the hearing officer or designee. Further, if such a prehearing meeting(s) occurs, the hearing officer will issue, in writing, determinations regarding the issues discussed at the meeting(s). The determinations will be effective when served on the parties and advisors.

(4) At appropriate stages, the hearing officer will give parties reasonable opportunity to submit and respond to requests, such as pleadings, motions, and objections.

(5) The hearing officer has the discretion to grant postponements, continuances, extensions of time, and/or adjournment if good cause is shown.

(6) The applicable standard of proof is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for EDFR prohibited conduct as defined in WAC 478-121-605, the hearing officer must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of EDFR prohibited conduct. The parties will be provided equal opportunity to present witnesses and other inculpatory and exculpatory evidence.

(7) During a hearing, all testimony of parties and witnesses shall be made under oath or affirmation. The hearing officer will permit each party's hearing advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination will be conducted directly, orally, and in real-time. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a hearing advisor is disruptive or interferes with any aspect of the proceeding, as determined by the hearing officer, the hearing advisor may be removed and a new hearing advisor made available to the party.

(8) The university will create an audio, audiovisual, or transcribed recording of the hearing. Upon request to the hearing office or as may otherwise be required under Part VII of this code, the university will make the recording available to the parties for inspection and review.

(9) Hearings will be conducted in accordance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99) except to the extent preempted by 34 C.F.R. Part 106.

NEW SECTION

WAC 478-121-660 Determination regarding responsibility. (1) Following a hearing, the hearing officer will apply the preponderance of the evidence standard described in WAC 478-121-655(6) and issue a written determination regarding responsibility in accordance with RCW 34.05.461, which will be simultaneously served on the parties. The written determination will include:

(a) Identification of the allegations as defined in WAC 478-121-605;

(b) A description of procedural steps taken from receipt of the formal complaint through the determination;

(c) Findings of fact supporting the hearing officer's determination;

(d) Conclusions regarding the application of Part VII of this code to the facts and the rationale for those conclusions; and

(e) Directions as to any sanctions imposed on the respondent or remedies provided to the complainant.

(2) One or more of the disciplinary sanctions outlined in WAC 478-121-210 may be imposed for any violation of EDFR prohibited conduct. In determining an appropriate sanction, if any, the hearing officer may consider the factors contained in WAC 478-121-210 (2) and (3), which are incorporated herein by this reference. Remedies for the complainant may be the same as the individualized services that comprise supportive measures or may be effectuated via sanctions impacting the respondent.

(3) The hearing officer must provide the written determination to the parties simultaneously and include the university's procedures for the parties to appeal. The determination regarding responsibility and any applicable sanction imposed becomes final and effective either on the date that the university provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

NEW SECTION

WAC 478-121-665 Appeal from determination regarding responsibility. (1) A party may appeal a determination of responsibility on any of the following bases:

(a) Procedural irregularity affected the outcome of the matter;

(b) A material error substantially affected the outcome of the fact finding or sanctioning;

(c) New evidence that was not reasonably available at the time the determination regarding responsibility and/or dismissal was made could affect the outcome of the matter; and/or

(d) A university official involved in the formal complaint investigation or adjudication had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter.

If one of the grounds is to consider newly discovered evidence, that evidence must be provided with the appeal.

(2) An appeal must be submitted in writing to the hearing officer within twenty-one calendar days of service of the determination of responsibility. The appeal is the party's opportunity to provide the party's position regarding why the appeal should be granted, and it must identify at least one of the grounds outlined in subsection (1) of this section.

(3) When an appeal is received, the university will:

(a) Notify both parties in writing that the appeal was received; of the name of the individual(s) who will be deciding the outcome of the appeal; and when the nonappealing party's response is due;

(b) Provide the nonappealing party an opportunity to submit a written statement within twenty-one calendar days of receipt of notice of the appeal. This is the nonappealing party's opportunity to respond to the appeal;

(c) Consider the available evidence, which may include, but is not limited to, the transcript of the hearing, any summaries of interviews conducted by the investigator, evidence gathered by or provided to the investigator, the investigative report, decisions related to the hearing, the recording of the hearing, the written determination of responsibility, the appeal and/or response to the appeal, and/or any newly discovered evidence;

(d) Issue a written decision describing the result of the appeal and rationale for such result; and

(e) Provide the written decision simultaneously to both parties.

(4) Communications with the individual(s) deciding the appeal, except for communications related to procedural aspects of maintaining an orderly process, must be made in the presence of, or with a copy to, all other parties, advisors, the investigator(s), and the hearing officer. Any communications not following such a procedure will be placed on the record, and others will be given an opportunity to respond.

(5) Appeals of a determination regarding responsibility will be made by a panel consisting of an odd number of members, and such appeals will be decided within thirty calendar days of the deadline for the nonappealing party's response. The panel will be managed by a nonvoting individual who may be the review coordinator as defined in WAC 478-121-050(11). The panel may include reviewing officers, as defined by WAC 478-121-050(13), and may decide appeals of determinations of responsibility regarding EDFR prohibited conduct under Part VII or initial orders regarding prohibited conduct under Part II of this code.

NEW SECTION

WAC 478-121-670 Service and time—Subpoenas—No discovery. (1) Service of all university notices will be sent by electronic mail (email) addressed to the parties' university-issued email addresses unless either party provides an alternative and preferred email address. Parties are permitted to file documents, provide evidence, and respond to investigators, the hearing officer, or other individuals responsible for appeals via email. Service is complete at the moment the email is sent to the email addresses.

(2) In computing any period of time prescribed or allowed under Part VII of this code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. A "business day" is any Monday, Tuesday, Wednesday, Thursday, or Friday that is not a legal holiday. A "calendar day" is any day of the week, Monday through Sunday, including legal holidays.

(3) Typically, the period from commencement of a proceeding conducted under Part VII of this code to the issuance of the investigative report, inclusive of the time parties may review the draft report and provide feedback will not exceed eighteen weeks. The period from issuance of an investigative report to the date of the hearing will not exceed seven weeks. Finally, the period from the hearing to the determination of responsibility, inclusive of the time frames required by the Department of Education federal regulations in light of those required to comply with state law for any appeal, will not exceed twenty-two weeks. Investigators and the hearing officer, or designee(s), will notify the parties in writing of any delay in the proceedings and the cause for such delay. Delays are permissible for good cause, which may include, and not be limited to, the absence or unavailability of a party or witness, scheduling conflicts, concurrent law enforcement activity, holidays, or academic calendar breaks.

(4) The hearing officer may issue subpoenas. The parties may also request that the hearing officer issue subpoenas or a party's attorney of record may also issue a subpoena on whose behalf the witness is required to appear at a hearing. The requesting party is responsible for serving the subpoena upon the witness.

(5) Discovery, including depositions, interrogatories, requests for production, entry onto land for inspection or other purposes, and physical and mental examinations, is not available in conduct proceedings under this code.

NEW SECTION

WAC 478-121-675 Evidence. (1) If a party or witness does not submit to questioning or cross-examination at the hearing, the hearing officer cannot rely on any statement of that party or witness in reaching a determination regarding responsibility. The hearing officer may not draw an inference about determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions or submit to cross-examination. This subsection does not apply to allegations of prohibited conduct under Part II of this code, WAC 478-121-103 through 478-121-173. The term "statement" does not include statements that constitute verbal conduct.

(2) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence about a party's sexual behavior are offered to prove that someone other than the respondent committed the sexual conduct alleged by the complainant or such questions or evidence concern specific incidents of the parties' prior sexual behavior and such information is relevant to determine the presence or absence of consent.

(3) Except as otherwise provided in this section, evidence may be considered if, in the judgment of the hearing officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of such reasonably prudent person's affairs. The relevance of evidence will be determined by the hearing officer at a hearing. The hearing officer may exclude from consideration evidence that is not relevant. Statements of personal opinion or general reputation about a party or witness are generally not consid-

ered to be relevant. Evidence that is duplicative of other evidence is generally not considered to be relevant.

(4) An investigator or hearing officer may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has voluntarily waived the privilege in writing. An investigator or hearing officer also may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent.

NEW SECTION

WAC 478-121-680 Disqualification. (1) Any person designated by the university as an investigator, hearing officer, or Title IX coordinator, or to determine an appeal or facilitate an informal resolution process shall self-recuse if this person discovers a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent or otherwise cannot act impartially.

(2) A party shall promptly petition for the disqualification of an individual described in subsection (1) of this section upon receiving notice of a formal complaint or upon discovering facts establishing grounds for disqualification. Such petition must be in writing and delivered to the person whose disqualification is requested, with copies of the petition delivered simultaneously to other known parties and any person known to be designated by the university as an investigator, hearing officer, or Title IX coordinator, or to determine an appeal or facilitate an informal resolution process.

(3) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination. If the individual whose disqualification is requested does not self-disqualify, the party may cite such failure for disqualification as a reason to appeal a dismissal or determination of responsibility. If the individual whose disqualification is requested self-disqualifies, an appropriate individual will be substituted for the disqualified individual's role in the investigation, hearing, appeal, or informal resolution process.

NEW SECTION

WAC 478-121-685 General record keeping. Records related to proceedings under Part VII of this code shall be maintained consistent with RCW 34.05.476 and 34.05.494, university records retention policies, and other relevant policies, rules, and regulations. If federal regulations under 34 C.F.R. Part 106 differ from Washington state law requirements or university policies, rules, or regulations, records will be maintained in accord with the more stringent standard.

WSR 21-07-055

PERMANENT RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed March 12, 2021, 1:52 p.m., effective April 12, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-918-080 (2)(d) (allopathic physician assistants) Physician assistant—Requirements for licensure, and 246-919-380 (allopathic physicians) AIDS prevention and information education requirements. The Washington medical commission has repealed WAC 246-918-080 (2)(d) and 246-919-380 relating to HIV/AIDS education as a result of ESHB 1551 Modernizing the control of certain communicable diseases, chapter 76, Laws of 2020.

Citation of Rules Affected by this Order: Repealing WAC 246-919-380; and amending WAC 246-918-080(2).

Statutory Authority for Adoption: RCW 18.71.017, 18.130.050.

Adopted under notice filed as WSR 21-01-213 on December 23, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental 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 0, Amended 0, 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 1, Repealed 1.

Date Adopted: March 12, 2021.

Melanie de Leon
Executive Director

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-080 Physician assistant—Requirements for licensure. (1) Except for a physician assistant licensed prior to July 1, 1999, individuals applying to the commission for licensure as a physician assistant must have graduated from an accredited commission approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as a physician assistant must submit to the commission:

(a) A completed application on forms provided by the commission;

(b) Proof the applicant has completed an accredited commission approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-918-990; and

- (d) ~~((Proof of completion of four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8; and~~
~~(e)))~~ Other information required by the commission.
- (3) The commission will only consider complete applications with all supporting documents for licensure.
- (4) A physician assistant may not begin practicing without written commission approval of a delegation agreement.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-919-380 AIDS prevention and information education requirements.

WSR 21-07-057

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed March 15, 2021, 9:36 a.m., effective April 15, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The university is updating the rules regarding the standards of conduct for students.

On May 19, 2020, the United States Department of Education (the department) published amendments to its regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The department's amended regulations specify how recipients of federal financial assistance covered by Title IX (which include the university) must respond to allegations of sexual harassment. Amendments to the university's standards of conduct for students are required to comply with the department's amended Title IX regulations.

Citation of Rules Affected by this Order: New WAC 504-26-231; and amending WAC 504-26-010, 504-26-015, 504-26-020, 504-26-045, 504-26-050, 504-26-120, 504-26-204, 504-26-206, 504-26-209, 504-26-217, 504-26-219, 504-26-220, 504-26-221, 504-26-222, 504-26-223, 504-26-227, 504-26-230, 504-26-401, 504-26-402, 504-26-403, 504-26-409, 504-26-415, 504-26-420, 504-26-425, 504-26-504, 504-26-515, and 504-26-525.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 20-24-125 on December 2, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 16, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 11, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11, 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 1, Amended 27, Repealed 0.

Date Adopted: March 12, 2021.

Deborah L. Bartlett, Director
 Procedures, Records, and Forms
 and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-010 Definitions. Words and phrases used in the standards of conduct regardless of their associated gender identity include all genders. Words and phrases used in the standards of conduct in the singular or plural encompass both the singular and the plural, unless the context clearly indicates otherwise. For purposes of the standards of conduct, the following definitions apply:

(1) Academic integrity hearing board. Teaching faculty and student representatives who, collectively, are authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(2) Appeals board. The group of students, faculty, and staff, collectively, authorized in accordance with WAC 504-26-115 to consider appeals from a university conduct board's or conduct officer's determination as to whether a student has violated the standards of conduct and any sanctions ~~((imposed))~~ assigned.

(3) Brief adjudication. The process by which a conduct officer may adjudicate student conduct matters ~~((involving))~~ that are not resolving allegations that would constitute Title IX sexual harassment within the university's Title IX jurisdiction, and where possible sanctions ~~((, other than matters involving))~~ do not include suspension for more than ten instructional days, expulsion, loss of recognition, or revocation of degree. Also referred to as a "conduct officer hearing" or "brief adjudicative proceeding."

(4) CCR. The university's office of compliance and civil rights.

~~(5)~~ Cheating. Includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact. The office of research must be consulted in matters involving alleged

research misconduct as that term is defined in the university's executive policy 33.

(ii) Counterfeiting a record of internship or practicum experiences.

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the center for community standards. The policy for responding to allegations of scientific misconduct (executive policy 33) may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

~~((5))~~ (6) Complainant. Any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint. Any individual, group, or entity, including the university, who submits a complaint alleging that a student or a registered or recognized student organization violated the standards of conduct.

~~((6))~~ (7) Conduct board. The group of students, faculty, and staff, collectively authorized in accordance with WAC 504-26-110 to adjudicate certain student conduct matters.

~~((7))~~ (8) Conduct officer. A university official authorized by the vice president for student affairs to initiate, manage, and/or adjudicate certain student conduct matters in accordance with WAC 504-26-401 and 504-26-402.

~~((8))~~ (9) Faculty member. For purposes of this chapter, any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

~~((9))~~ (10) Full adjudication. The process by which a conduct board adjudicates matters involving possible suspension of greater than ten instructional days, expulsion, loss of recognition, revocation of degree, or other matters as determined by the university. Also referred to as "formal adjudica-

tion," "formal (or full) adjudicative proceeding," or "conduct board hearing."

~~((10))~~ (11) Gender identity. Having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

~~((11))~~ (12) Member of the university community. Includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university, including guests of and visitors to the university. A person's status in a particular situation is determined by the vice president for student affairs or designee.

~~((12))~~ (13) Parties. The parties to a student conduct proceeding must include the university and the respondent. The parties in a student conduct matter ~~((implicating Title IX of the Civil Rights Act of 1964))~~ where the allegations, if true, would constitute Title IX sexual harassment within the university's Title IX jurisdiction must also include the complainant(s) ~~((, if the complainant(s) notifies the university in writing that they wish to participate as a party))~~. The university may designate other complainants, individuals, or recognized or registered student organizations as parties to conduct proceedings, or allow individuals or recognized or registered student organizations to intervene in conduct proceedings.

~~((13))~~ (14) Policies. The written rules and regulations of the university as found in, but not limited to, the standards of conduct, university policy manuals, housing and dining policies, academic regulations, and the university's graduate, undergraduate, and professional catalogs and other publications, including electronic publications.

~~((14))~~ (15) Recognized or registered student organization. A group of students, collectively, that has complied with the formal requirements for university recognition or registration.

~~((15))~~ (16) Respondent. A student or recognized or registered student organization alleged to have violated these standards of conduct.

~~((16))~~ (17) Student. Any person taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, even if not enrolled.

~~((17))~~ (18) Title IX. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 and its implementing 34 C.F.R. Part 106.

(19) University. Includes all locations, premises, programs, and operations of Washington State University.

~~((18))~~ (20) University official. Any person employed by the university, performing assigned administrative or professional responsibilities.

~~((19))~~ (21) University premises. All land, buildings, facilities, vehicles, websites, and other property in the posses-

sion of or owned, used, or controlled by the university (including adjacent streets and sidewalks), including its study abroad program sites, as well as university-sponsored or hosted online platforms.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-015 Jurisdiction and applicability—Relationship to other proceedings. (1) General. The standards of conduct apply to conduct that occurs on university premises or in connection with university sponsored activities, including transit to or from the activity.

(2) Off-campus conduct. In addition to subsection (1) of this section, the standards of conduct may apply to conduct that occurs off university premises and not in connection with university-sponsored activities, if the conduct adversely affects the health and/or safety of the university community or the pursuit of the university's vision, mission, or values.

(a) The university has sole discretion to make this determination. In making this determination, the conduct officer considers whether the alleged conduct:

(i) Requires the university to exercise jurisdiction under law or as required by federal or state agencies;

(ii) Negatively impacted the reputation of the university or its students;

(iii) Occurred on the property of recognized or registered student organizations;

(iv) Caused physical, mental, or emotional harm to another; or

(v) Was recognized by onlookers, complainants, or witnesses as being carried out by a student or recognized or registered student organization.

(b) When the university chooses to exercise jurisdiction for off-campus conduct not in connection with a university-sponsored activity, the parties must be notified in writing of the decision and the reasons for the decision, and their right to challenge the decision to the vice president for student affairs or designee. Challenges to jurisdiction must be in writing and filed within five calendar days from the date the notice is sent. In cases implicating Washington State University's executive policy 15, (~~which prohibits discrimination, sexual harassment, and sexual misconduct,~~) the vice president for student affairs or designee must consult with the university's Title IX coordinator.

(3) Online conduct - Electronic communications. These standards of conduct may be applied to behavior conducted online, via electronic mail, text message, or other electronic means.

(4) Time frame for applicability. Each student is responsible and accountable for their conduct from the time of application for admission through the actual awarding 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 apply to a student's conduct even if the student withdraws from school, takes a leave of absence, or graduates.

(5) Group accountability. Recognized or registered student organizations that violate university policies and the

standards of conduct are subject to sanctions. A recognized or registered student organization may be held accountable for the behavior of its officers, members, or guests when the university demonstrates that:

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

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

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

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

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

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

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

(d) These standards of conduct.

(7) Academic and professional standards. Nothing in these standards of conduct is to be construed as limiting academic action that may be taken by a program or other academic unit against a respondent who, based on an established violation of these standards or otherwise, demonstrates a failure to meet the academic and/or professional standards of the program.

(8) Relationship between student conduct process and other legal processes. The university is not required to stay a student conduct proceeding pending any criminal or civil proceeding, nor must the disposition of any such criminal or civil proceeding control the outcome of any student conduct proceeding. Respondents may choose to remain silent during conduct proceedings, in accordance with WAC 504-26-045.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-020 Advisors and representatives. (1) Advisors. Any party may have an advisor of their choice present during all stages of a conduct process. Upon a party's request, a list of trained advisors from outside the office of the dean of students (and those offices reporting to the dean of students) who can provide support at no cost to the student is provided. Advisors may assist any party engaged in the conduct process and attend meetings and hearings. Advisors may not be witnesses to the alleged behavior. (~~Students should select an advisor whose schedule allows for attendance at the scheduled date and time of the informational meeting and/or hearing, because delays are not normally allowed due to scheduling conflicts of the advisor.~~)

(2) Communication with the center for community standards. Advisors and representatives may communicate directly with the center for community standards to receive information on dates and times of meetings, status of conduct processes, and outcomes. As a condition of participation in the conduct process, the center for community standards may

require advisors and representatives to sign a statement agreeing to comply with legal requirements and university rules including, but not limited to, requirements related to confidentiality of student information.

