

WSR 24-16-081
EMERGENCY RULES
EVERETT COMMUNITY COLLEGE
[Filed July 31, 2024, 3:44 p.m.]

Effective Date of Rule: August 1, 2024.

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

Citation of Rules Affected by this Order: Repealing WAC 132E-122-170, 132E-122-180, 132E-122-190, 132E-122-250, 132E-122-260, 132E-122-370, 132E-122-380, 132E-122-410, 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-122-010, 132E-122-020, 132E-122-040, 132E-122-050, 132E-122-060, 132E-122-070, 132E-122-160, 132E-122-200, 132E-122-210, 132E-122-230, 132E-122-240, 132E-122-270, 132E-122-280, 132E-122-290, 132E-122-300, 132E-122-310, 132E-122-320, 132E-122-330, 132E-122-340, 132E-122-350, 132E-122-360, and 132E-122-400.

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

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

Reasons for this Finding: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

In addition to complying with the new final rule, the college is updating its code to address the use of gendered language as petitioned by a resident. Further changes were made to reflect title and position changes, as well as further clarify processes to promote accountability and efficiency. These new definitions of prohibited behavior and updated procedures are necessary to address conduct that may pose a threat to the general welfare of the college community and/or college operations and to protect the constitutional and procedural rights of individual students.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 18, Repealed 14; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, 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 16, Repealed 2.

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: July 30, 2024.

Joshua R. Ernst
Vice President of HR and Compliance

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-010 Authority. (1) The Everett Community College (referred to as the "College" or "EvCC") board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the ((vice president of instruction and student services)) chief student affairs officer or their designee(s). ((The)) Except in cases involving protected class discrimination, the student conduct officer, or delegate, shall serve as the principal investigator and/or administrator for alleged violations of this code.

(2) The Director of Equal Opportunity and Title IX Programs, also known as the Title IX coordinator, shall serve as the principal investigator and/or administrator for alleged violations of this code as ((it pertains to sexual misconduct and)) they pertain to protected class discrimination, including sex-based harassment. The ((Title IX coordinator)) Director of Equal Opportunity & Title IX Coordinator:

(a) Will accept all complaints of ((sexual misconduct and)) protected class discrimination.

(b) May conduct investigations or assign investigators.

(c) May impose interim remedial measures to protect parties during ((investigation proceedings)) grievance procedures.

(d) ((Will)) May make, or designate a qualified decisionmaker to make, findings of fact on completed ((sexual misconduct or)) protected class discrimination investigations.

(e) Will identify and address any patterns of systemic problems revealed by reports and/or complaints of ((sexual misconduct or)) protected class discrimination.

((3) The college shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate.))

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-020 Statement of jurisdiction. (1) The student conduct code shall apply to ((student conduct)) conduct of students and student organizations that occurs:

(a) On college owned and/or operated premises;

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

(c) Off-campus or in a noncollege electronic environment when such conduct is deemed to threaten the safety or security or otherwise adversely impacts the college community.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official (~~Everett Community College (college)~~) college activities including, but not limited to, residence halls, (~~foreign~~) international or domestic travel, activities funded by the associated students, student government, student clubs or organizations, athletic events, (~~training~~) trainings, internships, cooperative and distance education, online education, practicum, supervised work experiences, or any other college-sanctioned instructional, social, or club activities.

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

(~~4~~) ~~Student organizations affiliated with the college may also be sanctioned under this code for the conduct of their student members.~~

(~~5~~) (4) These standards shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending. (~~The conduct officer or, in matters involving sexual misconduct, the Title IX coordinator has sole discretion, on a case-by-case basis, to determine whether the conduct code will be applied to conduct that occurs off campus.~~

(6) Nothing in this subsection shall be construed as being intended to protect any person or class of persons from injury or harm.

(7) Under this conduct code, the college shall not be required to stay disciplinary action pending any criminal or civil proceeding arising from the same conduct. The disposition of any such criminal or civil proceeding shall not control the outcome of any student disciplinary proceeding.

(8) Nothing in this conduct code will be construed to deny students their legally and/or constitutionally protected rights.)

(5) 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.

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-040 Civility statement. (1) Background.

(a) As members of the EvCC community, we acknowledge our collective intention to create and maintain an environment in which everyone can flourish. This statement on civility and community serves as a reflection (~~on~~) of the shared values that inform our daily interac-

tions as a college. It provides a structure for responding to others with respect and without judgment and at the same time gives us all a context for teaching and learning. Students, faculty, administrators, and staff members may differ widely in their specific interests, in the degrees and kinds of experiences they bring to EvCC, and in the functions which they have agreed to perform. The statement is relevant to all EvCC community members, regardless of their professional functions or the setting in which they work, teach, or learn.

(b) The statement on civility and community is not a set of rules that prescribe how we should act in all situations. Conflict and differences of opinion exist within all communities, and values find expression in individual ways. The statement provides community members with a tool to address these differences with respect while informing and enhancing dialogue.

(c) This statement on civility and community is not intended to limit freedom of speech, intellectual or academic freedom.

(d) We honor the right of expression as a hallmark of learning, and we treasure intellectual freedom even when individual or group points of view are controversial or out of favor with prevailing perspectives. Individuals should not feel intimidated, nor be subject to reprisal for, voicing their concerns or for participating in governance or policy making.

(2) **Values.**

(a) (i) Respect, civility, integrity, honesty.

(ii) Respect, civility, integrity and honesty are not just words; they are intentions that must be present in our interactions with one another. Each member of the EvCC community must feel free and safe to exercise the rights accorded them to voice their opinions in a civil way, as well as to respectfully challenge the uncivil acts of others.

(b) (i) Accountability.

(ii) We value our accountability to one another within our civic, communal and environmental context. Each member of the community shall respect the fundamental rights of others, the rights and obligations of Everett Community College as an institution established by the state of Washington, and individual rights to fair and equitable procedures when the institution acts to protect the safety of its members.

(c) Inclusion. We value diversity in all its forms by engaging in inclusive assessment of, and action in, our workforce selection, in our policies and practices, in our curricular offerings, and in the scope of our services and programs. We actively seek and serve a diverse population of students. As a community, we are made richer by the variety of experiences and influences that individuals and groups contribute to our institution.

(3) **Collaboration.** We value the struggle to find and create meaningful human connection in our communication by embracing collaboration, respectful disagreement, free and open exchange of diverse ideas, perspectives, opinions and attitudes, and the resolving of differences through due process and a shared commitment to collaboration.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-050 Nondiscrimination statement. (1) Discrimination based on ((identity)) protected class in Everett Community Col-

lege programs, activities, admissions, or hiring is strictly prohibited.

(2) Everett Community College does not discriminate based on, but not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information in its programs, activities, or employment.

(3) Any student, employee, applicant, or visitor who believes that they have been the subject of protected class discrimination should report the incident(s) to the (~~Title IX coordinator~~) director of equal opportunity and Title IX programs, also known as the Title IX coordinator, identified below. If the complaint is against the Title IX coordinator, the incident(s) should be reported to the (~~vice president of administrative services~~) vice president of human resources and compliance.

(~~Title IX coordinator~~) Director of equal opportunity and Title IX programs

425-388-9271

TitleIXcoordinator@everettcc.edu

Olympus Hall Room ((207)) 111

2000 Tower Street

Everett, WA 98201

(~~Vice President of Administrative Services~~) Vice president of human resources and compliance

425-388-9232

(~~vpadmin@everettcc.edu~~)

Olympus Hall Room 116

2000 Tower Street

Everett, WA 98201

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-060 Definitions. For the purposes of this conduct code, the following definitions apply.

(~~(1) "Advisor" is a person selected by a complainant or a respondent to provide support and guidance in hearings under this conduct code.~~

(~~2) "Allegation of misconduct" is any report of an alleged violation of this conduct code, which may include, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal report or written statement from a complainant or a third party.~~

(~~3) "Attorney" is a person permitted to practice law in the state of Washington.~~

(~~4) "Business day" means a weekday, including during the summer, and excludes weekends and college holidays, and/or college closures.~~

(5) **"College community"** includes all college students and employees. It also includes guests of and visitors to the college during the time they are present on college premises.

(6) **"College official"** is an employee of the college performing their assigned administrative, professional, or paraprofessional duties.

(7) **"College premises"** includes all campuses and electronic presences of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, websites, and other property owned, used, or controlled by the college.

(8) **"Complaint"** is a description of facts that allege violation of the conduct code.

(9) **"Complainant"** is any person who is the alleged victim of prohibited conduct, whether or not such person has made an actual complaint.

(10) **"Conduct officer"** or **"student conduct officer"** is the college official designated by the college to be responsible for initiating disciplinary action for alleged violations of this code.

(11) **"Disciplinary action"** means the decision of the designated college official regarding alleged violations of the student code of conduct and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include summary suspension.

(12) **"FERPA"** refers to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).

(13) **"Filing and services."**

(a) **"Filing"** means the delivery to the designated college official of any document that is required to be filed under this code. A document is filed by hand delivering it or mailing it to the college official (or the official's assistant) at the official's office address. Filing is completed upon actual receipt during office hours at the office of the designated official.

(b) **"Service"** means the delivery to a party of any document that is required to be served under this code. A document is served by hand delivering it to the party or by mailing it to the party's address of record. Service is complete when the document is hand delivered or actually deposited in the mail.

(c) **"Electronic filing and services."** Unless otherwise provided, filing or services may be accomplished by electronic mail.

(14) **"Hostile environment"** may occur when another's unwelcome conduct of a sexual nature is sufficiently serious such that it substantially limits or denies one's ability to participate in or benefit from educational programs, activities, or employment.

(15) **"Investigation"** is the process through which the college collects information and otherwise reviews the complaint. As it pertains to reports of sexual misconduct under Title IX, this process includes equal opportunity for all complainants, respondents, and witnesses to participate in the Title IX proceedings, including the opportunity to provide information and/or evidence on their own behalf.

(16) **"Party"** to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct.

(17) **"Policy violation"** means the violation of any applicable law or college policy governing the conduct of students as members of the college community.

~~(18) "Preponderance of evidence" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.~~

~~(19) "Proceedings" means all processes related to the investigation and adjudication of a disciplinary matter under this conduct code including, but not limited to, investigations, informal and formal hearings, administrative review, and requests for reconsideration of a final order.~~

~~(20) "Resolution" is the means by which the complaint is finally addressed. This may be accomplished by using methods which may include counseling, supporting, disciplinary action, or otherwise facilitating the resolution of the complaint. No Title IX complainant will be required to have face-to-face interaction with the respondent in any resolution proceedings.~~

~~(21) "Respondent" is any student accused of misconduct under this conduct code.~~

~~(22) "Service." See "Filing and service."~~

~~(23) "Student" is 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. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.~~

~~(24) "Student organization" is a group of students that has complied with the requirements for college recognition or who otherwise are granted any rights or privileges by the college as a college affiliate. Student organizations include, but are not limited to, athletic teams or clubs, registered student organizations, and college service clubs.~~

~~(25) "Title IX coordinator" is the college official designated by the college to be responsible for initiating disciplinary action for allegations of sexual misconduct and discrimination.))~~

(1) "Advisor" is a person selected by a complainant or a respondent to provide support and guidance in meetings, interviews, or hearings under this conduct code.

(2) "Allegation of misconduct" is any report of an alleged violation of this conduct code, which may include, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal report or written statement from a complainant or a third party.

(3) "Attorney" is a person permitted to practice law in the state of Washington.

(4) "Day(s)" means business day(s) when the college is under regular operations, excluding weekends, holidays, and campus closures.

(5) "College community" includes all college students and employees. It also includes guests of and visitors to the college during the time they are present on college premises.

(6) "College official" is an employee of the college performing their assigned administrative, professional, or paraprofessional duties.

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

(8) "**Complaint**" is a description of facts that allege violation(s) of the conduct code.

(9) "**Complainant**" is any person who is the alleged victim of prohibited conduct, whether or not such person has made an actual complaint. This includes students, employees, or other members of the college community who were participating or attempting to participate in college programs and activities at the time of the alleged violation, and who are directly affected by a claimed violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may file complaints alleging a violation of the student conduct code. In any case involving a report of protected class discrimination, a complainant is afforded certain rights as specified in this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a determination of responsibility or dismissal of their complaint

(c) The right to be accompanied by an advisor, who may be an attorney retained at the complainant's cost.

(10) "**Conduct Review Officer**" is a college administrator designated by the President and is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(11) "**Disciplinary action**" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include summary suspension. A written or verbal warning is not disciplinary action.

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

(13) "**FERPA**" refers to the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).

(14) "**Grievance Committee**" is a group of college employees appointed by the president and current students appointed by the student government who shall be trained to hear and serve as decisionmakers in the proceedings listed below. The members of specific committees shall be drawn from this larger Grievance Committee. Members of the Grievance Committee may be called to serve on any committee discussed in this code and may sit on hearing panels for the following issues:

(a) Student affairs grievance

(b) academic grievance

(c) student conduct

(d) protected class nondiscrimination

(15) "**Investigation**" is the process through which the college collects information and otherwise reviews the complaint. As it pertains to reports of sexual misconduct under Title IX, this process includes equal opportunity for all complainants, respondents, and witnesses to participate in the Title IX proceedings, including the opportunity to provide information and/or evidence on their own behalf.

(16) "**Party**" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well

as any complainant in a proceeding involving allegations of protected class discrimination.

(17) "**Policy violation**" means the violation of any applicable law or college policy governing the conduct of students as members of the college community.

(18) "**Pregnancy or Related Conditions**" means: (a) pregnancy, childbirth, termination of pregnancy, or lactation; (b) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (c) recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(19) "**Preponderance of evidence**" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

(20) "**President**" is the President of the college. The President is authorized to: (a) delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and (b) reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(21) "**Proceedings**" means all processes related to the investigation and adjudication of a disciplinary matter under this conduct code including, but not limited to, investigations, informal and formal hearings, administrative review, and requests for reconsideration of a final order.

(22) "**Program**" or "**Programs and Activities**" means all operations of the College.

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

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

(25) "**Resolution**" is the means by which the complaint is finally addressed. This may be accomplished by using methods which may include counseling, supporting, disciplinary action, or otherwise facilitating the resolution of the complaint. No Title IX complainant will be required to have face-to-face interactions with the respondent in any resolution proceedings.

(26) "**Respondent**" is any student who is alleged to have violated the student conduct code. Respondents in cases involving protected class discrimination are afforded certain rights including, but not limited to:

(a) The right to be presumed not responsible for the reported misconduct unless or until a determination of responsibility is reached after completion of the disciplinary process; and

(b) The right to be accompanied by an advisor, who may be an attorney retained at respondent's cost.

(27) "**Service**" means the process by which a document is officially delivered to a Party by electronic transmission to a student or employee college issued email account. If a Party does not have a college issued email account, the College will use the last known personal email account or physical mailing address on record with or provi-

ded to the College. Service is deemed complete upon the date that the document is emailed.

(28) "**Spokesperson**" is a person who would, on the behalf of a student approved for this accommodation, address or assist in addressing college officials.

(29) "**Student**" is any person 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. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, as well as current and former students who engage in prohibited conduct between terms of actual enrollment or before awarding of a degree or certificate of completion. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered a "student" for purposes of this chapter.

(30) "**Student Conduct Officer**" is a college administrator designated by the president to be responsible for implementing and enforcing this code.

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

(32) "**Student group or organization**" is a group of students that has complied with the requirements for college recognition or who otherwise are granted any rights or privileges by the college as a college affiliate. Student organizations include, but are not limited to, athletic teams, student clubs, and registered student organizations.

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

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

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

(34) "**Title IX Coordinator**" means the director of equal opportunity and Title IX programs who is responsible for processing Title IX and protected class complaints and who oversees the resolution processes under the protected class nondiscrimination grievance procedure.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-070 Statement of student rights. (1) As members of the Everett Community College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

(2) The following rights are guaranteed to each student within the limitations of statutory law and college policies necessary to achieve the educational goals of the college.

(a) **Academic freedom.**

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

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

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

(iv) Students have the right to a learning environment which is free from discrimination, inappropriate and disrespectful conduct, and any and all harassment including ~~((sexual))~~ sex-based harassment.

(b) **Due process.**

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

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

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-160 Prohibited student conduct. (~~((Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this sections means "without limitation."))~~) The college may impose disciplinary sanctions against a student or a college sponsored student organization, athletic team or living group, who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to the following:

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

(2) **Abuse later in life.**

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

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

(c) Does not include self-neglect.

~~((2))~~ (3) **Abuse of the student conduct process.** Abuse of the student conduct process includes:

(a) Knowingly making false allegations of misconduct under this conduct code;

(b) Attempting to coerce a person not to make a report or to participate in proceedings under this conduct code;

(c) Attempting to influence the impartiality or participation of a campus official or party of a campus disciplinary proceeding; or

(d) Influencing or attempting to influence another person to commit an abuse of the student conduct process.

