

Chapter 478-121 WAC
STUDENT CONDUCT CODE FOR THE UNIVERSITY OF WASHINGTON

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WAC

PART I
AUTHORITY, APPLICATION, AND DEFINITIONS

478-121-010 Statement of authority.
478-121-020 General application of the student conduct code.
478-121-030 Application of student conduct code to research misconduct.
478-121-040 Jurisdiction of the university.
478-121-045 Severability.
478-121-050 Definitions.

PART II
PROHIBITED CONDUCT

478-121-100 General application.
478-121-103 Abuse of others.
478-121-105 Abuse of the student conduct process.
478-121-107 Academic misconduct.
478-121-110 Acts of dishonesty.
478-121-113 Aiding, assisting, and attempting.
478-121-115 Alcohol violations.
478-121-117 Computer abuses.
478-121-120 Creating a public nuisance in neighboring communities.
478-121-123 Discriminatory harassment.
478-121-125 Disruption or obstruction.
478-121-127 Drug violations.
478-121-130 Failure to comply.
478-121-133 Harassment or bullying.
478-121-135 Hazing.
478-121-137 Indecent exposure.
478-121-140 Intimate partner violence.
478-121-143 Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons.
478-121-145 Research misconduct.
478-121-147 Retaliation.
478-121-150 Sexual assault.
478-121-153 Sexual exploitation.
478-121-155 Sexual harassment.
478-121-157 Stalking.
478-121-160 Theft.
478-121-163 Unauthorized keys, entry, or use.
478-121-165 Unauthorized recording.
478-121-167 Vandalism.
478-121-170 Violation of disciplinary sanctions.
478-121-173 Violation of law.

PART III
CONDUCT PROCEEDINGS, DISCIPLINARY SANCTIONS, AND EVIDENCE

478-121-200 Form of adjudicative proceeding.
478-121-203 Brief adjudicative proceeding.
478-121-205 Conversion to full adjudicative proceeding.
478-121-207 Full adjudicative proceeding.
478-121-210 Disciplinary sanctions.
478-121-213 Effective date of sanctions.
478-121-215 Authority to initiate conduct proceedings and delegations of authority in conduct proceedings.
478-121-217 Appointment of reviewing officers.
478-121-220 Selection of review panels.
478-121-223 Disqualification and substitution of presiding officers and reviewing officers.
478-121-225 Initiating conduct proceedings.
478-121-227 Decision not to initiate a conduct proceeding.
478-121-230 Conduct hold on student record.
478-121-233 Parties.
478-121-235 Interim protective measures.
478-121-237 Emergency authority of the university.
478-121-240 Service of notices, filings, and orders; and time limits.
478-121-243 Participation of advisors and attorneys.
478-121-245 Consolidation.
478-121-247 Burden of proof.
478-121-250 Evidence in conduct proceedings.
478-121-253 Relevant evidence, hearsay, and character evidence.
478-121-255 Prior or subsequent conduct of the respondent.
478-121-257 Prior sexual history.
478-121-260 Experts.
478-121-263 Self-incriminating evidence.
478-121-265 Criminal conviction.

PART IV
BRIEF ADJUDICATIVE PROCEEDINGS

478-121-300 Brief adjudicative proceedings—Notice of conduct proceeding and investigative interview.

478-121-305 Brief adjudicative proceedings—Fact finding.
478-121-310 Brief adjudicative proceedings—Standard of proof.
478-121-315 Brief adjudicative proceedings—Initial order.
478-121-320 Brief adjudicative proceedings—Requesting administrative review.
478-121-325 Brief adjudicative proceedings—Grounds for administrative review.
478-121-330 Brief adjudicative proceedings—Notice of administrative review.
478-121-335 Brief adjudicative proceedings—Procedures for administrative review.
478-121-340 Brief adjudicative proceedings—Order from administrative review.
478-121-345 Brief adjudicative proceedings—Process following remand from administrative review or conversion.

PART V
FULL ADJUDICATIVE PROCEEDINGS AND FULL HEARING

478-121-400 Notice of full hearing.
478-121-403 Prehearing conferences.
478-121-405 Discovery.
478-121-407 Subpoenas.
478-121-410 Protective orders.
478-121-413 Pleadings, briefs, and motions.
478-121-415 Communications with hearing officer.
478-121-417 Standard of proof in full hearings.
478-121-420 Continuances.
478-121-423 Testimony under oath or affirmation.
478-121-425 Remote participation.
478-121-427 Initial order from full hearing.
478-121-430 Requesting administrative review from a full hearing.
478-121-433 Grounds for administrative review from a full hearing.
478-121-435 Notice of administrative review from a full hearing.
478-121-437 Procedures for administrative review from a full hearing.
478-121-440 Communications with reviewing officers.
478-121-443 Order from administrative review of a full hearing.
478-121-445 Process following remand from administrative review of a full hearing.
478-121-447 Reconsideration of final orders.
478-121-450 Denial of request for reconsideration.
478-121-453 Privacy in full hearings.

PART VI
RECORDKEEPING

478-121-500 General recordkeeping.
478-121-510 Disciplinary record.

PART VII
COMPLIANCE WITH DEPARTMENT OF EDUCATION FEDERAL REGULATIONS REGARDING SEXUAL HARASSMENT

478-121-600 Scope of Part VII.
478-121-605 Department of Education federal regulations prohibited conduct (sexual harassment).
478-121-610 Consent for purposes of EDFR prohibited conduct.
478-121-615 Additional definitions.
478-121-620 Reporting EDFR prohibited conduct.
478-121-625 Formal complaint.
478-121-630 Dismissal of a formal complaint.
478-121-635 Appeal from a dismissal of a formal complaint.
478-121-640 Informal resolution.
478-121-645 Emergency removal.
478-121-650 Investigation.
478-121-655 Hearings.
478-121-660 Determination regarding responsibility.
478-121-665 Appeal from determination regarding responsibility.
478-121-670 Service and time—Subpoenas—No discovery.
478-121-675 Evidence.
478-121-680 Disqualification.
478-121-685 General record keeping.

**PART I
AUTHORITY, APPLICATION, AND DEFINITIONS**

WAC 478-121-010 Statement of authority. Pursuant to chapter 34.05 RCW and the authority granted by RCW 28B.20.130, the board of regents of the University of Washington has established rules regarding student conduct and student discipline (code) that are set forth in chapter 478-121 WAC. The university has also developed agency-level policies and procedures regarding the code pursuant to chapter 34.05 RCW. See *Student Governance and Policies*, chapters 209 and 210.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-010, filed 7/14/17, effective 8/18/17.]