(3) Advisors in conduct meetings and conduct officer hearings. During any conduct ~~((process))~~ meeting or conduct officer hearing, breaks may be taken, within reason, to allow a party to consult with their advisor. However, advisors are not permitted to speak on behalf of parties.

(4) Advisors in conduct board hearings. As with all other conduct meetings and conduct officer hearings, advisors are not permitted to speak on behalf of parties, except that in conduct board hearings, advisors are permitted to ask relevant cross-examination questions as instructed by a party.

(5) Representatives. A party may choose to be represented during a full adjudication, at their own expense. Only persons currently admitted to practice law, including licensed legal interns, are permitted to act as representatives. In conduct board hearings, questions regarding logistical and administrative issues are to be directed to the presiding officer, who may impose reasonable conditions upon participation of advisors and representatives.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-045 Evidence. (1) Except as provided in subsection (2) of this section, evidence, including hearsay evidence, is admissible in student conduct proceedings if, in the judgment of the conduct officer or presiding officer, it is the kind of evidence that reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The conduct officer or presiding officer determines the admissibility and relevance of all information and evidence. ~~((The sexual history of a complainant is not admissible in a student conduct proceeding except to the extent permitted by evidence rule 412 and RCW 34.05.452 (stating that presiding officers must refer to the Washington rules of evidence as guidelines for evidentiary rulings).))~~

(2) In conduct board hearings to resolve allegations that, if proven, would constitute Title IX sexual harassment within the university's Title IX jurisdiction, witnesses, including parties, must submit to cross-examination for their written or verbal statements to be considered by the university conduct board.

(3) The sexual history of a complainant is not relevant and not admissible in a student conduct proceeding unless such evidence about the complainant's sexual predisposition or prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

(4) Students may choose to remain silent during conduct proceedings, recognizing that they give up the opportunity to explain their version of events and that the decision is made based on the information presented at the hearing. No student must be compelled to give self-incriminating evidence, and no negative inference will be drawn from a student's refusal

to participate in any stage of the conduct proceeding. If either party does not attend or participate in a hearing, the conduct officer or conduct board may resolve the matter based on the information available at the time of the hearing.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-050 Interim measures. (1) While a student conduct matter is pending, the university may take a number of interim actions or supportive measures in order to ensure the preservation of the educational experience and the overall university environment of the parties. These actions may include, but are not limited to:

- (a) A no-contact order ~~((imposed on))~~ assigned to any party;
- (b) University housing room change for one or more involved parties; and/or
- (c) Changes in academic schedules or assignments for any party.

(2) As stated in the university's housing and dining policies, the university reserves the right to assign roommates, to change room or hall assignments, and/or to consolidate vacancies by requiring residents to move from one room to another in the event such reassignments are determined to be necessary by the university.

(3) University departments taking interim or supportive measures must coordinate with the center for community standards, which advises the parties of the interim measures and the process for challenging them. For matters involving the university's executive policy 15, ~~((which prohibits discrimination, sexual harassment, and sexual misconduct,))~~ the departments must also consult with ~~((the university's office for equal opportunity))~~ CCR regarding interim or supportive measures. Interim and supportive measures are not sanctions and do not imply or assume responsibility for a violation of the standards of conduct.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-120 Training. (1) Board members and presiding officers. Conduct board members, appeals board members, and presiding officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Cultural competency and implicit bias;
- (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
- (c) Identifying bias against individuals and against groups;
- (d) Conflict of interest;
- (e) Sexual assault and gender-based violence;
- (f) Alcohol and drug prevention;
- (g) Due process and burden of proof in student conduct matters; ~~((and))~~
- (h) Sanctioning principles and guidelines;
- (i) Title IX regulatory definitions, jurisdiction, and grievance processes; and
- (j) Relevant and admissible evidence.

(2) Conduct officers. Conduct officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Alternative dispute resolution;
- (b) Restorative justice; and
- (c) All training required of board members (see subsection (1) of this section).

(3) Renewal of training. Training must be renewed on an annual basis.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-204 Abuse of others or disruption or interference with the university community. Abuse of others or disruption or interference with the university community (~~(includes, but is not limited to)~~) is defined as:

(1) Physical abuse, threats, intimidation, and/or other conduct that threatens, endangers, harms, or undermines the health, safety, or welfare of the university community or any person (~~(, including, but not limited to, domestic or intimate partner violence)~~).

(2) Conduct that disrupts the university community or prevents any member of the university community from completing their duties.

(3) Conduct that interferes with or disrupts the university's mission, operations, or activities.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-206 Hazing. (1) No student or recognized or registered student organization at Washington State University may conspire to engage in hazing or participate in hazing of another.

(a) Hazing includes any activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical harm, regardless of the person's willingness to participate.

(b) Hazing activities may include, but are not limited to, the following: Abuse of alcohol during new member activities; striking another person whether by use of any object or one's body; creation of excessive fatigue; physical and/or psychological shock; morally degrading or humiliating games or activities that create a risk of bodily, emotional, or mental harm.

(c) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and NCAA athletics, or other similar contests or competitions, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited.

(2) Washington state law also prohibits hazing which may subject violators to criminal prosecution. As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any method of initiation into a recognized or registered student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any stu-

dent or other person attending a public or private institution of higher education or other postsecondary education institution in this state.

(3) Washington state law (RCW 28B.10.901) also provides sanctions for hazing:

(a) Any person who violates this rule, in addition to other sanctions that may be (~~imposed~~) assigned, forfeits any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the university.

(b) Any recognized or registered student organization that knowingly permits hazing by its members or others subject to its direction or control must be deprived of any official recognition or approval granted by the university.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-209 Violation of university policy, rule, or regulation. Violation of any university policy, rule, or regulation published electronically on the university website or in hard copy including, but not limited to, Washington State University's alcohol and drug policy, executive policy 15 (~~(policy prohibiting discrimination, sexual harassment and sexual misconduct)~~), and housing and residence life policy.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-217 Unauthorized use of electronic or other devices. Unauthorized use of electronic or other devices: Making an audio or video record of any person while on university premises without (~~(his or her)~~) their prior knowledge, or without (~~(his or her)~~) their effective consent when such a recording is of a private conversation or of images taken of a person(s) at a time and place where (~~(she or he)~~) they would reasonably expect privacy and where such images are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view, such as Martin Stadium or the Glenn Terrell Mall.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system (~~(including, but not limited to)~~) is defined as:

(1) Failure to obey any notice from a university conduct board or other university official to appear for a meeting or hearing as part of the student conduct system.

(2) Willful falsification, distortion, or misrepresentation of information before a university conduct proceeding.

(3) Disruption or interference with the orderly conduct of a university conduct board proceeding.

(4) Filing fraudulent charges or initiating a university conduct proceeding in bad faith.

(5) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(6) Attempting to influence the impartiality of a member of the university conduct system prior to, and/or during the course of, any university conduct board proceeding.

(7) Harassment (verbal, written, or physical) and/or intimidation of a member of a university conduct board, any individual involved in the conduct process, or any conduct officer before, during, and/or after any university conduct proceeding.

(8) Failure to comply with or failure to complete any term or condition of any disciplinary sanction(s) (~~imposed~~) assigned under the standards of conduct.

(9) Influencing or attempting to influence another person to commit an abuse of the university conduct system.

(10) Violation of probation or any probationary conditions.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-220 (~~(Discrimination and)~~ Discriminatory harassment. (~~(Discrimination or discriminatory harassment)~~) (1) Unwelcome, intentional conduct on the basis of race; (~~(sex/gender)~~) sex and/or gender; sexual orientation; gender identity(~~(A)~~) or expression; religion; age; color; creed; national or ethnic origin; marital status; genetic information; status as an honorably discharged veteran or member of the military; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); (~~marital status; genetic information; and/or status as an honorably discharged veteran or member of the military; and as defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.~~) or immigration or citizenship status, except as authorized by federal or state law, regulation, or government practice, which is so severe or pervasive, and objectively offensive, that it substantially and unreasonably:

(a) Interferes with, or has the potential to interfere with, an individual's ability to participate in WSU employment, education, programs, or activities;

(b) Adversely alters the condition of an individual's WSU employment, education, or participation status;

(c) Creates an objectively abusive employment, program, or educational environment; or

(d) Results in a material or substantial disruption of WSU's operations or the rights of students, staff, faculty, visitors, or program participants.

(2) In determining if conduct is harassing, the totality of the circumstances are assessed including, but not limited to, the following factors:

(a) Severity;

(b) Frequency of the discrimination;

(c) Status of the reporting and responding parties and their relationship to each other;

(d) Physicality, threats, or endangerment; and

(e) Whether or not the conduct could be reasonably considered protected speech or serving some other lawful purpose.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-221 Sexual misconduct. (1) Sexual misconduct is an egregious form of sex discrimination/sexual harassment. (~~(A number of acts may be regarded as sexual misconduct including, but not limited to, nonconsensual sexual contact (including sexual intercourse) and sexual exploitation.~~) Sexual misconduct (~~(includes sexual assault and other sexual violence.)~~) is defined as:

(a) Sex offense. Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

(b) Rape (except statutory rape). The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(c) Sodomy. Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(d) Sexual assault with an object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(e) Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(f) Incest. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

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

(i) Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person.

(ii) Invading another person's sexual privacy.

(iii) Prostituting another person.

(iv) Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where they have a reasonable expectation of privacy.

(v) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection.

(vi) Exposing one's intimate parts in nonconsensual circumstances.

(h) Statutory rape. Sexual intercourse with a person who is under the statutory age of consent.

(i) Sexually based stalking and/or bullying.

(2) Consent. Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, and throughout the sexual contact, all parties actively express words or conduct that a reasonable person would conclude demonstrates clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Consent is active; silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

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

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

(ii) Coercion is unreasonable pressure for sexual activity. When an individual makes it clear through words or actions that the individual does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.

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

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

(3) ~~(Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (or clothing covering any of those areas), or by causing another person to touch his or her own or another person's intimate body parts without consent and/or by force. Sexual contact also can include any intentional bodily contact in a sexual manner with another person's nonintimate body parts. It also includes nonconsensual sexual intercourse.~~

(4) ~~Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above. Examples of sexual exploitation may include, but are not limited to:~~

~~(a) Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person;~~

~~(b) Invading another person's sexual privacy;~~

~~(c) Prostituting another person;~~

~~(d) Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, records, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where he or she has a reasonable expectation of privacy;~~

~~(e) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection;~~

~~(f) Exposing one's intimate parts in nonconsensual circumstances;~~

~~(g) Sexually based stalking and/or bullying.~~

~~(5)) Use of alcohol or other drugs is not a valid defense to a violation of this policy.~~

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-222 Harassment (other than sexual harassment or discriminatory harassment). Harassment is conduct by any means that is severe, persistent, or pervasive, and is of such a nature that it would cause a reasonable person in the victim's position substantial emotional distress and undermine (~~(his or her)~~) their ability to work, study, or participate in (~~(his or her)~~) their regular life activities or participate in the activities of the university, and/or actually does cause the victim substantial emotional distress and undermines the victim's ability to work, study, or participate in the victim's regular life activities or participate in the activities of the university.

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-223 Stalking. (1) Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(a) Fear for (~~(his or her)~~) their safety or the safety of others; or

(b) (~~Fear for harm to his or her property or the property of others; or~~

~~(e)) Suffer substantial emotional distress.~~

(2) ~~(Stalking includes, but is not limited to, conduct occurring in person, electronically, or through a third party.)~~ Course of conduct means two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(3) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(4) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessar-

ily, require medical or other professional treatment or counseling.

(5) The use of alcohol or other drugs is not a valid defense to a violation of this policy.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-227 Sexual harassment. ~~((Sexual harassment includes behavior defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.))~~ Unwelcome, intentional conduct, on the basis of sex and/or gender, which is so severe or pervasive, and objectively offensive, that it substantially and unreasonably:

(1) Interferes with, or has the potential to interfere with, an individual's ability to participate in WSU employment, education, programs, or activities;

(2) Adversely alters the condition of an individual's WSU employment, education, or participation status;

(3) Creates an objectively abusive employment, program, or educational environment; or

(4) Results in a material or substantial disruption of WSU's operations or the rights of students, staff, faculty, visitors, or program participants.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-230 Retaliation. ~~((Retaliation includes any act that would dissuade a reasonable person from making or supporting a complaint, or participating in an investigation, under the standards of conduct (this chapter). Retaliatory behavior includes action or threat of action that could negatively affect another's employment, education, reputation, or other interest. It also includes retaliation as defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.))~~ (1) Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by university policies, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

(2) First amendment activities do not constitute retaliation.

NEW SECTION

WAC 504-26-231 Intimate partner violence. Intimate partner violence is defined as:

(1) Dating violence, which is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the:

(a) Length of the relationship;

(b) Type of relationship; and

(c) Frequency of interaction between the persons involved in the relationship.

(2) Domestic violence, which is defined as a felony or misdemeanor crime of violence committed by:

(a) A current or former spouse or intimate partner of the victim;

(b) A person with whom the victim shares a child in common;

(c) A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

(d) A person similarly situated to a spouse of the victim under the domestic or family violence laws of Washington; or

(e) Any other person against an adult or youth victim who is protected from that person's act under the domestic or family violence laws of Washington.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-401 Initiating conduct proceedings. (1) Complaints. Any member of the university community may submit a complaint that a student or recognized or registered student organization violated the standards of conduct. In addition, the university may initiate conduct proceedings when it receives any direct or indirect report of conduct that may violate the standards of conduct.

(2) Decision not to refer the matter for hearing. Except as provided below, after reviewing the initial information, if the conduct officer determines that further conduct proceedings are not warranted, the conduct officer dismisses the matter. If the conduct officer decides not to initiate a conduct proceeding when requested by a complainant, the conduct officer must notify the complainant in writing of the decision, the reasons for the decision, and how to seek review of the decision. Conduct matters may be reopened if new relevant information becomes known. A conduct officer cannot dismiss a matter received from CCR where CCR completed a formal investigation implicating Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, regardless of the investigation's outcome. In such cases, the conduct officer must refer the matter to a conduct board hearing, which must be held within sixty days of the date the CCR formal investigation report was received, unless good cause exists to extend the date of the hearing or the matter is resolved through agreement or alternative dispute resolution.

(3) Notice of informational meeting. After reviewing initial information regarding a possible student conduct violation, if the student conduct officer decides conduct proceedings are warranted, the student conduct officer sends the respondent, or parties as appropriate, written notice of an informational meeting. The notice must, at a minimum, briefly describe the factual allegations or issues involved, the specific standard of conduct provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violations, and the time, date, and place of the meeting. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 (Interpretation—Policies, procedures, and guidelines) must be provided. Any request to change or extend the time or date of the informational meeting should be addressed to the conduct officer.

(4) Purpose of informational meeting. The purpose of the informational meeting is to provide the respondent with information on the conduct process and their rights and responsibilities, and to determine next steps, if any, in resolving the matter. During the informational meeting, the respondent may provide names of witnesses to the conduct officer to potentially contact. In cases involving Title IX, an informational meeting is also offered to a complainant.

(5) Agreement and alternative dispute resolution. A conduct officer may resolve a matter by agreement. Agreements may be reached directly or through alternative dispute resolution. In cases where agreement is not reached directly, before referring the matter to a hearing, the conduct officer must consider, and make a written determination, whether alternative dispute resolution is appropriate to resolve the matter. Alternative dispute resolution must not be used in matters involving sexual misconduct or sexual harassment. When resolution of a matter is reached by agreement or alternative dispute resolution, the agreement must be in writing and signed by the parties and the conduct officer. In the agreement, the parties must be advised in writing that:

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

(b) If any party decides not to sign the agreement, and the matter proceeds to a hearing, neither the agreement nor a party's refusal to sign will be used against either party at the hearing.

(6) Referral for adjudication. Except as provided in subsection (2) of this section, after the informational meeting, if the conduct officer determines that a conduct hearing is warranted, and the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing (brief adjudication) in accordance with WAC 504-26-402, or conduct board hearing (full adjudication) in accordance with WAC 504-26-403. In determining which process is appropriate, the conduct officer considers factors including, but not limited to, the nature and severity of the allegations, the respondent's past contacts with the center for community standards, and the range of possible sanctions that could be (~~imposed~~) assigned. A student may request that a conduct board hear the case, but the final decision regarding whether to refer the matter to the conduct board for hearing is made by the conduct officer and is not subject to appeal.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-402 Conduct officer hearings (brief adjudications). (1) The majority of student conduct matters are adjudicated through conduct officer hearings. However, conduct officer hearings are not used to adjudicate matters in which the respondent faces possible sanctions of suspension for more than ten instructional days, expulsion, or revocation of degree or when a recognized or registered student organization faces possible loss of recognition. In addition, conduct officer hearings generally are not used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221.

(2) Notice of hearing. The conduct officer must provide the parties with written notice no later than ten calendar days prior to the conduct officer hearing. The notice must, at a minimum, briefly describe the factual allegations or issues involved, the specific standard of conduct provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violations, and the time, date, and place of the hearing. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 must be provided. The notice must also include:

(a) A jurisdiction statement if the alleged behavior occurred off campus and information regarding the right to challenge jurisdiction in accordance with WAC 504-26-015;

(b) Information regarding the right to request recusal of a conduct officer under WAC 504-26-125; and

(c) Any request to extend the time or date of the conduct officer conference/hearing should be addressed to the conduct officer.

(3) Hearing and possible outcomes. Conduct officer hearings are brief adjudications conducted in accordance with RCW 34.05.482 through 34.05.494. The hearing allows the conduct officer to review available information, hear the parties' view of the matter, render a decision regarding responsibility, and (~~impose~~) assign sanctions, as appropriate.

(a) Before the hearing begins, the conduct officer must inform the respondent that:

(i) All respondents are presumed "not responsible" for pending charges;

(ii) The university must prove all violations by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred; and

(iii) The parties have the right to have an advisor present at the hearing.

(b) Upon conclusion of the hearing, the conduct officer may take any of the following actions:

(i) Terminate the proceeding and enter a finding that the respondent is not responsible for the alleged conduct violation;

(ii) Dismiss the matter with no finding regarding responsibility, in which case the matter may be reopened at a later date if relevant new information becomes known;

(iii) Find the respondent responsible for any violations and impose sanctions within the limitations described in subsection (1) of this section; or

(iv) Refer the matter to the conduct board.