~~((3))~~ **Academic dishonesty.** Any act of academic dishonesty including (~~, but not limited to:~~)

(a) **Cheating** (~~including, but not limited to, intentional use or attempted use of unauthorized material, information, or study aids, misrepresentation of invention or any information such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.~~) - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) **Plagiarism** (~~including, but not limited to, presenting or submitting another person's, entities', and/or sources' ideas, words, or other works in an instructional course without assigning proper credit.~~) - Taking and using as one's own, without proper attribution, the ideas, writings, work of another person, or artificial intelligence, in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

~~((c) **Unauthorized collaboration** including, but not limited to, intentionally sharing or working together in an academic exercise when such actions are not approved by the course instructor.~~

~~(d) **Academic dishonesty** including, but not limited to, presenting or submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).~~)

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

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

~~((4) **Aiding, solicitation, and attempt.** The following conduct is prohibited:~~

~~(a) Aiding or abetting another student or student organization in the commission of any misconduct prohibited by this conduct code;~~

~~(b) Requesting, hiring, or encouraging another person to commit any act of misconduct prohibited by this conduct code, either intending that the other person commit the misconduct or with the knowledge that the other person intends to commit the misconduct; or~~

~~(c) Attempting to commit any act of misconduct prohibited by this conduct code.)~~

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

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

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

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

~~((5) **Alcohol, other drug, and tobacco violations.** The unlawful possession, use, distribution, or manufacture of alcohol is prohibited. The conduct officer may elect not to initiate disciplinary action under this subsection against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of alcohol. Generally, no disciplinary action under this subsection will be initiated against a complainant or another reporting student, who admits to the possession or use of alcohol (in violation of this subsection) in connection with an incident of sexual misconduct.~~

~~(6) **Alcohol, other drugs, and tobacco violations.**~~

~~(a) **Alcohol.** An alcohol violation includes using, possessing, delivering, selling, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.~~

~~(b) **Marijuana.** A marijuana violation includes using, possessing, delivering, selling, or being under the influence of 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 any possession or use of marijuana on college premises or in connection with college activities.~~

~~(c) **Other drugs.** A drug violation includes using, possessing, delivering, selling, or being 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. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.~~

~~(d) **Tobacco.** A tobacco violation means smoking or using tobacco products, electronic smoking devices (including e-cigarettes or vape pens), or other smoking devices in any area of college premises where smoking or tobacco use is prohibited in accordance with public law and college policy.)~~

(6) **Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public in-

toxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(7) **Cannabis, Drug, and Tobacco Violations.**

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

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

(c) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

~~((7) **Computer abuses.** Computer abuses include, but are not limited to:~~

- ~~(a) Unauthorized use of college computer resources;~~
- ~~(b) Use of another person's college user name and/or password;~~
- ~~(c) Use of college computing facilities and resources to interfere with the work of another student, an instructor, or other college official;~~
- ~~(d) Use of college computing facilities or resources to send intimidating, harassing, or threatening messages;~~
- ~~(e) Use of a computer or software to interfere with normal operations of the college's computing systems;~~
- ~~(f) Use of the college's computing facilities or resources in violation of any law, including copyright laws; and~~
- ~~(g) Any violation of the college's computer use policies.)~~

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

~~((8) **Creating a public nuisance in neighboring communities.** In furtherance of the college's interest in maintaining positive relationships with its surrounding communities, the college shall have the authority to hold students accountable under this conduct code for~~

misconduct within any residential or commercial communities adjacent to a college campus as follows:

~~(a) A student or a student organization may be subject to disciplinary proceedings if the college is made aware that the student or student organization has been contacted by a law enforcement agency regarding, and is determined to have engaged in, conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses including, but not limited to: Creating a public nuisance due to noise, residential disturbance, intentional destruction of property, urinating in public, or criminal trespass.~~

~~(b) A first minor violation under (a) of this subsection will not subject the student or student organization to disciplinary sanctions under this conduct code; however, the student or student organization may receive a letter regarding the expectations of college community members as residents in the area. This letter shall constitute a warning that repeated misconduct under this subsection may result in the imposition of disciplinary sanctions.~~

~~(c) A second violation of this subsection will result in the initiation of disciplinary proceedings under this conduct code.)~~

(9) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

~~((9) **Discrimination.** Discrimination is unfavorable treatment of a person based on that person's identity as described in the nondiscrimination policy (WAC 132E-122-050). **Sex discrimination** is conduct which harms or adversely affects any member of the college community because of their sex, actual or perceived sexual orientation, gender identity or expression, parental, family or marital status, or pregnancy.)~~

(10) **Discriminatory harassment.** ((Discriminatory harassment is language or conduct directed at a person because of the person's identity that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or the person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.))

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

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

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

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

(b) any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

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

~~((11) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the college. The term includes disorderly conduct, breach of the peace, violation of local or college noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of college investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.~~

~~(12) **Domestic violence.** Domestic violence includes:~~

~~(a) The infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a family or household member. Family or household members include:~~

~~(i) A current or former spouse or intimate partner;~~

~~(ii) A person with whom the person shares a child in common;~~

~~(iii) A person with whom one is cohabitating or has cohabitated;~~

or

~~(iv) A person with whom one resides including a roommate, suite-mate, or housemate.~~

~~(b) Sexual assault of one family or household member by another family or household member; or~~

~~(c) Stalking, as defined under sexual misconduct below, of one family or household member by another family or household member.))~~

~~((13) **Ethics**)) (11) **Ethical violations.** ((An ethics violation includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or college policy relating to the ethical use of college resources.)) 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.~~

~~((14)) (12) **Failure to comply with directive.** Failure to comply ((means refusing to obey the lawful directive of a college official or authorized college body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.)) with the direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.~~

~~((15) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of college records, furnishing false or misleading information to the college, falsely claiming an academic credential, or falsely accusing any person of misconduct.~~

~~(16) **Gender-based harassment.** Gender-based harassment is a form of sex-based harassment and refers to unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature.~~

~~(17) Harassment.~~

~~(a) Harassment means unwelcome and offensive conduct including verbal, nonverbal, or physical conduct that is directed at a person because of their membership of a protected identity under this student code of conduct. Unwelcome and offensive conduct is considered harassment when:~~

~~(i) It is sufficiently serious as to deny or limit the ability of a student to participate in or benefit from the college's educational program; or~~

~~(ii) That creates an intimidating, hostile, or offensive environment for any campus community members.~~

~~(b) Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of harassment include, but are not limited to, the following:~~

~~(i) Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership of a protected identity.~~

~~(ii) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership of a protected identity.~~

~~(iii) Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to the person's membership of a protected identity.~~

~~(c) Protected identities under this student code of conduct (as cited in the nondiscrimination policy, WAC 132E-122-050) include, but are not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information.)~~

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

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

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

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

~~((18))~~ (14) Hazing. Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or

is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:

~~((a) Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person. Hazing activities may include, but are not limited to, encouraging or promoting the abuse of alcohol; striking another person whether by use of any object or any part of one's body; causing someone to experience excessive fatigue or physical and/or psychological shock; and causing someone to engage in degrading or humiliating games or activities that create a risk of serious mental, emotional, and/or physical harm.~~

~~(b) Consent of a victim or victims is not a defense to an allegation of hazing.~~

~~(c) Hazing does not include generally accepted practice, training, and conditioning activities, or activities reasonably designed to test a participant's ability to meet eligibility requirements for established athletic events such as intramural or club sports, intercollegiate athletics, or other similar contests or competitions.))~~

(a) causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(b) humiliation by ritual act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((19) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.))~~

~~((20))~~ (17) **Property ((violations)) violation.** ((The term "property violation" includes the theft, misappropriation, unauthorized use or possession, 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.)) Damage to, theft from, misappropriation of, unauthorized use or possession of, vandalism, or other non-accidental damaging or destruction of college property, including vending machines, 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.

~~((21))~~ (18) **Retaliation.** ((The term "retaliation" means 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 other 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.)) Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies.

~~((22))~~ (19) **Safety violations.** ((The term "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.)) Non-accidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

~~((23) **Sexual misconduct.** Sexual misconduct includes committing, or aiding, soliciting, or attempting the commission of, the following prohibited conduct: Sexual harassment, sexual intimidation, sexual violence and quid pro quo.~~

~~(24) **Sexual harassment.** Sexual harassment includes, but is not limited to, unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonver-~~

bal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, based on sex:

~~(a) The ability of a student to participate in or benefit from the college's educational program; or~~

~~(b) That creates an intimidating, hostile, or offensive environment for any campus community member(s).~~

Examples of behaviors that may rise to the level of sexual harassment include, but are not limited to:

~~(i) Physical assault.~~

~~(ii) A pattern of behaviors that is unwelcome and severe, persistent, or pervasive, resulting in unreasonable interference with the work or educational environment, and may include, but is not limited to, the following:~~

~~(A) Comments of a sexual nature;~~

~~(B) Sexually explicit statements, questions, jokes, or anecdotes;~~

~~(C) Unnecessary or undesirable touching, patting, hugging, kissing, or brushing against an individual's body;~~

~~(D) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences;~~

~~(E) Persistent, unwanted attempts to change a professional relationship to an amorous relationship;~~

~~(F) Subtle propositions for sexual activity or direct propositions of a sexual nature;~~

~~(G) Uninvited letters, emails, telephone calls, or other correspondence referring to or depicting sexual activities.~~

~~(25) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or to suffer substantial emotional distress.~~

~~(26) Sexual violence. Sexual violence incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including dating violence, domestic violence, nonconsensual intercourse (rape), nonconsensual sexual contact (sexual assault), and stalking. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, unconsciousness, or other cause.~~

~~(a) "Consent" is 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 he or she is unable to understand what is happening or is 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.~~

~~(b) "Dating violence" means violence by a person who has been in a romantic or intimate relationship with that person. Whether there~~

was such relationship will be gauged by its length, type, and frequency of interaction.

~~(c) "Domestic violence" includes asserted violent misdemeanor and felony offenses committed by the person's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence laws, or anyone else protected under domestic or family violence law.~~

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

~~(e) "Nonconsensual sexual contact (sexual assault)" is any intentional sexual contact, however slight, with any object, by a person upon another person that is without consent and/or by force. "Sexual contact" includes any touching of another person for the purposes of sexual gratification, or any 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.~~

~~(f) "Stalking" means intentional and repeated harassment, following of, or otherwise surveilling another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.~~

~~(i) The person being harassed or followed is placed in reasonable fear that the stalker intends to injure the person, another person, or property of the person or of another person.~~

~~(ii) "Reasonable fear" is a fear that a reasonable person in the same situation would experience under most circumstances.~~

~~(27) Quid pro quo. Quid pro quo occurs when an individual in a position of real or perceived authority conditions the recipient of a benefit upon granting sexual favors. Examples of conduct that may qualify include:~~

~~(a) Persistent comments or questions of a sexual nature.~~

~~(b) A supervisor who gives an employee a promotion or special privileges in exchange for sexual favors.~~

~~(c) Sexually explicit statements, questions, jokes, or anecdotes.~~

~~(d) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.~~

~~(e) Remarks of a sexual nature about an individual's clothing, body, or speculation about previous sexual experiences.~~

~~(f) Persistent, unwanted attempts to change a professional relationship to a romantic relationship.~~

~~(g) Direct or indirect propositions for sexual activity.~~

~~(h) Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.~~

~~(28) Sexual exploitation. Sexual exploitation includes:~~

~~(a) Taking nonconsensual or abusive advantage of another for one's own sexual benefit, or for the sexual benefit of anyone other than the one being exploited;~~

~~(b) Compelling another by threat or force to engage in sexual conduct or activity;~~

~~(c) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings of~~

~~a private and sexual nature where such transmission, publication, or distribution is without the consent of the subject(s) and is likely to cause emotional distress to the subject(s);~~

~~(d) Taking or making photographs, films, or digital images of the private body parts of another person without that person's consent;~~

~~(e) Causing or attempting to cause the impairment of another person to gain nonconsensual sexual advantage over that person;~~

~~(f) Prostituting another person;~~

~~(g) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity; or~~

~~(h) Taking, making, or directly transmitting nonconsensual video or audio recordings of sexual activity.)~~

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

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

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

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

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

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

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

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

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

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

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

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

(D) **Statutory Rape (Rape of a Child)** is non-forcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of State of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Washington.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

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

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

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

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

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

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

(c) **Sexual Exploitation.** An act or a failure to act that involves a member of the College community taking non-consensual, unjust, hu-

miliating, or abusive sexual advantage of another, either for the individual's own advantage or to benefit anyone other than the person being exploited. Sexual advantage may include, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third Parties to observe private sexual acts; disclosing, causing to be disclosed or threatening to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed; engaging in voyeurism, and intentionally exposing another to a sexually transmitted infection.

~~((29) **Theft.** Theft is the taking of property or services without express permission of the owner. This includes, but is not limited to, taking, possessing, or aiding another to take university property or services, or property belonging to members of the university community.))~~

~~((30))~~ (21) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the college or the property of another person, including any facility, computer system, email account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes. 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.

~~(31) **Unauthorized recording.** The following conduct is prohibited:~~

~~(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy.~~

~~(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.~~

~~(32) **Vandalism.** Vandalism includes maliciously damaging or misusing university property, or the property of any member of the university community.~~

~~(33) **Violation of disciplinary sanctions.** The violation of any term or condition of any final disciplinary order issued under this conduct code, or the failure to complete a disciplinary sanction in the specified time frame, may be grounds for additional disciplinary action.~~

(22) **Unauthorized disclosure.** Distributing or otherwise making public materials created or produced during the grievance procedures except as required by law or as expressly permitted by the College, or publicly disclosing a Party's identifiable information without consent. Unauthorized Disclosures may also be considered Retaliation.

~~((34))~~ (23) **Violation of ((law)) other laws or policies.** ((Any conduct that would constitute a violation of any federal, state, or local criminal law may be the subject of disciplinary proceedings under this conduct code.)) Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college housing, traffic, and parking rules.

~~((35)) Weapons ((violations)). ((A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on college premises of any firearm or other dangerous weapon in violation of public law or college policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160. Examples include, but are not limited to:~~

~~(a) Firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities are not permitted on campus premises, except for authorized campus purposes, or unless prior written approval has been obtained from the director of campus safety and security, or any other college official designated by the president.~~

~~(b) Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instrument used in the propulsion of shot, shell, bullets, or other harmful objects by:~~

~~(i) The action of gunpowder or other explosives;~~

~~(ii) The action of compressed air; or~~

~~(iii) The power of springs or other forms of propulsion.~~

~~(c) The exhibition or display of a replica or a dangerous weapon prohibited under this subsection is also prohibited if done in a manner, and at a time or place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.))~~

Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus and during college programming and activities, subject to the following exceptions:

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

(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view.

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

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-200 ((Disciplinary sanctions.)) Corrective action, disciplinary sanctions, terms and conditions. ((Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the student code of conduct hearing procedures.

(1) ~~Warning. A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.~~

(2) ~~Reprimand. Notice in writing that the student has violated one or more terms of the college's conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.~~

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

(4) ~~Suspension. Dismissal from the college and from the student status for a stated period of time. There may be no refund of tuition or fees for the quarter in which the action is taken.~~

(5) ~~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 sanction is taken.~~

(6) ~~Other sanctions. The following additional sanctions for conduct code violations may be imposed as required or permitted by law or college policy.~~

(a) ~~Athletic eligibility. A student athlete found in violation of WAC 132E-122-160, relating to drug violations, shall be ineligible to participate in college athletics pursuant to RCW 69.41.340.~~

(b) ~~Parental notification. The college reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.)~~

(1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.

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

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

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

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

(e) **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 dismissal is imposed.

(f) The college shall have authority to revoke a degree or other certificate or completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate.

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

(a) **Education.** Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

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

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

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

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

(d) **No contact directive.** 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.

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

(f) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incur-

red by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

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

(3) More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

(4) If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-210 ((Terms and conditions.)) Hazing sanctions.

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

~~(1) **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.~~

~~(2) **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 approved 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. A student may not return to campus if the evaluation indicates that the student is not capable of functioning within the college community, or if the evaluation lacks information for the college to make reasonable accommodations, or until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.~~

~~(3) **No contact/trespass 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 for a stated period of time.)~~

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

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

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

(4) Any student group found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-230 Standard of burden of proof. The applicable standard of proof in all disciplinary hearings (including those involving ~~((sexual misconduct))~~ protected class discrimination and appeals) is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for a violation of this conduct code, the conduct officer, Title IX coordinator, conduct review officer, student conduct committee, or ~~((vice president of instruction and student services))~~ 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 misconduct.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-240 Initiation of disciplinary action ~~((**Non-Title IX.**))~~ ~~((**(1) Written notice.** The conduct officer will initiate disciplinary action by serving the respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations, the specific conduct code provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violation(s), and specify the time and location of the meeting.~~

~~((**(2) Disciplinary meeting.** At the disciplinary meeting, the conduct officer will review the allegations with the respondent and, consistent with "Brief Adjudicative Proceedings" under RCW 34.05.482, will afford the respondent an opportunity to respond and provide any other information or evidence. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.~~

~~((**(3) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or arguments presented by the respondent, the conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific code of conduct**~~

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

~~(4) Following written notice and a disciplinary or investigation meeting, the conduct officer will take any of the following actions:~~

~~(a) Dismiss the proceeding upon finding the allegation(s) to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review.~~

~~(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 132E-122-200. Such sanction(s) shall be subject to review on appeal as provided in this student code.~~

~~(c) Refer the matter for disciplinary action by the student conduct committee. Such referral shall be in writing, to the attention of the committee chair, with a copy served to the respondent. The decision to refer shall not be subject to appeal or further review.)~~

(1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

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

(a) Protected class discrimination, including sex-based harassment. The College's director of equal opportunity and Title IX programs or designee shall review, process, and, if applicable, investigate complaints or other reports of protected class discrimination, including sex-based harassment. Allegations of discrimination, including sex-based harassment, by a student shall be addressed through the protected class nondiscrimination policy and associated grievance procedures and student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

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

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

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

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

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

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement

or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

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

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

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

(9) 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.

(10) Within ten calendar 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 their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

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

- (a) Dismiss the case if
 - (i) Insufficient evidence exists to demonstrate responsibility for the alleged infraction;
 - (ii) The college is unable to identify a respondent after taking reasonable steps to do so;
 - (iii) Respondent is not participating in the college's educational programs or activities;
 - (iv) The reporting party has voluntarily withdrawn any or all of the allegations in the complaint;
- (b) Exonerate the respondent and terminate the proceedings.
- (c) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132E-122-200; or
- (d) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(12) In cases involving allegations of sex-based harassment, the student conduct officer shall review the investigation report provided by the director of equal opportunity and Title IX programs, and within five business days refer the matter to the student conduct committee.

(a) Upon receipt of the student conduct committee's decision, the director of equal opportunity and Title IX programs or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's protected class nondiscrimination grievance procedure.

(b) If the respondent is found responsible for engaging in sex-based harassment, the director of equal opportunity and Title IX programs shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-270 ((Appeals—All cases.)) Appeal from Disciplinary Action. ((The following general rules apply to appeals of disciplinary action at any stage of the student disciplinary proceeding.

(1) ~~**Parties.**~~ The parties to an appeal shall be the respondent, and complainant in a proceeding involving sexual misconduct allegations, and the designated appeal authority.

(2) ~~**Filing appeals.**~~

(a) ~~**Appeal periods.**~~ The respondent may appeal a disciplinary action by filing a written notice of appeal with the designated college official within ten business days of services of the conduct officer's decision.

(b) ~~**Contents of appeal.**~~ A party's written notice of appeal must clearly state the reason(s) for the appeal or request for review and provide any relevant information to support the appeal.

(c) ~~**Issues that may be raised on an appeal.**~~ The issues that may be raised on an appeal include: New information, contradictory information, and information indicating that the party was not afforded due process.

(d) ~~**Failure to appeal.**~~ The failure of a party to file a timely appeal at any stage of the proceeding waives that party's right to appeal.

(e) ~~**Cases involving allegations of sexual misconduct.**~~ The complainant and respondent have equal appeal rights in cases involving allegations of sexual misconduct, including filing an appeal, notice of appeal, participation in any appeal proceedings, and notification of appeal outcome.

(3) ~~**Notification of appeal.**~~ In proceedings involving allegations of sexual misconduct, if any party appeals, the designated appeal authority will notify the other party(ies) of such. Each party shall be afforded the opportunity to participate in the appeal proceedings.

(4) ~~**Effect of appeal – Stay.**~~ The implementation of disciplinary action imposing a suspension of any length or imposing expulsion shall

be stayed pending the time for filing an appeal and the conclusion of disciplinary proceedings. Other disciplinary sanctions shall not be stayed.