WAC 478-121-020 General application of the student conduct code.

This conduct code applies to all students from the time of admission through the actual conferral of a degree, including any period between terms of enrollment.

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-020, filed 3/11/21, effective 4/11/21. Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-020, filed 7/14/17, effective 8/18/17.]

WAC 478-121-030 Application of student conduct code to research misconduct.

Research misconduct, as defined in WAC 478-121-145, is a form of prohibited conduct under this code. Federal rules and policies, however, regulate the handling of research misconduct matters when university research is supported by federal funding. These federal requirements are incorporated into the university's Executive Order No. 61, Research Misconduct Policy, which governs the handling of research misconduct allegations against students participating in research on behalf of the university, as is further explained in that executive order. The disciplinary sanction provisions of this code, WAC 478-121-210 through 478-121-213, apply if there has been a finding of research misconduct against a student under Executive Order No. 61. The administrative review provisions of this code, WAC 478-121-320 through 478-121-345, apply to the extent such review is permitted by Executive Order No. 61.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-030, filed 7/14/17, effective 8/18/17.]

WAC 478-121-040 Jurisdiction of the university.

(1) The scope of the university's jurisdiction includes reports that prohibited conduct occurred:

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

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

(2) Nothing in this conduct code shall be construed to limit academic action that may be taken by schools, colleges, or programs against a respondent based on an established violation of this conduct

code that demonstrates a failure to meet the academic and/or professional standards of the school, college, or program.

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-040, filed 3/11/21, effective 4/11/21. Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-040, filed 7/14/17, effective 8/18/17.]

WAC 478-121-045 Severability. If any provision or clause of this chapter 478-121 WAC, or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application and, to this end, the provisions of these rules are declared to be severable.

These rules are additional to any others duly promulgated by the university.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-045, filed 7/14/17, effective 8/18/17.]

WAC 478-121-050 Definitions. For the purposes of this conduct code, the following definitions apply:

(1) **Attorney.** Attorney is a person permitted to practice law in Washington state.

(2) **Complainant.** A complainant is the person who is the subject of the prohibited conduct, whether or not that person made a report that a violation of the code had been committed against them.

(3) **Conduct hold.** A conduct hold refers, collectively, to administrative notes on a student's record, such as registration holds, degree holds, and transcript holds, that enable the conduct officer to monitor the registration and enrollment status of a student for the purpose of administering this code.

(4) **Conduct officer.** Conduct officer is an individual who has the authority to initiate conduct proceedings under this code, including initiating conduct proceedings, completing fact finding, and issuing initial orders. A conduct officer under this code is considered a "presiding officer" under chapter 34.05 RCW for the purpose of conducting a brief adjudicative proceeding.

(5) **Conduct proceedings.** Conduct proceedings refers to brief adjudicative proceedings and full adjudicative proceedings, collectively, under chapter 34.05 RCW.

(6) **FERPA.** 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).

(7) **Full hearing.** Full hearing refers to the hearing that occurs when a matter is designated as being appropriate for a full adjudica-

tive proceeding, consistent with WAC 478-121-400 through 478-121-427 of this code.

(8) **Hearing officer.** A hearing officer is a "presiding officer" in a full hearing for the purpose of conducting a full adjudicative proceeding under chapter 34.05 RCW.

(9) **Presiding officer.** Presiding officer refers to conduct officers and hearing officers collectively.

(10) **Respondent.** A respondent is any student or student organization reported to have engaged in or charged with prohibited conduct under the conduct code.

(11) **Review coordinator.** A review coordinator is an individual who may be appointed to a review panel as a nonvoting member who manages the administrative review process.

(12) **Review panel.** Review panel is a panel of reviewing officers selected from the pool of reviewing officers appointed to conduct administrative reviews under WAC 478-121-320 through 478-121-345 and 478-121-430 through 478-121-445. The review panel may also include a "review coordinator."

(13) **Reviewing officers.** Reviewing officers are those who conduct administrative reviews for the purpose of full adjudicative proceedings or brief adjudicative proceedings under chapter 34.05 RCW.

(14) **Student.** A student is any person enrolled in or taking courses at or through the university, either full-time or part-time, including credit, noncredit, online, and nondegree courses, and any person who has been notified of acceptance for admission by the university. A student who withdraws from a course or from the university, graduates, or completes courses after the date of an alleged violation, or who is not enrolled for a particular quarter or quarters, but has a continuing relationship with the university, is still considered a student for purposes of this conduct code.

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

(16) **University community.** The university community includes all university students, employees, guests of and visitors to the University of Washington, and other individuals affected by the conduct of a university student.

(17) **University official.** University official means employees of the University of Washington performing their assigned administrative, professional, or paraprofessional duties.

(18) **University premises.** University premises includes all of the University of Washington's campus buildings, grounds, and facilities, all of its extension and research locations, and all other university-leased, -owned, or -managed buildings, grounds, and facilities, including its global learning centers and study abroad program sites, as well as university-sponsored and/or -hosted online platforms.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-050, filed 7/14/17, effective 8/18/17.]

PART II

PROHIBITED CONDUCT

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-100, filed 3/11/21, effective 4/11/21. Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-100, filed 7/14/17, effective 8/18/17.]

WAC 478-121-103 Abuse of others. Abuse of others includes assault and other forms of physical abuse of any person, or any conduct intended to threaten bodily harm or to endanger the health or safety of any person.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-103, filed 7/14/17, effective 8/18/17.]

WAC 478-121-105 Abuse of the student conduct process. (1) Abuse of the student conduct process includes:

(a) Attempting to influence the impartiality or participation of any presiding officer or any reviewing officer;

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

(c) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(2) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-105, filed 7/14/17, effective 8/18/17.]

WAC 478-121-107 Academic misconduct. Academic misconduct includes:

(1) "Cheating" which includes, but is not limited to:

(a) The use of unauthorized assistance in taking quizzes, tests, or examinations, or completing assignments;

(b) The acquisition, use, or distribution of unpublished materials created by another student without the express permission of the original author(s);

(c) Using online sources, such as solution manuals, without the permission of the instructor to complete assignments, exams, tests, or quizzes; or

(d) Requesting, hiring, or otherwise encouraging someone to take a course, exam, test, or complete assignments for a student.