(4) Notice of decision and right to appeal. The conduct officer notifies the parties in writing of the decision within ten calendar days of the conduct officer hearing. This is the initial order of the university and includes information regarding the parties' right to appeal under WAC 504-26-420.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-403 Conduct board hearings (full adjudications). (1) Conduct board hearings are used in matters in which the respondent faces possible sanctions of suspension for more than ten instructional days, expulsion, or revocation of degree and matters in which a recognized or registered stu-

dent organization faces possible loss of recognition. In addition, conduct board hearings are generally used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221. Other matters may be referred to a conduct board in the discretion of the conduct officer.

(2) Adoption of model rules of procedure. Conduct board hearings are full adjudications governed by the Administrative Procedure Act, RCW 34.05.413 through 34.05.476, and chapter 10-08 WAC, Model rules of procedure, except as otherwise provided in this chapter. In the event of a conflict between the rules in this chapter and the model rules, this chapter governs.

(3) Notice of hearing. Notice to the parties of a conduct board hearing must comply with model rule WAC 10-08-040 and standards of conduct rule WAC 504-26-035. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 must be provided.

(4) Time for conduct board hearings. The conduct board hearing is scheduled not less than ten calendar days after the parties have been sent notice of the hearing.

In accordance with WAC 10-08-090, requests to extend the time and/or date for hearing must be addressed to the presiding officer. A request for extension of time is granted only upon a showing of good cause.

(5) Subpoenas. Subpoenas may be issued and enforced in accordance with model rule WAC 10-08-120. In determining whether to issue, quash, or modify a subpoena, the presiding officer must give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal Office for Civil Rights. The party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(6) Discovery. Depositions, interrogatories, and physical or medical examinations of parties are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process.

(7) Cross-examination. As required by RCW 34.05.449, cross-examination of witnesses is permitted to the extent necessary for full disclosure of all relevant facts and issues. ((The preferred method of cross-examination in all student conduct matters is through written questions submitted to, and asked by, the presiding officer. Regardless, in)) Cross-examination is conducted orally through the party's advisor or representative. If a party does not have an advisor or representative, an advisor is provided by the university free of charge to conduct cross-examination on that party's behalf. Advisors and representatives are required to engage in cross-examination questioning in a respectful manner. In no circumstance may the complainant or respondent be permitted to cross-examine each other directly ((in person or through their representative)). Before any witness or party may answer a cross-examination question, the presiding officer must first determine whether the question is relevant. The presiding officer ((may decline to ask)) must instruct parties or witnesses not to answer cross-examination questions that

are irrelevant, immaterial, or unduly repetitious. ((All questions submitted by the parties must be retained as part of the agency record, in accordance with RCW 34.05.566.))

(8) Decision requirements. Decisions regarding responsibility and sanctions are made by a majority of the conduct board hearing the matter, except that any sanction of expulsion, revocation of degree, or loss of recognition of a recognized or registered student organization requires a supermajority consisting of no more than one "no" vote.

(9) Notice of decision and right to appeal. Within ten calendar days of the completion of the hearing, the conduct board must issue a decision simultaneously to all parties, which is the initial order of the university and must contain the following:

(a) Description of the allegations that initiated the community standards process;

(b) Description of procedural steps taken from the receipt of the formal complaint up to and including the university conduct board hearing;

(c) Appropriately numbered findings of fact and conclusions;

~~((b))~~ (d) The sanction(s) and/or remedy(ies) to be ~~((imposed))~~ assigned, if any, and the rationale for the sanction(s) and/or remedy(ies);

~~((c))~~ (e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and

~~((d))~~ (f) Notice that the initial order becomes final unless an appeal is filed within ~~((twenty-one))~~ twenty calendar days of ~~((service of))~~ the date the initial order is sent to the parties.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-409 Emergency suspension. (1) Definition. An emergency suspension is a temporary exclusion of a student from all or specified portions of university premises, programs, or activities pending an investigation or student conduct proceeding relating to alleged standards of conduct violations. An emergency suspension may be ~~((imposed))~~ assigned at any time prior to the issuance of the university's final order in the matter.

(2) Circumstances warranting emergency suspension.

(a) For matters which would not constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, emergency suspension may be ((imposed)) assigned only in situations when the ((vice president for student affairs)) dean of students or campus chancellor (in consultation with the center for community standards), or their designee, has cause to believe that the student:

~~((a))~~ (i) Has violated any provision of the standards of conduct; and

~~((b))~~ (ii) Presents an immediate danger to the health, safety, or welfare of any part of the university community or the public at large. Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from completing their duties or accessing their education or the

educational environment, is conduct harmful to the welfare of members of the university community.

(b) For matters which would constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, emergency suspension may be assigned only in a situation where the dean of students or campus chancellor (in consultation with the center for community standards), or their designee, has engaged in an individualized safety and risk analysis, and determines that removal is justified because the student:

(i) Has violated any provision of the standards of conduct; and

(ii) Is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX sexual harassment.

(3) Procedure. The ~~((vice president for student affairs))~~ dean of students or campus chancellor, or their designee, ordering an emergency suspension must send the student a written notice of emergency suspension. The notice must contain the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct), ~~((and))~~ the policy reasons for the emergency suspension, and the process to challenge the decision. The emergency suspension does not replace the regular hearing process, which must proceed to a conduct officer hearing or conduct board hearing, as applicable, as quickly as feasible. Once a final order is entered, any emergency suspension is lifted and the sanction, if any, set forth in the final order is ~~((imposed))~~ assigned.

(4) Challenge of the decision. The student can challenge the emergency suspension decision within ten calendar days of the date of notice. Challenges are reviewed by the vice president of student affairs or their designee, provided the designee is not the same person who made the original emergency suspension decision. The vice president of student affairs or designee has ten calendar days to respond to the review and can uphold, reverse, or modify the emergency suspension. The submission of a challenge does not stay the emergency suspension decision.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-415 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor must assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the center for community standards in writing, including the allegations, the student's admission, and the sanctions ~~((imposed))~~ assigned.

(b) If the instructor is unable to meet with the student or if the respondent disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor must make a determination as to whether the student did or did not violate the academic integrity policies. If the instructor finds that the

student was in violation, the instructor must provide the student and the center for community standards with a written determination, the evidence relied upon, and the sanctions ~~((imposed))~~ assigned.

(c) The student has twenty-one calendar days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) ~~((imposed))~~ assigned to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by their instructor to have violated the academic integrity policies, the academic integrity hearing board must make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policies and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome ~~((imposed))~~ assigned by the instructor violates the instructor's published policies.

(c) Academic integrity hearing board proceedings.

(i) Any student appealing a responsible instructor's finding of an academic integrity violation is provided written notice of an academic integrity hearing board hearing in accordance with WAC 504-26-035. The written notice must include:

(A) The specific complaint, including the university or instructor academic integrity policy or regulation allegedly violated;

(B) The approximate time and place of the alleged act that forms the factual basis for the violation;

(C) The time, date, and place of the hearing;

(D) A list of the witnesses who may be called to testify, to the extent known; and

(E) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student must have the right to inspect the documentation.

(ii) Time for hearings.

(A) Academic integrity hearing board hearings are scheduled not less than seven calendar days after the student has been sent notice of the hearing.

(B) Requests to extend the time and/or date for hearing must be addressed to the chair of the academic integrity hearing board, and must be copied to the center for community standards. A request for extension of time is granted only upon a showing of good cause.

(iii) Academic integrity hearing board hearings are conducted according to the following procedures, except as provided by (c)(iv) of this subsection:

(A) Academic integrity hearing board hearings are conducted in private.

(B) The instructor, respondent, and their advisor, if any, are allowed to attend the entire portion of the hearing at which information is received (excluding deliberations).

Admission of any other person to the hearing is at the discretion of the academic integrity hearing board chair.

(C) In academic integrity hearings involving more than one respondent, the academic integrity hearing board chair may permit joint or separate hearings at the chair's discretion.

(D) In hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(E) The responsible instructor and the respondent may arrange for witnesses to present relevant information to the academic integrity hearing board. Witnesses must provide written statements to the conduct officer at least two weeks before the hearing. The respondent is responsible for informing their witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the academic integrity hearing board, the responsible instructor, and the respondent, as appropriate. The respondent and/or responsible instructor may suggest written questions to be answered by each other or by other witnesses. Written questions are submitted to, and asked by, the academic integrity hearing board chair. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the academic integrity hearing board chair, who has the discretion to determine admissibility of information.

(F) Pertinent records, exhibits, and written statements may be accepted as information for consideration by an academic integrity hearing board at the discretion of the chair.

(G) Questions related to the order of the proceedings are subject to the final decision of the chair of the academic integrity hearing board.

(H) After the portion of the hearing concludes in which all pertinent information is received, the academic integrity hearing board determines (by majority vote) whether or not the respondent is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(I) The respondent is notified of the academic integrity hearing board's decision within twenty calendar days from the date the matter is heard. The respondent must receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the academic integrity policies), and the sanction.

(iv) If a respondent to whom notice of the hearing has been sent (in the manner provided above) does not appear at the hearing, the information in support of the complaint is presented and considered in the respondent's absence, and the board may issue a decision based upon that information.

(v) The academic integrity hearing board may for convenience, or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of any person, provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the chair of the academic integrity hearing board to be appropriate.

(vi) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the respondent's first offense, the center for community standards ordinarily requires the respondent to attend a workshop separate from, and in addition to, any academic outcomes (~~imposed~~) assigned by the instructor. A hold is placed on the respondent's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the respondent's second offense, the respondent is ordinarily referred for a full adjudicative hearing in accordance with WAC 504-26-403, with a recommendation that the respondent be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the respondent is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the respondent's case be referred for a full adjudicative hearing, with a recommendation for dismissal from the university even if it is the respondent's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings must be reported to the responsible instructor and the chair or dean.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-420 Appeals. (1) Time for appeals. Decisions made by a conduct officer or conduct board become final (~~twenty-one~~) on the twenty-first calendar day(~~s~~) after the date the decision is sent to the parties, unless an appeal is submitted (~~before that date~~) within twenty calendar days of the date the decision is sent to the parties.

(2) Effect of appeal - Stay. Except in extraordinary circumstances, which must be explained in writing in the conduct officer's or conduct board's initial order, the implementation of an initial order (~~imposing~~) assigning sanctions must be stayed pending the time for filing an appeal and the issuance of the university's final order.

(3) Appeals of conduct officer decisions. Upon receipt of a timely appeal, the appeals board provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond, and conducts a limited review as described below.

(a) Scope of review. Except as required to explain the basis of new information, appeal of a conduct officer decision is limited to a review of the record for one or more of the following purposes:

(i) To determine whether the conduct officer hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results;

(ii) To determine whether the decision reached was based on substantial information, that is, whether there were

facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) To determine whether the sanction(s) (~~imposed~~) assigned were appropriate for the violation of the standards of conduct that the respondent was found to have committed; or

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original conduct officer hearing, because such information and/or facts were not known to the person appealing at the time of the original conduct officer hearing.

(b) Conversion to conduct board hearing. The appeals board makes any inquiries necessary to ascertain whether the proceeding must be converted to a conduct board hearing in accordance with WAC 504-26-403.

(4) Appeals of conduct board decisions. Upon receipt of a timely appeal, the appeals board provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond.

(a) The appeals board must have and exercise all the decision-making power that the conduct board had, except that the appeals board must give due regard to the conduct board's opportunity to observe the witnesses, if applicable. The appeals board members must personally consider the whole record or such portions of it as may be cited by the parties.

(b) Scope of review. The appeals board conducts a full review in accordance with RCW 34.05.464.

(5) University's right to initiate appeal. The university president or designee, at their own initiative, may request that the appeals board review any initial order. Prior to taking action, the appeals board must notify the parties and allow them an opportunity to explain the matter.

(6) Appeals board decisions.

(a) Actions. After reviewing the record and any information provided by the parties, the appeals board may take the following actions:

(i) Affirm, reverse, or modify the conduct board's or conduct officer's decision, or any part of the decision;

(ii) Affirm, reverse, or modify the sanctions (~~imposed~~) assigned by the conduct board or conduct officer, or any part of the sanctions; or

(iii) Set aside the findings or sanctions, or any part of the findings or sanctions, and remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(b) Content of decision. The decision includes the outcome, any sanction, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. For appeals of conduct board hearings, the decision includes, or incorporates by reference to the conduct board's decision, all matters as set forth in WAC 504-26-403.

(c) Service and effective date of decision. For appeals of conduct officer decisions, the appeals board's decision must be sent simultaneously to the parties within twenty calendar days of receipt of the appeal. For appeals of conduct board decisions, the appeals board's decision must be sent simultaneously to the parties within thirty calendar days of receipt of

the appeal, unless the appeals board notifies the parties in writing that additional time (up to ninety calendar days) is needed. The appeals board's decision is the final order of the university, except in the case of remand, and is effective when sent.

(7) Reconsideration of final orders. Within ten calendar days of service of a final order, any party may submit a request for reconsideration. The request must be in writing, directed to the appeals board, and must state the reasons for the request. The request for reconsideration does not stay the effective date of the final order. However, the time for filing a petition for judicial review does not commence until the date the appeals board responds to the request for reconsideration or twenty-one calendar days after the request has been submitted, whichever is sooner. If the appeals board does not respond to the request for reconsideration within twenty-one calendar days, the request is deemed to have been denied.

(8) Stay. A party may request that the university delay the date that the final order becomes effective by requesting a stay in writing to the appeals board within ten calendar days of the date the order was served.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-425 Sanctions. (1) Publication of guidelines for sanctioning. Sanctioning guidelines and other information regarding sanctioning must be published on the center for community standards website. Guidelines must explain in plain language the types of sanctions that a respondent may face for a particular violation and the factors that are used to determine the sanction(s) (~~imposed~~) assigned for a particular violation. Factors must include, but not be limited to, the following:

(a) Conduct record. Any record of past violations of the standards of conduct, and the nature and severity of such past violations;

(b) Malicious intent. If a respondent is found to have intentionally selected a victim based upon the respondent's perception of the victim's race, color, religion, national or ethnic origin, age, sex/gender, marital status, status as an honorably discharged veteran or member of the military, sexual orientation, genetic information, gender identity/expression, or mental, physical, or sensory disability (including disability requiring the use of a trained service animal), such finding is considered an aggravating factor in determining a sanction for such conduct; and

(c) Impact on victim and/or university community.

(2) Effective date of sanctions. Except as provided in WAC 504-26-420(2), sanctions are implemented when a final order becomes effective. If no appeal is filed, an initial order becomes a final order on the day after the period for requesting review has expired. (See WAC 504-26-420.)

(3) Types of sanctions. The following sanctions may be (~~imposed upon~~) assigned to any respondent found to have violated the standards of conduct. More than one of the sanctions listed below may be (~~imposed~~) assigned for any single violation:

(a) Warning. A notice in writing to the respondent that the respondent is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the respondent's continued attendance, recognition, or registration at the university. Probation is for a designated period of time and warns the student or recognized or registered student organization that suspension, expulsion, loss of recognition, or any other sanction outlined in this section may be ~~((imposed))~~ assigned if the student or recognized or registered student organization is found to have violated any institutional regulation(s) or fails to complete any conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any recognized or registered student group or organization; they are not eligible for certain jobs on campus including, but not limited to, resident advisor or orientation counselor; and they are not eligible to serve on the university conduct or appeals board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the respondent to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(f) Community service. ~~((Imposition))~~ Assignment of service hours (not to exceed eighty hours per student or per member of a recognized or registered student organization).

(g) University housing suspension. Separation of the student from a residence hall or halls for a definite period of time, after which the student may be eligible to return. Conditions for readmission may be specified.

(h) University housing expulsion. Permanent separation of the student from a residence hall or halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to request readmission. Conditions for readmission may be specified.

(j) University expulsion. Permanent separation of the student from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or standard of conduct in obtaining the degree, or for other serious violations committed by a student before awarding of the degree.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in these standards of conduct, including the completion of all sanctions ~~((imposed))~~ assigned, if any.

(m) Trespass. A student may be restricted from any or all university premises based on their misconduct.

(n) Loss of recognition. A recognized or registered student organization's recognition (or ability to register) may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing first year students. Loss of recognition is defined as withholding uni-

versity services, privileges, or administrative approval from a recognized or registered student organization. Services, privileges, and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, student involvement office organizational activities, and center for fraternity and sorority life advising.

(o) Hold on transcript and/or registration. A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions ~~((imposed))~~ assigned by a conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be ~~((imposed))~~ assigned. Fines are established each year prior to the beginning of the academic year and are approved by the vice president for student affairs.

(r) Additional sanctions for hazing. In addition to other sanctions, a student who is found responsible for hazing forfeits any entitlement to state-funded grants, scholarships, or awards for a specified period of time, in accordance with RCW 28B.10.902.

(s) Remedies. Sanctions designed to restore or preserve a victim's equal access to the university's educational programs or activities.

(4) Academic integrity violations. No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-504 Interpretation—Policies, procedures, and guidelines. (1) The vice president for student affairs or designee has authority to interpret these rules and develops policies, procedures, and guidelines for the administration of the university's student conduct system that are consistent with the provisions in this chapter. These must be published, at a minimum, on the center for community standards website and in the university's student handbook. A link to the student handbook or center for community standards website must be provided to parties prior to any informational meeting or student conduct hearing and must provide the following information:

- (a) Rights in the student conduct process;
- (b) A clear explanation of what to expect during the process;
- (c) Information regarding legal resources available in the community;

(d) A statement that respondents are presumed "not responsible"; and

(e) A statement regarding the right not to self-incriminate in accordance with WAC 504-26-045.

(2) Definitions from these standards are incorporated into Washington State University's executive policy 15(~~which prohibits discrimination, sexual harassment, and sexual misconduct~~)).

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-515 Periodic review and assessment. At the end of each academic year, the center for community standards provides a report to the vice president for student affairs which must include, at a minimum, a numerical breakdown of the types of matters handled and the sanctions (~~imposed~~) assigned. The vice president for student affairs must make the report publicly available, provided all personally identifiable or readily ascertainable student information is removed.

The standards of conduct and the student conduct system as a whole are reviewed every three years under the direction of the vice president for student affairs or designee. The student government council is asked to provide recommendations and input on proposed changes. After completion of any adjudication or other resolution of a student conduct matter, the center for community standards must send a survey to all parties requesting feedback on the process. Feedback results must be reviewed, at a minimum, every three years in connection with the periodic review and assessment.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-525 Good standing. The award of a degree and/or diploma is conditioned upon the student's good standing in the university and satisfaction of all university graduation requirements. "Good standing" means the student has resolved any acts of academic or behavioral misconduct and complied with all sanctions (~~imposed~~) assigned as a result of the misconduct. The university has the sole authority in determining whether to withhold the degree and/or diploma in cases where the student is not in good standing. The university must deny the award of a degree if the student is dismissed from the university based on their misconduct. Neither diplomas nor transcripts are sent until students have resolved any unpaid fees and resolved any acts of academic or behavioral misconduct and complied with all sanctions (~~imposed~~) assigned as a result of misconduct. (See also academic regulation 45 in the university general catalog.)