~~(5) (a) **Appeal authorities.** Appeals of disciplinary action taken by the conduct officer shall be submitted to and heard by the student conduct committee (EMAIL, 2000 Tower Street, Everett, WA 98201).~~

~~(b) Appeals of disciplinary action taken by the student conduct committee shall be submitted to and heard by the vice president of instruction and student services (gmiulli@everettec.edu, 2000 Tower Street, Everett, WA 98201).~~

~~(6) **Ex parte communications.** Appeal authorities may not communicate with any of the parties regarding an appeal without first providing notice of the filed appeal and an equal opportunity for all parties to participate.~~

~~(7) **Disqualification.** Appeal authorities may not participate in a proceeding in which they:~~

~~(a) Are a respondent, complainant, or witness.~~

~~(b) Have a direct or personal interest, prejudice, or bias; or~~

~~(c) Have acted previously in another capacity.~~

~~(8) The student conduct committee shall conduct full adjudicative hearings arising from appeals from:~~

~~(a) The imposition of disciplinary suspension in excess of ten instructional days;~~

~~(b) Dismissals; and~~

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

~~(9) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:~~

~~(a) Suspension of ten instructional days or less;~~

~~(b) Disciplinary probation;~~

~~(c) Written reprimand; and~~

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

~~(10) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.~~

~~(11) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the 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 disciplinary warning.)~~

(1) Except as specified for cases involving allegations of protected class discrimination, as set forth in WAC 132E-122-240(12), the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within fifteen business days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review. Appeals may be based upon:

(a) procedural irregularity that would change the outcome;

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

(c) the student conduct officer had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

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

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

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

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

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

(a) suspensions of ten instructional days or less;

(b) disciplinary probation; and

(c) written reprimands; and

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

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

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

(b) dismissals;

(c) protected class discrimination, and

(d) disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the chief student affairs office.

(9) Appeals of disciplinary action taken by the student conduct committee shall be submitted to and heard by the chief student affairs officer (studentconduct@everettcc.edu, 2000 Tower Street, Everett, WA 98201).

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-280 Participation of advisors and attorneys. (1)

Each party involved in (~~sexual misconduct proceedings~~) disciplinary meeting, interview, or hearing may appear alone or with another person of their choice to advise and assist them during any conduct proceeding, including meetings, interviews, and hearings.

(2) Any advisor who accompanies the complainant, respondent, or witness may provide support or guidance but may not speak, represent, or advocate on their behalf during (~~sexual misconduct proceedings with the exception of full adjudication proceedings (WAC 132E-122-290 through 132E-122-350)~~) proceedings unless otherwise indicated herein. An advisor has an exclusively non-speaking role, and may not otherwise present evidence, argue, or assert any right on behalf of the party they advise.

(3) An advisor may not delay, disrupt, or otherwise interfere with proceedings.

(4) ~~((An accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's documented disability warrants such an accommodation.))~~ If a Party needs language assistance or reasonable accommodations due to a qualifying disability in order to fully and meaningfully participate in these procedures, access requests must be made five days prior to any meeting, interview, or live hearing by contacting the Student Conduct Office at 425-388-9271 or studentconduct@everettcc.edu.

(5) ~~((**Notice of attorney advisor.** Anyone who plans to have an attorney present during a conduct proceeding must notify the conduct officer (awilliams@everettcc.edu or 425-388-9282) Title IX coordinator (TitleIXcoordinator@everettcc.edu or 425-388-9271), or chair of the student conduct committee (email address or phone number) of this intent four business days in advance of the scheduled sexual misconduct proceeding.))~~ An attorney advising a party must enter a notice of appearance with the college at least five days before the initial interview, meeting, or live hearing they plan to attend, so the college can secure its own legal representation, if necessary. This notification can be made to the student conduct officer (studentconduct@everettcc.edu or 425-388-9258), Title IX coordinator (TitleIXcoordinator@everettcc.edu or 425-388-9271), or chair of the student conduct committee, as applicable.

(6) When scheduling procedural meetings and/or interviews, the college will make reasonable efforts to accommodate an advisor. However, the availability of individuals directly involved in the proceedings, including the personnel assigned to the matter, as well as the expectation to promptly complete the proceedings may, in the ~~((campus constituent))~~ college's discretion, take priority when determining the date and time for the proceedings.

(7) Advisors should not disclose details of their interactions with their advisees to institutional officials or decisionmakers, unless there is an emergency or a health and safety concern.

(8) Everett Community College, which includes any official acting on behalf of the college, has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. Advisors who are disruptive, disrespectful, or refuse to follow college policy or procedures will be removed. The college has the right to take appropriate steps to ensure compliance with college policy and procedures, including by placing limitations on the advisor's ability to participate in future meetings and proceedings.

(9) Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Everett Community College. Unauthorized disclosures may also be considered retaliation. The college may restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by privacy expectations.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-290 Brief adjudicative proceeding—Initial hearing.

(1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which (~~he or she~~) conduct review officer is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, and 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 view of the matter; and

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

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within 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 (~~ten~~) fifteen business days of service of the initial decision, the initial decision shall be deemed the final decision.

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-300 Brief adjudicative proceedings—Review of initial decision.

(1) An initial decision is subject to review by the (~~(vice president of instruction and student services)~~) chief student affairs officer, provided a party files a written request for review with the conduct review officer within (~~ten~~) fifteen business days of service of the initial decision.

(2) The (~~(vice president of instruction and student services)~~) chief student affairs officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the (~~(vice president of instruction and student services)~~) chief student affairs officer 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 decision 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 judicial review may be available. A request for review may be deemed to have been denied if the (~~(vice president of instruction and student services)~~) chief student affairs officer does not make a disposition of the matter within twenty business days after the request is submitted.

(5) If the (~~(vice president of instruction and student services)~~) chief student affairs 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.

(~~(6) In cases involving allegations of sexual misconduct, the vice president of instruction and student services, 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 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-310 ((Full adjudicative)) Live hearing process— Student conduct committee. (1) The student conduct committee shall consist of (~~(three)~~) five members (~~(appointed by the president in consultation with student and faculty leadership)~~), pulled from the larger grievance committee:

(a) (~~(A full-time student)~~) Two students appointed by the student government;

(b) (~~(A full-time faculty member)~~) Two faculty members appointed by the president; and

(c) (~~(A full-time exempt administrative staff member who shall serve as chair of the committee)~~) One administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president who shall serve as chair of the committee and presiding officer for all committee proceedings and may take action on preliminary hearing matters prior to convening the committee.

(~~(2) The student conduct committee will hear appeals of disciplinary action imposing a conduct suspension in excess of ten days or a conduct dismissal.~~

(~~(3) The committee will hear such other matters as may be referred to the committee by the conduct officer, Title IX coordinator, conduct review officer, or vice president of instruction and student services. The committee shall have the authority to recommend dismissing a proceeding or to recommend imposing any of the disciplinary sanctions under WAC 132E-122-200.~~

(~~(4) 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), as supplemented by these rules.)

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

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

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

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-320 ~~Full adjudicative process—Prehearing procedure.~~) Student conduct committee—Prehearing ((1) ~~The student conduct committee chair shall serve all parties with written notice of the hearing date, time, and location not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 132E-122-270.~~

~~The chair may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown.~~

~~(2) The student conduct committee chair is authorized to conduct prehearing conferences and to make prehearing decisions concerning the forms and extent of any discovery, issuance of protective orders, and similar procedural matters.~~

~~(3) The student conduct committee chair may direct the parties prior to the hearing to submit to the chair a list of witnesses and copies of exhibits that the parties reasonably expect to present to the committee.~~

~~(a) The student conduct committee chair shall then provide copies of the submitted list of witnesses and of exhibits to the other party(ies), concurrently.~~

~~(b) Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.~~

~~(4) The student conduct committee chair in advance of the hearing may provide committee members with copies of:~~

~~(a) Any notice of disciplinary action or referral to the committee; and~~

~~(b) Any notice of appeal filed by the respondent or any complainant.~~

~~However, such "pleadings" shall not be regarded as evidence of any facts they may allege.~~

~~(5) Consistent with WAC 132E-122-260, any party may be accompanied at the hearing by an advisor or attorney of the party's choice.~~

~~(6) A respondent or any complainant may be represented by an attorney at such party's own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, the attorney files and serves a notice of appearance to the student conduct committee chair (EMAIL, 2000 Tower Street, Everett, WA 98201).~~

~~(7) If the respondent or complainant is represented by an attorney, the conduct officer may be represented by the college's assistant attorney general.~~

~~(8) The student conduct committee may itself be advised in any proceeding by an independently assigned assistant attorney general who shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.)~~

(1) Proceedings of the student conduct committee shall be governed by the Administrative Procedures Act, Chapter 34.05 RCW.

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

(a) a copy of the student conduct code;

(b) the basis for jurisdiction;

(c) the alleged violation(s);

(d) a summary of facts underlying the allegations;

(e) the range of possible sanctions that may be imposed; and

(f) a statement that retaliation is prohibited.

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

(4) Upon request filed at least five business days before the hearing by any party or at the direction of the chair, the parties shall exchange, no later than the third 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 chair may provide to the committee members in advance of the hearing copies of

(a) the student 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 shall provide reasonable assistance to the respondent and complainant in procuring the presence of

college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than twenty-four hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(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 an advisor of their choice, which may be an attorney retained at the party's expense.

(10) The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

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

(12) In cases involving allegations of protected class discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

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

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

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

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

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

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

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

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

(ii) that the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;

(iii) that they may have an advisor of their choice, who may be an attorney, to assist them during the hearing; and

(iv) they are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) the student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than forty-eight hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than twenty-four hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than forty-eight hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

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

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

(f) Separate locations. The chair may, or upon the request of any party, must, conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

- WAC 132E-122-330** (~~(Full adjudicative process—Hearing procedure.)~~) **Student conduct committee—Presentation of evidence** (1)
- ~~((Should a party fail to attend))~~ Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:
- (a) Proceed with the hearing and issuance of its decision; or
 - (b) Serve ~~((an order))~~ of default in accordance with RCW 34.05.440.
- (2) ~~((The student conduct committee chair shall cause the hearing to be recorded pursuant to RCW 34.05.449 by a method the chair selects.))~~ The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.
- (3) ~~((The student conduct committee chair shall maintain the official record of the proceeding that is required by RCW 34.05.476. Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.))~~ The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall ensure 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 ~~((student conduct committee))~~ chair shall preside at the hearing and shall decide procedural questions that arise during the hearing, except as overridden by a majority vote of the committee.
- (5) The student conduct officer ~~((unless represented by an assistant attorney general))~~ shall present the college's case ~~((for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence))~~.
- (6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.
- ~~((7) All evidence shall be admitted or excluded in accordance with RCW 34.05.452.~~
- (8) ~~In proceedings involving allegations of sexual misconduct, the respondent and complainant, or their advisor or attorney representatives, shall not directly question or cross-examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on behalf of the parties.~~
- (9) ~~In proceedings involving allegations of sexual misconduct, the respondent and complainant shall not be required to be in the same room at the same time (i.e., through use of closed circuit TV or use of other similar technology).~~
- (10) ~~In proceedings involving allegations of sexual misconduct, college officials shall make arrangements to reasonably assure that respondents and complainants will not be in the same room at the same time when arriving to, departing from, and during any breaks of the student conduct committee proceedings.)~~

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

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

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

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

(i) spousal/domestic partner privilege;

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

(iii) clergy privileges;

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-340 ~~((Full adjudicative process—Decision.))~~ **Student conduct committee—Initial decision** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to

make closing arguments, written or verbal in whatever form the committee wishes to receive them.

The committee may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within (~~twenty~~) fifteen days following the conclusion of the hearing or the committee's receipt of closing arguments, the student conduct committee shall issue a decision in accordance with RCW 34.05.461 and WAC 132E-122-160 and 132E-122-200. The 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 found to be violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

~~((a) The decision shall contain findings on:~~

~~(i) All material issues of fact, except for cases involving sexual misconduct;~~

~~(ii) Conclusions concerning which, if any, provisions of the conduct code were found to be violated; and~~

~~(iii) Any sanction(s).~~

~~(b) Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.~~

~~(3) The student conduct committee chair shall, within twenty days of the conclusion of the hearing, serve the decision to the respondent, the student conduct officer, and any complainant in a proceeding involving allegations of sexual misconduct, concurrently.~~

~~The recommended decision letter shall include notification that the review will be limited to reviewing the specific issues raised by the parties during the full adjudication proceedings.~~

~~(4) In a proceeding involving allegations of sexual misconduct, the review decision letter will explain the reasons for modifying any recommended disciplinary action with respect to such allegations.~~

~~(5) The decision will state whether the alleged misconduct was substantiated and will describe any sanctions or conditions imposed.~~

~~The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential information not relating to sexual misconduct allegations.)~~

(3) The committee's decision shall also include a determination of appropriate sanctions, 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 a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of its decision to be served on the parties and their attorney, if any. The notice will inform all parties of their appeal rights. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-350 (~~(Full adjudicative proceedings—Student conduct committee appeal.)~~) **Student conduct committee—Appeal of initial decision.** (1) ~~((A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee))~~ Any party may appeal the committee's ((initial)) decision to the ((vice president of instruction and student services by filing a notice of appeal to the vice president of instruction and student services within ten business days of services of the committee's initial decision)) chief student affairs officer office within fifteen business days of services of the committee-s decision. Failure to file a timely appeal constitutes a waiver of the right and the ~~((initial))~~ decision shall be deemed final.

~~((2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the vice president may ask for additional briefing from the parties on issues raised on appeal. The vice president of instruction and student services' 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 vice president of instruction and student services shall provide a written decision to the respondent and the student conduct officer within twenty days after receipt of the notice of appeal. The vice president of instruction and student services' decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.~~

~~(4) In cases involving allegations of sexual misconduct, the vice president of instruction and student services, 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) In cases involving allegations of sexual misconduct, the complainant will have the same appeal rights as the respondent.)~~ (2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain an argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) procedural irregularity that would change the outcome;

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

(c) the investigator, decisionmaker, student conduct officer, or director of equal opportunity and Title IX programs had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the chief student affairs officer or a designee will promptly serve a copy of the appeal on all non-appealing parties, who will have ten business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all par-

ties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

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

(5) The chief student affairs officer shall serve a written decision on all parties and their attorneys, if any, within fifteen days after receipt of the appeal. The chief student affair officer's decision shall be final and subject to judicial review pursuant to Chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the chief student affairs officer's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(7) The chief student affairs officer shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-360 Summary suspension (~~(—Purpose and proceeding)~~).

~~((1) Summary suspension is exclusion from classes or other privileges, services and activities. A student shall be summarily suspended if the chief student affairs officer or designee has cause to believe that the student:~~

~~(a) Has violated any provision of this chapter; and/or~~

~~(b) Presents an imminent danger either to themselves, other persons on the campus, or to the educational process.~~

~~(2) Summary suspension is appropriate only where subsection (1)(b) of this section can be shown, either alone or in conjunction with subsection (1)(a) of this section. The chief student affairs officer or designee shall enter an order served by certified and regular mail at the student's last known address, or shall be personally served on the student.~~

~~(3) The procedures for a summary suspension hearing shall be considered an emergency adjudicative proceeding and shall be conducted as soon as possible and, if feasible, within five business days. It is the student's responsibility to schedule the hearing. The chief student affairs officer or designee may, upon the request of the student, schedule the hearing at a time later than five business days. The chief student affairs officer or designee shall preside over the meeting. The student may appear alone or with another to advise and assist them as they appear before the appropriate college official(s). Any person who accompanies the student may provide support or guidance to the student, but may not speak, represent, or advocate for the student before the college official. An accommodation of a spokesperson (a person who would address the college official(s)) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the chief student affairs officer or designee. The chief student affairs officer or designee shall, at the summary suspension proceeding, determine whether there is probable cause to~~

~~believe that continued suspension is necessary and/or whether other disciplinary action is appropriate.~~

~~(4) The chief student affairs officer or designee may continue to enforce the suspension of the student from the college and/or may impose other disciplinary action if, after the summary suspension hearing, the chief student affairs officer or designee finds that the student against whom the specific violations are alleged has in fact committed one or more of said violations and:~~

~~(a) Summary suspension is necessary for the safety of the student, other campus community members, or to restore order to the campus; and~~

~~(b) The violation(s) by the student are grounds for disciplinary action per the provisions of this code.)) (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.~~

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

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

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

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

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

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

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

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

~~(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter 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.~~

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

~~(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary pro-~~

ceedings are pending or why the summary suspension should be less restrictive in scope.

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

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

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

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

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-400 Readmission after dismissal. (1) Any student expelled (dismissed) from the college may submit a written petition to the chief student affairs officer or designee requesting readmission. Such petition must include how any conditions imposed by the chief student affairs officer or designee or student conduct committee have been met. Decisions by the chief student affairs officer or designee regarding a petition for readmission shall be reviewed by the president.

(2) If the chief student affairs officer or designee suspends or expels a student from a college program that has a readmission policy and procedure, the program's readmission policy and procedures will be followed and the readmission committee will review, as part of their deliberations, the chief student affairs officer's or designee's recommendation/_conditions of readmission concerning the student's readmission to the program.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|------------------|---|
| WAC 132E-122-170 | Reporting—Sexual misconduct and discrimination. |
| WAC 132E-122-180 | Confidentiality and right to privacy. |
| WAC 132E-122-190 | Retaliation is prohibited. |
| WAC 132E-122-250 | Initiation of Title IX proceedings. |
| WAC 132E-122-260 | Interim measures. |
| WAC 132E-122-370 | Summary suspension—Notice. |

| | |
|------------------|---|
| WAC 132E-122-380 | Summary suspension—For failure to appear. |
| WAC 132E-122-410 | Order of precedence. |
| WAC 132E-122-420 | Prohibited conduct under Title IX. |
| WAC 132E-122-430 | Title IX jurisdiction. |
| WAC 132E-122-440 | Initiation of Title IX proceedings. |
| WAC 132E-122-450 | Prehearing procedure. |
| WAC 132E-122-460 | Rights of parties. |
| WAC 132E-122-470 | Evidence. |
| WAC 132E-122-480 | Initial order. |
| WAC 132E-122-490 | Title IX appeals. |

WSR 24-18-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-161—Filed August 21, 2024, 4:22 p.m., effective August 25, 2024]

Effective Date of Rule: August 25, 2024.

Purpose: The purpose of this emergency rule is to close recreational coastal salmon fishing in Catch Record Card Area 2.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500A; and amending WAC 220-313-075.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: The purpose of this rule is to close recreational salmon fishing in Area 2. Coho catch for Area 2 is projected to be near the quota for the area by August 24, and would likely be exceeded if the fishery remained open. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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: August 21, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07500B Pacific Ocean salmon—Seasons—Closed areas.

Effective August 25 through September 30, 2024, the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

(1) **Catch Record Card Area 1:** Closed to fishing for salmon. It is unlawful to possess salmon on board a vessel, including in transit.

- (2) **Catch Record Card Area 2:** Closed to fishing for salmon. It is unlawful to possess salmon on board a vessel, including in transit.
- (3) **Catch Record Card Area 3:** Closed to fishing for salmon. It is unlawful to possess salmon on board a vessel, including in transit.
- (4) **Catch Record Card Area 4:**
Open August 25 through September 15, 2024:
(a) Daily limit of 2 salmon.
(b) Release chum and wild coho.
(c) Chinook minimum length 24 inches.
(d) Coho minimum length 16 inches.
(e) No chinook retention allowed in waters east of the Bonilla-Tatoosh line.