(2) "Falsification," which is the intentional use or submission of falsified data, records, or other information including, but not limited to, records of internship or practicum experiences or attendance at any required event(s), or scholarly research.

(3) "Plagiarism," which is the submission or presentation of someone else's words, composition, research, or expressed ideas, whether published or unpublished, without attribution. Plagiarism includes, but is not limited to:

(a) The use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment; or

(b) The unacknowledged use of materials prepared by another person or acquired from an entity engaging in the selling of term papers or other academic materials.

(4) Unauthorized collaboration.

(5) Engaging in behavior specifically prohibited by an instructor in the course of class instruction or in a course syllabus.

(6) Multiple submissions of the same work in separate courses without the express permission of the instructor(s).

(7) Taking deliberate action to destroy or damage another's academic work in order to gain an advantage for oneself or another.

(8) The recording of instructional content without the express permission of the instructor(s), unless approved as a disability accommodation, and/or the dissemination or use of such unauthorized records.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-107, filed 7/14/17, effective 8/18/17.]

WAC 478-121-110 Acts of dishonesty. Acts of dishonesty include:

(1) Knowingly furnishing false information to any university official;

(2) Impersonating, or providing false information in the name of, any university official;

(3) Forging, altering, or misusing any university document or record, or instrument of identification;

(4) Falsely claiming an academic credential; and

(5) Providing dishonest or misleadingly incomplete information or answers on application forms or in response to other official university requests for information.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-110, filed 7/14/17, effective 8/18/17.]

WAC 478-121-113 Aiding, assisting, and attempting. Students may be found responsible for prohibited conduct if they:

(1) Aid or assist another student or student organization in the commission of prohibited conduct;

(2) Request, hire, or incite another person to commit prohibited conduct, either intending that the other person commit the prohibited conduct or with the knowledge that the other person intends to commit the prohibited conduct; or

(3) Attempt to commit prohibited conduct.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-113, filed 7/14/17, effective 8/18/17.]

WAC 478-121-115 Alcohol violations. The unlawful possession, use, distribution, or manufacture of alcohol.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-115, filed 7/14/17, effective 8/18/17.]

WAC 478-121-117 Computer abuses. Computer abuses include, but are not limited to:

- (1) Unauthorized use of university computer resources;
- (2) Use of another person's university user name and/or password;
- (3) Use of university computing facilities and resources to interfere with the work of another student, an instructor, or other university official;
- (4) Use of university computing facilities or resources to send intimidating, harassing, or threatening messages;
- (5) Use of a computer or software to interfere with normal operations of the university's computing systems;
- (6) Use of the university's computing facilities or resources in violation of any law, including copyright laws; and
- (7) Any violation of the university's computer use policies.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-117, filed 7/14/17, effective 8/18/17.]

WAC 478-121-120 Creating a public nuisance in neighboring communities. In furtherance of the university's interest in maintaining positive relationships with its surrounding communities, the university shall have the authority to hold students accountable under this conduct code for misconduct within any residential or commercial communities adjacent to a university campus. Conduct proceedings may be initiated if the university is made aware that a 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.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-120, filed 7/14/17, effective 8/18/17.]

WAC 478-121-123 Discriminatory harassment. Discriminatory harassment includes verbal, physical, electronic, or other conduct based on an individual's race, color, creed, religion, national origin, citizenship, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, disability, or veteran status when one of the conditions outlined in subsection (1) or (2) of this section is present:

(1) Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or

(2) Such conduct creates a hostile environment, which is created when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities, or the receipt of legitimately requested services when viewed through both a subjective and objective standard.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-123, filed 7/14/17, effective 8/18/17.]

WAC 478-121-125 Disruption or obstruction. Disruption or obstruction includes materially and substantially obstructing or disrupting, through words or conduct, the teaching or learning environment of any university educational setting, or any university functions or activities.

An instructor has the authority to exclude a student from any individual class session or other academic activity in which the student is materially disruptive or obstructive and may also make a report in accordance with this code and university policy.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-125, filed 7/14/17, effective 8/18/17.]

WAC 478-121-127 Drug violations. The possession, use, distribution, or manufacture of controlled substances (as defined in chapter 69.50 RCW or 21 U.S.C. Sec. 802) on university premises or during university-sponsored activities where such possession, use, distribution, or manufacture is illegal under federal, state, or local law is prohibited. This includes the possession, use, distribution, or growing of marijuana in all forms during university-sponsored activities or on university premises, including university housing.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-127, filed 7/14/17, effective 8/18/17.]

WAC 478-121-130 Failure to comply. Failure to comply includes, but is not limited to:

(1) Any failure to comply with the directions of any university officials acting in the performance of their duties;

(2) Any failure to identify oneself to university officials when requested to do so; or

(3) Any failure to comply with the rules, regulations, procedures, policies, standards of conduct, or any order or directive of the university or any of its schools, colleges, and departments.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-130, filed 7/14/17, effective 8/18/17.]

WAC 478-121-133 Harassment or bullying. Harassment or bullying is language or conduct 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 university's programs, services, opportunities, or activities, when viewed through both an objective and subjective standard. This includes harassment or bullying that occurs through electronic means, such as electronic media, the internet, social networks, blogs, cell phones, or text messages.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-133, filed 7/14/17, effective 8/18/17.]

WAC 478-121-135 Hazing. All student organizations and living groups are prohibited from hazing.

(1) Hazing includes:

(a) Conduct associated with initiation or admission 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 psychological or emotional harm to any student or other person. This conduct includes, but is not limited to:

(i) Humiliation by ritual act;

(ii) Striking another person whether by use of any object or any part of one's body;

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

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

(v) Encouraging or promoting the unlawful possession, forced or coerced use, or competitive or ritualistic consumption of alcohol, drugs or other substances.

(b) Hazing also includes conduct that is not a violation of (a) of this subsection and is associated with initiation or admission into a student organization or living group, or any pastime or amusement engaged in with respect to a student organization or living group, such as:

(i) Subtle hazing: Activities or situations created that emphasize a direct or indirect power imbalance between members. This includes, but is not limited to, physical or mental manipulation, or causing someone to believe that they may be required to participate in degrading or humiliating games or activities that create psychological, emotional, or physical harm;

(ii) Harassment hazing: Activities that cause confusion, frustration, or physical discomfort that are directly or indirectly required, in order to become or remain a member of the student organization or living group. This includes, but is not limited to, sleep deprivation, verbal abuse, or being expected to harass others; or

(iii) Interference hazing: Activities that do not allow reasonably adequate time for study or that otherwise unreasonably interferes with academic obligations.