WSR 21-07-058

PERMANENT RULES

GAMBLING COMMISSION

[Filed March 15, 2021, 9:42 a.m., effective April 15, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The definitions of "gross sales," "net gambling receipts," "net gambling income," and "cost" strictly pertain to rules related to activity reporting that is no longer relevant to the agency's licensees. The gambling commission has completed its transition from activity reporting to quarterly licensing reporting and all other rules related to activity reporting have been repealed, therefore these definitions are no longer relevant.

Citation of Rules Affected by this Order: Repealing WAC 230-06-155 Defining "gross sales," 230-06-160 Defining "net gambling receipts," 230-06-165 Defining "net gambling income," and 230-06-175 Defining "cost."

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 21-02-044 on December 30, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 4.

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: March 15, 2021.

Ashlie Laydon
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-06-155 Defining "gross sales."

WAC 230-06-160 Defining "net gambling receipts."

WAC 230-06-165 Defining "net gambling income."

WAC 230-06-175 Defining "cost."

WSR 21-07-074

PERMANENT RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Filed March 17, 2021, 8:50 a.m., effective April 17, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Permanently repeal WAC 480-100-238, which was superseded by rules adopted under WSR 21-02-022 and repealed by emergency rule making under WSR 21-02-025, effective January 1, 2021.

Citation of Rules Affected by this Order: Repealing WAC 480-100-238.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160; chapters 80.28, 19.280, and 19.405 RCW.

Adopted under notice filed as WSR 21-02-090 on January 6, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

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 1.

Date Adopted: March 17, 2021.

Mark L. Johnson
Executive Director
and Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-100-238 Integrated resource planning.

WSR 21-07-082
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 17, 2021, 3:39 p.m., effective April 17, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is adopting housekeeping amendments to WAC 388-434-0005 How often does the department review my eligibility for benefits?, to update outdated terminology without changing the effect of the rule.

Citation of Rules Affected by this Order: Amending WAC 388-434-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510.

Adopted under notice filed as WSR 20-22-039 on October 27, 2020.

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

Number of Sections Adopted at the Request of a Non-governmental 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 0, Amended 1, 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 1, Repealed 0.

Date Adopted: March 18, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-434-0005 How often does the department review my eligibility for benefits? (1) If you receive cash assistance, the department reviews your eligibility for assistance at least once every twelve months.

(2) When it is time for your eligibility review, the department requires you to complete a review. We use the information you provide to determine your eligibility for all assistance programs.

(3) If you complete an interview for assistance with a department representative and sign the printed (~~application for benefits (AFB))~~ interactive interview declaration (IID) form, you do not have to complete a separate review form.

(4) For cash assistance, an eligibility review form or the (~~AFB~~) IID must be dated and signed by both (~~husband and wife~~) spouses, or both parents of a child in common when the parents live together.

(5) We may review your eligibility at any time if we decide your circumstances need to be reviewed sooner.

(6) At your review, we look at:

(a) All eligibility requirements under WAC 388-400-0005 through 388-400-0030;

(b) Changes since we last determined your eligibility; and

(c) Changes that are anticipated for the next review period.

(7) You are responsible for attending an interview if one is required under WAC 388-452-0005.

(8) If you do not complete the eligibility review for cash assistance, we consider you to be withdrawing your request for continuing assistance and your cash assistance benefits will end.

(9) We will send you written notice as described under chapter 388-458 WAC before assistance is suspended, terminated, or a benefit error is established as a result of your eligibility review.

(10) When you need a supplemental accommodation under WAC 388-472-0010, we will help you meet the requirements of this section.

WSR 21-07-085

PERMANENT RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed March 18, 2021, 10:14 a.m., effective April 18, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: All public institutions must update their policies and procedures to comply with the recently adopted Title IX regulations, which took effect on August 14, 2020. In order to comply, Bellingham Technical College must update portions of its student conduct code with certain procedures required by Title IX that the college must take in response to allegations of sexual harassment. Bellingham Technical College is also updating other sections of its student conduct code procedures.

Citation of Rules Affected by this Order: New WAC 495B-121-250, 495B-121-255, 495B-121-270, 495B-121-290, 495B-121-305, 495B-121-340, 495B-121-345, 495B-121-350, 495B-121-355, 495B-121-360, 495B-121-365, 495B-121-370, 495B-121-375, 495B-121-380, 495B-121-385 and 495B-121-390; repealing WAC 495B-121-150, 495B-121-160, 495B-121-170, 495B-121-180, 495B-121-190 and 495B-121-200; and amending WAC 495B-121-010, 495B-121-020, 495B-121-040, 495B-121-050, 495B-121-060, 495B-121-065, 495B-121-070, 495B-121-080, 495B-121-090, 495B-121-100, 495B-121-110, 495B-121-120, 495B-121-125, 495B-121-130, 495B-121-134, and 495B-121-140.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130.

Adopted under notice filed as WSR 21-01-100 on December 11, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 11, Amended 6, Repealed 6; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 5, Amended 10, 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: March 18, 2021.

Ronda Laughlin
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-010 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) "College" means Bellingham Technical College.

(3) "Student conduct officer" is a Bellingham Technical College (~~administrator~~) employee 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.

(4) "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.

(5) "The president" is the president of (~~the~~) Bellingham Technical College. The president is authorized to:

(a) Delegate any (~~and all~~) of (~~his or her~~) 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.

(6) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) "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 instructional days or (~~and~~) an expulsion are heard by the student conduct (~~appeals board~~) committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(8) "Respondent" is the student against whom disciplinary action is initiated.

(9) "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.

(10) "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.

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

(12) "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))~~ and persons who have been notified of their acceptance for admission are considered "students~~(-)~~" for purposes of this chapter.

(13) "Day" ~~((and))~~ means a calendar day, except when a "business day" is specified. "Business day" means a week-day, excluding weekends and college holidays.

(14) ~~((("Alcohol" or "alcoholic beverages" means the definition of liquor as contained within RCW 66.04.010 as now law or hereinafter amended.~~

(15) ~~"Drugs" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.201 through 60.50.212, or a legend drug as defined in RCW 69.41.010.)~~ A "complainant" is an alleged victim of sexual misconduct.

(15) "Sexual misconduct" has the meaning ascribed to this term in WAC 495B-121-265(13).

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of Bellingham Technical College the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. ~~((The vice president of student services or))~~ Unless otherwise specified, the student conduct officer, or their delegee, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-040 Prohibited student conduct. ~~((Prohibited student conduct for which))~~ The college may impose ((sanctions includes, but is)) disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, any of the following:

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

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

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submis-

sion for credit of academic work that has been submitted for credit in another course.

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

(d) 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 for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

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

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

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

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

(3) Obstruction or ((disruption of)) disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

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

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

(4) Assault, intimidation, harassment. Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, ((stalking)) or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this ((subsection:

~~((a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.~~

~~((b) Stalking is intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent))~~ code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law, that intentionally humiliates, harms, or intimidates the victim.

(5) Cyber misconduct. Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging,

electronic bulletin boards, 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.

(6) ~~((Attempted or actual damage to, or theft or misuse of, real or personal property or money of:~~

~~(a) The college or state;~~

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

~~(c) Any other person or organization, or possession of such property or money after it has been stolen.)) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, 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.~~

(7) ~~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 ~~((his or her))~~ their duties, including failure to properly identify oneself to such person when requested to do so.

(8) ~~((Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.~~

~~(9))~~ 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, 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 ~~((his or her))~~ 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; ~~((or))~~

(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.

~~((10))~~ (9) Hazing. Hazing includes, but is not limited to, any initiation into a 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 mental or emotional harm, to any student.

~~((11) 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 twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems and snuff.~~

(12) Alcohol. Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(13) Marijuana. Being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling, or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(14) Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional.

(15) Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.

(16) Conduct that is disorderly, lewd, or obscene.

(17) Breach of the peace.

~~(18) Discriminatory action))~~ (10) Alcohol, drug, and tobacco violations.

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

(b) Marijuana. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

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

(d) Tobacco, 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 twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. 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, cigars, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems, and snuff.

(11) Lewd conduct. Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) Discriminatory conduct. Conduct which harms or adversely affects any ((student or college employee)) member of the college community because of ((his/her race,)) their race; color((:)); national origin((:)); sensory, mental, or physical disability((:)); use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation((, age, creed, or religion.

(19) Sexual violence. Sexual or gender-based misconduct perpetrated against a person's will or where a person is incapable of giving consent including, but not limited to, rape, sexual assault, sexual battery, gender-based stalking, and sexual coercion, regardless of the relationship between the perpetrator and the victim.

(20) Sexual harassment. Conduct that includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other sexual conduct, including verbal, nonverbal, electronic or social media communication, or physical touching that would substantially interfere with a reasonable person's ability to participate in or benefit from the college's program, or to create an intimidating, hostile, or offensive educational environment.

(21) Other harassment. Conduct that has the purpose or effect of substantially interfering with a reasonable person's work or educational performance or creating an intimidating, hostile or offensive working or educational environment, when such conduct is directed at an individual because of race, national origin, disability, age, religion, sexual orientation, gender or any other legally protected classification.)); gender identity; veteran's status; or any other legally protected classification.

(13) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495B-121-355 (supplemental Title IX student conduct procedures).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

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

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

(B) Suffer substantial emotional distress.

(d) For the purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

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

(14) Harassment. Unwelcome conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status, or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

((22)) (15) Retaliation. Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) 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.

((23)) (17) 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.

((24)) (18) Procedural interference. Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

- (a) ~~(Failure to obey a subpoena;~~
- ~~(b) Falsification or misrepresentation of information;~~
- ~~(c) Disruption or interference with the orderly conduct of a proceeding;~~
- ~~((4)) (b) Interfering with someone else's proper participation in a proceeding;~~

~~((e)) (c) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness; or~~

~~((f)) (d) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member;~~

~~(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.~~

(25) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person).

((26)) (19) Safety violations. ~~(Safety violation includes any)~~ Nonaccidental 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 ~~(and)~~, triggering false alarms or other emergency response systems, or operating a motor vehicle on college property in a manner which is reasonably perceived as threatening the health or safety of another person.

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

((28)) (21) 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.

~~((29) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.)~~

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-050 Disciplinary sanctions terms and conditions. (1) The following disciplinary ~~(actions include, but are not limited to, the following sanctions that may be imposed upon students according to the procedure outlined in WAC 495B-121-070 through 495B-121-200.~~

~~(1))~~ sanctions may be imposed upon students found to have violated the student conduct code.

(a) Disciplinary warning~~(s)~~. A verbal statement to a student that there is a violation, and that continued violation

may be cause for further disciplinary action. This sanction is not subject to appeal.

~~((2))~~ ~~(b)~~ Written reprimand~~((:))~~. Notice in writing that the student has violated one or more terms of this code of conduct and that continuation or repetition of the same or similar ~~((behavior))~~ may result in more severe disciplinary action. This sanction is not subject to appeal.

~~((3))~~ ~~(c)~~ Disciplinary probation~~((:))~~. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student, subject to a deferred disciplinary sanction, is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction~~(s)~~ or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. ~~((A student who is on disciplinary probation may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:~~

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

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

~~(4))~~ ~~(d)~~ Summary suspension. Immediate exclusion from classes and other privileges or activities in accordance with this code.

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

~~(f) Deferred suspension. Notice of suspension from the college with the provision that the student may remain enrolled contingent on meeting any condition(s) specified. Not meeting the contingency shall immediately invoke a suspension for the period of time and under the conditions originally imposed.~~

~~(g) Dismissal. The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return except as outlined in WAC 495B-121-340. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

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

(a) Educational sanction. Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

(b) Restitution~~((:))~~. Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of

monetary reimbursement, appropriate service, or other compensation.

~~((5) Disciplinary suspension: Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~((6))~~ ~~(c)~~ Professional evaluation~~((:))~~. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation, which may also include mandatory attendance at educational programs, courses, or other assignments. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

~~((7) Dismissal: The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~(8) Refund of fees: Refund of fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund policy.~~

~~A student suspended on the basis of conduct that disrupted the orderly operation of the campus or any facility of the college may be denied access to all or any part of the campus or other college facility.~~

~~((9))~~ ~~(d)~~ Not in good standing. A student may be deemed "not in good standing" with the college. If so, that student shall be subject to the following restrictions:

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

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

(e) No trespass order. A student may be restricted from college property based on their misconduct.

(f) No contact order~~((:))~~. An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-060 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On Bellingham Technical College premises and facilities~~((, to conduct that occurs))~~;

(b) At or in connection with college-sponsored activities~~(, or to off-campus conduct that)~~; or

(c) Off-campus, and which, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

(2) 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, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

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

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-065 Statement of purpose. The purpose of these rules is to prescribe standards of conduct for students of Bellingham Technical College. Violations of these standards may be cause for disciplinary action as described in this code.

(1) Bellingham Technical College is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, it has special expectations regarding the conduct of the various participants in the college community.

(2) Admission to the college carries with it the prescription that the student will conduct ~~((himself or herself))~~ themselves as a responsible member of the college community. This includes an expectation that the student will obey appropriate laws, will comply with the rules of the college and its departments, and will maintain a high standard of integrity and honesty.

(3) Sanctions for violations of college rules or conduct that interferes with the operation of college affairs may be

applied by the college, and the college may impose sanctions independently of any action taken by civil or criminal authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

(4) The rules and regulations prescribed in this title shall be observed by guests and visitors while on campus, at all college functions and events, and on or within any other college-controlled or college-owned property. Guests and visitors who willfully refuse to obey college security or other duly designated college authorities to desist from conduct prohibited by such rules and regulations may be ejected from the premises. Refusal to obey such an order may subject the person to arrest under the provisions of the Washington criminal trespass law, in addition to such other sanctions as may be applicable.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-070 Initiation of disciplinary action.

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

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing ~~((him or her))~~ 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. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

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

(4) Within ten 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 shall serve the respondent with a written decision setting forth the facts and conclusions supporting ~~((his or her))~~ 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.

~~((4))~~ (5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC ((495B-121-040)) 495B-121-265;

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

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-080 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ((twenty-one)) ten business days of service ((~~to~~)) 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 the respondent has been summarily suspended.

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

(a) The imposition of disciplinary suspensions in excess of ten 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)) subject to the procedures outlined in WAC 495B-121-290 through 495B-121-305.~~

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

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

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

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

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

(12) Except as otherwise specified in this 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.

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-090 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer ((designated by the president)). The conduct review officer shall not participate in any case in which ((he or she is)) 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, the student conduct officer, and in cases involving sexual misconduct, 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 ((agency's)) college's view of the matter; and

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

(3) The conduct review officer shall serve an initial decision upon ((both of the parties)) the respondent and the student conduct officer within ten 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 ((twenty-one)) ten business days of service((s)) of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial

decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-100 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided ~~((the respondent))~~ a party files a written request for review with the conduct review officer within ~~((twenty-one))~~ ten business days of service of the initial decision.

(2) The president shall not participate in any case in which ~~((he or she is))~~ 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 ~~((each party))~~ 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 twenty business days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that committee 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 business 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 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 misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-110 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 ~~((staff member))~~ 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 ~~((staff member))~~ employee appointed on a yearly basis shall serve as the chair of the committee and may ~~((take action))~~ act 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~~((s))~~; in which they have direct or personal interest, prejudice, or bias~~((s))~~; 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).

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-120 ~~((Appeal—))~~ Student conduct committee—Procedure and evidence. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure 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 business 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 also 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,))~~ If a request for a document exchange is filed at least five business days before the hearing by any party or at the direction of the committee 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, 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) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of ((his/her)) their choice. A respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at ((his or her)) their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(10) At the option of the college president, the college may appoint an administrative law judge as a hearing officer responsible for handling procedural matters otherwise assigned to the chair and to conduct the hearing on behalf of the student conduct committee.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-125 Student conduct ((appeals)) committee hearing((s—Presentations of evidence)) procedures. (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 ((he/she)) they select((s)), in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

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

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

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

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross-examine the other. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-130 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within ((twenty)) ten business days following the latter 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 so be 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)) a party, the committee may affirm, reverse, or modify the disciplinary sanction(s) 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.

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-135 Appeal from student conduct committee initial decision. (1) A ~~((respondent))~~ party 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 within ~~((twenty-one))~~ ten business 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 an argument as to 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))~~ twenty-one business 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.

~~((The president may, at his or her discretion, suspend any disciplinary action and/or impose interim sanctions pending review of the merits of the findings, conclusions, and disciplinary actions imposed.))~~ In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-140 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises ~~((or))~~ and/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 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))~~ 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 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. At the hearing the review officer will:

~~((The hearing will be conducted as a brief adjudicative proceeding.~~

~~((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.~~

~~((The respondent shall be afforded an))~~ Determine 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; and

(b) Provide the respondent the 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))~~ (6) If the ~~((student))~~ 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))~~ (7) 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))~~ (8) 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.

(9) In cases involving allegations of sexual misconduct, 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.

~~((DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT))~~

NEW SECTION

WAC 495B-121-250 General policies. (1) Bellingham Technical College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for laws by cooperating in their enforcement.

(2) Bellingham Technical College cannot and will not establish regulations that would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions helpful to the effective function of the college, to protect individual students from unfair penalties, and to assure due process. Bellingham Technical College is granted the right by law to adopt rules to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take that action which is in the best interest of the entire college.

(5) Bellingham Technical College reserves the right to impose the provisions of this code and provide further sanctions before or after law enforcement agencies, courts, or other agencies have imposed penalties or otherwise disposed of a case. College hearings are not subject to challenge on the grounds that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or otherwise not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

NEW SECTION

WAC 495B-121-255 Student responsibilities. Bellingham Technical College is a dynamic learning community that promotes growth and development by offering opportunities to gain knowledge, entrance skills, examine values, and pursue learning options. The college is committed to quality life-long learning through its values of respect, responsibility, and responsiveness. To that end, Bellingham Technical College maintains a strong commitment to providing a civil and non-disruptive learning environment. Students are reminded that they assume certain responsibilities of performance and conduct which have been reasonably established in order to accomplish Bellingham Technical College's education goals. Therefore, the college expects that students will conduct themselves as responsible members of the college community, will comply with the rules and regulations of the college, will maintain high standards of integrity and honesty, and will respect the rights, privileges, and property of other members of the college community.

NEW SECTION

WAC 495B-121-270 Disciplinary sanctions. (1) Administration of the disciplinary procedure is the responsibility of the vice president of student services. The student conduct officer, or designee, shall serve as the principle investigator and prosecutor for alleged violations of this code.

(2) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

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

(4) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct officer or designee on the same day of the suspension. In consultation with the faculty member or college administrator, the student conduct officer may set conditions for the student upon return to the class or activity.

(5) The student has the right to appeal any disciplinary action of an instructor or college employee to the student conduct officer in accordance with the procedures set forth in this code.

(6) A student formally charged or under investigation for a violation of this code may not excuse themselves from disciplinary hearings by withdrawing from the college.

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

the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 495B-121-290 Brief adjudicative proceedings authorized. This chapter 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) Student conduct appeals involving the following disciplinary actions:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Written reprimands;
- (d) Any condition or term imposed in conjunction with one of the foregoing disciplinary actions;
- (e) Summary suspensions; and
- (f) 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 the respondent.

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

NEW SECTION

WAC 495B-121-305 Brief adjudicative proceedings—Agency record. 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.