REPEALER

The following section of the Washington Administrative Code is repealed, effective August 25, 2024:

WAC 220-313-07500A Pacific Ocean salmon—Seasons—Closed areas. (24-159)

WSR 24-18-004

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed August 22, 2024, 8:49 a.m., effective August 22, 2024, 8:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Home care aide and nursing assistant-certified (NA-C) alternate certification time frames. The department of health (department) is establishing alternate certification time frames for individuals working toward certification as a home care aide or NA-C. This includes amending WAC 246-980-025, 246-980-030, 246-980-040 and 246-980-065, and adopting new WAC 246-980-011. Due to lasting impacts caused by the coronavirus disease 2019 (COVID-19) pandemic, many long-term care workers are still unable to obtain training and certification as home care aides or NA-Cs within statutory time frames. By continuing alternate time frames established under ESHB 1120 (chapter 203, Laws of 2021), the department will allow workers impacted by the pandemic more time to complete requirements while training, testing, and credentialing capacity issues are being resolved.

This sixth emergency rule continues, without change, emergency rules originally filed January 12, 2023, under WSR 23-03-066 and extended thereafter as necessary, and most recently on April 26, 2024, under WSR 24-10-062. These rules established alternate certification time frames for two different groups of long-term care workers: Individuals working toward certification as a home care aide and individuals working toward certification as an NA-C. The rule language for this extension is the same as the most recent filing. Rules impacting home care aides were developed in collaboration with the department of social and health services (DSHS), while rules impacting NA-Cs were developed in collaboration with DSHS and the Washington state board of nursing (WABON).

New WAC 246-980-011 establishes alternate time frames for long-term care workers seeking certification as a home care aide or NA-C.

Amendments to WAC 246-980-025, 246-980-030, 246-980-040, and 246-980-065 create cross-references to WAC 246-980-011 and, where applicable, to DSHS rules that establish alternate time frames for training and testing.

Citation of Rules Affected by this Order: New WAC 246-980-011; and amending WAC 246-980-025, 246-980-030, 246-980-040, and 246-980-065.

Statutory Authority for Adoption: RCW 18.88B.021; ESHB 1120 (chapter 203, Laws of 2021).

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

Reasons for this Finding: This emergency rule is necessary to avoid a critical shortage of long-term care workers as a result of the COVID-19 pandemic.

During the COVID-19 pandemic, both training and testing were unavailable for several months in 2020 before resuming at limited capacity. This created a large backlog of long-term care workers unable to become certified as a home care aide or NA-C within statutory time frames. During the COVID-19 declared emergency, thousands of workers seeking certification were allowed to continue working under Gover-

nor's Proclamations 20-52 and 20-65 (waivers), which waived credentialing requirements. Now that the waivers have been rescinded, however, uncertified workers will no longer be able to work and will still be unable to readily access the training and testing necessary for certification. Losing these workers would exacerbate the existing workforce shortage, forcing more medically vulnerable patients to rely on other care options, such as higher-level residential care settings, and further impact an already strained hospital and emergent health care settings to receive urgent healthcare services.

ESHB 1120, passed in 2021, gives the department authority to allow long-term care workers additional time to become certified if a pandemic or other declared state of emergency impacts their ability to complete certification timely. Pursuant to ESHB 1120, the department collaborated with DSHS and WABON to develop alternate, extended time frames for long-term care workers seeking certification as a home care aide or NA-C. These alternate time frames create a path to certification for uncertified home care aides and NA-Cs and allow workers to continue caring for clients while the testing and training backlog is being resolved.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 4, 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 4, Repealed 0.

Date Adopted: August 22, 2024.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-3558.9

NEW SECTION

WAC 246-980-011 Long-term care workers working or hired during the COVID-19 public health emergency. (1) Unless exempt from certification as described in WAC 246-980-025, a long-term care worker affected by the coronavirus disease 2019 (COVID-19) public health emergency who is required to be certified as a home care aide must obtain certification as follows:

| Hired or rehired during the time frame of: | Shall be certified no later than: |
|--|-----------------------------------|
| August 17, 2019, to September 30, 2020 | January 31, 2024 |

| Hired or rehired during the time frame of: | Shall be certified no later than: |
|--|-----------------------------------|
| October 1, 2020, to April 30, 2021 | April 30, 2024 |
| May 1, 2021, to March 31, 2022 | July 31, 2024 |
| April 1, 2022, to September 30, 2022 | October 31, 2024 |
| October 1, 2022, to June 30, 2023 | January 31, 2025 |
| July 1, 2023, to January 31, 2024 | April 30, 2025 |
| Beginning February 1, 2024 | Standard training |

The above chart provides additional time for a long-term care worker to be certified, as either a home care aide or nursing assistant.

(2) "Hired" and "rehired" as used in this section mean the date of hire as defined in WAC 246-980-010. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in subsection (1) of this section.

(3) If a long-term care worker or home care aide is limited-English proficient, the worker may request an additional 60 days to obtain certification under WAC 246-980-065.

(4) Nothing in this section prevents a long-term care worker hired between August 17, 2019, and September 30, 2022, from completing training or obtaining certification in advance of the deadlines stipulated in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 18-20-072 [24-15-025], filed 9/28/18 [7/9/24], effective 10/29/18 [8/9/24])

WAC 246-980-025 Individuals exempt from obtaining a home care aide certification. (1) The following individuals are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the entry level training required by RCW 74.39A.074 and meet the requirements of WAC 246-980-040 (1)(b) and (c).

(a) An individual provider caring only for a biological, step, or adoptive child or parent.

(b) An individual provider who provides (~~twenty~~) 20 hours or less of care for one person in any calendar month.

(c) An individual employed by a community residential service business.

(d) An individual employed by a residential habilitation center licensed under chapter 71A.20 RCW or a facility certified under 42 C.F.R. Part 483.

(e) A direct care worker who is not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(f) A person working as an individual provider who only provides respite services and works less than (~~three hundred~~) 300 hours in any calendar year.

(g) Any direct care worker exempt under RCW 18.88B.041(1).

(2) The following long-term care workers are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must meet the requirements of WAC 246-980-040 (1)(b) and (c). The training requirements under RCW 74.39A.074(1) are not required.

(a) An individual who holds an active credential by the department as a:

(i) Registered nurse, a licensed practical nurse, or advanced registered nurse practitioner under chapter 18.79 RCW; or

(ii) Nursing assistant-certified under chapter 18.88A RCW.

(b) A home health aide who was employed by a medicare certified home health agency within the year before being hired as a long-term care worker and has met the requirements of 42 C.F.R. Part 484.36.

(c) A person who is in an approved training program for certified nursing assistant under chapter 18.88A RCW, provided that the training program is completed within (~~one hundred twenty~~) 120 calendar days of the date of hire and that the nursing assistant-certified credential has been issued within (~~two hundred~~) 200 calendar days of the date of hire, or that the training and certification are completed in compliance with the deadlines in WAC 246-980-011.

(d) An individual with special education training and an endorsement granted by the superintendent of public instruction under RCW 28A.300.010 and is approved by the secretary.

(e) An individual employed as a long-term care worker on January 6, 2012, or who was employed as a long-term care worker between January 1, 2011, and January 6, 2012, and who completed all of the training requirements in effect as of the date of hire. This exemption expires if the long-term care worker has not provided care for three consecutive years.

(i) The department may require the exempt long-term care worker who was employed as a long-term care worker between January 1, 2011, and January 6, 2012, to provide proof of that employment. Proof may include a letter or similar documentation from the employer that hired the long-term care worker between January 1, 2011, and January 6, 2012, indicating the first and last day of employment, the job title, a job description, and proof of completing training requirements. Proof of training will also be accepted directly from the approved instructor or training program, if applicable.

(ii) For an individual provider reimbursed by the department of social and health services, the department will accept verification from the department of social and health services or the training partnership.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

WAC 246-980-030 Working while obtaining certification as a home care aide. (1) A long-term care worker may provide care before receiving certification as a home care aide if all the following conditions are met:

(a) Before providing care, the long-term care worker must complete the training required by RCW 74.39A.074 (1)(d)(i)(A) and (B).

(b) The long-term care worker must submit an application for home care aide certification to the department within ~~((fourteen))~~ 14 calendar days of hire. An application is considered to be submitted on the date it is post-marked or, for applications submitted in person or online, the date it is accepted by the department.

(2) Except as provided in WAC 246-980-011, a long-term care worker is no longer eligible to provide care without a credential under the following circumstances:

(a) The long-term care worker does not successfully complete all of the training required by RCW 74.39A.074(1) within ~~((one hundred twenty calendar days from their date of hire))~~ the timelines in WAC 388-71-0876 or 388-112A-0081;

(b) The long-term care worker has not obtained their certification within ~~((two hundred))~~ 200 calendar days from their date of hire, or ~~((two hundred sixty))~~ 260 calendar days if granted a provisional certificate under RCW 18.88B.041.

(3) This section does not apply to long-term care workers exempt from certification under WAC 246-980-025.

AMENDATORY SECTION (Amending WSR 21-02-002 [24-15-025], filed 12/23/20 [7/9/24], effective 1/23/21 [8/9/24])

WAC 246-980-040 Certification requirements. (1) To qualify for certification as a home care aide, except as provided in WAC 246-980-011, the applicant must:

(a) Successfully complete all training required by RCW 74.39A.074(1) within ~~((one hundred twenty calendar days of the date of hire as a long-term care worker))~~ the timelines in WAC 388-71-0876 or 388-112A-0081;

(b) Successfully pass the home care aide certification examination, after completing training; and

(c) Become certified within ~~((two hundred))~~ 200 days of date of hire, or ~~((two hundred sixty))~~ 260 days if granted a provisional certificate under RCW 18.88B.041.

(2) An applicant for certification as a home care aide must submit to the department:

(a) A completed application for both certification and the examination on forms provided by the department;

(b) The exam fee set by the examination vendor and required fees under WAC 246-980-990; and

(c) A certificate of completion from an approved training program indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.074. The certificate of completion or other official verification may also be submitted directly from the approved instructor or training program.

(3) An applicant must submit to a state and federal background check as required by RCW 74.39A.056.

(4) An applicant exempt from certification under WAC 246-980-025(2) who voluntarily chooses to be certified must provide documentation of qualification for the exemption. The applicant is not required to take the training required in subsection (1)(a) of this section or provide proof of training completion to the department.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 16-09-004, filed 4/7/16, effective 5/8/16)

WAC 246-980-065 Home care aide provisional certification. (1)

The department may issue a provisional certification to a long-term care worker who is limited-English proficient and submits:

- (a) A request for a provisional certification; and
 - (b) Verification of his or her date of hire as a long-term care worker, as follows:
 - (i) For individual providers, verification of the applicant's date of hire submitted directly by the department of social and health services; or
 - (ii) For all other applicants, a form supplied by the department and completed by the employer who hired the applicant as a long-term care worker, verifying the applicant's date of hire.
- (2) A provisional certification will be issued only once.
- (3) Except as provided in WAC 246-980-011, a provisional certification will take effect ((two hundred)) 200 days from the applicant's date of hire as a long-term care worker, as defined in WAC 246-980-010(2).
- (4) Except as provided in WAC 246-980-011, a provisional certification will expire ((two hundred sixty)) 260 days from the applicant's date of hire as a long-term care worker. The applicant must stop working on the ((two hundred sixtieth)) 260th day of employment if the certification has not been granted for any reason.
- (5) A request for provisional certification may be denied pursuant to chapter 18.130 RCW, the Uniform Disciplinary Act, or based on RCW 18.88B.080.
- (6) For the purposes of this section, "limited-English proficient" means that an individual is limited in his or her ability to read, write, or speak English.

WSR 24-18-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-162—Filed August 22, 2024, 5:04 p.m., effective August 22, 2024, 5:04 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chronic wasting disease (CWD) is a fatal neurologic disease of cervids including deer, elk, moose, and caribou. It is caused by infectious proteins called prions that are transmitted directly from animal to animal or indirectly through environments. There is no cure or vaccine for CWD, and the disease is always fatal. It can only be confirmed through testing of an animal's lymph nodes or brainstem tissue. The purpose of the rule is to aid in sample collection, reduce the concentration of animals, and reduce the likelihood of disease transmission through transportation of carcasses. The emergency rules also prohibit scents that could contain cervid urine or glandular tissue in the area surrounding the detection, as these scents can contain the disease.

Citation of Rules Affected by this Order: Amending WAC 220-400-040, 220-413-030, 220-413-100, and 220-414-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

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

Reasons for this Finding: Recently, CWD cases have been confirmed in Washington state. As a result, testing for the disease and limiting the potential spread of the disease are now more important than ever. These emergency rules are intended to increase testing by making it mandatory to test salvaged and harvested animals in the area surrounding the detection. Also to reduce the potential spread of the disease, emergency rules will prohibit the transportation of deer, elk, and moose from the region surrounding the detection area and prohibit baiting during hunting in the area near the detection. The effect of CWD is always fatal on cervids.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 4, 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: August 22, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-400-04000A Possession of dead wildlife. Effective August 22, 2024, and until further notice, notwithstanding the provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070, the salvage possession requirements of WAC 220-400-040 for deer, elk and moose are modified as contained herein. All other provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

In GMUs 124, 127, and 130 salvagers must submit the whole head with at least 3 inches of the neck attached or extracted lymph nodes to WDFW for chronic wasting disease sampling within 3 days of receiving a salvage permit.

NEW SECTION

WAC 220-413-03000E Transportation, importation and retention of dead resident and nonresident wildlife Effective August 22, 2024, and until further notice, notwithstanding the provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070, the transportation, importation, and retention requirements of WAC 220-413-030 for deer, elk and moose are modified as contained herein. All other provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful:

(a) To transport deer, elk, or moose, or parts thereof, taken from within 100 series GMUs in areas that require a Washington state hunting license, to other areas of Washington state, with the following exceptions:

(b) To import or possess meat that has been deboned in the state or province where it was harvested and is imported as boned-out meat, or meat that has been deboned within 100 series GMUs and is transported as boned-out meat to other areas of the state;

(2) It is unlawful for an importer or receiver of deer, elk, or moose to fail to notify the department within 24 hours if a state, province, tribe, or laboratory alerts the importer or receiver that a harvested animal has tested positive for chronic wasting disease. Violation of this subsection is an infraction punishable under RCW 77.15.160 Infractions.

NEW SECTION

WAC 220-413-10000A Mandatory report of hunting activity Effective September 1, 2024, and until further notice, notwithstanding the provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070, the hunting reporting requirements of WAC 220-413-100 for deer, elk and moose are modified as contained herein. All other provisions of WAC 220-415-020, WAC 220-415-030, WAC

220-415-050, WAC 220-415-060 and 220-415-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

In GMUs 124, 127, and 130 successful deer, elk or moose hunters must present the whole head with at least 3 inches of the neck attached or extracted lymph nodes to WDFW for chronic wasting disease sampling within 3 days of harvesting.

NEW SECTION

WAC 220-414-03000A Baiting for the purposes of hunting deer, moose or elk. Effective September 1, 2024, and until further notice, notwithstanding the provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070, the baiting requirements of WAC 220-414-030 for deer, elk and moose are modified as contained herein. All other provisions of WAC 220-415-020, WAC 220-415-030, WAC 220-415-050, WAC 220-415-060 and 220-415-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

In GMUs 124, 127, and 130, it is unlawful to hunt deer, elk or moose using:

(1) Any type of bait placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting deer or elk with the intent to hunt them.

(2) Natural or synthetic scents that contain or are derived from cervid urine and glandular extracts.

WSR 24-18-018

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed August 23, 2024, 7:52 a.m., effective August 24, 2024]

Effective Date of Rule: August 24, 2024.

Purpose: The health care authority (agency) is amending these rules to expand screening and preventative services for certain sexually transmitted infections, to include HIV testing, viral hepatitis B and C, and hepatitis A/B combination vaccines, when clinically appropriate or according to nationally recognized guidelines. The agency is also including coverage for family planning-related services and supplies, defined as those services provided as part of, or as follow-up to, a family planning visit.

Citation of Rules Affected by this Order: Amending WAC 182-532-530, 182-532-550, and 182-532-560.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: These rules are necessary to expand family-planning only (FPO) coverage to support preventative screenings and family planning services while the permanent rule-making process is completed. The agency began the permanent rule-making process under WSR 23-24-065 and filed emergency rules on December 29, 2023, and again on April 26, 2024. The FPO program operates under a federal waiver allowing changes to be in response to state needs. These changes were approved by the Centers for Medicare and Medicaid Services (CMS) as eligible additions to the state program.

The agency has drafted the rule amendments, but a third emergency rule filing is needed. The agency is waiting for CMS to approve the renewal of the FPO waiver application, which includes the expanded coverage.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Date Adopted: August 23, 2024.

Wendy Barcus
Rules Coordinator

OTS-5096.1

AMENDATORY SECTION (Amending WSR 22-02-025, filed 12/28/21, effective 2/1/22)

WAC 182-532-530 Family planning only programs—Covered services.

The medicaid agency covers all of the following services:

(1) One comprehensive preventive family planning visit once every twelve months, based on nationally recognized clinical guidelines. This visit must have a primary focus and diagnosis of family planning and include counseling, education, risk reduction, and initiation or management of contraceptive methods;

(2) Assessment and management of family planning or contraceptive problems, when medically necessary;

(3) Family planning-related services and supplies defined as those services provided as part of, or as follow-up to a family planning visit;

(4) Contraception, including:

(a) Food and Drug Administration (FDA)-approved contraceptive methods, as described under WAC 182-530-2000;

(b) Education and supplies for Federal Drug Administration (FDA)-approved contraceptive, natural family planning, and abstinence; and

(c) Sterilization procedures, as described under WAC 182-531-1550.

~~((4))~~ (5) The following services, when clinically appropriate ~~(, during a visit focused on family planning)~~ or according to nationally recognized guidelines:

(a) Pregnancy testing;

(b) Cervical cancer screening ~~(, according to nationally recognized clinical guidelines)~~;

(c) Gonorrhea and chlamydia screening and treatment ~~((for clients age thirteen through twenty-five, according to nationally recognized clinical guidelines))~~;

(d) Syphilis screening and treatment ~~((for clients who have an increased risk for syphilis, according to nationally recognized guidelines; and))~~;

(e) Sexually transmitted infection (STI) screening, testing, and treatment, when medically indicated by symptoms or report of exposure, and medically necessary for the client's safe and effective use of their chosen contraceptive method;

(f) HIV testing, including rapid tests; and

(g) Viral hepatitis B and C testing.

(6) Hepatitis B and hepatitis A/B combination vaccines.

~~((5))~~ (7) Human papillomavirus (HPV) vaccines.

AMENDATORY SECTION (Amending WSR 19-18-024, filed 8/28/19, effective 10/1/19)

WAC 182-532-550 Family planning only programs—Payment limitations. (1) The medicaid agency limits payment under the family planning only programs to services that:

(a) Have a primary focus and diagnosis of family planning as determined by a qualified licensed medical practitioner; ~~(and)~~

(b) Are medically necessary for the client to safely and effectively use, or continue to use, the client's chosen contraceptive method; and

(c) Include family planning-related services and supplies listed in WAC 182-532-530.