(2) Hazing does not include customary athletic or cultural events or other similar contests or competitions.

(3) Consent is not a defense to hazing.

(4) Any student organization or living group that knowingly permits hazing as defined in subsection (1)(a) of this section shall be deprived of official recognition, approval, or registration granted by the university.

Any student organization or living group that knowingly permits hazing as defined in subsection (1)(b) of this section shall either be deprived of official recognition, approval, or registration or be placed on disciplinary probation for a period specified by the university.

(5) Students found responsible for violations of this section shall forfeit any entitlement to state funded grants, scholarships, or awards for a specified period of time determined by the university.

[Statutory Authority: RCW 28B.20.130 and 28B.10.900 through 28B.10.903. WSR 20-09-105, § 478-121-135, filed 4/16/20, effective 5/17/20. Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-135, filed 7/14/17, effective 8/18/17.]

WAC 478-121-137 Indecent exposure. Indecent exposure includes the 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, or is against generally accepted standards of decency. Breastfeeding or expressing breast milk is not indecent exposure.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-137, filed 7/14/17, effective 8/18/17.]

WAC 478-121-140 Intimate partner violence. Intimate partner violence includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate partner violence may include any form of prohibited conduct under this code, including sexual assault, stalking, and physical abuse of others.

Abuse of others includes assault and other forms of physical abuse of any person, or any conduct intended to threaten bodily harm or to endanger the health or safety of any person.

Intimate partner violence may also include forms of economic or emotional abuse, including behaviors that are intended to intimidate, manipulate, humiliate, or isolate someone.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-140, filed 7/14/17, effective 8/18/17.]

WAC 478-121-143 Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons. (1) Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons includes unauthorized possession of firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on university premises, unless specifically authorized by the university president or delegate.

(2) Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instru-

ment used in the propulsion of shot, shell, bullets, or other harmful objects by the:

- (a) Action of gunpowder or other explosives;
- (b) Action of compressed air; or
- (c) Power of springs or other forms of propulsion.

(3) This includes the exhibition or display of a replica of a dangerous weapon prohibited under this subsection 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.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-143, filed 7/14/17, effective 8/18/17.]

WAC 478-121-145 Research misconduct. "Research misconduct" is fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, as is further set forth in the university's Executive Order No. 61.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-145, filed 7/14/17, effective 8/18/17.]

WAC 478-121-147 Retaliation. Retaliation includes engaging or attempting to engage in any action, directly or indirectly, including through a third party, that is intended to harass, intimidate, threaten, harm or improperly influence any person because they:

- (1) Make, or intend to make, a report, complaint, grievance, or allegation of prohibited conduct under any university policy or rule, or under any law;
- (2) Participate in and/or cooperate with conduct proceedings; or
- (3) Appear as a witness.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-147, filed 7/14/17, effective 8/18/17.]

WAC 478-121-150 Sexual assault. Sexual assault includes sexual contact with another person without, or that exceeds, that person's consent.

For the purposes of this subsection, "sexual contact" includes:

- (1) Any intentional touching of the intimate parts of another person's clothed or unclothed body, including but not limited to the mouth, neck, buttocks, anus, genitalia, or breast;
- (2) Causing another person to touch their own or another's body in the manner described above; or
- (3) Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral-genital contact.

For the purposes of this subsection, "consent" means that at the time of and throughout the sexual contact, there are words or conduct that reasonably communicate freely given agreement between or among the parties to engage in the sexual contact. In addition:

- (4) Consent cannot be obtained when force or threat is used to gain consent;
- (5) Consent cannot be obtained where the respondent knew or reasonably should have known that the other person was incapacitated; or

(6) Consent cannot be given or granted by a person who is under the statutory age of consent in accordance with the criminal code of Washington, chapter 9A.44 RCW, Sex offenses.

A respondent's use of alcohol or drugs is not a valid defense to a charge of sexual assault, and a respondent will be held to the standard of a reasonable sober person in evaluating whether the respondent knew or reasonably should have known that the complainant was incapacitated.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-150, filed 7/14/17, effective 8/18/17.]

WAC 478-121-153 Sexual exploitation. Sexual exploitation involves taking nonconsensual or abusive advantage of another for the purposes of sexual arousal or gratification, financial gain, or other personal benefit. Examples of sexual exploitation include:

(1) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings or images of a private and sexual nature, including consensual sexual activity, without the consent of the subject(s);

(2) Taking, making, sharing, or directly transmitting photographs, films, or digital images of the private body parts of another person without that person's consent;

(3) Prostituting another person; or

(4) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-153, filed 7/14/17, effective 8/18/17.]

WAC 478-121-155 Sexual harassment. Sexual harassment is unwelcome sexual advances, requests for sexual favors or other verbal, physical, or electronic conduct of a sexual nature when one of the conditions outlined in subsection (1) or (2) of this section is present:

(1) Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or

(2) Such conduct creates a hostile environment, which is created when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities, or the receipt of legitimately requested services when viewed through both a subjective and objective standard.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-155, filed 7/14/17, effective 8/18/17.]

WAC 478-121-157 Stalking. (1) Stalking means engaging in a course of conduct directed at another person that would cause a reasonable person to:

- (a) Fear for the person's safety or safety of others; or
- (b) Suffer substantial emotional distress.

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

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

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-157, filed 7/14/17, effective 8/18/17.]

WAC 478-121-160 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.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-160, filed 7/14/17, effective 8/18/17.]

WAC 478-121-163 Unauthorized keys, entry, or use. Unauthorized keys, entry, or use includes, but is not limited to:

(1) Unauthorized possession, duplication, or use of keys (including conventional keys, key cards, or alphanumeric passcodes) to any university premises;

(2) Unauthorized entry upon or use of university premises or property; or

(3) Providing keys to an unauthorized person or providing access to an unauthorized person.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-163, filed 7/14/17, effective 8/18/17.]

WAC 478-121-165 Unauthorized recording. (1) Unauthorized recording includes, but is not limited to:

(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; or

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

(2) When such recordings may fall within WAC 478-121-153 Sexual exploitation, they will be addressed in accordance with that provision and related policies.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-165, filed 7/14/17, effective 8/18/17.]