NEW SECTION

WAC 495B-121-340 Readmission after dismissal. A student dismissed due to a code of conduct violation from the college may be readmitted only on written petition to the president. Petitions must indicate reasons that support reconsideration. The president may use whatever review procedures are at the president's disposal in consideration of readmission. The president shall convey a decision in writing to the student within thirty days after completion of the review process.

NEW SECTION

WAC 495B-121-345 Review of rules. These rules will be reviewed annually by the student conduct officer. Upon determining a need to revise this code a review committee shall be convened to make recommendations for change in the code. The ASBTC executive team will be notified of proposed changes.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 495B-121-350 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.

NEW SECTION

WAC 495B-121-355 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 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 495B-121-360 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 495B-121-230 through 495B-121-345.

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

NEW SECTION

WAC 495B-121-365 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 Title IX hearing 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 a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 495B-121-370 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the Title IX hearing 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 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 495B-121-375 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-121-380 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 495B-121-385 Initial order. (1) In addition to complying with WAC 495B-121-325 the Title IX hearing 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 deter-

mination 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, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college educational 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 495B-121-390 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 495B-121-330.

(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(s) and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction(s) and/or condition(s).

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

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
495B-121-010	495B-121-245
495B-121-020	495B-121-230
495B-121-030	495B-121-260
495B-121-040	495B-121-265
495B-121-050	495B-121-275
495B-121-060	495B-121-235
495B-121-065	495B-121-240
495B-121-070	495B-121-280
495B-121-080	495B-121-285
495B-121-090	495B-121-295
495B-121-100	495B-121-300
495B-121-110	495B-121-310

495B-121-120	495B-121-315
495B-121-125	495B-121-320
495B-121-130	495B-121-325
495B-121-135	495B-121-330
495B-121-140	495B-121-335

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495B-121-150	Supplemental sexual misconduct— Procedures.
WAC 495B-121-160	Supplemental sexual misconduct— Definitions.
WAC 495B-121-170	Supplemental complaint process.
WAC 495B-121-180	Supplemental appeal rights.
WAC 495B-121-190	Brief adjudicative proceedings autho- rized.
WAC 495B-121-200	Brief adjudicative proceedings— Agency record.

WSR 21-07-088**PERMANENT RULES****BOARD OF****PILOTAGE COMMISSIONERS**

[Filed March 19, 2021, 8:20 a.m., effective April 19, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The changes to this rule are necessary due to the passage of HB 1647 during the 2019 legislative session, which amended RCW 88.16.103 Mandatory rest periods for pilots and became effective July 28, 2019. This new rule will codify that pilots have a mandatory rest period of at least ten hours with the opportunity for eight hours of uninterrupted sleep after the completion of an assignment. In addition, this rule defines multiple assignments within a harbor area, and codifies and defines the existing practice of Puget Sound pilots to receive a mandatory rest period after three consecutive night assignments.

Citation of Rules Affected by this Order: Amending WAC 363-116-081.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Adopted under notice filed as WSR 21-04-125 on February 2, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 0, Amended 1, 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 1, Repealed 0.

Date Adopted: March 18, 2021.

Jaimie C. Bever
Executive Director

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

WAC 363-116-081 Rest period. (1) Pilots shall observe rest period requirements as set out in RCW 88.16-103 as now or hereafter amended. ~~((For purposes of applying this rule an assignment shall begin at the pilot's dispatched departure time if the pilot is on board, regardless of when the ship actually sails. The assignment ends when the pilot leaves the vessel. Travel time shall not be included in an assignment.))~~ Pilots shall have a mandatory rest period of at least ten hours with an opportunity for eight hours of uninterrupted sleep after completion of an assignment; excluding multiple assignments within a harbor area, provided the combined total duration of assignment time does not exceed thirteen hours.

(2) An assignment is a billable pilotage service, including cancellations and ship movements, regardless of duration

(3) An assignment begins at call time and ends at check-in time and includes preparation time and travel time to and from the ship in addition to bridge time. Call time allows one to two hours of preparation before the start of travel time to the ship. Check-in time occurs when travel time from the ship is completed. In the Puget Sound Pilotage district travel times are documented in the Puget Sound pilots operating rules and may be reviewed by the board from time to time.

(4) When there are multiple assignments within a harbor area (multiple harbor shifts), call time is before the first harbor shift and check-in time occurs when the travel time has been completed after the final harbor shift. Harbor area geographic definitions outlined by the utilities and transportation commission are used to distinguish harbor shifts from other ship moves.

(5) Pilots shall not complete more than three consecutive night assignments, a night assignment being one in which any part occurs between 0100 and 0459 hours. After three consecutive night assignments, pilots shall have a mandatory rest period of at least twelve hours, including at least one period between 2000 and 0800 hours.

WSR 21-07-094**PERMANENT RULES****OLYMPIC COLLEGE**

[Filed March 19, 2021, 3:23 p.m., effective April 19, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and took effect on August 14, 2020. In response, the college's board of trustees has adopted new student conduct code rules to comply with the Title IX regulations. The board has also determined that the college's grievance procedures (chapter 132C-285 WAC) does not need to be memorialized in WAC and therefore, has repealed this provision to permit the college to revise these procedures without undergoing formal rule making to address sexual misconduct and other discriminatory conduct that falls outside Title IX.

Citation of Rules Affected by this Order: New WAC 132C-120-320, 132C-120-325, 132C-120-330, 132C-120-335, 132C-120-340, 132C-120-345, 132C-120-350, 132C-120-355 and 132C-120-360; and repealing chapter 132C-285 WAC.

Statutory Authority for Adoption: RCW 28B.50.14 [28B.50.140].

Adopted under notice filed as WSR 21-03-084 on January 19, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental 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 0, Amended 0, 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: March 16, 2021.

Martin Cavalluzzi
President

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132C-120-320 Order of precedence. These supplemental procedures apply 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 Olympic College's standard disciplinary procedures, WAC 132C-120-010 through 132C-120-315 these supplemental procedures shall take precedence.

NEW SECTION

WAC 132C-120-325 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 these supplemental procedures, "sexual harassment" encompasses the following conduct:

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

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

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

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

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

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 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 132C-120-330 Title IX jurisdiction. (1) These supplemental procedures apply 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 these supplemental procedures.

(2) For purposes of these supplemental procedures, 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 132C-120-065.

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

NEW SECTION

WAC 132C-120-335 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);

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

(e) Explain that the complainant and the respondent 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 132C-120-340 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 132C-120-122. 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 132C-120-345 Rights of parties. (1) The college's student conduct procedures, WAC 132C-120-010 through 132C-120-315 and these supplemental procedures 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 132C-120-350 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 132C-120-355 Initial order. (1) In addition to complying with WAC 132C-120-122, 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 132C-120-360 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 132C-120-139.

(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) President's office shall serve the final decision on the parties simultaneously.

WSR 21-07-098

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 22, 2021, 9:02 a.m., effective April 22, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is adopting WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic, allowing the department to adjust food assistance benefit issuances as provided under the Families First Coronavirus Response Act (H.R. 6201, Section 2302).

These adjustments to food benefit issuances have been in effect since March 31, 2020, under emergency rule adoptions filed as WSR 20-08-107, 20-10-048, 20-18-029, and 21-01-193.

Citation of Rules Affected by this Order: New WAC 388-437-0005.

Statutory Authority for Adoption: RCW 74.04.500, 74.04.510, 74.08A.120.

Other Authority: H.R. 6201.

Adopted under notice filed as WSR 20-24-072 on November 24, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 0, Amended 0, 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 1, Amended 0, Repealed 0.

Date Adopted: March 18, 2021.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic. Starting March 2020, assistance units (AUs) eligible for either federal or state-funded food assistance, or both, will receive emergency allotments that bring the AU up to the maximum benefit for their household size.

(1) The amount is the maximum food assistance benefit allotment for your AU size under WAC 388-478-0060(1) less the amount received under WAC 388-450-0162 (4)(b).

(2) Emergency allotments will continue each month until:

(a) The secretary for health and human services rescinds the public health emergency declaration that was issued on January 27, 2020, under section 319 of the Public Health Service Act;

(b) The state-issued emergency or disaster declaration expires; or

(c) The food and nutrition service directs otherwise.

(3) Emergency allotments for state-funded food assistance will continue each month, contingent on the availability of state funds.

WSR 21-07-110

PERMANENT RULES

EVERETT COMMUNITY COLLEGE

[Filed March 23, 2021, 8:26 a.m., effective April 23, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and went into effect on August 14, 2020. An earlier CR-103E request was submitted to reflect these federal changes to the college's Washington Administrative Code and presently remains in effect. Everett Community College is now seeking a finalize[d] permanent rule-making process through this request.

Citation of Rules Affected by this Order: New Supplemental Title IX Student Conduct Procedures; WAC 132E-122-140, 132E-122-420, 132E-122-430, 132E-122-440, 132E-122-450, 132E-122-460, 132E-122-470, 132E-122-480 and 132E-122-490; and amending WAC 132E-122-170 and 132E-122-250.

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

Adopted under notice filed as WSR 20-20-125 on October 6, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 8, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 8, Amended 2, 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: March 23, 2021.

Rita Belvill
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-170 Reporting—Sexual misconduct and discrimination. (1) Persons who believe that a sexual misconduct or discrimination violation has been committed may contact and make a report to the Title IX coordinator directly ~~((or by filing a report online at everettcc.edu/TitleIX)).~~

~~((Becky Lamboley))~~

Title IX Coordinator

425-388-9271

TitleIXcoordinator@everettcc.edu

Olympus Hall ~~((207))~~ 114

2000 Tower Street

Everett, WA 98201

(2) The person filing the report will be asked to write a brief statement of allegation(s), including dates, names, a description of the incident, and the remedy sought.

(3) **Sexual misconduct responsible employee reporting.** Any employee who receives a report, formally or informally, of an alleged Title IX violation is required to report such information to the Title IX coordinator. The employee may contact the Title IX coordinator directly ~~((@))~~ TitleIXcoordinator@everettcc.edu or 425-388-9271 ~~((or may file a Title IX report through the college online reporting system)).~~

(4) **Campus counselors.** If information regarding a possible sexual misconduct violation is disclosed during a confidential counseling session with a campus counselor, the counselor is not required to report this information to the Title IX coordinator.

(5) If the complaint is against the conduct officer or Title IX coordinator, the matter is to be reported to the vice president of ~~((administrative services))~~ human resources.

Vice President of ~~((Administrative Services~~
~~vpadmin@everettcc.edu))~~ Human Resources

hr@everettcc.edu
425-388-9232
2000 Tower Street
Everett, WA 98201

NEW SECTION

WAC 132E-122-410 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Everett Community College's standard disciplinary procedures, WAC 132E-122-010 through 132E-122-490, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132E-122-420 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, Everett Community 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.** An Everett Community College employee conditioning the provision of an aid, benefit, or service of Everett Community 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 Everett Community 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 132E-122-430 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during an Everett Community 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 Everett Community 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 Everett Community 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 Everett Community College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Everett Community College's student conduct code, WAC 132E-122-010 through 132E-122-490.

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

NEW SECTION

WAC 132E-122-440 Initiation of Title IX proceedings. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisor(s) during the hearing and that:
 - (i) The advisor(s) will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) Everett Community College will appoint the party an advisor of the Everett Community 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 132E-122-450 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 132E-122-440. 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 Everett Community College intends to offer the evidence at the hearing.

NEW SECTION

WAC 132E-122-460 Rights of parties. (1) Everett Community College's student conduct procedures and this supplemental procedure shall apply equally to all parties.

(2) Everett Community 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 Everett Community College's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132E-122-470 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 132E-122-480 Initial order. The student conduct committee will be responsible for conferring and drafting an initial order that:

- (1) Identifies the allegations of sexual harassment;
- (2) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, inter-

views with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

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

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

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

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

(7) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Everett Community College's education programs or activities; and

(8) Describes the process for appealing the initial order to Everett Community College's president.

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

NEW SECTION

WAC 132E-122-490 Title IX appeals. (1) The parties have the right to appeal from the determination of responsibility and/or from a Title IX dismissal, in whole or part, of a formal complaint, as set forth in the initial order.

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

(3) If a request for reconsideration is received, the Title IX coordinator shall respond within seven business days. The Title IX coordinator shall either deny the request or, if the Title IX coordinator determines that the request for reconsideration has merit, issue amended findings.

(4) If any of the grounds in the request for appeal do not meet the grounds in this policy, that request will be denied and the parties and their advisors will be notified in writing of the denial and the rationale.

(5) If any of the grounds in the request for appeal meet the grounds in this policy, then the other party(ies) and their advisors, and, when appropriate, the investigators and/or the original decision-maker(s) will be notified of the decision.

(6) The other party(ies) and their advisors, and, when appropriate, the investigators and/or the original decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and be provided seven business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the appeal decision-maker(s) to all parties for review and comment.

(7) The nonappealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the appeal decision-maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the investigator(s) and/or original decision-maker(s), as necessary, who will

submit their responses in seven business days, which will be circulated for review and comment by all parties.

(8) Neither party may submit any new requests for appeal after this time period. The appeal decision-maker(s) will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than seven business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

(9) A notice of appeal outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The notice of appeal outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the recipient is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the recipient is permitted to share under state or federal law.

(10) Notification will be made in writing and may be delivered by one or more of the following methods: In person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' recipient-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

(11) The grounds for appeal are as follows:

(a) Procedural irregularity that affected the outcome of the matter;

(b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(c) The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter.

(12) All decisions reached through this process are final. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

(13) If no request for reconsideration is received within seven days, the findings become final.

(14) Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

(15) Appeals are not intended to provide for a full rehearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

(16) An appeal is not an opportunity for appeal decision-maker(s) to substitute their judgment for that of the original decision-maker(s) merely because they disagree with the finding and/or sanction(s).

(17) Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand except in the case of a new hearing.

(18) Any amended findings are final and no further reconsideration is available.

WSR 21-07-121**PERMANENT RULES****TRANSPORTATION COMMISSION**

[Filed March 23, 2021, 1:13 p.m., effective June 14, 2021]

Effective Date of Rule: June 14, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: At the request of the transportation commission, the definition of the transportation commission has been edited in WAC 468-305-001 reflecting its statutory authority.

Purpose: The effective date for this rule making is changed to June 14, 2021.

Rules are needed to define customer requirements to use toll facilities and Washington state department of transportation procedures for processing transactions and penalties. This rule making is required to update specific requirements and procedures that will change when a new toll back office system becomes operational.

Citation of Rules Affected by this Order: Amending WAC 468-305-001, 468-305-100, 468-305-105, 468-305-125, 468-305-131, 468-305-133, 468-305-150, 468-305-160, 468-305-210, 468-305-220, 468-305-300, 468-305-315, 468-305-316, 468-305-320, 468-305-330, 468-305-340, 468-305-400, 468-305-526, 468-305-527, 468-305-528, 468-305-529, 468-305-540, 468-305-570, and 468-305-580.

Statutory Authority for Adoption: RCW 46.63.160(5), 47.01.101(5), 47.56.030(1), and 47.56.795.

Adopted under notice filed as WSR 19-09-069 on April 16, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, 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: March 23, 2021.

Shannon Gill
Interim Director
Risk Management
and Legal Services

WSR 21-07-126**PERMANENT RULES****DEPARTMENT OF****LABOR AND INDUSTRIES**

[Filed March 23, 2021, 2:36 p.m., effective April 23, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to adopt amendments to the factory assembled structures (FAS) rules that increase fees by 5.91 percent. The fee increase is the maximum the state office of financial management allows for fiscal year 2021. An evaluation of the FAS program's budget and projected revenue has determined a fee increase is needed to help cover the cost of ongoing services. A fee increase enables the program to continue providing quality and timely services to assure [ensure] the health and safety of Washington state citizens who work and live in factory-built housing and commercial structures.

Citation of Rules Affected by this Order: Amending WAC 296-150C-3000 Commercial coach fees, 296-150F-3000 Factory-built housing and commercial structure fees, 296-150I-3000 Penalties, fees, and refunds, 296-150M-3000 Manufactured/mobile home fees, 296-150P-3000 Recreational park trailer fees, 296-150T-3000 Factory-built temporary worker housing fees, and 296-150V-3000 Conversion vendor units and medical units—Fees.

Statutory Authority for Adoption: Chapter 43.22 RCW, Department of labor and industries; and chapter 43.22A RCW, Mobile and manufactured home installation.

Adopted under notice filed as WSR 21-04-137 on February 2, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, 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 7, Repealed 0.