(2) The agency pays:

(a) Providers for covered family planning services using the agency's published fee schedules;

(b) For family planning pharmacy services, family planning laboratory services, and sterilization services using the agency's published fee schedules; and

(c) A dispensing fee only for contraceptive drugs purchased through the 340B program of the Public Health Service Act. (See chapter 182-530 WAC)

(3) The agency does not pay for inpatient services under the family planning only programs, except for complications arising from covered family planning services.

(4) The agency requires providers to:

(a) Meet the timely billing requirements of WAC 182-502-0150; and

(b) Seek timely reimbursement from a third party when a client has available third-party resources, as described under WAC 182-501-0200. Exceptions to this requirement are described under WAC 182-501-0200 (2) and (3) and 182-532-570.

(5) Services provided to family planning clients by federally qualified health centers (FQHCs), rural health centers (RHCs), and Indian health care providers (IHCP) do not qualify for encounter or enhanced rates.

AMENDATORY SECTION (Amending WSR 19-18-024, filed 8/28/19, effective 10/1/19)

WAC 182-532-560 Family planning only programs—Documentation requirements. In addition to the requirements in WAC 182-502-0020, providers must document the following in the client's medical record:

(1) Primary focus and diagnosis of the visit is family planning or family planning related;

(2) Contraceptive methods discussed;

(3) Plan for use of a contraceptive method, or the reason and plan for no contraceptive method;

(4) Education, counseling, and risk reduction with sufficient detail that allows for follow-up;

(5) Referrals to, or from, other providers; and

(6) If applicable, a copy of the completed consent form for sterilization. (See WAC 182-531-1550)

WSR 24-18-020
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed August 23, 2024, 9:40 a.m., effective August 23, 2024, 9:40 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of children, youth, and families' (DCYF) early learning division is expanding eligibility to people working in licensed child care centers and licensed family homes, specialty and therapeutic court participants, and undocumented children. This rule making will also establish eligibility for families with a parent participating in a state-registered apprenticeship with income less than 85 percent of the state median income who, within the last year, were approved for working connections child care. This emergency has been in effect since December 29, 2023, under WSR 24-02-064 and 24-10-060.

Citation of Rules Affected by this Order: Amending WAC 110-15-0005, 110-15-0015, 110-15-0024, 110-15-0045, and 110-15-0075.

Statutory Authority for Adoption: 2SSB 5225, 2SHB 1525; chapter 43.216 RCW.

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

Reasons for this Finding: The new eligibility categories are necessary for the preservation of public health, safety, and general welfare through: Increasing the number of vulnerable children eligible for child care where they will receive supervision, nurturing and care; allowing child care employees to use subsidy for their own children; and providing undocumented children subsidized child care with state dollars.

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 5, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, 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: August 23, 2024.

Brenda Villarreal
Rules Coordinator

OTS-5105.2

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0005 Eligibility. (1) **Consumers.** At the time of application and reapplication, to be eligible for WCCC, consumers must:

- (a) Have parental control of one or more eligible children;
- (b) Live in the state of Washington;
- (c) Participate in an approved activity or meet the eligibility special circumstances requirements under WAC 110-15-0020, 110-15-0023, or 110-15-0024;
- ~~(d) ((Have countable income at or below 60 percent of the SMI at initial application or at or below 65 percent of the SMI at reapplication;~~
- ~~(e))~~ Not have assets that exceed \$1,000,000; ~~((and~~
- ~~(f))~~ (e) Have an agreed payment arrangement with any provider to whom any outstanding WCCC copayment is owed; and
- (f) One of the following:
 - (i) Have countable income at or below 60 percent of the state median income (SMI) at initial application or at or below 65 percent of the SMI at reapplication;
 - (ii) Within the first 12 months of a state-registered apprenticeship program, have a household annual income adjusted for family size that does not exceed 75 percent of the SMI; or
 - (iii) Be employed by a licensed or certified child care provider as confirmed or verified in the agency's electronic workforce registry and have a household annual income adjusted for family size that does not exceed 85 percent of the SMI.

(2) Parents currently attending high school or who are age 21 years or younger and completing a high school equivalency certificate are eligible for WCCC if their income does not exceed 85 percent of the SMI at the time of application.

(3) **Children.** To be eligible for WCCC, children must:

- ~~(a) ((Belong to one of the following groups as defined in WAC 388-424-0001:~~
 - ~~(i) A U.S. citizen;~~
 - ~~(ii) A U.S. national;~~
 - ~~(iii) A qualified alien; or~~
 - ~~(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.~~
- ~~(b) Legally))~~ Reside in Washington state ~~((, which will be determined by applying the criteria of WAC 388-424-0001 or 388-468-0005));~~ and
- ~~((e))~~ (b) At the time of eligibility determination or redetermination, be less than age 13 years ~~((of age on the first day of eligibility)); or~~
- ~~((d))~~ (c) Be less than age 19 years ~~((of age)), and:~~
 - (i) Have a verified special need, according to WAC 110-15-0020;

or

- (ii) Be under court supervision.

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0015 Determining family size. (1) DCYF determines a consumer's family size as follows:

(a) For a single parent, including a minor parent living independently, DCYF counts the consumer and the consumer's children;

(b) For unmarried parents who have at least one mutual child, DCYF counts both parents and all of their children living in the household;

(c) ~~For unmarried parents who have no mutual children ((are counted as separate WCCC households)),~~ DCYF counts the unmarried parents and their respective children, although living in the same household, as separate WCCC households;

(d) For married parents, DCYF counts both parents and all of their children living in the household;

(e) ~~((For parents who are undocumented aliens as defined in WAC 388-424-0001, DCYF counts the parents and children, documented and undocumented, and all other family rules in this section apply. Children needing care must meet citizenship requirements described in WAC 110-15-0005;~~

~~(f))~~ For a legal guardian verified by a legal or court document, adult sibling or step-sibling, nephew, niece, aunt, uncle, grandparent, any of these relatives with the prefix "great," such as a "great-nephew," or an in loco parentis custodian who is not related to the child as described in WAC ~~((110-15-0005))~~ 110-15-0003, DCYF counts only the children and only the children's income is counted;

~~((g))~~ (f) For a parent who is out of the household because of employer requirements, such as training or military service, and expected to return to the household, DCYF counts the consumer, the absent parent, and the children;

~~((h))~~ (g) For a parent who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household, DCYF counts the consumer, the absent parent, and the children. WAC 110-15-0020 and all other family and household rules in this section apply;

~~((i))~~ (h) For a parent who is out of the country and waiting for legal reentry ~~((in to))~~ into the United States, DCYF counts only the consumer and children residing in the United States ~~((and)).~~ All other family and household rules in this section apply;

~~((j))~~ (i) An incarcerated parent is not part of the household count for determining income and eligibility. DCYF counts the remaining household members using all other family rules in this section; and

~~((k))~~ (j) For a parent incarcerated at a Washington state correctional facility whose child lives with them at the facility, DCYF counts the parent and child as their own household.

(2) When the household consists of the consumer's own child and another child identified in subsection (1) ~~((f))~~ (e) of this section, the household may be combined into one household or kept as distinct households for the benefit of the consumer.

AMENDATORY SECTION (Amending WSR 23-23-082, filed 11/13/23, effective 12/14/23)

WAC 110-15-0024 Categorical eligibility for families receiving child protective, child welfare, or family assessment response services, or referred during specialty or therapeutic court proceedings.
 (1) Families with children ~~((who have received))~~ are eligible for WCCC

benefits for a 12-month period if the consumer is a Washington state resident and the child or children are living with a biological parent or guardian and:

(a) In the six months prior to application or reapplication for WCCC benefits, the family received:

(i) Child protective services as defined and used by chapters 26.44 and 74.13 RCW((~~r~~));

(ii) Child welfare services as defined and used by chapter 74.13 RCW((~~r~~)); or

(iii) Services through a family assessment response, as defined and used by chapter 26.44 RCW ((in the six months previous to application or reapplication for working connections child care (WCCC) benefits are eligible for WCCC benefits for a 12-month period if, in addition the:

~~(a) Consumer is a Washington state resident;~~

~~(b) Family has been referred for child care as part of the family's case management as defined by RCW 74.13.020; and~~

~~(c) Child or children are residing with a biological parent or guardian);~~ and

(b) The family has been referred for child care as part of the family's case management as defined by RCW 74.13.020; or

(c) The child's or children's parent or guardian:

(i) Is participating in a specialty or therapeutic court or is listed as a victim in a case in a specialty or therapeutic court; and

(ii) Was referred for child care as part of the specialty court or therapeutic court proceedings.

(2) Families eligible for WCCC under this section will:

(a) Have no copayment;

(b) Be authorized for full-time child care regardless of participation in an approved activity; and

(c) Be eligible to have benefits paid only to a provider that meets the requirements in WAC 110-15-0125.

(3) "Specialty court" and "therapeutic court," for the purpose of this section, are defined by RCW 2.30.020.

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst. (1) Applicants and consumers not participating in WorkFirst activities may be eligible for WCCC benefits for the following approved activities:

(a) Employment;

(b) Self-employment;

(c) Supplemental nutrition assistance program employment and training (SNAP E&T); or

(d) The following education programs:

(i) High school or working towards a high school equivalency certificate for consumers under age 22 years (~~(of age)~~);

(ii) Part-time enrollment in a vocational education, adult basic education (ABE), high school equivalency certificate for consumers age 22 years (~~(of age)~~) and older, or English as a second language (ESL) program combined with an average of 20 or more employment hours per week or 16 more work-study hours per week; or

- (iii) For full-time students of a community, technical, or tribal college, enrollment in:
 - (A) A vocational education program that leads to a degree or certificate in a specific occupation;
 - (B) An associate degree program; or
 - (C) A registered apprenticeship program.
- (iv) "Full-time student" for the purpose of this subsection means a consumer attends a community, technical, or tribal college and meets its definition of full-time student.
- (e) Applicants and consumers who meet the requirements of ~~((e))~~ (d) of this subsection are eligible to receive subsidy payment for up to 10 hours per week of study time for approved classes.
- (2) Applicants and consumers who are eligible for WCCC benefits under the terms of this section are eligible to receive subsidy payment for:
 - (a) Transportation time between the child care location and the consumer's place of employment or approved activity; and
 - (b) Up to eight hours of sleep time before or after a night shift.

AMENDATORY SECTION (Amending WSR 23-12-038, filed 5/30/23, effective 7/1/23)

WAC 110-15-0075 Determining income eligibility and copayment amounts. (1) DCYF takes the following steps to determine consumers' eligibility and copayments, when care is provided under a WCCC voucher or contract:

- (a) Determine their family size as described in WAC 110-15-0015; and
 - (b) Determine their countable income as described in WAC 110-15-0065.
- (2) DCYF calculates consumers' copayments as follows:

| If the household's income is: | Then the household's maximum monthly copayment is: |
|--|--|
| At or below 20 percent of the SMI | Waived |
| Above 20 percent and at or below 36 percent of the SMI | \$65 |
| Above 36 percent and at or below 50 percent of the SMI | \$90 |
| Above 50 percent and at or below 60 percent of the SMI | \$165 |
| At reapplication, above 60 percent and at or below 65 percent of the SMI | \$215 |
| <u>An applicant between 60 percent and 75 percent of the SMI for families participating in a state-registered apprenticeship</u> | <u>\$215</u> |

(3) DCYF does not prorate copayments when consumers use care for only part of a month.

(4) ~~((For parents))~~ DCYF waives copayments for eligible consumers who are one or more of the following:

(a) Age 21 years or younger who attend high school or are working towards completing a high school equivalency certificate (~~(, copayments are not required)~~);

(b) Employed by a licensed or certified child care provider as confirmed or verified in the agency's electronic workforce registry;

(c) Eligible under WAC 110-15-0023; or

(d) Eligible under WAC 110-15-0024.

WSR 24-18-022
EMERGENCY RULES
SEATTLE COLLEGES

[Filed August 23, 2024, 11:16 a.m., effective August 23, 2024, 11:16 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To bring Seattle College's (college) student conduct code, chapter 132F-121 WAC, into compliance with the new Title IX final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the procedure to ensure its prohibited conduct and procedures adequately protect the interests of the college's community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: Amending WAC 132F-121-270, 132F-121-280, 132F-121-290, 132F-121-300, 132F-121-310, 132F-121-330, 132F-121-340, and 132F-121-350.

Statutory Authority for Adoption: RCW 34.05.010(16), 28B.50.140(13).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: To bring the college's student conduct code, chapter 132F-121 WAC, into compliance with a new final rule issued by the United States Department of Education pursuant to its authority under Title IX of the Education Amendment of 1972 and to update other provisions of the student conduct code to reflect current uses and needs of the college district and its students.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 8, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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: August 20, 2024.

Dr. Rosie Rimando-Chareunsap
Chancellor

OTS-5793.1

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

WAC 132F-121-110 Student misconduct. Misconduct for which the campuses may impose sanctions includes, but is not limited to, any of the following:

(1) Discriminatory conduct. Discriminatory conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status, religion; creed; genetic information; sexual orientation; age; gender identity; gender expression; veteran's status; or any other legally protected classification.

(2) Sexual misconduct. Sexual misconduct includes sexual harassment, sexual intimidation, sexual violence, domestic violence, and dating violence. Sexual misconduct may also include acts of sexual harassment prohibited under Title IX. See WAC 132F-121-280.

(a) Sexual harassment is a form of sexual discrimination consisting of unwelcome, gender-based, verbal, written, electronic and/or physical conduct. Sexual harassment does not need to be sexual in nature and can include offensive remarks about a person's gender. There are two types of sexual harassment:

(i) Hostile environment sexual harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing.

(ii) Quid pro quo harassment occurs when an individual, in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

(b) Sexual exploitation. Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or take advantage of anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

(i) Invading another person's sexual privacy;

(ii) Prostituting another person;

(iii) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;

(iv) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;

(v) Engaging in voyeurism. A person commits voyeurism if 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 the person has a reasonable expectation of privacy;

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

(vii) Causing the nonconsensual indecent exposure of another person, as defined by subsection (21) of this section.

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

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

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, 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.

(d) Consent: 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 is 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.

(e) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law, and, includes conduct that causes emotional, psychological, physical, and sexual trauma.

(f) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim, and includes conduct that causes emotional, psychological, physical, and sexual trauma. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(g) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(3) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct not otherwise protected by law, that is directed at a person because of their membership in a protected class 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 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; genetic information; sexual orientation; gender identity; gender expression; veteran's status; or any other legally protected classification, and includes sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic forms of communication not otherwise protected by law.

(4) Academic dishonesty. Any act of course-related dishonesty including, but not limited to, cheating or plagiarism.

(a) Cheating includes, but is not limited to, using, or attempting to use, any material, assistance, or source which has not been au-

thorized by the instructor to satisfy any expectation or requirement in an instructional course, or obtaining, without authorization, test questions or answers or other academic material that belong to another.

(b) Plagiarism includes, but is not limited to, using another person's ideas, words, or other work in an instructional course without properly crediting that person.

(c) Academic dishonesty also includes, but is not limited to, submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(5) Other dishonesty. Any other act of dishonesty related to district operations. Such acts include, but are not limited to:

(a) Forgery, alteration, or misuse of any district document, record, or instrument of identification;

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

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

(6) Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other district activity, whether occurring on or off district property, or (b) any other activity that is authorized to occur on district property, whether or not actually conducted by the district.

(7) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(8) Bullying is unwelcome conduct, whether verbal, physical or otherwise, including "cyber" bullying that is objectively offensive and sufficiently severe, or persistent, and/or pervasive, that it has the effect of substantially limiting the ability of an individual to participate in or benefit from the colleges' educational and/or social programs, and/or student housing. Bullying behavior is conduct that is not otherwise protected by law. Bullying may be top-down, perpetuated by someone with greater positional power towards another with lesser positional power; bottom-up, perpetuated by someone with lesser positional power towards someone with greater positional power; or peer-to-peer. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as bullying.

(9) 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, including images or videos of a sexual nature, and nonconsensual distribution of such material.

(10) Stalking. Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(11) Attempted or actual damage to, or theft or misuse of, real or personal property or money of (a) the district or state, (b) any student or district officer, employee, or organization, or (c) any other person or organization lawfully present on district property, or possession of such property or money after it has been stolen.

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

(13) Participation in any activity which unreasonably disrupts the operations of the district or infringes on the rights of another member of the district community, or leads or incites another person to engage in such an activity.

(14) Weapons. Carrying, holding, wearing, exhibiting, displaying or drawing of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, 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 firearm in their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or the president's designee may authorize possession of a weapon on campus upon a showing 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 therein.

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

(15) Hazing. Hazing includes any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. 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.

(16) Alcohol. The use, possession, delivery, or sale of any alcoholic beverage, except as permitted by law, applicable college policies, or authorized by chancellor or a college president, or being observably under the influence of alcohol.

(17) Drugs.

(a) Marijuana. The use, possession, delivery, or sale of 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.

(b) Other drugs. The use, possession, delivery, sale or being 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.

(18) Obstruction of the free flow of pedestrian or vehicular movement on district property or at a district activity.

(19) Conduct which is disorderly, lewd, or obscene.

(20) Breach of the peace, or aiding, abetting, or procuring a breach of the peace.

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

(22) The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased or operated by the college, including 25 feet from entrances, exits, windows that open, and ventilation intakes of such buildings, and where otherwise prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(23) Theft or other misuse of computer time or other electronic information resources of the district. 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 district'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 district's electronic information resources without authorization; or

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

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

(25) 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;
- (d) Interfering with someone else's proper participation in a proceeding;
- (e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;
- (f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or
- (g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(26) Safety violations. The operation of any motor vehicle on district property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person. 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.

(27) Violation of any other district rule, requirement, or procedure including, but not limited to, any that is posted in electronic form, the district's traffic and parking rules, or the requirements for carpool parking.

(28) Violation of any federal, state, or local law, rule, or regulation, including any hate crime.

(29) 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.

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

(30) Attempting to commit any of the foregoing acts of misconduct or aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

(31) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-270 Sex discrimination—Supplemental student conduct code and procedures—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 Seattle Colleges' standard disciplinary procedures, WAC 132F-121-110 through 132F-121-260, these supplemental procedures shall take precedence. The Seattle Colleges may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair)) student conduct code and procedure applies to allegations of sex discrimination arising on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard student conduct code and procedure, WAC 132F-121-110 through 132F-121-260, these supplemental student conduct code and procedure shall take precedence.~~

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

WAC 132F-121-280 ((Prohibited conduct under Title IX.)) Sex discrimination—Prohibited conduct and definitions. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Seattle Colleges may impose disciplinary sanctions against a student or student group who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of ~~(("sexual harassment."))~~ "sex discrimination."