WAC 478-121-167 Vandalism. Vandalism includes maliciously damaging or misusing university property, or the property of any member of the university community.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-167, filed 7/14/17, effective 8/18/17.]

WAC 478-121-170 Violation of disciplinary sanctions. Violation of disciplinary sanctions includes the violation of any term or condition of any final order issued under this conduct code or the failure to complete a disciplinary sanction in the specified time frame.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-170, filed 7/14/17, effective 8/18/17.]

WAC 478-121-173 Violation of law. Violation of law includes when a student has been convicted of a crime under any federal, state, or local law that adversely affects a university interest.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-173, filed 7/14/17, effective 8/18/17.]

PART III CONDUCT PROCEEDINGS, DISCIPLINARY SANCTIONS, AND EVIDENCE

WAC 478-121-200 Form of adjudicative proceeding. All conduct proceedings under this code shall be conducted in accordance with chapter 34.05 RCW, Administrative Procedure Act and constitutional due process. If there is an irresolvable conflict between this code and the Administrative Procedure Act or constitutional due process, the Administrative Procedure Act and constitutional due process shall supersede these rules.

In applying this code, due consideration shall be given to the fact that the conduct process is administrative and not judicial in nature and that the rules of civil procedure only apply to the extent set forth in this code or in chapter 34.05 RCW. In formal proceedings pursuant to RCW 34.05.413 through 34.05.476, the University of Washington adopts the model rules of procedure, chapter 10-08 WAC, Model rules of procedure. In the case of a conflict between the model rules of procedure and these procedural rules, the procedural rules adopted in these rules shall govern.

Informal settlements may be conducted under the authority of RCW 34.05.060.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-200, filed 7/14/17, effective 8/18/17.]

WAC 478-121-203 Brief adjudicative proceeding. When conduct proceedings have been designated as brief adjudication proceedings under this code, they will be conducted in accordance with RCW 34.05.482 through 34.05.494 and the parties will receive notice as set forth in WAC 478-121-235.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-203, filed 7/14/17, effective 8/18/17.]

WAC 478-121-205 Conversion to full adjudicative proceeding.

Prior to the conclusion of a brief adjudicative proceeding, the conduct officer shall make any inquiries necessary to ascertain whether the proceeding should be converted to a full adjudicative proceeding under RCW 34.05.413 through 34.05.476 of the Administrative Procedure Act. If converted, the conduct officer will take steps necessary to initiate a full hearing and a hearing officer will be assigned.

To the extent feasible, the conduct officer's record will be included in the record for the full hearing. The time of commencement of the full hearing shall be considered to be the time of commencement of the original conduct proceeding.

If not converted by the conduct officer, the parties will be given an opportunity to request a full hearing per WAC 478-121-320 through 478-121-345.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-205, filed 7/14/17, effective 8/18/17.]

WAC 478-121-207 Full adjudicative proceeding. If it becomes apparent that a full adjudicative proceeding is necessary, is in the public interest, or is more appropriate to resolve issues affecting the participants, a full hearing will be held in accordance with WAC 478-121-400 through 478-121-427 that is in compliance with RCW 34.05.413 through 34.05.476. Factors that may be considered as guidelines to determine whether the issues and interests involved warrant the use of a full adjudicative proceeding consistent with this code will be defined in university policy, including *Student Governance and Policies*, chapters 209 and 210.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-207, filed 7/14/17, effective 8/18/17.]

WAC 478-121-210 Disciplinary sanctions. (1) One or more of the following disciplinary sanctions may be imposed for any violation of this conduct code:

(a) Disciplinary reprimand. A respondent may be issued a written disciplinary reprimand.

(b) Disciplinary probation. A respondent may be placed on disciplinary probation (meaning formal conditions are imposed on the respondent's continued attendance). The time period for the disciplinary probation and any conditions shall be specified. Failure to fulfill conditions of the disciplinary probation in a timely manner will extend the probationary period (and the conditions) and may result in additional disciplinary sanctions.

(c) Restitution. A respondent may be required to make restitution for damage or other loss of property and for injury to persons. The university may put a conduct hold in place if the respondent fails to pay or to make in writing university-approved arrangements to pay restitution.

(d) Loss of privileges. A respondent may be denied specified privileges for a designated period of time such as the privilege to participate in a particular campus activity and may be restricted from any or all university premises for a specific duration.

(e) Suspension. A respondent may be suspended (i.e., temporarily separated) from the university for a specified period of time. Conditions of suspension may be imposed and will be specified. Except as otherwise specified in the final order, all conditions must be fulfilled before the end of the suspension period. Failure to fulfill all conditions of suspension in a timely manner will extend the suspension period and any conditions, and may result in additional disciplinary sanctions. The university may put a conduct hold in place during the suspension period.

(f) Dismissal. A respondent may be dismissed (i.e., permanently separated) from the university.

(g) Sanctions for hazing. In addition to other sanctions, a student who is found responsible for participating in hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a specified period of time.

(2) In determining an appropriate sanction for a violation of this code, factors that may be considered include, but are not limited to:

(a) The seriousness, severity, persistence, or pervasiveness of the prohibited conduct;

(b) The nature or violence, if applicable, of the prohibited conduct;

(c) The impact on the complainant and/or university community;

(d) The respondent's past disciplinary record with the university;

(e) Whether the respondent has accepted responsibility for the prohibited conduct;

(f) The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning; and/or

(g) Any other mitigating, aggravating, or compelling factors that the presiding officer determines to be relevant and admissible.

(3) The use of alcohol or drugs by a respondent will not be considered a mitigating factor in imposing discipline.

(4) If a respondent withdraws from the university (or fails to reenroll) before completing a sanction, the sanction must be completed prior to or upon the respondent's reenrollment, depending on the nature of the sanction. Completion of disciplinary sanctions may be considered in applications for readmission to the university.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-210, filed 7/14/17, effective 8/18/17.]

WAC 478-121-213 Effective date of sanctions. Sanctions will be implemented when a final order becomes effective in the university's conduct proceeding. An initial order that becomes a final order because no administrative review was requested or initiated becomes effective on the day after the period for requesting review has expired.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-213, filed 7/14/17, effective 8/18/17.]