Date Adopted: March 23, 2021.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150C-3000 Commercial coach fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction: VB	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
• Square footage of the building multiplied by the amount in the BVD valuation table	\$
6. Total valuation:	\$
PERMIT FEE	
7. Calculate from building permit fee table using the total valuation	\$
STRUCTURAL PLAN REVIEW FEE*	
8. One year design review: (Valid for one year) multiply the total on line 7 by ((0.382) <u>0.404</u>)	\$
9. Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.546) <u>0.578</u>)	\$
* Minimum plan review fee is 2 1/2 hours x ((\$83.00) <u>\$87.90</u>) per hour	
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)	
10. Fire and life-safety plan review:	
a. One year design—Multiply the total on line 7 by ((0.163) <u>0.173</u>)	\$
b. Master plan design—Multiply the total on line 7 by ((0.273) <u>0.289</u>)	\$
• Required for all structures that are more than 4,000 square feet and for all A and I occupancy	
PLUMBING PLAN-REVIEW FEE	
11. Plumbing ((\$19.60) <u>\$20.70</u>) + ((\$6.50) <u>\$6.80</u>) per fixture	\$
12. Medical gas ((\$19.60) <u>\$20.70</u>) + ((\$6.50) <u>\$6.80</u>) per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM	
13. ((10.92) <u>11.56</u>)% of building permit + ((\$83.00) <u>\$87.90</u>)	\$
RESUBMITTAL	
14. ((10.92) <u>11.56</u>)% of building permit + ((\$83.00) <u>\$87.90</u>)	\$
ELECTRICAL PLAN-REVIEW FEE	
15. See WAC 296-46B-906(9) for electrical review fees	
INSIGNIA FEES	
16. FIRST SECTION	\$ ((24.90) <u>26.30</u>)
17. EACH ADDITIONAL SECTION	\$ ((15.30) <u>16.20</u>)
TOTAL FEES	
18. Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
19. Total fees due: Includes plan fees and insignia fees	\$
20. Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00

Total Valuation	Fee
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	((\$41.00) \$43.40)
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((+092)) <u>1.156</u> *	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((+092)) <u>1.156</u> *	
RENEWAL FEE - 10% of permit fee × ((+092)) <u>1.156</u> +	((\$83.00) \$87.90)
RESUBMIT FEE - 10% of permit fee × ((+092)) <u>1.156</u> +	((\$83.00) \$87.90)
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((+092)) <u>1.156</u> +	((\$83.00) \$87.90)
ELECTRONIC PLAN SUBMITTAL FEE ((\$5.80) <u>\$6.10</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
PLUMBING PLAN FEE, ((\$19.60) <u>\$20.70</u> + PER FIXTURE FEE of	((\$6.50) \$6.80)
MEDICAL GAS PLAN FEE, ((\$19.60) <u>\$20.70</u> + PER OUTLET FEE of	((\$6.50) \$6.80)
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((+092)) <u>1.156</u>	
One year design 15% of the permit fee × ((+092)) <u>1.156</u>	
ELECTRICAL PLAN REVIEW - Find fee @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN (minimum 3 hours)	((\$83.00) \$87.90 per hour)
INITIAL FEE - ONE YEAR DESIGN (minimum 2 hours)	((\$83.00) \$87.90 per hour)
RENEWAL FEE (minimum 1 hour)	((\$83.00) \$87.90 per hour)
ADDENDUM (minimum 1 hour)	((\$83.00) \$87.90 per hour)
PLANS APPROVED BY PROFESSIONALS - 10% of permit fee × ((+092)) <u>1.156</u> +	((\$83.00) \$87.90)
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS - 5% of permit fee × ((+092)) <u>1.156</u> +	((\$83.00) \$87.90)
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time* and mileage***)	((\$83.00) \$87.90)
TRAVEL (Per hour)	((\$83.00) \$87.90)

PER DIEM***	
HOTEL ****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	(((\$83.00)) \$87.90
TRAVEL (Per hour**)	(((\$83.00)) \$87.90
PER DIEM***	
HOTEL ****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
ALTERATION INSPECTION (one hour minimum + alteration insignia fee)	(((\$107.90)) \$114.20
INSIGNIA FEES:	
FIRST SECTION (NEW or ALTERATION)	(((\$24.90)) \$26.30
EACH ADDITIONAL SECTION (NEW or ALTERATION)	(((\$15.30)) \$16.20
REISSUED-LOST/DAMAGED	(((\$15.30)) \$16.20
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	(((\$83.00)) \$87.90
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	(((\$15.30)) \$16.20
REFUND FEE	(((\$27.30)) \$28.90

*Minimum plan review fee is 2 1/2 hours at the field technical service rate
 **Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments
 ***Per state guidelines
 ****Actual charges incurred

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150F-3000 Factory-built housing and commercial structure fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction:	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
• Square footage of the building multiplied by the amount in the BVD valuation table	\$
6. Total valuation:	\$
PERMIT FEE	
7. Calculate from building permit fee table using the total valuation	\$

STRUCTURAL PLAN REVIEW FEE*		
8.	One year design review: (Valid for one year) multiply the total on line 7 by ((0.382)) <u>0.404</u>	\$
9.	Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.546)) <u>0.578</u>	\$
* Minimum plan review fee is 2 1/2 hours x ((93.40)) <u>98.90</u> per hour		
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)		
10.	Fire and life-safety plan review:	
a.	One year design—Multiply the total on line 7 by ((0.163)) <u>0.173</u>	\$
b.	Master plan design—Multiply the total on line 7 by ((0.273)) <u>0.289</u>	\$
• Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy		
PLUMBING PLAN-REVIEW FEE		
11.	Plumbing ((19.60)) <u>20.70</u> + ((6.50)) <u>6.80</u> per fixture	\$
12.	Medical gas ((19.60)) <u>20.70</u> + ((6.50)) <u>6.80</u> per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM		
13.	((10.92)) <u>11.56%</u> of building permit + ((93.40)) <u>98.90</u>	\$
RESUBMITTAL		
14.	((10.92)) <u>11.56%</u> of building permit + ((93.40)) <u>98.90</u>	\$
ELECTRICAL PLAN-REVIEW FEE		
15.	See WAC 296-46B-906(9) for electrical review fees	
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)		
16.	Notification to local enforcement agency fee:	\$ ((40.30)) <u>42.60</u>
INSIGNIA FEES		
17.	FIRST SECTION	\$ ((298.70)) <u>316.30</u>
18.	EACH ADDITIONAL SECTION	\$ ((26.70)) <u>28.20</u>
TOTAL FEES		
19.	Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
20.	Total fees due: Includes plan fees, insignia fees, and NLEA fees	\$
21.	Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Table 1-A - Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00

Total Valuation	Fee
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	(((\$72.90)) \$77.20
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((1-092)) 1.156*	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((1-092)) 1.156*	
RENEWAL FEE - 10% of permit fee × ((1-092)) 1.156 +	(((\$93.40)) \$98.90
RESUBMIT FEE - 10% of permit fee × ((1-092)) 1.156 +	(((\$93.40)) \$98.90
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((1-092)) 1.156 +	(((\$93.40)) \$98.90
ELECTRONIC PLAN SUBMITTAL FEE (((\$5.80)) \$6.10 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
PLUMBING PLAN FEE, (((\$19.60)) \$20.70 + PER FIXTURE FEE of	(((\$6.50)) \$6.80
MEDICAL GAS PLAN FEE, (((\$19.60)) \$20.70 + PER OUTLET FEE of	(((\$6.50)) \$6.80
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((1-092)) 1.156	
One year design - 15% of the permit fee × ((1-092)) 1.156	
ELECTRICAL PLAN REVIEW - Find fees @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE-MASTER DESIGN (minimum 3 hours)	(((\$93.40)) \$98.90 per hour
INITIAL FEE-ONE YEAR DESIGN (minimum 2 hours)	(((\$93.40)) \$98.90 per hour
RENEWAL FEE (minimum 1 hour)	(((\$93.40)) \$98.90
ADDENDUM (minimum 1 hour)	(((\$93.40)) \$98.90 per hour
PLANS APPROVED BY DESIGN PROFESSIONALS - 10% of permit fee × ((1-092)) 1.156 +	(((\$93.40)) \$98.90
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST THREE SETS - 5% of permit fee × ((1-092)) 1.156 +	(((\$93.40)) \$98.90
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time** and mileage***)	(((\$93.40)) \$98.90
TRAVEL (Per hour**)	(((\$93.40)) \$98.90
PER DIEM***	
HOTEL ****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	

DEPARTMENT AUDIT FEES:	
AUDIT (Per hour**)	((93.40)) \$98.90
TRAVEL (Per hour**)	((93.40)) \$98.90
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
INSIGNIA FEES:	
FIRST SECTION	((298.70)) \$316.30
EACH ADDITIONAL SECTION	((26.70)) \$28.20
REISSUED-LOST/DAMAGED	((72.90)) \$77.20
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	((93.40)) \$98.90
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	((40.30)) \$42.60
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((14.90)) \$15.70
REFUND FEE	((27.30)) \$28.90

*Minimum plan review fee is 2 1/2 hours at the field technical service rate.
 **Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.
 ***Per state guidelines.
 ****Actual charges incurred.

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-150I-3000 Penalties, fees, and refunds.

Penalties

(1) Monetary penalties for infractions listed in WAC 296-150I-0210 shall be assessed for each violation of chapter 43.22A RCW in the following amount:

(a) Failure to have a certified installer on the installation site whenever installation work is being performed:

First Final Violation \$250.00
 Each Additional Final Violation \$1,000.00

(b) Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same:

First Final Violation Warning
 Second Final Violation \$250.00
 Third Final Violation \$500.00
 Each Additional Final Violation \$1,000.00

(c) Failure by a certified installer to affix a certification tag to an installed manufactured/mobile home:

First Final Violation Warning
 Second Final Violation \$250.00
 Third Final Violation \$500.00
 Each Additional Final Violation \$1,000.00

(d) Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department:

First Final Violation Warning
 Each Additional Final Violation \$250.00

(e) Transfer of certification tag(s) from a certified installer to a noncertified installer:

First Final Violation to Each Contractor in Violation \$250.00
 Each Additional Final Violation to Each Contractor in Violation \$1,000.00

(f) Transfer of unused installer certification tags by a manufactured home retailer to a new ownership without prior written approval of the department:

First Final Violation	Warning
Each Additional Final Violation	\$250.00

Retake failed examination and training	(\$40.50) \$42.80
Manufactured home installer training manual	(\$13.50) \$14.20
Installer certification tag	(\$9.40) \$9.90

Fees and Refunds

The following fees are payable to the department in advance:

Training and certification	(\$270.40) \$286.30
Training only 10 hours	(\$135.20) \$143.10
Manufactured/mobile home installation inspector training	(\$135.20) \$143.10
Refund	(\$27.00) \$28.50
Certification renewal	(\$135.20) \$143.10
Continuing education class	(\$54.00) \$57.10

(2) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

(3) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

- (a) Change to another scheduled training and examination; or
 - (b) Request a refund.
- (4) An applicant who fails the examination shall not be entitled to a refund.

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150M-3000 Manufactured/mobile home fees.

DESIGN PLAN FEES:	
STRUCTURAL ALTERATION	(\$181.50) \$192.20
RESUBMITTAL FEE	(\$80.20) \$84.90
ADDENDUM (Approval expires on the same date as original plan.)	(\$80.20) \$84.90
ELECTRONIC PLAN SUBMITTAL FEE ((\$5.60)) \$5.90 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
Combination permit - Mechanical and electrical inspections	(\$198.30) \$210.00
Heat pump	(\$198.30) \$210.00
Air conditioning	(\$198.30) \$210.00
Air conditioning with replacement furnace	(\$198.30) \$210.00
Gas furnace installation includes gas piping	(\$198.30) \$210.00
Fire safety inspection	(\$198.30) \$210.00
MECHANICAL	
Gas*** Piping	(\$88.10) \$93.30
Wood Stove	(\$88.10) \$93.30
Pellet Stove	(\$88.10) \$93.30
Gas*** Room Heater	(\$88.10) \$93.30
Gas*** Decorative Appliance	(\$88.10) \$93.30
Range: Changing from electric to gas***	(\$88.10) \$93.30
Gas*** Water Heater Replacement	(\$66.00) \$69.90
ELECTRICAL	
Electric Water Heater Replacement	(\$110.30) \$116.80
Electric Water Heater replacing Gas*** Water Heater	(\$110.30) \$116.80
Each added or modified 120 volt circuit (maximum charge is two circuits)	(\$110.30) \$116.80
Each added 240 volt circuit (for other than Heat Pumps, Air Conditioners, Furnaces, Water Heaters, Ranges, Hot Tubs or Spas)	(\$110.30) \$116.80
Hot Tub or Spa (power from home electrical panel)	(\$110.30) \$116.80

Replace main electrical panel/permanently installed transfer equipment	((\$110.30) <u>\$116.80</u>)
Low voltage fire/intrusion alarm	((\$110.30) <u>\$116.80</u>)
Any combination of Furnace, Range and Water Heater changing from electric to gas***	((\$110.30) <u>\$116.80</u>)
PLUMBING	
Fire sprinkler system	((\$247.80) <u>\$262.40</u>)
Each added fixture	((\$66.00) <u>\$69.90</u>)
Replacement of water piping system (this includes two inspections)	((\$221.20) <u>\$234.20</u>)
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	((\$98.90) <u>\$104.70</u>)
Reroofs (may require a plan review)	((\$176.70) <u>\$187.10</u>)
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	((\$176.70) <u>\$187.10</u>)
Other structural changes (may require a plan review)	((\$176.70) <u>\$187.10</u>)
MISCELLANEOUS	
OTHER REQUIRED INSPECTIONS (Per hour*)	((\$72.40) <u>\$76.60</u>)
ALL REINSPECTIONS (Per hour*)	((\$72.40) <u>\$76.60</u>)
Refund	((\$21.90) <u>\$23.10</u>)
INSIGNIA FEES:	
REISSUED - LOST/DAMAGED	((\$21.90) <u>\$23.10</u>)
IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	((\$36.30) <u>\$38.40</u>)
Second and succeeding inspections of unlabeled sections (Per hour*)	((\$80.20) <u>\$84.90</u>)
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (Per hour*separate from other fees)	((\$80.20) <u>\$84.90</u>)
Red tag removal at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Increased frequency surveillance (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Attendance at manufacturers training classes (Per hour* only)	((\$80.20) <u>\$84.90</u>)
Subpart "I" investigations (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Alterations to a labeled unit (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
IPIA Issues/Responses (Per hour* Plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Monthly surveillance during a regularly scheduled IPIA audit (Per hour*plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Monthly surveillance at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Plant certifications, recertifications and addenda updates (Per hour* plus travel time* and mileage** per each inspector)	((\$80.20) <u>\$84.90</u>)
Response to HBT Audit during a regularly scheduled IPIA audit (Per hour*)	((\$80.20) <u>\$84.90</u>)
Response to HBT Audit at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time*and mileage**)	((\$80.20) <u>\$84.90</u>)
Alternative construction (AC) letter inspections at placement site (Per hour* plus travel time*and mileage**)	((\$80.20) <u>\$84.90</u>)
Replacement of HUD labels (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
State Administrative Agency (SAA) inspection fee (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
State Administrative Agency (SAA) dispute resolution filing fee	((\$80.20) <u>\$84.90</u>)
State Administrative Agency (SAA) dispute resolution (Per hour*)	((\$80.20) <u>\$84.90</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour plus travel time* and mileage**)	((\$74.50) <u>\$78.90</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((\$14.60) <u>\$15.40</u>)
VARIANCE INSPECTION FEE	((\$176.70) <u>\$187.10</u>)
HOMEOWNER REQUESTED INSPECTION	((\$176.70) <u>\$187.10</u>)
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	((\$176.70) <u>\$187.10</u>)
DEMOLITION OF A MOBILE/MANUFACTURED HOME	((\$176.70) <u>\$187.10</u>)
ENERGY CONSERVATION PERMIT	((\$30.10) <u>\$31.80</u>)

NOTE: Local jurisdictions may have other fees that apply.

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Gas means all gases; natural, propane, etc.

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150P-3000 Recreational park trailer fees.

INITIAL FILING FEE	((\$37.80) \$40.00)
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	((\$107.20) \$113.50)
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	((\$141.80) \$150.10)
RESUBMITTAL FEE	((\$76.70) \$81.20)
ADDENDUM (Approval expires on same date as original plan.)	((\$76.70) \$81.20)
ELECTRONIC PLAN SUBMITTAL FEE ((\$5.60) \$5.90 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	((\$76.70) \$81.20)
TRAVEL (per hour)*	((\$76.70) \$81.20)
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	((\$76.70) \$81.20)
TRAVEL (per hour)*	((\$76.70) \$81.20)
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	((\$114.50) \$121.20)
INSIGNIA FEES:	
STATE CERTIFIED	((\$27.30) \$28.90)
ALTERATION	((\$37.80) \$40.00)
REISSUED-LOST/DAMAGED	((\$14.00) \$14.80)
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	((\$76.70) \$81.20)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((\$14.20) \$15.00)
REFUND FEE	((\$27.30) \$28.90)

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150T-3000 Factory-built temporary worker housing fees.

INITIAL FILING FEE	((\$57.50) \$60.80)
DESIGN PLAN FEES:	
INITIAL ONE YEAR DESIGN	((\$166.80) \$176.60)

	RENEWAL FEE	((\$57.50) \$60.80)
	RESUBMIT FEE	((\$83.00) \$87.90)
	ADDENDUM (Approval expires on same date as original plan)	((\$83.00) \$87.90)
	ELECTRONIC PLAN SUBMITTAL FEE ((\$5.70) \$6.00 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
	Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	((\$98.40) \$104.20)
	APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	((\$15.30) \$16.20)
	DEPARTMENT INSPECTION FEES:	
	INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	((\$83.00) \$87.90)
	TRAVEL (Per hour)*	((\$83.00) \$87.90)
	PER DIEM**	
	HOTEL***	
	MILEAGE**	
	RENTAL CAR***	
	PARKING***	
	AIRFARE***	
	DEPARTMENT AUDIT FEES:	
	AUDIT (Per hour*)	((\$83.00) \$87.90)
	TRAVEL (Per hour*)	((\$83.00) \$87.90)
	PER DIEM**	
	HOTEL***	
	MILEAGE**	
	RENTAL CAR***	
	PARKING***	
	AIRFARE***	
	INSIGNIA FEES:	
	FIRST SECTION	((\$234.00) \$247.80)
	EACH ADDITIONAL SECTION	((\$22.50) \$23.80)
	REISSUED-LOST/DAMAGED	((\$57.50) \$60.80)
	ELECTRICAL COMMERCIAL/INDUSTRIAL	
	Electrical Service/feeders 200 Amperage plus	
	Service/feeder	((\$242.40) \$256.70)
	Additional Feeder	((\$45.90) \$48.60)
	ELECTRICAL MULTIFAMILY RESIDENTIAL	
	Electrical Service/feeders 200 Amperage plus	
	Service/feeder	((\$128.50) \$136.00)
	Additional Feeder	((\$32.50) \$34.40)
	OTHER FEES:	
	FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	((\$83.00) \$87.90)
	PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free per year)	((\$15.30) \$16.20)
	REFUND FEE	((\$27.30) \$28.90)

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150V-3000 Conversion vendor units and medical units—Fees.

	INITIAL FILING FEE	((\$41.00) \$43.40)
	DESIGN PLAN FEES:	
	INITIAL FEE - MASTER DESIGN	((\$284.60) \$301.40)
	INITIAL FEE - ONE YEAR DESIGN	((\$116.30) \$123.10)

RENEWAL FEE	(((\$49.30)) \$52.20
RESUBMIT FEE	(((\$83.00)) \$87.90
ADDENDUM (Approval expires on same date as original plan)	(((\$83.00)) \$87.90
ELECTRONIC PLAN SUBMITTAL FEE (((\$5.70)) \$6.00 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW - For medical units, find fees at http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	(((\$126.80)) \$134.20
INITIAL FEE - ONE YEAR DESIGN	(((\$76.60)) \$81.10
RENEWAL FEE	(((\$76.60)) \$81.10
ADDENDUM	(((\$76.60)) \$81.10
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	(((\$15.30)) \$16.20
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	(((\$83.00)) \$87.90
TRAVEL (Per hour)*	(((\$83.00)) \$87.90
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	(((\$124.30)) \$131.60
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	(((\$23.80)) \$25.20
REISSUED-LOST/DAMAGED	(((\$15.30)) \$16.20
EXEMPT	(((\$41.00)) \$43.40
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	(((\$83.00)) \$87.90
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	(((\$15.30)) \$16.20
REFUND FEE	(((\$27.30)) \$28.90

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

WSR 21-07-127
PERMANENT RULES
TRANSPORTATION COMMISSION

[Filed March 23, 2021, 2:44 p.m., effective April 23, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To modify the current definition of WAC 468-17-030 in order to establish a single clearly defined size standard for the small businesses in the small and veteran's business enforceable goals program.

The revisions include: (b) Is ~~certified with the office of minority and women's business enterprises (OMWBE) as a DBE, MBE, WBE or SBE under chapter 39.19 RCW; or is self-certified as a "small business enterprise (SBE)" through the Washington state department of enterprise services and is listed as a SBE on the WEBS.~~

Citation of Rules Affected by this Order: Amending WAC 468-17-030 (14)(b).

Statutory Authority for Adoption: RCW 34.05.310.

Adopted under notice filed as WSR 21-05-053 on February 13, 2021.

A final cost-benefit analysis is available by contacting Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98504-7314, phone 360-338-5783, fax 360-705-6801, TTY 711, email BayneJ@wsdot.wa.gov, website www.wsdot.wa.gov/equalopportunity, 360-705-7084.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2021.