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

~~(1) Title IX quid pro quo harassment. Quid pro quo harassment occurs when a student in their capacity as an employee of the Seattle Colleges conditions the provision of an aid, benefit, or service of the Seattle Colleges on an individual's participation in unwelcome sexual conduct.~~

~~(2) Title IX hostile environment. Unwelcome sexual or gender-based 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 Seattle Colleges' educational programs or activities, or employment.~~

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

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

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

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

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

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

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

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

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

~~(i) The length of the relationship;~~

~~(ii) The type of relationship; and~~

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

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

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

(a) A student or employee; or

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

(2) "Pregnancy or related conditions" means:

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

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

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

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

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

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

educational programs and activities after a determination that sex discrimination has occurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

related. Descendant includes stepchildren and adopted children under the age of 18.

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

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

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

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

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

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

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

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

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

(8) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a

student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-290 ((Title IX jurisdiction.)) Sex discrimination—Jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct (:

~~(a) Occurred in the United States;~~

~~(b) Occurred during a Seattle Colleges' 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 Seattle Colleges 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 Seattle Colleges.~~

~~(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 Seattle Colleges from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Seattle Colleges' student conduct code, WAC 132F-121-110.

~~(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.)~~ meets the definition of "sex discrimination" as that term is defined in WAC 132F-121-280 and occurs:

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

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-300 Sex discrimination—Dismissal and initiation of discipline. ~~((1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.~~

~~(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:~~

- ~~(a) Set forth the basis for Title IX jurisdiction;~~
- ~~(b) Identify the alleged Title IX violation(s);~~
- ~~(c) Set forth the facts underlying the allegation(s);~~
- ~~(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);~~ and
- ~~(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

 - ~~(i) The advisors will be responsible for questioning all witnesses on the party's behalf;~~
 - ~~(ii) An advisor may be an attorney; and~~
 - ~~(iii) The Seattle Colleges will appoint the party an advisor of the Seattle Colleges' 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.)~~ (1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.

(2) The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplina-

ry process for allegations of sex discrimination, including sex-based harassment, against a student shall be addressed through the student conduct code.

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

(4) When a summary suspension is imposed pursuant to WAC 132F-121-250, 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.

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

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

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

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

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

(e) The student conduct officer may recommend dismissal of the complaint if:

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

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

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint. In cases involving allegations of sex-based harassment, the complainant must withdraw their complaint in writing;

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

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

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

(g) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive meas-

ures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

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

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-310 Sex discrimination—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 132F-121-180. 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 Seattle Colleges intends to offer the evidence at the hearing.)~~ (1) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

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

(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) Notice. The college must provide a notice that includes all information required in WAC 132F-121-180 as well as a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

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

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (4)(b) of this section.

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

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

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

(a) Notice. In addition to all information required to be provided in a prehearing notice pursuant to WAC 132F-121-180, the prehearing notice must also inform the parties that:

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

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

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

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

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

WAC 132F-121-330 Sex discrimination—Presentation of 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) 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.~~

~~(5) 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.)~~ In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or

witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

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

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

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

(a) Spousal/domestic partner privilege;

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

(c) Clergy privileges;

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-340 Sex discrimination—Initial order. (~~((1) In addition to complying with WAC 132F-121-210 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 Seattle Colleges' education programs or activities; and~~
- ~~(h) Describes the process for appealing the initial order to the Seattle Colleges' president.~~
- ~~(2) The committee chair will serve the initial order on the parties simultaneously.)) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.~~

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

- WAC 132F-121-350 Sex discrimination—Appeals.** (~~(1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.~~
- ~~(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.~~
- ~~(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.~~
- ~~(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.~~
- ~~(5) The president's office shall serve the final decision on the parties simultaneously.~~

~~(6) All administrative decisions reached through this process may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.)~~ (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

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

(a) Procedural irregularity that would change the outcome;

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

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

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

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

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

(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on all parties and the Title IX coordinator.

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

WSR 24-18-023

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2024-03.04—Filed August 23, 2024, 12:12 p.m., effective August 24, 2024]

Effective Date of Rule: August 24, 2024.

Purpose: The health care authority is refileing WAC 182-12-5200 When is a retiring employee or a retiring school employee who separates from employment eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage?, as authorized in HB 1008, chapter 164, Laws of 2023, 68th legislature, 2023 regular session.

Citation of Rules Affected by this Order: New WAC 182-12-5200.

Statutory Authority for Adoption: HB 1008, chapter 164, Laws of 2023, 68th legislature, 2023 regular session.

Other Authority: RCW 41.05.021 and 41.05.160.

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

Reasons for this Finding: This emergency rule making is necessary to implement HB 1008, chapter 164, Laws of 2023, while the authority conducts the permanent rule-making process.

This filing continues the emergency rules filed under WSR 24-10-057, filed on April 26, 2024. Since the filing of this emergency rule, the agency filed CR-102 on the proposed rules and conducted a public hearing on August 6, 2024, and is preparing to file CR-103P under permanent rule making shortly. The text (OTS-4906.3) included with this filing differs from the text included in the second emergency rule filing (OTS-4906.2) filed under WSR 24-10-057. The proposed text under this emergency filing includes a reference to WAC 182-12-5110 (4)(b), which is a newly proposed WAC section, also filed under emergency rule filing as WSR 24-11-151.

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 1, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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: August 23, 2024.

Wendy Barcus
Rules Coordinator

OTS-4906.3

NEW SECTION

WAC 182-12-5200 When is a retiring employee or a retiring school employee who separates from employment eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? (1) A retiring employee or a retiring school employee who meet the definition of a separated employee as defined in RCW 41.05.011 (25)(a) or (b) is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if they meet procedural and substantive eligibility requirements as described in WAC 182-12-171 (1), (2), and (3), except as described in subsection (2) of this section.

(2) Effective January 1, 2024, the exceptions for a retiring employee and a retiring school employee to immediately begin receiving a monthly retirement plan payment to meet the substantive eligibility requirements as described in WAC 182-12-171 (2)(a), (c)(ii), and (d), and 182-12-5110 (4)(b), will include the following:

(a) A retiring employee or a retiring school employee who is a member of a Plan 3 retirement plan, also called a separated employee, must meet their Plan 3 retirement eligibility criteria; and

(b) A retiring employee or a retiring school employee who is a member of the teachers' retirement system Plan 2, school employees' retirement system Plan 2, or public employees' retirement system Plan 2, also called a separated employee, who separates from employment on or after January 1, 2024, and who is at least age 55 and have at least 20 years of service.

(3) The exceptions described in subsection (2) of this section apply to an employee or a school employee who is determined to be retroactively eligible for a disability retirement as described in WAC 182-12-211 (1)(c).

WSR 24-18-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-164—Filed August 23, 2024, 1:21 p.m., effective August 26, 2024]

Effective Date of Rule: August 26, 2024.

Purpose: This emergency rule closes sea cucumber District 2-2 to prevent overharvest of sea cucumbers.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000Q; and amending WAC 220-340-730.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: District 2-2 is projected to reach quota by August 26. This emergency rule closes sea cucumber harvest in District 2-2 to prevent overharvest. Harvestable surpluses of sea cucumbers exist in the districts specified. There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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: August 23, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000R Sea cucumbers Effective August 26, 2024, until further notice, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest seasons and landing limits shall be as described herein. All other provisions of WAC 220-340-730 not addressed herein, and unless otherwise amended, remain in effect:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 2-1 Monday through Sunday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 except for all waters in Gig Harbor and adja-

cent waters within a one nautical mile radius of the Gig Harbor entrance, Monday through Sunday of each week.

(3) It is unlawful for any harvester to fish for, take, or possess for commercial purposes more than 1,500 pounds of sea cucumber per license for each weekly fishery opening period.

(4) The maximum cumulative landing of sea cucumbers from August 5 through November 17, 2024, is 9,300 pounds per valid designated sea cucumber harvest license.

REPEALER

The following section of Washington Administrative Code is repealed, effective August 26, 2024:

WAC 220-340-73000Q Sea cucumbers (24-142)

WSR 24-18-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-166—Filed August 23, 2024, 4:08 p.m., effective August 24, 2024]

Effective Date of Rule: August 24, 2024.

Purpose: The purpose of this emergency rule is to set the opening of the Quinault secondary special management area (SSMA).

Citation of Rules Affected by this Order: Amending WAC 220-340-450.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: Closure of the Quinault Indian Nation Dungeness crab fishery allows for the opening of the Quinault SSMA to state license holders. State commercial Dungeness crab harvest in the Quinault U&A is below 50 percent of the harvestable surplus. Opening this area will not compromise the harvest sharing goals as described in the current harvest sharing agreement. There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: August 23, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45000T Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450 effective immediately, until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area: The area from the US/Canada Border to the WA/OR border (46°15.00) and Grays Harbors and Willapa Bay.

For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(2) Effective immediately, through 7:59 a.m. August 26, 2024, the Quinault secondary special management area (SSMA) is closed to fishing for Dungeness crab. The SSMA includes the area shoreward of a line approximating the 17-fathom depth curve between Split Rock (47°24.50) and Joe Creek (47°12.25) according to the following coordinates:

- | | | |
|------------------------------------|------------------|-------------------|
| (a) Northeast Corner (Split Rock): | 47°24.50'N. Lat. | 124°20.00'W. Lon. |
| (b) Northwest Corner: | 47°24.50'N. Lat. | 124°28.50'W. Lon. |
| (c) Southwest Corner: | 47°12.25'N. Lat. | 124°19.00'W. Lon. |
| (d) Southeast Corner (Joe Creek): | 47°12.25'N. Lat. | 124°12.28'W. Lon. |

(3) Unless otherwise amended all other provisions of the permanent rule remain in effect.

WSR 24-18-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-165—Filed August 23, 2024, 4:10 p.m., effective August 26, 2024]

Effective Date of Rule: August 26, 2024.

Purpose: The purpose of this emergency rule is to close the commercial beach seine fishery in Puget Sound Salmon Management and Catch Reporting Area 12C on August 26.

Citation of Rules Affected by this Order: Amending WAC 220-354-210.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule is necessary to close Puget Sound Salmon Management and Catch Reporting Area 12C August 26. Hood-sport Hatchery Chinook returns are trending behind broodstock goals with less than 100 fish currently on hand at the hatchery. This temporary closure of commercial beach seine harvest is needed to ensure that broodstock goals are met.

There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: August 23, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-21000M Puget Sound salmon—Beach seine—Open periods. Effective immediately through August 26, 2024, the following provisions of WAC 220-354-210 regarding commercial Beach Seine open periods for Puget Sound Salmon Management and Catch Reporting Area 12C shall be as described below. All other provisions of WAC 220-354-210 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

| Area | Open/Closed | Time | Date(s) |
|------|-------------|------|---------|
| 12C | Closed | N/A | 8/26 |

WSR 24-18-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-166—Filed August 26, 2024, 4:49 p.m., effective August 26, 2024, 4:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to better clarify a previously filed emergency rule (see Order 24-162 filed on August 23, 2024) concerning chronic waste disease (CWD). The Washington department of fish and wildlife (WDFW) seeks to repeal the emergency rule filed as WAC 220-413-03000E Transportation, importation and retention of dead resident and nonresident wildlife, and replace it with an amended emergency rule that better describes the prohibition of transporting, importing, and retaining both resident and nonresident wildlife.

Citation of Rules Affected by this Order: Repealing WAC 220-413-03000E; and amending WAC 220-413-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

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

Reasons for this Finding: Recently, CWD cases have been confirmed in Washington state. As a result, testing for the disease and limiting the potential spread of the disease are now more important than ever. These emergency rules are intended to increase testing by making it mandatory to test salvaged and harvested animals in the area surrounding the detection. Also, to reduce the potential spread of the disease, emergency rules will prohibit the transportation of deer, elk, and moose from the region surrounding the detection area and prohibit baiting during hunting in the area near the detection. The effect of CWD is always fatal on cervids.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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: August 26, 2024.

Kelly Susewind
Director

NEW SECTION**WAC 220-413-03000F Transportation, importation and retention of dead resident and nonresident wildlife.** (1) It is unlawful:

(a) To import or possess dead wildlife, taken in another state or country, into Washington unless such wildlife was acquired lawfully. Proof of legal acquisition must be retained during the period of retention of the carcass or edible parts.

(b) For a person who imports a dead bighorn sheep, mountain goat, cougar, or bear to fail to report such importation to the department in writing within 10 days of the importation. The report must contain the name and address of the importer, the location where the dead wildlife is being stored, and general information describing where and how the wildlife was obtained.

(c) To transport deer, elk, or moose, or parts thereof, taken from within 100 series GMUs, excluding tribal lands, to other areas of Washington state; or to import or possess deer, elk, moose, or caribou, or parts thereof, harvested outside Washington state, with the following exceptions:

(i) Meat that has been deboned in the state or province where it was harvested and is imported as boned-out meat, or meat that has been deboned within 100 series GMUs and is transported as boned-out meat to other areas of the state;

(ii) Skulls and antlers, antlers attached to the skull plate, or upper canine teeth (buglers, whistlers, ivories) from which all soft tissue has been removed;

(iii) Hides or capes without heads attached;

(iv) Tissue imported for use by a diagnostic or research laboratory; and

(v) Finished taxidermy mounts.

(2) Violation of subsection (1) of this section is punishable under RCW 77.15.290 Unlawful transportation of fish or wildlife—Penalty.

(3) It is unlawful for an importer or receiver of deer, elk, or moose to fail to notify the department within 24 hours if a state, province, tribe, or laboratory alerts the importer or receiver that a harvested animal has tested positive for chronic wasting disease. Violation of this subsection is an infraction punishable under RCW 77.15.160 Infractions.

REPEALER

The following section of the Washington Administrative Code is repealed, effective immediately:

WAC 220-413-03000E Transportation, importation and retention of dead resident and nonresident wildlife. (24-162)

WSR 24-18-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-168—Filed August 29, 2024, 5:06 p.m., effective September 3, 2024]

Effective Date of Rule: September 3, 2024.

Purpose: The purpose of this rule is to close recreational salmon fishing in Area 4 and reopen recreational salmon fishing for one day in Areas 1 and 2. Coho catch for Area 4.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500B; and amending WAC 220-313-075.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: The purpose of this rule is to close recreational salmon fishing in Area 4 and reopen recreational salmon fishing for one day in Areas 1 and 2. Coho catch for Area 4 is projected to be near the quota for the area by September 2, necessitating closure to avoid exceeding the quota. Sufficient coho quota remains for Areas 1 and 2 to reopen recreational salmon fishing for an additional day. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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: August 29, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07500C Pacific Ocean salmon—Seasons—Closed areas.

Effective September 3 through September 30, 2024, the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC

220-313-075 not addressed herein remain in effect unless otherwise amended:

(1) **Catch Record Card Area 1:**

(a) September 3, 2024: Closed to fishing for salmon

(b) Open September 4, 2024:

(i) Daily limit of 2 salmon including no more than one Chinook.

(ii) Release wild coho.

(iii) Chinook minimum length 22 inches.

(iv) Coho minimum length 16 inches.

(c) September 5, 2024, until further notice: Closed to fishing for salmon.

(2) **Catch Record Card Area 2:**

(a) September 3, 2024: Closed to fishing for salmon

(b) Open September 4, 2024:

(i) Daily limit of 2 salmon including no more than one Chinook.

(ii) Release wild coho.

(iii) Chinook minimum length 22 inches.

(iv) Coho minimum length 16 inches.

(v) Grays Harbor Control Zone is closed. See WAC 220-306-040 for area definition.

(c) September 5, 2024, until further notice: Closed to fishing for salmon.

(3) **Catch Record Card Area 3:** Closed to fishing for salmon.

(4) **Catch Record Card Area 4:** Closed to fishing for salmon.

REPEALER

The following section of the Washington Administrative Code is repealed, effective September 3, 2024:

WAC 220-313-07500B Pacific Ocean salmon—Seasons—Closed areas. (24-161)

WSR 24-18-085
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 30, 2024, 7:55 a.m., effective September 1, 2024]

Effective Date of Rule: September 1, 2024.

Purpose: The developmental disabilities administration (DDA) is enacting these changes on an emergency basis to implement home and community-based services (HCBS) waivers as approved by the Centers for Medicare and Medicaid Services (CMS).

Primary waiver amendments:

- These amendments add: Waiver eligibility for children and youth age 20 and younger who are subject to a court dependency or a similar proceeding in a tribal court or are receiving extended foster care services from the department of children, youth, and families (DCYF) or from a tribe in Washington state; technical information about service plan collaboration; and teleservice delivery as a service delivery method for some services.
- These amendments adjust: Waiver enrollment limits; language about cross-agency collaboration; the service definition for transportation; provider qualifications for music therapists; and level-of-care and inter-rate reliability level of care evaluation processes.
- These amendments clarify: Teleservice language in all services where teleservice delivery is now available; and waiver service definitions and service limit language across all five waivers.

To read all other CMS-approved waiver amendments effective September 1, 2024, open a waiver under "Current Approved Waivers" on DDA's Home and Community-Based Waivers website.

Citation of Rules Affected by this Order: New WAC 388-842-0001, 388-842-0005, 388-842-0010, 388-842-0015, 388-842-0020, 388-842-0025, 388-842-0030, 388-842-0035, 388-842-0040, 388-842-0045, 388-842-0060, 388-842-0065, 388-842-0070, 388-842-0075, 388-842-0080, 388-842-0085, 388-842-0090, 388-842-0095, 388-842-0110, 388-842-0115, 388-842-0120, 388-842-0125, 388-842-0140, 388-842-0145, 388-842-0150, 388-842-0165, 388-842-0170, 388-842-0175, 388-842-0180, 388-842-0185, 388-842-0190, 388-842-0195, 388-842-0205, 388-842-0210, 388-842-0215, 388-842-0220, 388-842-0230, 388-842-0235 and 388-842-0250; repealing WAC 388-825-0571 and 388-845-2019; and amending WAC 388-825-020, 388-825-096, 388-825-120, 388-828-1020, 388-828-1340, 388-828-1540, 388-828-5120, 388-828-5140, 388-828-5160, 388-828-5180, 388-828-5920, 388-828-5940, 388-828-5980, 388-845-0001, 388-845-0030, 388-845-0045, 388-845-0055, 388-845-0060, 388-845-0100, 388-845-0110, 388-845-0111, 388-845-0113, 388-845-0210, 388-845-0760, 388-845-0955, 388-845-1515, 388-845-1607, 388-845-1620, 388-845-2000, 388-845-2010, 388-845-2200, 388-845-3015, and 388-845-3095.

Statutory Authority for Adoption: RCW 34.05.350.

Other Authority: RCW 71A.12.380(1); 42 C.F.R. 441.301.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Enacting these rules on an emergency basis is necessary in order to implement HCBS waivers as approved by

CMS. Aligning rules with approved waiver amendments provides assurances required under 42 C.F.R. 441.301.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 39, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 39, Amended 33, Repealed 2.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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: August 29, 2024.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [24-20](#) issue of the Register.

WSR 24-18-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-169—Filed August 30, 2024, 11:21 a.m., effective September 3, 2024]

Effective Date of Rule: September 3, 2024.