WAC 478-121-215 Authority to initiate conduct proceedings and delegations of authority in conduct proceedings. (1) The following university officials may initiate conduct proceedings under this conduct code:

(a) The vice president for student life at University of Washington Seattle;

(b) The chancellors at University of Washington Bothell and Tacoma;

(c) Deans of a school or college (including the graduate school) at University of Washington Seattle; and

(d) Deans or directors of any school or program at University of Washington Bothell or Tacoma.

(2) The above named university officials may delegate the authority to one or more individuals to initiate conduct proceedings, engage in fact finding, hold hearings, and issue initial orders under this conduct code. They may also establish student or student-faculty-staff hearing bodies to advise or to act for them in conduct proceedings.

(3) For the purpose of completing administrative reviews under WAC 478-121-320 through 478-121-345 and 478-121-430 through 478-121-445 of this code:

(a) The chair of the faculty senate will appoint one or more faculty to be included in a pool of available reviewing officers; and

(b) The president, vice president for student life at University of Washington Seattle, or the chancellors at University of Washington Bothell and Tacoma may appoint one or more students to be included in a pool of available reviewing officers.

(4) Review panels, composed of multiple reviewing officers, may be created to complete administrative reviews under WAC 478-121-320 through 478-121-345 and 478-121-430 through 478-121-445 of this code. Review panels may also include a review coordinator.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-215, filed 7/14/17, effective 8/18/17.]

WAC 478-121-217 Appointment of reviewing officers. Faculty and students may be appointed to the pool of available reviewing officers at any time by a university official with authority to appoint such individuals. Efforts will be made to ensure the pool includes available reviewing officers representing the University of Washington Seattle, Bothell, and Tacoma campuses. The appointment will be for a specific term, which may be extended at the discretion of a university official with authority to appoint such individuals, and will include any training and other conditions of service. See *Student Governance and Policies*, chapters 209 and 210.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-217, filed 7/14/17, effective 8/18/17.]

WAC 478-121-220 Selection of review panels. For each administrative review, an odd number of available reviewing officers will be selected from the pool, based on availability, to form the review panel. Those selected for the panel will designate a faculty member of the panel to act as chair, with efforts made that the chair be a representative from the campus where the respondent is enrolled.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-220, filed 7/14/17, effective 8/18/17.]

WAC 478-121-223 Disqualification and substitution of presiding officers and reviewing officers. Consistent with RCW 34.05.425, any presiding officer or reviewing officer is subject to disqualification for bias, prejudice, interest, or any other applicable cause. Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification. The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination. An appropriate individual will then be substituted as a presiding or reviewing officer.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-223, filed 7/14/17, effective 8/18/17.]

WAC 478-121-225 Initiating conduct proceedings. Conduct proceedings may be initiated when the university receives any direct or indirect report of conduct that may violate this code, which may include, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal or written report from a complainant, witness, or other third party.

Conduct matters may be initiated under the conduct code regardless of whether or not the incident in question is the subject of criminal or civil proceedings.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-225, filed 7/14/17, effective 8/18/17.]

WAC 478-121-227 Decision not to initiate a conduct proceeding. If the conduct officer decides not to initiate a conduct proceeding when requested by a complainant who, otherwise, would be a party to the proceeding, the conduct officer will provide the complainant with a written decision, including a brief statement of the reasons and of any other options for review.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-227, filed 7/14/17, effective 8/18/17.]

WAC 478-121-230 Conduct hold on student record. A conduct officer or other designated university official may place a conduct hold on the student's record if the student is the respondent in a pending report of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction under this code. A conduct hold may restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the university until the hold has been removed. If the conduct hold is put in place pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The hold will remain

in place until lifted by the conduct office or other designated university official with authority to do so.

Implementation of any conduct hold does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-230, filed 7/14/17, effective 8/18/17.]

WAC 478-121-233 Parties. The parties to conduct proceedings are typically the university and the respondent. In accordance with *Student Governance and Policies*, chapter 210, student conduct policy for discriminatory and sexual harassment, intimate partner violence, sexual misconduct, stalking, and retaliation, in cases involving discriminatory harassment, indecent exposure, intimate partner violence, sexual assault, sexual exploitation, sexual harassment, stalking, or retaliation, the complainant is also a party. In addition, the university may designate other individuals, such as a complainant, as a party to other types of conduct proceedings, or allow individuals to intervene in conduct proceedings. For additional guidance, see *Student Governance and Policies*, chapter 209, student conduct policy for academic misconduct and behavioral misconduct.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-233, filed 7/14/17, effective 8/18/17.]

WAC 478-121-235 Interim protective measures. After receiving a report of prohibited conduct, the university may implement interim protective measures that impact a respondent at any time prior to the conclusion of a conduct proceeding. When implemented, the respondent will be advised on how to raise an objection about the interim measure or request that it be made less restrictive. Interim measures will remain in place until lifted or modified by a university official with authority to do so.

Implementation of any interim measure does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code. A respondent who fails to comply with any interim protective measures may, however, be charged with a "failure to comply" pursuant to WAC 478-121-130.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-235, filed 7/14/17, effective 8/18/17.]

WAC 478-121-237 Emergency authority of the university. If there is reasonable cause to believe that a student's conduct represents a threat to the health, safety, or welfare of the university or any member of the university community, or poses an ongoing threat of substantially disrupting or materially interfering with university activities or operations, the president, the president's delegate, the vice president for student life for the University of Washington Seattle or delegates, and the chancellors of the University of Washington Bothell and Tacoma campuses or delegates, may immediately suspend that student from participation in any or all university functions, privileges, or locations.

In such an emergency situation, the university official placing the student on emergency suspension shall issue a written order to be served upon the student describing the terms of the emergency suspension and the reasons for the emergency suspension. The order shall advise the student how to raise an objection about the emergency suspension or request that it be made less restrictive. The university may also put a conduct hold in place during the emergency suspension period.

The order shall be effective immediately. The proceeding shall then be referred to the appropriate conduct office and the proceeding shall proceed as quickly as feasible. The emergency suspension shall remain in effect until lifted or revised by a university official with authority to do so or until a final order is entered in the proceeding. Once a final order is entered in the proceeding, any emergency suspension shall be lifted and the sanction, if any, will be imposed.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-237, filed 7/14/17, effective 8/18/17.]