Shannon H. Gill
Interim Director
Risk Management
and Legal Services

AMENDATORY SECTION (Amending WSR 19-12-026, filed 5/29/19, effective 6/29/19)

WAC 468-17-030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Award" means the formal decision by the department to accept a bid and the intent to enter into a contract with the bidder.

(2) "Commercially useful function" means the activity conducted by a firm responsible for the execution of the work of the contract and that is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Additional requirements are discussed in WAC 468-17-060.

(3) "Condition of award (COA)" means that a prime contractor or consultant, on a design-bid-build or consultant agreement, commits to subcontracting with a small business enterprise (SBE) or veteran-owned business (VOB). On design-build or general contractor/construction manager contracts, all SBEs and VOBs in the quarterly small and veteran business plans are considered COA firms.

(4) "Consultant agreement" means a contract entered into by a public body for architectural and engineering services (performed pursuant to chapter 39.80 RCW) with another party, i.e., an independent individual or firm, in which the other party agrees to perform a service, render an opinion, or recommendations according to the consultant's methods and without being subject to the control of the public body except as to the result of the work.

(5) "Contract goal" means a percentage of the contract award amount the prime contractor or prime consultant must meet with small, mini, micro and veteran-owned businesses in order to receive award of the contract:

(a) For design-bid-build contracts, the contract goal is a percentage of the prime contractor's total bid plus any executed change orders;

(b) For design-build and consulting agreements, the contract goal is a percentage of the original contract amount plus any executed change orders or supplements;

(c) For general contractor/construction manager contracts, the contract goal is a percentage of the maximum

allowable contract cost (MACC) plus any executed change orders or supplements.

(6) "Department" means the Washington state department of transportation (WSDOT).

(7) "Design-bid-build (DBB) contract" means a contract between a public body and another party in which the public body contracts separately with a designer and a contractor for the design and construction of a facility, portion of the facility, or other item specified in the contract. Designers and contractors bear no contractual obligation to one another under a DBB contract.

(8) "Design-build (DB) contract" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract as defined in chapter 39.10 RCW.

(9) "General contractor/construction manager (GC/CM)" means a contract between a public body and another party in which the party agrees to both build and manage the construction of the facility, portion of the facility, or other item specified in the contract as defined in chapter 39.10 RCW.

(10) "Good faith efforts (GFE)" means efforts to achieve a goal or other requirement of this chapter which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. GFE is not necessary when a contract goal has been met.

(11) "Mini-business" means any business that:

(a) Is owned and operated independently from all other businesses;

(b) Has a gross revenue of less than three million dollars annually as reported on its federal tax return or on its return filed with the department of revenue;

(c) Is self-certified as a "mini-business" through the Washington state department of enterprise services (DES); and

(d) Is listed as a "mini-business" on the Washington electronic business service (WEBS).

(12) "Micro-business" means any business that:

(a) Is owned and operated independently from all other businesses;

(b) Has a gross revenue of less than one million dollars annually as reported on its federal tax return or on its return filed with the department of revenue;

(c) Is self-certified as a "micro-business" through the Washington state department of enterprise services (DES); and

(d) Is listed as a "micro-business" on the WEBS.

(13) "Quarterly small and veteran business plans" means documents design-builders are required to submit which outline the strategies the organization will be utilizing to meet the established contract goals.

(14) "Small business enterprise (SBE)" means an in-state business that:

(a) Is owned and operated independently from all other businesses and has either:

(i) Fifty or fewer employees; or

(ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its

return filed with the department of revenue over the previous three consecutive years; or

(b) Is ~~((certified with the office of minority and women's business enterprises (OMWBE) as a DBE, MBE, WBE or SBE under chapter 39.19 RCW; or is))~~ self-certified as a "small business enterprise (SBE)" through the Washington state department of enterprise services and is listed as a SBE on the WEBS.

(15) "Tiered participation" means the amount of additional contract goal credit the prime contractor or prime consultant may receive for using SBE and VOBs of different designations, as detailed in WAC 468-17-080.

(16) "Veteran-owned businesses (VOB)" means a business certified by the Washington state department of veterans affairs, pursuant to RCW 43.60A.190.

WSR 21-07-132
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 23, 2021, 4:25 p.m., effective April 23, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-444-0010 Who is exempt from work registration while receiving basic food?, 388-444-0030 Are able-bodied adults without dependents (ABAWD) subject to additional work requirements and time limits to be eligible for basic food?, and 388-444-0035 Who is exempt from ABAWD time limits and minimum work requirements?

These amendments will align rules regarding basic food work registration and ABAWD work requirements more closely with federal Supplemental Nutrition Assistance Program regulations, and strike obsolete or duplicative language.

Citation of Rules Affected by this Order: Amending WAC 388-444-0010, 388-444-0030, and 388-444-0035.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: 7 C.F.R. 273.7, 7 C.F.R. 273.24.

Adopted under notice filed as WSR 20-22-095 on November 3, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 0, Amended 0, 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 3, Repealed 0.

Date Adopted: March 22, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-04-046, filed 1/27/16, effective 2/27/16)

WAC 388-444-0010 Who is exempt from work registration while receiving basic food? If you receive basic food, you are exempt from work registration and the requirements in chapter 388-444 WAC if you meet any one of the following conditions:

- (1) Are age sixteen or seventeen, and:
 - (a) Not the head of household;
 - (b) Attend school; or
 - (c) Are enrolled at least half time (using the institutions definition) in an employment and training program under:
 - (i) The Workforce Innovation and Opportunity Act of 2014 (WIOA);
 - (ii) Section 236 of the Trade Act of 1974; or
 - (iii) A state or local employment and training program.
- (2) You are a student age eighteen or older enrolled at least half time as defined by the institution in:
 - (a) Any accredited school;
 - (b) A training program; or
 - (c) An institution of higher education. If you are enrolled in higher education, you must meet the requirements under WAC 388-482-0005 to be eligible for basic food benefits.
- (3) You are an employed or self-employed person working at least thirty hours per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty;
- (4) You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);
- (5) You receive unemployment compensation (UC) benefits or have an application pending for UC benefits;
- (6) You are responsible to care for:
 - (a) A dependent child under age six; or
 - (b) ~~((An adult))~~ A person with an incapacity that meets the requirements of WAC 388-310-0350 (1)(d)(i), (ii), (iv), and (v), except the person does not need to be related to you as stated in (1)(d)(v).
- (7) You are physically or mentally unable to work as determined below:
 - (a) A DSHS SSI facilitator has assessed you as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) and your SSI application status may be verified through either the SSI facilitator or state data exchange, or both;
 - (b) You have a severe and chronic mental, physical, emotional, or cognitive disability that prevents you from participating in work or work activities for at least thirty hours a week; or
 - (c) We verify your disability using documentation from DDA, DVR, HCS, MHD, or RSN, or by one of the medical or mental health professionals listed in WAC 388-310-0350(2).

(8) You regularly participate in a drug addiction or alcoholic treatment and rehabilitation program as defined by the Food Stamp Act of 1977.

AMENDATORY SECTION (Amending WSR 19-17-086, filed 8/21/19, effective 9/21/19)

WAC 388-444-0030 Are able-bodied adults without dependents (ABAWD) subject to additional work requirements and time limits to be eligible for basic food?

(1) An able-bodied adult without dependents (ABAWD) is a person who:

- (a) Is age eighteen through forty-nine; and
- (b) Is fit for work and not exempted under WAC 388-444-0035(~~and~~
- (c) ~~Does not receive food assistance in an assistance unit (AU) that includes a minor child (we will consider the AU to include a minor child even if the minor child is not eligible to receive food assistance)).~~

(2) If you are an ABAWD, you must participate in work activities under subsection ~~((4))~~ (3) of this section.

(3) ~~(Nonexempt ABAWDs who live outside of King County or on the Muckleshoot Tribal Reservation may continue to receive food assistance until December 31, 2019, even if they fail to participate in work-related activities.~~

~~(4))~~ A nonexempt ABAWD is not eligible to receive food assistance for more than three full months (which do not have to be consecutive months), not including any partial benefit months in a thirty-six month period, unless the ABAWD:

(a) Works an average of eighty hours per month, including:

- (i) Work in exchange for money;
- (ii) Work in exchange for goods or services ("in kind" work);
- (iii) Unpaid work that is verified according to department requirements; or
- (iv) Any combination of (a)(i) through (iii) of this subsection;

(b) Participates in one of the following work programs and is meeting the requirements of that work program:

- (i) The Workforce Innovation and Opportunity Act of 2014;
- (ii) Section 236 of the Trade Act of 1974;
- (iii) A state-approved employment and training program at least an average of eighty hours per month; or

(c) Participates in an unpaid work program as provided in WAC 388-444-0040.

AMENDATORY SECTION (Amending WSR 16-22-002, filed 10/19/16, effective 11/19/16)

WAC 388-444-0035 Who is exempt from ABAWD time limits and minimum work requirements? Some people who receive basic food are exempt from able-bodied adult without dependents (ABAWD) time limits and minimum work requirements. You are exempt from ABAWD time limits and work requirements under WAC 388-444-0030 if you meet any one or more of the following:

(1) You are exempt from work requirements under WAC 388-444-0010;

~~(2)~~ You are under age eighteen or are age fifty or older;

~~((2))~~ (3) You receive temporary or permanent disability benefits issued by a governmental or private source;

~~((3))~~ (4) You are obviously mentally or physically unfit for employment as determined by the department; however, if the unfitness is not obvious, you must provide a statement that you are physically or mentally unfit for employment from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, licensed or certified psychologist, social worker, or any other medical personnel the department determines appropriate;

~~((4))~~ (5) You are an adult in a basic food assistance unit that has a family member who is under the age of eighteen;

~~((5))~~ (6) You are pregnant;

~~((6))~~ (7) You live in an area approved as exempt by U.S. Department of Agriculture (USDA); or

~~((7))~~ You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);

~~(8)~~ You are applying for or currently receive unemployment compensation;

~~(9)~~ You are a student enrolled at least half time as defined by the institution in:

~~(a)~~ Any accredited school;

~~(b)~~ Training program; or

~~(c)~~ Institution of higher education and you meet the requirements of WAC 388-482-0005 regarding basic food eligibility;

~~(10)~~ You are participating in a chemical dependency treatment and rehabilitation program;

~~(11)~~ You are employed a minimum of thirty hours per week or receive weekly earnings that equal the federal minimum hourly rate multiplied by thirty hours;

~~(12))~~ (8) You are eligible for one of the approved exemption slots under the U.S. Department of Agriculture (USDA) fifteen percent exemption rule(~~or~~

~~(13)~~ You are otherwise exempt from work requirements under WAC 388-444-0010)).

WSR 21-07-140

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed March 24, 2021, 9:16 a.m., effective April 24, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department issued an interim guidance statement in August 2019 regarding the taxation of stand-alone concrete pumping services, which went into effect April 1, 2020. The department is making amendments to WAC 458-20-211 to incorporate the information provided in the interim guidance statement and to clarify the department's policies regarding charges for the provision of concrete pumping equipment with an operator, by example. Specifically, the amendments clarify the distinctions between charges for the rental of concrete pumping equipment with an operator, sales of construction services, and sales of construction materials.

The department is also making amendments intended to reformat and modernize the rule.

Citation of Rules Affected by this Order: Amending WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

Statutory Authority for Adoption: RCW 82.01.060(2) and 82.32.300.

Adopted under notice filed as WSR 21-01-131 on December 16, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, 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: March 24, 2021.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-070, filed 2/25/10, effective 3/28/10)

WAC 458-20-211 Leases or rentals of tangible personal property, bailments. (1) **Introduction.** This section explains how persons are taxable who rent or lease tangible personal property or rent equipment with an operator. It explains that some activities performed by operated equipment may be taxable under classifications other than retail sales if the operator and equipment perform activities as a prime contractor or subcontractor and these activities are specifically classified under other tax classifications by the revenue act. Readers may want to refer to rules in the following list:

(a) WAC 458-20-102 Reseller permits.

(b) WAC 458-20-13501 Timber harvest operations.

(c) WAC 458-20-170 Constructing and repairing of new or existing buildings or other structures upon real property.

(d) WAC 458-20-17001 Government contracting—Construction, installations, or improvements to government real property.

(e) WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

(f) WAC 458-20-180 Motor carriers.

(g) WAC 458-20-198 Installment sales, method of reporting.

(h) WAC 458-20-209 Farming for hire and horticultural services performed for farmers.

(2) **Definitions.**

(a) The terms "leasing" and "renting" are used interchangeably and refer generally to the act of granting to another the right of possession to and use of tangible personal property for a consideration. When "lease," "leasing," "lessee," or "lessor" are used in this section, these terms are intended to include rentals as well, even if not specifically stated.

Persons may not claim to be leasing or renting equipment to themselves since they are not granting to another the right of possession.

(b) The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.

(c) The term "subcontractor" refers to a person who has entered into a contract for the performance of an act with the person who has already contracted for its performance. A subcontractor is generally responsible for performing the work to contract specification and determines how the work will be performed. In purchasing subcontract services, the customer is primarily purchasing the knowledge, skills, and expertise of the contractor to perform the task, as distinguished from the operation of the equipment.

(d) The term "rental of equipment with operator" means the provision of equipment with an operator to a lessee to perform work under the specific direction of the lessee. In such cases the lessor is generally not responsible for performing work to contract specification and does not determine how the work will be performed. ~~((Though not controlling, persons who rent equipment with an operator typically bill on the basis of the amount of time the equipment was used.))~~

(e)(i) The term "true object test" as it relates to this section means the analysis of a transaction involving the rental of equipment ((and) with an operator, to determine if the lessee is simply purchasing the use of the equipment or purchasing the knowledge, skills, and expertise of the operator beyond those needed to operate the equipment. Even if it is determined that the customer is purchasing the knowledge, skills, and expertise of the operator, the transaction may still be a retail sale if the activity is specifically included by statute within the definition of a retail sale. This test can also be applied to rentals of tangible personal property ~~((when the seller))~~ without an operator, where the lessor performs some service in connection with the rental property. See examples 5 and 6.

(ii) The "true object test" described in this section is distinguished from the "true object test" described in RCW 82.08.190 for bundled transactions of two or more products. See example 15.

(iii) The "true object test" described in this section is also distinguished from transactions involving two or more products where one or more of the products is real property or a service to real property. See example 10.

(f) The term "true lease" (often referred to as an "operating lease") refers to the act of leasing property to another for consideration with the property under the dominion and control of the lessee for the term of the lease with the intent that the property will revert back to the lessor at the conclusion of the lease.

(g) The term "financing lease" (often referred to as a "capital lease") typically involves the lease of property for a stated period of time with ownership transferring to the "lessee" at the conclusion of the lease for a nominal or minimal payment. The transaction is structured as a lease, but retains some elements of an installment sale. Financing leases will generally be taxed as if they are installment sales. The presence of some or all of the following factors indicates a financing lease with the transaction treated as an installment sale:

(i) The lessee is given an option to purchase the equipment, and, if so, the option price is nominal (sometimes referred to as a "bargain purchase option");

(ii) The lessee acquires equity in the equipment;

(iii) The lessee is required to bear the entire risk of loss;

(iv) The lessee pays all the charges and taxes imposed on ownership;

(v) There is a provision for acceleration of rent payments; and

(vi) The property was purchased specifically for lease to this lessee.

(3) A true lease, rental, or bailment of personal property does not arise unless the lessee or bailee, or employees or independent operators hired by the lessee or bailee actually takes possession of the property and exercises dominion and control over it. Where the owner/lessor of the equipment or the owner's/lessor's employees or agents maintain dominion and control over the personal property and actually operate it, the owner/lessor has not generally relinquished sufficient control over the property to give rise to a true lease, rental, or bailment of the property.

(4)(a) RCW 82.04.050 excludes from the definition "retail sale" any purchases for the purpose of resale, "as tangible personal property." Persons who use equipment in performing services either as prime contractors or as subcontractors are not purchasing the equipment for purposes of reselling the equipment as tangible personal property. These contractors must pay retail sales tax or use tax at the time the equipment is acquired ~~(Generally persons who rent equipment with an operator are not purchasing the equipment for resale as tangible personal property and must pay retail sales or use tax at the time the equipment is acquired)~~ and are not eligible to use a reseller permit for the purchase.

(b) Persons renting operated equipment to others may purchase the equipment without payment of retail sales tax only when the equipment is rented as tangible personal property. This can be demonstrated only when:

~~((a))~~ (i) The agreement between the parties is designated as an outright lease or rental, without reservations; and

~~((b))~~ (ii) The lessee acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

This last requirement is a factual question and the burden of proof is upon the owner/operator of the equipment to establish that the degree of control has been relinquished necessary to constitute a lessor-lessee relationship. Weight will be given to such factors as who has physical, operating control of the equipment; who is responsible for its maintenance, fueling, repair, storage, insurance (risk of loss or damage), safety and security of operation, and whether the operator is a loaned employee. If control of these factors is left with the

owner/operator, then as a matter of fact, there has not been a relinquishing of control of the equipment to the degree necessary to create a lessor-lessee relationship for the rental of tangible personal property. This is true, even though the customer exercises some constructive control over such matters as when and where the equipment is used in connection with the construction work being performed, i.e., the contractor controls the job site.

(5) Business and occupation (B&O) tax.

(a) Outright rentals of bare (unoperated) equipment or other tangible personal property as well as leases of operated equipment are generally subject to the retailing ~~(classification of the business and occupation)~~ B&O tax.

(i) When a lessor purchases equipment for bare rental or lease, the seller of the equipment is making a wholesale sale to the lessor and is required to obtain a ~~(resale certificate for sales made before January 1, 2010, or a)~~ reseller permit ~~(for sales made on or after January 1, 2010,))~~ from the lessor to document the wholesale nature of any sale, as provided in ~~((WAC 458-20-102A (Resale certificates) and))~~ WAC 458-20-102 (Reseller permits). ~~((Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.))~~

(ii) Under unique circumstances when equipment is rented ~~((for rent by the lessee,))~~ by a lessee for use as a rental to other lessees without intervening use, ~~((then))~~ the original rental is subject to ~~((the wholesaling classification of tax))~~ wholesaling B&O tax and the subsequent rental is subject to the retailing ~~((classification))~~ B&O tax. The original seller is required to obtain ~~((a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or))~~ a reseller permit (WAC 458-20-102) ~~((for sales made on or after January 1, 2010, for these wholesale sales))~~ to substantiate the wholesale nature of the transaction.

(iii) Persons who purchase equipment for use as prime contractors or subcontractors are considered ~~((to be the))~~ consumers of ~~((these purchases. They are the consumers because they are not specifically reselling the tangible personal property. Persons selling equipment to these persons are retailers and))~~ the equipment, as the contractor, not their customers, actually use the equipment. Sales of equipment and tools to prime contractors and subcontractors are generally subject to ((the)) retailing B&O tax, unless purchased for resale without any use on the part of the purchaser.