Purpose: The purpose of this emergency rule is reduce the salmon daily limit in Catch Record Card Area 8-2.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This emergency rule is necessary to reduce daily salmon limits in Catch Record Card Area 8-2. The coho catch in August has greatly exceeded the preseason projected catch for the entire month. Even larger catches are expected in the September marine and freshwater sport fisheries. The daily retention limit is being reduced to allow the fishery to continue without putting other fisheries or attainment of conservation objectives at risk. There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: August 30, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000E Puget Sound salmon—Saltwater seasons and daily limits. Effective September 3 through September 24, 2024, salmon rules for Catch Record Card Area 8-2, except the Tulalip Terminal Area (Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point and not including waters east of a line drawn from Mission Point to Hermosa Point) and Tulalip Bay (waters east of a line drawn from Mission Point to Hermosa Point),

shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 8-2, except the Tulalip Terminal Area and Tulalip Bay:

Salmon: Daily limit 1. Release Chinook and chum.

WSR 24-18-092
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-170—Filed August 30, 2024, 2:49 p.m., effective September 1, 2024]

Effective Date of Rule: September 1, 2024.

Purpose: The purpose of this emergency rule is to provide guidance to the public on the new requirements of costs of providing public records based on the implementation of body worn cameras for the Washington department of fish and wildlife's (department) law enforcement officers that begins on September 1, 2024.

Citation of Rules Affected by this Order: Amending WAC 220-120-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

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

Reasons for this Finding: The department plans to activate body worn cameras for its law enforcement officers starting on September 1, 2024. As part of this new program, the department must amend WAC 220-120-060 to update its fee schedule for anticipated record requests associated with body worn cameras. The department previously undertook a fee study in 2024 to research the reasonable costs for producing records requested for body worn cameras.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: August 30, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-120-06000A Costs of providing public records. Effective September 1, 2024, and until further notice, requirements for costs of providing records shall be as contained herein:

(1) There is no fee for inspecting public records or locating public documents and making them available for copying, except as provided in RCW 42.56.240(14) and subsection (3) of RCW 42.56.120

(2) Pursuant to RCW 42.56.120, the department may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120 and as published in the department's fee schedule available on the department website at <http://wdfw.wa.gov>.

(3) Before copying requested public records, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all of the records. The public records officer or designee may also require payment of the remainder or an installment of the copying costs before providing all of the records.

(4) The department will not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth in this section.

(5) The department may determine whether customized electronic access to public records is required if the department estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the department for other department purposes. The department will charge the actual costs, including staff time and outside vendor costs necessary to reimburse the department for providing customized electronic access services.

(6) The department may waive any charges for providing public records at the discretion of the public records officer. This determination will be made on a case-by-case basis.

(7) Payment. Payment may be made by cash, check, or money order to the Washington department of fish and wildlife.

WSR 24-18-094
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-171—Filed September 3, 2024, 8:59 a.m., effective September 3, 2024, 8:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule closes Marine Fish/Shellfish Catch Areas 21A and 22A, and all shrimp trawl subareas within, in shrimp management Subregion 1B to commercial shrimp trawl harvest.

Citation of Rules Affected by this Order: Repealing WAC 220-340-53000D; and amending WAC 220-340-530.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require the adoption of harvest seasons contained in this emergency rule. This emergency rule is necessary to prosecute state commercial shrimp trawl fisheries in Puget Sound. This rule closes a quota area to commercial harvest following the projected attainment of the available harvest. These rules are in congruence with comanager agreements. There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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: September 3, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-53000E Commercial shrimp trawl fishery—Puget Sound. Notwithstanding the provisions of WAC 220-340-530, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes using beam trawl gear in Puget Sound except as provided for in Tables a, b, and c of this section:

(a) Non-spot shrimp beam trawl harvest is permitted starting one hour before official sunrise on the hard season opening dates listed for each of the areas detailed below.

| Geographic Area Description (WAC 220-320-140(3); WAC 220-320-120) | Open period |
|--|--|
| Catch Area 20A outside of those waters north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light at the Lummi Reservation (48.7868°, -122.7124°) | Immediately, through October 15, 2024. |
| Those waters within the Lummi-Sinclair Triangle. | Immediately, through September 4, 2024. |
| Those waters of South Lopez Sound. | Immediately, through September 4, 2024. |
| All waters within subregion 1B, excluding those waters of South Lopez Sound, the Lummi-Sinclair Triangle, and Catch Area 20B. | Immediately, through October 15, 2024. |
| Subarea 23A East, MFSF Catch Areas 23B, and MFSF Catch Area 25A outside of the Discovery Bay Shrimp District. | Immediately, through September 30, 2024. |
| Subarea 23A West | Immediately, through September 30, 2024. |
| MFSF Catch Area 23C | Immediately, through September 30, 2024. |
| MFSF Catch Area 29 | Immediately, through September 30, 2024. |

(b) Non-spot shrimp beam trawl harvest is permitted starting one hour before official sunrise in the areas detailed below contingent on the harvester bringing a WDFW on-board observer on the first trip of the area. If by-catch sampling criteria are not met these areas will open on the later dates described in WAC 220-340-530 (5) (d) and (5) (e).

| Geographic Area Description (WAC 220-320-140(3); WAC 220-320-120) | Open period |
|--|---|
| Those waters within the Rosario Box. | Immediately, through September 4, 2024. |
| Those waters of Catch Area 22A within subregion 1B, excluding the Rosario Box and South Lopez Sound. | Immediately, through September 4, 2024. |
| Those waters of Catch Area 20B within subregion 1B. | Closed. |

(c) Non-spot shrimp beam trawl harvest is not permitted in the areas of Shrimp Management Regions 1 and 3 detailed below.

| Geographic Area Description (WAC 220-320-140(3); WAC 220-320-120) |
|--|
| Discovery Bay Shrimp District |
| Sequim Bay CSMA |
| MFSF Catch Area 23D |
| Subregion 1A |

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

REPEALER

The following section of the Washington Administrative Code is repealed, effective immediately:

WAC 220-340-53000D Commercial shrimp trawl fishery—Puget
Sound. (24-160)

WSR 24-18-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-172—Filed September 3, 2024, 9:54 a.m., effective September 3, 2024, 9:54 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close the commercial beach seine fishery in Puget Sound Salmon Management and Catch Reporting Area 12C on September 3.

Citation of Rules Affected by this Order: Amending WAC 220-354-210.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule is necessary to close Puget Sound Salmon Management and Catch Reporting Area 12C September 3. Hoodspout Hatchery Chinook returns are trending behind broodstock goals with approximately 800 fish currently on hand at the hatchery. This temporary closure of commercial beach seine harvest is needed to ensure that broodstock goals are met.

There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: September 3, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-21000N Puget Sound salmon—Beach seine—Open periods.

Effective the immediately through September 3, 2024, the following provisions of WAC 220-354-210 regarding commercial Beach Seine open periods for Puget Sound Salmon Management and Catch Reporting Area 12C shall be as described below. All other provisions of WAC 220-354-210 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

| Area | Open/Closed | Time | Date(s) |
|------|-------------|------|---------|
| 12C | Closed | N/A | 9/3 |

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

WSR 24-18-113
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 4, 2024, 8:08 a.m., effective September 4, 2024, 8:08 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making is to expand access to running start in alignment with 2SHB 1316 (2023). The rules provide for funding, reporting, and administration of participating students' enrollment in running start courses.

This is a renewal of emergency rule filing as the office of superintendent of public instruction (OSPI) continues to conduct permanent rule making.

Citation of Rules Affected by this Order: Repealing WAC 392-169-057; and amending WAC 392-121-123, 392-121-136, 392-169-015, 392-169-020, 392-169-022, 392-169-025, 392-169-045, 392-169-055, and 392-169-115.

Statutory Authority for Adoption: 2SHB 1316 (chapter 350, Laws of 2023); RCW 28A.600.390 and 28A.150.290.

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

Reasons for this Finding: The emergency rules are necessary to ensure eligible students can participate in running start at enrollment levels provided for in 2SHB 1316. Emergency rules are needed to ensure requirements for student enrollment calculations, reporting, and program administration are effective by the beginning of the 2023-24 school year.

OSPI will also conduct permanent rule making concerning running start.

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 9, Repealed 1.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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: September 4, 2024.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-4904.1

AMENDATORY SECTION (Amending WSR 23-13-089, filed 6/16/23, effective 7/1/23)

WAC 392-121-123 Nonstandard school year programs. Except for running start, a student participating in a program of education occurring during the nonstandard school year on a tuition-free basis may be claimed for state funding to the extent that the student was not claimed as a 1.0 AAFTE during the regular school year (September through June), subject to the following:

(1) Eligible student FTE in a nonstandard school year program shall be claimed based upon the following:

(a) Enrolled hours based upon the standards in WAC 392-121-122 or 392-121-182.

(b) Credit based for student enrolled in a college program under WAC 392-121-188.

(c) A student enrolled in transition school is not eligible for nonstandard school year funding.

(2) A district or charter school shall make month by month evaluation of the student to determine if the following conditions were met during the regular school year:

(a) The student was not home schooled or enrolled in a private school.

(b) The student was not claimed as a 1.0 FTE in a regular or institution education program.

(3) For each month in which the conditions of subsection (2) of this section are met, the district or charter school shall determine the amount of student FTE claimed for the student. To the extent the enrollment claimed is less than 1.0 FTE for each month, the school district or charter school may claim nonstandard school year FTE based upon the student enrollment in the nonstandard school year school program.

(4) For the running start program only, a student may be claimed up to 1.40 AAFTE for their running start enrollment.

OTS-4903.1

AMENDATORY SECTION (Amending WSR 22-15-119, filed 7/20/22, effective 8/20/22)

WAC 392-121-136 Limitation on enrollment counts. Enrollment counts under WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts or charter schools operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the aggregate of enrolled hours based upon the fourth day of each summer session.

(i) Prior to the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(ii) Beginning with the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 1,000 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments and is limited to an overall maximum (~~(1.8)~~) 2.0 FTE.

(c) Subject to (b) of this subsection:

(i) A student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student.

(ii) A student enrolled in running start during the regular school year may be claimed for up to a combined (~~(1.2)~~) 1.4 full-time equivalent student.

(iii) A student enrolled in high school and skills center for more than 1.0 FTE, can be claimed for a (~~(0.2)~~) 0.4 running start FTE.

(iv) A student enrolled in an institutional education program under WAC 392-122-205 and a youth engagement program under chapter 392-700 WAC can be claimed up to a combined 2.0 FTE.

(v) Each student may be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment, a maximum of a (~~(1.0)~~) 1.40 full-time equivalent for running start, a maximum of a 1.0 full-time equivalent for the student's high school enrollment, and a maximum of a 1.0 full-time equivalent for institutional education funding under WAC 392-122-225 subject to the overall combined FTE limitation in (b) of this subsection.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old pre-school student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as part-time by a state institution educational program on Form SPI E-672 shall not be reported by a school district or charter school for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts or charter schools for basic education and on Form SPI E-672 must not exceed one full-time equivalent, except if the student is enrolled in a youth reengagement program under chapter 392-700 WAC.

(6) Districts and charter schools providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim for an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

OTS-4902.1

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

WAC 392-169-015 Running start program—Definition. As used in this chapter, the terms "running start" and "running start program" mean the part-time to full-time equivalent enrollment under this chapter of eligible (~~(eleventh and twelfth)~~) 11th and 12th grade high school students, as defined under this chapter, in an institution of higher education for the purpose of earning at least high school credit to be awarded by a school district, and such additional college level or university level credit as may be awarded by the institution of higher education. A running start program's course must be open for registration to matriculated students at the participating institution of higher education and may not be a course consisting solely of high school students in a high school classroom.

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

WAC 392-169-020 Eligible student—Definition. As used in this chapter, the term "eligible student" means any person, including a person who is otherwise attending a private school or receiving home-based instruction, who meets each of the following conditions:

- (1) The person is under the age of (~~(twenty-one)~~) 21 years of age as of September 1st of the school year.
- (2) The person is eligible by reason of his or her residence or other criterion established by law to enroll in the school district through which the person seeks to obtain the award of running start program high school credit. See RCW 28A.225.160 (residents of a school district), RCW 28A.225.170 (residents of the United States and Indian Reservations), RCW 28A.225.210 (residents of "nonhigh" school districts), and RCW 28A.225.220 ("choice" students). Note: A running start student who changes his or her school district of residence, including after a rescindment of a choice transfer agreement following enrollment in running start, solely for the purpose of attending an institution of higher education under this chapter shall be deemed to have retained his or her residence in the school district of initial running start enrollment for high school graduation, funding and other purposes under this chapter.
- (3) The person is eligible to be in the 11th or 12th grade under the grade placement policies of the school district through which the person seeks to obtain running start program high school credit (~~(to be in the eleventh or the twelfth grade)~~). For the summer term, eligibility is established when the person has completed the 10th grade at the end of the standard school year or will be eligible to enroll in the 11th or 12th grade in the upcoming school year based upon district grade placement policies.
- (4) The person has not as of the beginning of the school year earned the credits required for the award of a high school diploma by the school district through which the person seeks to obtain the award of running start program high school credit.

(5) The person has not as of the beginning of the school year received a high school diploma or its equivalent. Note: A general education development certificate is not considered to be the equivalent of a high school diploma for purposes of this subsection.

(6) The person's running start program enrollment to date is below the applicable (~~eleventh or twelfth~~) 11th or 12th grade running start enrollment limitations established under WAC 392-169-055.

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-022 Running start student—Definition. For the purposes of this chapter and chapter 392-121 WAC, the term "running start student" means an eligible student:

(1) Who is enrolled in the running start program in accordance with this chapter;

(2) Whose enrollment has not been suspended or terminated by withdrawal, transfer, suspension or expulsion; and

(3) Who has participated in one or more instructional activities conducted by college or university staff (e.g., classroom or laboratory instruction, course work testing, post enrollment/registration academic counseling, and similar other instructional activities) on at least one college or university day during the current (~~quarter or semester~~) term since the last enrollment count date.

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

WAC 392-169-025 Full-time equivalent (FTE) running start enrollment—Definition. For the purposes of this chapter and chapter 392-121 WAC, "full-time equivalent (FTE) running start enrollment" (i.e., college or university enrollment) means the FTE of running start students on an enrollment count date when each student's FTE is determined subject to the limitations of WAC 392-169-022, 392-169-055 and 392-169-115 as follows:

(~~(1)~~) FTE for running start enrollment is the result of dividing a student's enrolled college credits by (~~fifteen~~) 15. For Washington State University classes offered at the college campus only, the FTE for running start enrollment is the result of dividing a student's enrolled college semester credits by (~~fifteen~~) 15.

(~~(2)~~ The sum of the results of running start enrollment under subsection (1) of this section at all colleges shall not exceed 1.00 FTE per student on any count day except for the month of January or 1.00 annual average FTE in any school year.)

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-045 Enrollment—General requirements and conditions.

The enrollment of an eligible student in the running start program shall be governed as follows:

(1) An eligible student is responsible for applying for and pursuing admission to an institution of higher education on or before the deadline for enrollment established by the college or university.

(2) It shall not be necessary for an eligible student to obtain a release of attendance from (~~his or her~~) their resident school district or school in order for the student to enroll in an institution of higher education.

(3) An eligible student is entitled to enroll in an institution of higher education for running start program purposes subject to each of the following conditions and limitations:

(a) Enrollment is limited to college and university level courses.

(b) Prior confirmation pursuant to WAC 392-169-050 by the school district through which the student seeks to obtain the award of running start program high school credit of the amount of high school credit to be awarded on or before the deadline for enrollment established by the institution of higher education.

(c) Acceptance of the student by the institution of higher education subject to generally applicable admission and enrollment requirements and limitations established by the institution, including a determination that the student is competent to profit from the college or university level course(s) the student seeks to enroll in: Provided, That a technical college shall not deny admission or continued attendance to a person under (~~twenty-two~~) 22 years of age with a disability based upon impaired competency or the creation of a disruptive atmosphere associated with the person's disability.

(d) The limitations upon the duration and extent of institution of higher education course enrollment set forth in WAC 392-169-055 and 392-169-057.

AMENDATORY SECTION (Amending WSR 23-13-089, filed 6/16/23, effective 7/1/23)

WAC 392-169-055 Enrollment—Extent and duration of running start enrollment. Running start program enrollment under this chapter is limited as follows (~~((and as may be further limited for academic reasons under WAC 392-169-057))~~):

(1) An eligible student who enrolls upon completion of grade 10 after the end of the regular school year may enroll in an institution of higher education for no more than the course work equivalent to 10 postsecondary credits in the summer term prior to enrolling in grade 11.

(2) An eligible student who enrolls in grade 11 may enroll in an institution of higher education while in the 11th grade for (~~no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student.~~)

~~(2)) a maximum 1.40 AAFTE or 63 postsecondary credits, depending on the student's concurrent enrollment in high school and/or skill center courses, subject to the AAFTE limitation under WAC 392-121-136.~~

~~(3) An eligible student who enrolls in grade 12 may enroll in an institution of higher education while in the 12th grade for (no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student.~~

~~(3) As a general rule)) a maximum 1.40 AAFTE or 63 postsecondary credits, depending on the student's concurrent enrollment in high school and/or skill center courses, subject to the AAFTE limitation under WAC 392-121-136.~~

~~(4) An eligible student who enrolls in summer term must have the capacity under the AAFTE limits established in subsections (2) and (3) of this section and may enroll for no more than the course work equivalent of 10 postsecondary credits.~~

~~(5) Even when a student does not enroll at the postsecondary level to the full extent permitted by subsections (1) through (4) of this section, a student's eligibility for running start program enrollment terminates at the end of the ((student's 12th grade regular academic year, notwithstanding the student's failure to have enrolled in an institution of higher education to the full extent permitted by subsections (1) and (2) of this section: Provided, That a student who has failed to meet high school graduation requirements as of the end of the student's 12th grade regular academic year (September through June) due to the student's absence, the student's failure of one or more courses, or another similar reason may continue running start program enrollment for the sole and exclusive purpose of completing the particular course or courses required to meet high school graduation requirements, subject to the enrollment limitation established by subsection (2)) academic year in which a student meets the district's graduation requirements. Students who have not yet met high school graduation requirements as of the end of the 12th grade standard school year would be eligible to enroll in the summer college term, provided they have capacity under the 1.40 AAFTE limitation. Students who have not met running start enrollment limits may continue running start program enrollment into a second 12th grade year due to the student's absence, inability to complete all required courses, or another similar reason for the sole and exclusive purpose of completing the particular course(s) required to meet the district's high school graduation requirements, subject to the enrollment limitation established by subsection (3) of this section.~~

AMENDATORY SECTION (Amending WSR 13-02-006, filed 12/19/12, effective 1/19/13)

WAC 392-169-115 Finance—Limitations on enrollment counts. ~~((No running start student enrolled in one or more institutions of higher education reported under WAC 392-169-105 and 392-169-110 shall exceed one full-time equivalent running start student on any enrollment count date except for the month of January or more than one annual average full-time equivalent student in any school year. An exception is allowed for January when the change in high school semesters may result in students exceeding the FTE limitation until the high school begins a new term.))~~ A student enrolled in both high school and running start

may be claimed for a maximum of 1.40 combined monthly FTE and a maximum of 1.40 AAFTE. The high school may only claim a maximum of 1.00 FTE and AAFTE. A student whose enrollment is reported under WAC 392-169-105 and 392-169-110 may be claimed up to a 1.40 monthly FTE on any enrollment count date, except for July and August. No student may be claimed for more than 1.40 AAFTE in any school year. An exception is allowed for December and January when the high school term overlaps with the institution of higher education term but may result in a reduction of the available FTE for the spring term. District business offices or high schools will complete the spring quarter eligibility adjustment form for any student who was claimed for more than a 1.40 FTE in December or January to determine if the student's available FTE for the spring term will be reduced.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-169-057 Enrollment—Extent of combined high school and running start enrollment.