WAC 478-121-240 Service of notices, filings, and orders; and time limits. Service of all university notices under this code will be sent by electronic mail (email) addressed to the party's university-issued email address. An alternative email address may be provided to the presiding officers and reviewing officer(s) in writing. Service is complete at the moment the email is sent to the email address. If there is no email on record, service may also be accomplished by personal service or by posting it in the United States mail, properly addressed, and postage prepaid. Service by mail is complete upon deposit in the United States mail.

The parties are permitted to file documents with the presiding officer or reviewing officer(s) via email or other electronic means as determined by the presiding officer or reviewing officer(s). Receipt of such documents will be determined by the date of the email. For documents that must be shared with other parties, the university will be responsible for service of such documents, as above.

In computing any period of time under this conduct code, the day of service of any order, notice, or other document is not counted. The last day of the applicable period of time is counted. If the last day of the applicable period of time falls on a Saturday, Sunday, or official state holiday (which includes the day after Thanksgiving), the period ends on the next business day. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

The time limit for seeking administrative review of an initial order is based upon the date of service of the initial order.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-240, filed 7/14/17, effective 8/18/17.]

WAC 478-121-243 Participation of advisors and attorneys. The parties to conduct proceedings may, at their own expense, be accompanied by an advisor of their choice, including an attorney, throughout the conduct proceedings. In a brief adjudicative proceeding, an advisor may provide support and advice, but an advisor may not speak on behalf of the student or disrupt or interfere with any aspect of the

brief adjudicative proceeding, as determined by the conduct officer. In a full adjudicative proceeding, including any prehearing matters, if the party's advisor is an attorney, the attorney may advise and represent the party, but the advisor may not disrupt or interfere with any aspect of the proceeding, as determined by the hearing officer. For additional guidance, see *Student Governance and Policies*, chapters 209 and 210.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-243, filed 7/14/17, effective 8/18/17.]

WAC 478-121-245 Consolidation. If there are multiple conduct proceedings involving common issues or parties, the parties may request, or the presiding officer may decide, to consolidate the proceedings. This decision is within the sole discretion of the presiding officer.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-245, filed 7/14/17, effective 8/18/17.]

WAC 478-121-247 Burden of proof. The burden of proof in conduct proceedings rests with the university.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-247, filed 7/14/17, effective 8/18/17.]

WAC 478-121-250 Evidence in conduct proceedings. The following evidentiary provisions apply to conduct proceedings under this code. In applying this code, due consideration shall be given to the fact that the conduct process is administrative and not judicial in nature and that rules of evidence only apply to the extent set forth in this code or in chapter 34.05 RCW. The university has also developed agency-level guidance regarding its interpretations of these rules, including in *Student Governance and Policies*, chapters 209 and 210.

While brief adjudicative proceedings do not require the application of rules of evidence, the conduct officer will be guided by the principles underlying the Washington state rules of evidence when they do not conflict with the code or relevant university policies.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-250, filed 7/14/17, effective 8/18/17.]

WAC 478-121-253 Relevant evidence, hearsay, and character evidence. (1) Evidence, including hearsay, is admissible if, in the judgment of the presiding officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. In a full hearing, however, the hearing officer shall not base a finding exclusively on such inadmissible evidence unless the hearing officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the initial order.

(2) The presiding officer will determine the admissibility and relevance of all evidence, including that offered by the parties and/or witnesses, and shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude from consideration evidence that is not relevant. The presiding officer may also exclude from consideration evidence that is immaterial or unduly repetitious.

(3) In general, the presiding officer will not consider statements of personal opinion or statements as to any individual's general reputation or any character trait, unless the presiding officer considers such evidence to be relevant and admissible.

(4) The presiding officer may take official notice of some material that was not offered as evidence by the parties. In full adjudicative proceedings, the process for taking official notice is set forth in RCW 34.05.452.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-253, filed 7/14/17, effective 8/18/17.]

WAC 478-121-255 Prior or subsequent conduct of the respondent.

Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake. The presiding officer will determine the relevance and admissibility of this evidence.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-255, filed 7/14/17, effective 8/18/17.]

WAC 478-121-257 Prior sexual history.

The sexual history of the parties or witnesses will not be used to prove character or reputation. Evidence related to the prior sexual history of the parties or witnesses is generally not relevant to the determination of a violation of this code and will be considered only in limited circumstances. The presiding officer will determine the relevance of this evidence.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-257, filed 7/14/17, effective 8/18/17.]

WAC 478-121-260 Experts.

Consistent with RCW 34.05.452(5), presiding officers may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. This information will be summarized in the initial order.

Generally, results of polygraph examinations are not considered relevant, even if offered voluntarily.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-260, filed 7/14/17, effective 8/18/17.]

WAC 478-121-263 Self-incriminating evidence.

No student shall be compelled to give self-incriminating evidence and a negative infer-

ence will not be drawn from a refusal to participate at any stage of the conduct proceeding. The presiding officer may, however, continue with the conduct proceeding and reach a finding based on other available and admissible evidence.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-263, filed 7/14/17, effective 8/18/17.]

WAC 478-121-265 Criminal conviction. The presiding officer may accept a conviction of a crime under any federal, state, or local law as the evidentiary basis for establishing prohibited conduct under this code when the elements of that crime establish prohibited conduct under this code that adversely affects a university interest.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-265, filed 7/14/17, effective 8/18/17.]

PART IV BRIEF ADJUDICATIVE PROCEEDINGS

WAC 478-121-300 Brief adjudicative proceedings—Notice of conduct proceeding and investigative interview. The conduct officer will provide notice to the parties, in writing, of the commencement of conduct proceedings, which will include information on how to petition for disqualification of the conduct officer.

The conduct officer will also schedule an investigative interview with the respondent as part of the fact-finding process.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-300, filed 7/14/17, effective 8/18/17.]

WAC 478-121-305 Brief adjudicative proceedings—Fact finding. Before taking action in a brief adjudication proceeding, the conduct officer shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter. This process includes, without limitation, conducting fact finding and providing the parties with the opportunity to participate in the conduct proceeding by explaining the process to the parties and allowing them to review the allegations, provide evidence, identify witnesses with relevant knowledge, respond to evidence provided by others, and provide the conduct officer with suggested questions for others (collectively, "fact finding").

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-305, filed 7/14/17, effective 8/18/17.]

WAC 478-121-310 Brief adjudicative proceedings—Standard of proof. The applicable standard of proof 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 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 conduct prohibited by this code.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-310, filed 7/14/17, effective 8/18/17.]