(b) Persons who provide equipment or other tangible personal property and, in addition, operate the equipment or supply an employee to operate the same for a charge, without relinquishing substantial dominion and control to the customer, are providing a service that is classified as a retail sale unless the nature of the activity is specifically classified under another tax classification. Where a specific tax classification applies to the activity, the income is subject to ~~((the business and occupation))~~ B&O tax (or public utility tax (PUT)) according to the classification of the activities performed by the equipment ~~((and))~~ operator. In the case of building construction, it ~~((will be))~~ is presumed that the rental of equipment with an operator to a contractor is a retail sale unless the operator ((has responsibility)) is responsible for

performing construction to contract specifications and assumes control over how the work will be performed.

(c) Under some circumstances, the ~~((leasing or renting)) rental or lease of tangible personal property ((can be))~~ is subject to the ~~((special))~~ "retailing of interstate transportation equipment" B&O tax classification. This classification applies if the sale is exempt from retail sales tax because of the specific tax exemptions ~~((of))~~ provided in RCW 82.08.0261, 82.08.0262, or 82.08.0263. These exemptions apply primarily to sales to private or common carriers who are engaged in interstate or foreign commerce.

~~((d))~~ The following examples show how the tax would be applied to certain situations:

~~(i) The charge made by a subcontractor to a prime construction contractor for use of equipment with an operator used in the paving of a parking lot as part of the construction of a building would be taxable under wholesaling—other when the subcontractor has the responsibility to perform the work to contract specification and determines how the work will be performed.~~

~~(ii) A contractor performing work to contract specification making a charge to a city for use of equipment and operator in the construction of a publicly owned road would be taxable under public road construction.~~

~~(iii) Income for loading of a vessel using equipment with an operator is taxable under the stevedoring classification.~~

~~(iv) Income from transporting persons or property for hire by motor vehicle, including leasing or renting motor carrier equipment with driver, is generally taxable under either motor transportation or urban transportation.~~

~~(v) A customer rents scaffolding and the seller is responsible for a technician to setup, move, and dismantle it. This is the rental of tangible personal property since the true object of the transaction is having the scaffolding available for use by the customer. The customer also assumes dominion or control over the scaffolding by determining who will use the scaffolding and by controlling the use of the scaffolding.~~

~~(vi) Income from transporting persons or property for hire by vessel is not a retail equipment rental with operator.~~

(6) **Retail sales tax.** Persons who rent or lease tangible personal property to ~~((users or))~~ consumers are required to collect ~~((from their lessees the))~~ retail sales tax measured by ~~((gross income from))~~ the selling price of the rentals as of the time the rental payments ~~((that))~~ become due. See RCW 82.08.010.

(a) RCW 82.04.050 excludes from the definition of the term "retail sale," purchases for the purpose of resale in the regular course of business without intervening use "as tangible personal property." Thus, the retail sales tax does not apply ~~((upon))~~ to sales of tangible personal property to persons who purchase the same solely for the purpose of renting or leasing such property without operators in the regular course of business. However, the retail sales tax applies upon sales to persons who provide such property with operators for a charge, without relinquishing substantial dominion and control, or who intend to make some use of the property other than or in addition to renting or leasing it.

(b) For state tax purposes, financing leases are treated ~~((for state tax purposes))~~ as installment sales. The retail sales

tax applies to the full selling price. Refer to WAC 458-20-198.

~~((e))~~ The retail sales tax does not apply to lease payments made by a seller/lessee under a sale/leaseback agreement in respect to property, equipment, and components used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish. Nor does the sales tax apply to the purchase amount paid by the lessee pursuant to an option to purchase this specific kind of processing equipment at the end of the lease term. (See RCW 82.08.0295.) In both situations the availability of this special sales tax exemption is contingent upon the seller/lessee having paid retail sales tax or use tax at the time of acquisition of such special processing property, equipment, and components. The use tax will also not apply if the sales tax does not apply.)

(7) **Use tax ((and/or)) or deferred retail sales tax.** Consumers who rent or lease tangible personal property from others and who have not paid ~~((the))~~ retail sales tax to their lessors are liable for ~~((the))~~ retail sales tax or use tax on the amount of the rental payments as of the time the payments fall due unless an exemption from the tax applies. ~~((However, if the))~~ In cases where rental payments do not represent a reasonable rental value for the article, the taxable value shall be determined according to the rental charges made by other sellers of similar articles of like quality and character. This ~~((can))~~ may include using the rate of return as a percentage of the capitalized value that lessors of the particular type of property are generally using in rate setting.

In some cases, lessors may lease articles wherein the lease payments do not include property taxes or insurance. These leases are often referred to as "net leases" with the insurance and property taxes paid directly by the lessee. If the lessor is the party insured and the party legally liable for payment of the taxes, the payments made directly by the lessee must be treated as additional consideration to the lessor and subject to ~~((the))~~ retailing B&O tax and retail sales tax.

(a) **Bailment.** The value of tangible personal property held or used under bailment is subject to use tax if the property was purchased or acquired under conditions whereby the retail sales tax was not paid by the bailor. Tax liability is that of the bailor, or of the bailee if the bailor has not paid the tax. The measure of the use tax to the bailor is the fair market value of the article at the time the article was first put to use in Washington. The measure of the use tax to the bailee for articles acquired by bailment is the reasonable rental ~~((with the))~~ value ~~((to be))~~, determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. In the absence of rental prices for similar products, the reasonable rental value may be computed by prorating the retail selling price over the period of possession ~~((had))~~ by a bailee and payable in monthly installments. No further use tax is due upon property acquired by bailment after use tax has been paid by the bailee or any previous bailee upon the full original value of the article.

(b) Use tax does not apply to use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental, and testing activities conducted by the user, providing the acqui-

sition or use of such articles by the bailor are exempt from retail sales tax or use tax. (RCW 82.12.0265.)

(8) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. In some situations it may be difficult to determine if the transaction is a retail equipment rental with operator. If in doubt as to whether a particular rental with an operator is a retail sale, taxpayers should contact the department for a ~~((specific))~~ tax ruling.

~~((a))~~ **Example 1.** ABC Contracting, Inc. (prime contractor) is hired by XYZ Property Rentals, Inc. (end consumer) to construct a retail shopping complex, including construction of an on-site parking lot adjacent to the shopping complex. ABC hires DEF Subcontracting, Inc. (subcontractor) to pave the parking lot. DEF will use its own equipment to complete the project, including equipment to pour, roll, and level the asphalt. As part of its contract with ABC, DEF is liable for meeting the contractual specifications set by XYZ (end consumer). At the time of purchase, ABC provides DEF with a reseller permit in lieu of paying retail sales tax.

In this scenario, DEF's business activity is classified as a construction service, rather than a rental of equipment with an operator, the charges for which are subject to wholesaling B&O tax, as construction services are eligible for resale in this case. This conclusion is supported by the fact that DEF is responsible for the actual performance of the construction activities, not merely the provision of equipment with an operator, which might also include services limited solely to the operation of the equipment.

Example 2. ABC Contracting, Inc. (prime contractor) enters into a contract with the city of Olympia, Washington, to construct a publicly owned road to specification. The contract includes separately stated charges for ABC's use of its own equipment and equipment operators to construct the publicly owned road. ABC's activities are assumed to meet the requirements of the public road construction B&O tax classification.

In this scenario, ABC's business activity is classified as a public road construction service, the charges for which, including charges for equipment and operators, are subject to the public road construction B&O tax. Additionally, ABC may be subject to deferred retail sales or use tax, if it has not previously reported and paid retail sales or use tax on its purchase of the equipment used to provide the public road construction services at issue in this scenario.

Example 3. GHI Crane Operators, Inc. is hired by UVW Terminal, Inc. to load storage containers onto a vessel. Under the terms of its contract with UVW, GHI will use its own crane and operator to load the storage containers onto the vessel. Additionally, GHI will use its own discretion in properly loading the vessel according to its experience in stevedoring. GHI's activities are assumed to meet the requirements of the stevedoring B&O tax classification.

In this scenario, GHI's business activity is classified as a stevedoring service, the charges for which are subject to stevedoring B&O tax. Additionally, GHI may be subject to deferred retail sales tax or use tax, if it has not previously

reported and paid tax on its purchase of the crane used to provide stevedoring services.

Example 4. JKL Trucking, Inc. contracts with MNO Builders, Inc. to lease to MNO several motor carrier vehicles that are operated by JKL employees. The vehicles are used to haul construction materials from MNO's headquarters in Yakima, Washington, to a construction site in Vancouver, Washington, over state highways. JKL's activities are assumed to meet the requirements of the motor transportation PUT classification.

In this scenario, JKL's business activity is classified as a motor transportation service, the charges for which are subject to motor transportation PUT.

Example 5. ZYX Construction Co. contracts with WVU Rental Co. for the rental of scaffolding. WVU's technicians set up, move, and dismantle the equipment. After assembly, ZYX assumes dominion and control over the use of the scaffolding until it is dismantled by WVU upon conclusion of the construction project.

In this scenario, WVU's business activity is classified as a rental of tangible personal property without an operator, the charges for which are subject to retailing B&O and retail sales tax. As the consumer of the scaffolding, ZYX is not eligible to use a reseller permit in lieu of paying retail sales tax.

Example 6. ABC Crane Co. is hired by DEF Builders Co. to supply a crane and operator to lift air conditioning equipment from the ground and hold it in place on the roof of a six-story building while ~~((the prime construction contractor))~~ DEF employees bolt ~~((s))~~ the unit down. ~~((ABC Crane's))~~ ABC's operator will retain control over the crane. ABC ~~((Crane))~~ has no responsibility to attach wiring, plumbing, or otherwise make the unit operational.

~~((ABC Crane is renting))~~ In this scenario, ABC's business activity is classified as a rental of equipment with an operator ((since it has no responsibility to perform actual construction to contract specification. The activity of renting a crane with an operator is a service included within the definition of a retail sale and is not otherwise tax classified elsewhere within the revenue act. The purchase of the crane by ABC is also a retail transaction because ABC retained control over the crane and is not renting the crane as tangible personal property.

~~((b))~~, the charges for which are subject to retailing B&O and retail sales tax. RCW 82.04.050(9). This is demonstrated by the fact that ABC is not responsible for the performance of any services, other than those necessary to operate the crane.

Additionally, ABC may be subject to retail sales tax or use tax on its use of the crane, if it has not already paid the tax at the time ABC initially acquired or used the crane in Washington.

Example 7. ABC Crane Co. (ABC) is hired by ~~((a prime contractor))~~ DEF Builders Co. (DEF), the prime contractor, to install a neon sign on the side of a new six-story building ~~((which is being constructed))~~ DEF is constructing. At the time of purchase, DEF provides ABC with a reseller permit in lieu of paying retail sales tax. ABC is responsible for making certain that the sign is correctly fastened to the side of the building and ~~((for installation of the electrical connections and meets the proper building codes. ABC is directly involved in construction and performs work to contract spec-~~

ification. Since the work is being done for the prime contractor for further resale, this is a wholesale sale, provided a resale certificate (WAC 458-20-102A) is obtained for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010. Had ABC only been hired to hold the sign in place while the prime contractor fastened it, this would have been a retail rental of equipment with operator.

(e) XYZ Concrete Pumping is hired by a prime contractor to supply a concrete pump and operator to pump concrete from a premix concrete delivery truck to the location of the forms. XYZ has no responsibility to build forms, do the concrete finishing, or otherwise see that the concrete meets or is placed according to contract specifications. In short, the pump functions similarly to a wheelbarrow, but in a more efficient manner. XYZ is not a subcontractor and is making a retail rental of equipment with an operator.

(d) ABC Company purchases a crane which it rents to others as a bare rental. It periodically rents the crane to lessees on this basis for two years. Beginning in the third year of ownership of this crane, ABC decides to start providing these customers with an employee to operate the crane. The employee will operate under the direction of ABC with ABC retaining dominion and control over the crane. Does ABC owe use tax on the crane, and if so, what is the measure of the use tax?

ABC owes use tax upon the first use of the crane as a consumer. This occurred in the third year of ownership when ABC began supplying an operator. The measure of the tax is the retail market value of the crane at the time it is put to use by ABC.

(e)) in accordance with the contract specifications established between DEF and the property owner.

In this scenario, ABC's business activity is classified as a construction service, the charges for which are generally subject to retailing B&O and retail sales tax. RCW 82.04.050(2). However, in this scenario the charges are subject to wholesaling B&O tax, as construction services are eligible for resale, and ABC received a reseller permit from DEF, who is reselling construction services to the property owner.

Example 8. ABC Crane Co. is an Oregon business. ABC purchases a crane in Oregon for \$75,000, which it will rent to customers. ABC's employees will operate the crane and ABC will retain dominion and control over the crane at all times. In the first two years following ABC's purchase of the crane, all rentals occur in Oregon. In the third year, ABC moves its operations to Washington, and begins renting the crane with an operator to Washington customers.

In this scenario, ABC owes use tax upon its first use of the crane as a consumer. This occurred in the third year of ownership when ABC first used the crane as a consumer in Washington. The measure of the tax is the retail market value of the crane at the time ABC puts it to use. At that time, the comparable retail value of the crane is determined to be \$50,000, which is the measure of the use tax.

Example 9. DEF Builders Co. (prime contractor) is hired to construct an apartment complex. DEF is performing a significant portion of the construction services associated with the project on its own behalf, including construction of the building's foundation. After constructing forms for the

apartment's foundation, DEF contracts with XYZ Concrete Co. to pump premixed concrete from a ready mix truck (located at the construction site) into the forms. XYZ operates its own pumping equipment, however, DEF controls the flow and placement of the concrete, directing XYZ's operator to start and stop the pump. The premixed concrete is not provided by XYZ. DEF is responsible for finishing the concrete.

In this scenario, XYZ is providing stand-alone concrete pumping services, and its business activity is classified as a rental of equipment with an operator, the charges for which are subject to retailing B&O and retail sales tax. Additionally, XYZ's activity is not eligible for resale, as DEF is considered the consumer of the operated rental equipment.

Example 10. DEF Builders Co. (prime contractor) is hired to construct an apartment complex. DEF is performing a significant portion of the construction services associated with the project on its own behalf, including construction of the building's foundation. After constructing forms for the apartment's foundation, DEF contracts with XYZ Concrete Co. to provide premixed concrete and to pump for the pour. XYZ operates its own pumping equipment, however, DEF controls the flow and placement of the concrete, directing XYZ's operator to start and stop the pump. At the time of its purchase, DEF provides XYZ with a reseller permit in lieu of paying retail sales tax.

In this scenario, where the taxpayer is providing both the concrete materials and the concrete pumping equipment and pumping services, XYZ's activity is classified according to subsection (2)(e)(iii) of this rule. In this case, the transaction's true object (or primary purpose) is the sale of premixed concrete. The sale of tangible personal property (concrete) for resale is subject to wholesaling B&O tax.

Example 11. DEF Builders Co. (prime contractor) is hired to construct an apartment complex. DEF hires subcontractors to perform a significant portion of the construction services associated with the project, including construction of the building's foundation. DEF contracts with XYZ Concrete Co. to pour and finish the building's concrete foundation, including construction of forms to pour the foundation. XYZ operates its own pumping equipment, in addition to providing on-site contractors who will manage the flow and placement of the pumped concrete. After the pour, XYZ is responsible for finishing the concrete. XYZ's contract with DEF requires the finished foundation meet the contract specifications entered into between DEF and its customer, the building owner.

In this scenario, XYZ's business activity is classified as the sale of subcontracted construction services, the charges for which are subject to wholesaling B&O tax, provided XYZ received a reseller permit from DEF.

Example 12. Farm Services, Inc. specializes in the cutting and baling of hay for farmers. Farm Services contracts with PQR Farms, Inc. (farmer) to cut and bale PQR's hay. The hay, after being cut and baled, is sold by ((the farmer)) PQR.

((Farm Services is not making a retail rental of equipment with operator, but is engaged in a farming for hire activity which is taxable under the)) In this instance, Farm Services' business activity is a farming for hire service, the pro-

ceeds from which are subject to service and other business activities B&O tax ((classification)). See WAC 458-20-209.

~~((f))~~ **Example 13.** Helicopter, Inc. contracts with Logs, Inc. to move logs from where they have been cut in the woods to a landing approximately one mile away where the logs will be sorted, loaded on trucks, and transported to a mill. Total control over the helicopter operation rests with Helicopter, Inc.

In this scenario, Helicopter, Inc.'s business activity is classified as an extracting for hire service, the proceeds from which are subject to extracting for hire B&O tax. This is not a rental of equipment with an operator, nor is it considered as an air transportation service((-This)) as the activity is directly part of the timber extracting and harvesting activity ((and is taxable as extracting for hire)). See WAC 458-20-13501.

~~((g))~~ **Example 14.** ABC Sound Productions ~~((provides))~~ Co. contracts with DEF Entertainers, Inc. ~~((entertainment promoter))~~ to provide lighting, amplifying equipment, and speakers ~~((as part of the services it sells to entertainment promoters. ABC also provides several operators of the equipment. This is a rental of equipment with operator.))~~ for a performance run and operated by DEF. As part of its contract with DEF, ABC's employees operate all of the equipment provided. DEF will oversee and direct the operators as to the specific use of the equipment.

In this scenario, ABC's business activity is classified as a rental of equipment with an operator, the proceeds from which are subject to retailing B&O tax and retail sales tax. In applying the true object test, ((the promoter)) DEF is primarily purchasing the use of ((the)) lighting and sound equipment. ((The performer or promoter could be expected to)) DEF maintains the authority to specify the color, location, and degree of lighting and ((may)) also ((request)) changes and modifications to the level of sound amplification during the performance. ABC's services are solely limited to the operation of the equipment itself.

Example 15. Fun Snacks, LLC is in the business of renting popcorn and cotton candy machines with an operator. Fun Snacks does not sell cotton candy or popcorn to individual customers attending an event, but rather charges a flat rate to event organizers in which attendees of the event consume either product for no additional charge. Fun Snacks is hired by Little Farm, Inc. to provide a cotton candy machine with an operator for a fall festival organized and operated by Little Farm. Little Farm staff will operate concessions at the event and will oversee the flavor and quantity of cotton candy made by the operator of the machine. Fun Snacks charges a flat rate of \$500 to Little Farm which includes the rental equipment, operator, and cotton candy ingredients and supplies.

In this scenario, Fun Snacks is selling a bundled transaction, subject to the "true object test" contemplated in RCW 82.08.190. Because one or more of the products included in the transaction are subject to retail sales tax, the rental of equipment with an operator and cotton candy ingredients and supplies, the total charge of \$500 is subject to retailing B&O tax and retail sales tax.

~~((h))~~ **Example 16.** John Doe ~~((purchased))~~ purchases a vessel ~~((which will be rented))~~ that he will rent to others as a bare boat rental. The rentals will be arranged through an agent at ~~((a marina. The marina))~~ GHI Marina. GHI receives

a commission based on any usage of the vessel, including usage by ~~((the owner))~~ John Doe. The rental of the boat is a retail sale when the boat is rented to others. The usage of the boat by John Doe is not a rental. Since John Doe will be using the boat at times for his own use, he may not purchase the boat for resale. As a result, John Doe is subject to retail sales tax or use tax on his initial acquisition or use of the vessel in Washington.