WSR 24-18-114
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 4, 2024, 8:09 a.m., effective September 4, 2024, 8:09 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making is to amend college in the high school rules in alignment with 2SSB 5048 (2023) that eliminated fees for students.

This is a renewal of emergency rule filing as the office of superintendent of public instruction (OSPI) continues to conduct permanent rule making.

Citation of Rules Affected by this Order: Repealing WAC 392-725-325; and amending WAC 392-725-005, 392-725-015, 392-725-050, 392-725-225, 392-725-235, 392-725-250, and 392-725-300.

Statutory Authority for Adoption: RCW 28A.600.287 and 2SSB 5048 (chapter 314, Laws of 2023).

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

Reasons for this Finding: The emergency rules are necessary to ensure students participating in college in the high school programs are not required to pay fees as provided in 2SSB 5048 during the 2023-24 school year.

OSPI will also conduct permanent rule making concerning college in the high school (chapter 392-725 WAC).

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 7, Repealed 1.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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: September 4, 2024.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-4916.2

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

WAC 392-725-005 Authority. The authority for this chapter is RCW ((28A.600.290)) 28A.600.287, which authorizes the superintendent of public instruction to adopt rules governing RCW ((28A.600.290)) 28A.600.287, with the state board of community and technical colleges, the student achievement council, and the public baccalaureate institutions to jointly develop rules, and with the association of Washington school principals to be consulted. The rules set forth in this chapter have been jointly developed and agreed upon by the four organizations with the council of presidents representing the public baccalaureate institutions. The rules may be modified only by agreement of the superintendent of public instruction, state board of community and technical colleges, the student achievement council, and an organization representing the interest of the public baccalaureate institutions.

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

WAC 392-725-015 Definitions. The following definitions in this section apply throughout this chapter.

(1) "**College in the high school course**" means a dual credit course provided on a high school campus or in a high school environment in which an eligible student is given the opportunity to earn high school credit to be awarded by a district, charter school, or tribal compact school and college credit awarded by the participating institution of higher education by completing a college course with a passing grade. College in the high school courses may be either academic or career and technical (vocational) education.

(2) "**College in the high school program**" means the subset of dual credit courses meeting NACEP quality standards and provided on a high school campus or in a high school environment in which an eligible student is given the opportunity to earn high school credit to be awarded by a district, charter school, or tribal compact school and college credit awarded by the participating institution of higher education by completing a college course with a passing grade.

(3) "**Eligible student**" means any student who meets the following conditions:

(a) The student meets the definition of an enrolled student pursuant to WAC 392-121-106.

(b) The student under the grade placement policies of the district, charter school, or tribal compact school through which the high school credits will be awarded has been deemed to be a ((~~tenth, eleventh, or twelfth~~)) 9th, 10th, 11th, or 12th grade student.

(4) "**Participating institution of higher education**" means an institution of higher education that:

(a) A district, charter school, or tribal compact school has contracted with to provide the college in the high school program;

(b) Meets the definition in RCW 28B.10.016, is authorized or exempt under the requirements of chapter 28B.85 RCW, or is a public tribal college located in Washington as ((~~noted in RCW 28A.600.290~~-(7)-(a))) described in RCW 28A.600.287 (12) (c);

(c) Meets the college in the high school program standards outlined in WAC 392-725-130 through 392-725-170; and

(d) Is accredited by National Alliance of Concurrent Enrollment Partnerships or commits to the reporting of evidence requirement outlined in WAC 392-725-120.

(5) **"National Alliance of Concurrent Enrollment Partnerships"** is the professional organization that works to ensure that college in the high school courses are as rigorous as courses offered on the sponsoring college campuses. National Alliance of Concurrent Enrollment Partnerships (NACEP) has defined a set of quality standards that is the basis of their accreditation process.

(6) **"Council of presidents"** is defined throughout this chapter as the organization representing the interest of public baccalaureate institutions (~~(, specific to RCW 28A.600.290(6)).~~

~~(7) **"Fees."**~~

~~(a) **"College in the high school fees"** means the per credit or per course fee charged by the participating institution of higher education for the registration for the college course.~~

~~(i) The maximum college in the high school fee shall not exceed the college in the high school state-funded subsidies described in RCW 28A.600.290.~~

~~(ii) The college in the high school fee may be less than the college in the high school state-funded subsidies.~~

~~(iii) The institution of higher education must receive the corresponding fee for any student seeking to earn college credit from the college in the high school course in accordance with the general requirements identified in WAC 392-725-225 (2)(a) unless the student qualifies for the state-funded subsidies in accordance with WAC 392-725-325(4).~~

~~(b) **"Other associated college in the high school fees"** means additional fees required to fully participate in the college in the high school program charged by the participating institution of higher education such as registration fees and fees for consumables.~~

~~(8) **"College in the high school state-funded subsidies"** means the amount provided in the Omnibus Appropriations Act that pays the college in the high school fee for specific eligible eleventh or twelfth grade students pursuant to RCW 28A.600.290 (1)(b)(i) only and for the limited amount provided in WAC 392-725-325(2)).~~

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

WAC 392-725-050 Local agreement requirement. Prior to the start of the college in the high school program(s), a local agreement between the district, charter school, or tribal compact school and the participating institution of higher education must be developed and in place. The agreement shall be for no more than one school year, meet the district, charter school, or tribal compact school's board policies and the policies of the institution of higher education regarding contracting agreements, and address the following requirements:

(1) List of college in the high school courses.

(2) College in the high school student standards pursuant to WAC 392-725-130 will be met.

(3) College in the high school curriculum and assessment standards pursuant to WAC 392-725-140 will be met.

(4) College in the high school faculty standards pursuant to WAC 392-725-150 will be met.

(5) College in the high school evaluation standards pursuant to WAC 392-725-160 will be met.

(6) College in the high school partnership standards pursuant to WAC 392-725-170 will be met.

(7) Award of high school credits pursuant to WAC 392-725-200 will be met.

(8) District, charter school, or tribal compact school's responsibilities for offering college in the high school program.

~~(9) ((Institution of higher education's fee amount per college credit or per college course and a description and amount of other associated college in the high school fees.~~

~~(10))~~ Course materials including, but not limited to, textbooks for each college in the high school course, and which party will be responsible to provide.

~~((11))~~ (10) Provide an explanation of how any compensation paid to the instructor for work performed beyond their contract with the district, charter school, or tribal compact school will be calculated and provide details of what duties the compensation represents.

~~((12) Method and collection of college in the high school fee and other associated college in the high school fees.~~

~~(13))~~ (11) Districts, charter schools, tribal compact schools, and institutions of higher education shall as necessary assure compliance with their respective duties under federal and state law.

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

WAC 392-725-225 College in the high school general requirements.

(1) Participating districts, charter schools, or tribal compact schools must provide general information about the college in the high school program to all students in grades ~~((nine))~~ eight through ~~((twelve))~~ 12 and to the parents and guardians of those students.

(2) The enrollment of a student who meets the definition of WAC 392-725-015(2) in the college in the high school program shall be governed as follows:

(a) An eligible student seeking to earn college credit is responsible for enrolling into an institution of higher education on or before the deadline established by the institution of higher education.

(b) An eligible student is entitled to enroll in an institution of higher education for college in the high school program purposes subject to each of the following conditions and limitations:

(i) Enrollment is limited to college courses.

(ii) Prior confirmation pursuant to WAC 392-725-200 by the district, charter school, or tribal compact school of the amount of high school credit to be awarded for a college in the high school course on or before the deadline for enrollment established by the institution of higher education.

(iii) Acceptance of the student by the institution of higher education subject to enrollment requirements and limitations established by the institution.

AMENDATORY SECTION (Amending WSR 17-21-001, filed 10/5/17, effective 11/5/17)

WAC 392-725-235 Co-delivery of college in the high school courses. (1) In cases where a college in the high school course is co-delivered with another dual credit course, such as career and technical education dual credit, advanced placement, international baccalaureate, or Cambridge international, the participating institution of higher education, in coordination with the institution's academic department, shall assess curriculum alignment and approve the option to provide a co-delivered course.

(2) In cases where a college in the high school course is co-delivered with another dual credit course, the high school transcript shall reflect the co-delivered courses as follows:

(a) The course title as listed on the high school transcript shall begin with the institute of higher education's curriculum and course number, as described in the office of superintendent of public instruction CEDARS manual.

(b) Any additional course title description for a co-delivered college in the high school course title shall be included pursuant to WAC 392-415-070.

Official course abbreviations for career and technical education dual credit, advanced placement, international baccalaureate and Cambridge international shall be included on the high school transcript as listed in appendix Q of the office of superintendent of public instruction CEDARS manual.

(c) For approved co-delivered courses, as provided in subsection (1) of this section, the high school transcript course title and course designators may reflect two dual credit programs in cases where students have met any required prerequisites or other entrance requirements for both programs.

(3) Students choosing to enroll in a co-delivered college in the high school course for the purpose of earning college credit must meet the college in the high school enrollment requirements outlined in WAC 392-725-225(2).

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

WAC 392-725-250 Transferability of college credit. (1) College in the high school programs may include both academic and career and technical education. The college credit shall be applied at institutions of higher education (~~toward:~~

~~(a) General education requirements; or~~

~~(b))~~ as appropriate and applicable to the student's degree requirements.

(2) A college in the high school course has the same transferability as its equivalent course on the college campus. Some courses including career and technical education courses may not meet specific general education and/or degree requirements.

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

WAC 392-725-300 Finance. (~~((1))~~) Districts, charter schools, and tribal compact schools claim the college in the high school courses for basic education funding based on the course's average enrolled weekly minutes pursuant to WAC 392-121-122. Courses that qualify for vocational enhanced funding can be claimed pursuant to WAC 392-121-138.

~~((2) The participating institution of higher education receives college in the high school fees as defined in WAC 392-725-015 (7)(a) and other associated college in the high school fees for eligible students as defined in WAC 392-725-015 (7)(b). The amount and method of collection of these fees shall be outlined in local agreement.~~

~~(3) For college in the high school courses that qualify for state funded subsidies as defined in WAC 392-725-015(8) and based on the per student limitations provided in WAC 392-725-325(2), these subsidies are provided in lieu of college in the high school fees as defined in WAC 392-725-015 (7)(a).)~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-725-325 College in the high school state funded subsidies.

WSR 24-18-116

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed September 4, 2024, 8:29 a.m., effective September 4, 2024, 8:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (agency) is amending these rules to allow for backdating on the provider enrollment application.

Citation of Rules Affected by this Order: Amending WAC 182-502-0005 and 182-502-0006.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: This rule making is necessary to allow provider enrollment to align with contract dates and delivery of services. The agency is extending the emergency rules (filed on May 8, 2024, under WSR 24-11-036) while the standard rule-making process continues. The agency filed the preproposal statement of inquiry (CR-101) on July 1, 2024, under WSR 24-14-093.

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 Nongovernmental 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 2, Repealed 0.

Date Adopted: September 4, 2024.

Wendy Barcus
Rules Coordinator

OTS-5352.2

AMENDATORY SECTION (Amending WSR 23-21-061, filed 10/12/23, effective 11/12/23)

WAC 182-502-0005 Core provider agreement (CPA). (1) The agency only pays claims submitted for services provided by or on behalf of:

(a) A health care professional, health care entity, supplier or contractor of service that has an approved core provider agreement (CPA) with the agency;

(b) A servicing provider enrolled under an approved CPA with the agency; or

(c) A provider who has an approved agreement with the agency as a nonbilling provider in accordance with WAC 182-502-0006.

(2) Servicing providers performing services for a client must be enrolled under the billing providers' CPA.

(3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form. Refer to WAC 182-502-0006 for enrollment as a nonbilling provider.

(4) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, and 182-501-0184.

(5) The agency does not pay for services provided to clients during the CPA application process or application for nonbilling provider process, regardless of whether the agency later approves or denies the application, except as provided in subsection (6) of this section or WAC 182-502-0006(5).

(6) **Effective date of enrollment of a provider.**

(a) Enrollment of a provider applicant is effective on the date the agency approves the provider application or a date designated by the agency.

~~((a))~~ (b) A provider applicant may ask for an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date requested by the provider that is ~~((~~

~~(i))~~ earlier than the effective date of any required license or certification ~~((~~

~~(ii) More than 365 days prior to the agency's approval of the provider application~~)).

~~((b))~~ (c) The chief medical officer or designee may approve an exception ~~((s))~~ as requested by the provider as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

~~((e))~~ (d) For federally qualified health centers (FQHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.

~~((d))~~ (e) Exceptions granted under this subsection (6) do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.

AMENDATORY SECTION (Amending WSR 15-10-003, filed 4/22/15, effective 5/23/15)

WAC 182-502-0006 Enrollment for nonbilling individual providers.

(1) The agency pays for health care services, drugs, supplies or equipment prescribed, ordered, or referred by a health care professional only when the health care professional has one of the following

approved agreements with the agency and all other conditions of payment have been met (see WAC 182-501-0050):

(a) Core provider agreement, in accordance with WAC 182-502-0005;
or

(b) Nonbilling provider agreement, in accordance with subsection (4) of this section.

(2) Only a licensed health care professional whose scope of practice under their licensure includes ordering, prescribing, or referring may enroll as a nonbilling provider.

(3) Nothing in this chapter obligates the agency to enroll any health care professional who requests enrollment as a nonbilling provider.

(4) **Enrollment.**

(a) To enroll as a nonbilling provider with the medicaid agency, a health care professional must, on the date of application:

(i) Not already be enrolled with the medicaid agency as a billing or servicing provider;

(ii) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules;

(iii) Be enrolled with medicare, when required in specific program rules;

(iv) Have current professional liability coverage, individually or as a member of a group, to the extent the health care professional is not covered by the Federal Tort Claims Act, including related rules and regulations;

(v) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;

(vi) Pass the agency's screening process, including license verifications, database checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450. The agency uses the same screening level risk categories that apply under medicare. For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare;

(vii) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner; and

(viii) Sign, without modification, a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002). The medicaid agency and each provider signing a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002) will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of this agreement.

(b) The medicaid agency does not enroll a nonbilling provider for reasons which include, but are not limited to, the following:

(i) The agency determines that:

(A) There is a quality of care issue with significant risk factors that may endanger client health and/or safety (see WAC 182-502-0030 (1)(a)); or

(B) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030 (1)(b)).

(ii) The health care professional:

(A) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(B) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(C) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(D) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(E) Is noncompliant with the department of health's or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(F) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(G) Fails a background check, including a fingerprint-based criminal background check, performed by the agency. See WAC 182-502-0014, except that subsection (2) of this section does not apply to nonbilling providers;

(H) Does not have sufficient liability insurance according to (a) (iv) of this subsection for the scope of practice, to the extent the health care professional is not covered by the Federal Tort Claims Act, including related rules and regulations; or

(I) Fails to meet the requirements of a site visit, as required by 42 C.F.R. 455.432.

(5) **Effective date of enrollment of nonbilling provider.**

(a) Enrollment of a nonbilling provider applicant is effective on the date the agency approves the nonbilling provider application or a date designated by the agency.

~~((a))~~ (b) A nonbilling provider applicant may ask for an effective date earlier than the agency's approval of the nonbilling provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date requested by the provider that is ~~((+~~

~~(i))~~ earlier than the effective date of any required license or certification ~~((+ or~~

~~(ii) More than three hundred sixty-five days prior to the agency's approval of the nonbilling provider application)).~~

~~((b))~~ (c) The chief medical officer or designee may approve an exception ~~((s))~~ as requested by the provider as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

(6) **Continuing requirements.** To continue eligibility, a nonbilling provider must:

(a) Only order, refer, or prescribe for clients consistent with the scope of their department of health (DOH) licensure and agency program rules;

(b) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(c) Document that the client was informed that the provider:

(i) May bill the client for any billable item or service. The rules in WAC 182-502-0160 do not apply; and

(ii) Is enrolled with the agency for the sole purpose of ordering, prescribing, or referring items or services for clients.

(d) Inform the agency of any changes to the provider's Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002) including, but not limited to, changes in:

(i) Address or telephone number;

(ii) Business name.

(e) Retain a current professional state license, registration, certification and applicable business license for the service being provided, and update the agency of all changes;

(f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, decision, disciplinary action or other action(s) including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Maintain professional liability coverage requirements, to the extent the nonbilling provider is not covered by the Federal Tort Claims Act, including related rules and regulations;

(h) Not surrender, voluntarily or involuntarily, his or her professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct;

(i) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice.

(j) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information;

(ii) Submitting forms as required by the agency including, but not limited to, a new Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002); and

(iii) Passing the agency's screening process as specified in subsection (4) (a) (vi) of this section.

(k) Follow the laws and rules that govern the agency's programs. A nonbilling provider may contact the agency with questions regarding the agency's programs. However, the agency's response is based solely on the information provided to the agency's representative at the time of inquiry, and in no way exempts a nonbilling provider from this requirement.

(7) **Audit or investigation.**

(a) Audits or investigations may be conducted to determine compliance with the rule and regulations of the program.

(b) If an audit or investigation is initiated, the provider must retain all original records and supportive materials until the audit is completed and all issues are resolved even if the period of retention extends beyond the required six year period.

(8) **Inspection; maintenance of records.** For six years from the date of services, or longer if required specifically by law, the non-billing provider must:

(a) Keep complete and accurate medical records that fully justify and disclose the extent of the services or items ordered, referred or prescribed.

(b) Make available upon request appropriate documentation, including client records, supporting material for review by the professional staff within the agency or the U.S. Department of Health and Human Services. The nonbilling provider understands that failure to submit or failure to retain adequate documentation may result in the termination of the nonbilling provider's enrollment.

(9) Terminations.

(a) The agency may immediately terminate a nonbilling provider's agreement, and refer the nonbilling provider to the appropriate state health professions quality assurance commission for:

(i) Any of the reasons in WAC 182-502-0030 termination for cause (except that subsection (1)(a)(ix) and (b)(i) do not apply); and

(ii) Failure to comply with the requirements of subsections (4), (6), and (8) of this section.

(b) Either the agency or the provider may terminate this agreement for convenience at any time with (~~thirty~~) 30 calendar days' written notification to the other.

(c) If this agreement is terminated for any reason, the agency will pay for services ordered, referred, or prescribed by the provider only through the date of termination.

(10) Termination disputes.

(a) To dispute terminations of a nonbilling provider agreement under subsection (9)(a) of this section, the dispute process in WAC 182-502-0050 applies.

(b) Nonbilling providers cannot dispute terminations under subsection (9)(b) of this section.