WAC 478-121-315 Brief adjudicative proceedings—Initial order.

At the conclusion of the fact finding, the conduct officer will prepare an initial order. If the respondent is found responsible, the conduct officer will impose a sanction. The conduct officer will serve the initial order to the parties, simultaneously and in writing. The initial order will include a brief written statement of the reasons for the decision and an explanation of how to request administrative review of the initial order and the time frame to do so.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-315, filed 7/14/17, effective 8/18/17.]

WAC 478-121-320 Brief adjudicative proceedings—Requesting administrative review. A party may request administrative review of the initial order based on the grounds as set forth in WAC 478-121-325.

A request for administrative review must be submitted in writing to the conduct officer within twenty-one days of the date of service of the initial order. The party requesting the review will be provided with an opportunity to explain the reasons for seeking review. If one of the grounds is to consider newly discovered evidence, that evidence must also be provided with the request for review.

If an administrative review is not requested within twenty-one days of service of the initial order, the initial order shall become the final order.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-320, filed 7/14/17, effective 8/18/17.]

WAC 478-121-325 Brief adjudicative proceedings—Grounds for administrative review. A party may request administrative review for any or all of the following reasons:

(1) To determine whether there was a material error that substantially affected the outcome of the fact finding or sanctioning;

(2) To consider newly discovered evidence, not reasonably available during the fact finding, that could substantially impact the outcome;

(3) To determine whether the sanction(s) imposed were appropriate for the violation committed and were not excessively lenient or excessively severe; or

(4) To determine whether the issue and interests involved warrant a full hearing.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-325, filed 7/14/17, effective 8/18/17.]

WAC 478-121-330 Brief adjudicative proceedings—Notice of administrative review. If administrative review is requested, the university will provide the parties notice, in writing, of the date the administrative review will be initiated and the identities of the reviewing officer(s) selected for the review panel. The parties will also be provided with information on how to petition for disqualification of any reviewing officer(s).

Other parties will be provided with a copy of the request for administrative review and notice of how to submit a written response. Responses must be submitted within five business days of service of the notice of administrative review.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-330, filed 7/14/17, effective 8/18/17.]

WAC 478-121-335 Brief adjudicative proceedings—Procedures for administrative review. (1) When the reviewing officer(s) conducts an administrative review, the review is based on:

- (a) The conduct officer's record and fact finding;
- (b) Information submitted to the review panel in the request for review or response to request for review; and
- (c) Newly discovered evidence, if the basis for seeking administrative review is that newly discovered evidence has become available; however the review of newly discovered evidence is limited to determining whether the newly discovered evidence warrants remanding the matter for further proceedings.

(2) Decisions by a panel of reviewing officers will be determined by majority vote.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-335, filed 7/14/17, effective 8/18/17.]

WAC 478-121-340 Brief adjudicative proceedings—Order from administrative review. (1) Within twenty days after the request is submitted, the review panel will issue an order, which will include the outcome, any sanction, and a brief statement of the reasons for the outcome. All parties will receive simultaneous, written notification of the outcome of the review.

(2) The reviewing officer(s) may reach one of the following results:

- (a) Conclude there is no basis for remand or alteration of sanctions, and issue a final order disposing of the proceeding;
- (b) Remand for further fact finding or review if newly discovered evidence may have impacted the result or if the record demonstrates material error;
- (c) Increase or reduce the sanction(s) and issue a final order, if the increased sanction does not warrant a full hearing; or
- (d) Conclude whether the proceeding should be converted to a full adjudicative proceeding and, if so, take steps necessary to initiate a full hearing.

(3) If the review panel does not issue an order within twenty days after the request is submitted, the request for review is deemed to be denied.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-340, filed 7/14/17, effective 8/18/17.]

WAC 478-121-345 Brief adjudicative proceedings—Process following remand from administrative review or conversion. If the proceeding is remanded or converted to a full adjudicative proceeding following administrative review, the initial order will be rescinded and the reviewing officer(s) will describe, in writing, the reasons for the remand or conversion.

Following remand, additional proceedings will be conducted as necessary to address the reasons for the remand or conversion and will be conducted in accordance with the relevant sections of this code.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-345, filed 7/14/17, effective 8/18/17.]

PART V FULL ADJUDICATIVE PROCEEDINGS AND FULL HEARING

WAC 478-121-400 Notice of full hearing. The hearing officer shall set the time and place of the full hearing and give not less than seven days advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The notice will include information on how to petition for disqualification of the hearing officer.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-400, filed 7/14/17, effective 8/18/17.]

WAC 478-121-403 Prehearing conferences. (1) Hearing officers upon their own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

- (a) Simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings, if any;
- (c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;
- (d) Limitations on the number and consolidation of the examination of witnesses;
- (e) Procedural matters;
- (f) Distribution of written testimony and exhibits to the parties prior to the hearing;
- (g) Such other matters as may aid in the disposition or settlement of the proceeding.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by hearing officers.

(3) Following prehearing conferences, hearing officers shall issue an order. Orders are effective when they are served. Hearing offi-

cers may, at their discretion, hold more than one prehearing conference and issue orders modifying any prehearing order.

(4) In any full hearing, hearing officers may, in their discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this rule. Hearing officers shall state on the record the results of such conference.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-403, filed 7/14/17, effective 8/18/17.]

WAC 478-121-405 Discovery. Discovery, including depositions, interrogatories, requests for production, entry onto land for inspection or other purposes, and physical and mental examinations, are not available in conduct proceedings under this code.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-405, filed 7/14/17, effective 8/18/17.]

WAC 478-121-407 Subpoenas. The hearing officer may issue subpoenas. The parties may also request that the hearing officer issue subpoenas or a party's attorney of record may also issue a subpoena in whose behalf the witness is required to appear at a full hearing. The requesting party is responsible for serving the subpoena upon the witness. In the discretion of the hearing officer, and where the rights of the parties will not be prejudiced thereby, such testimony may be by telephone or other electronic means.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-407, filed 7/14/17, effective 8/18/17.]

WAC 478-121-410 Protective orders. The hearing officer may enter protective orders, which limit the admissibility of evidence or condition it on specified criteria necessary to protect a party or a witness from annoyance, embarrassment, oppression, or undue burden or expense, or to comply with any applicable law.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-410, filed 7/14/17, effective 8/18/17.]

WAC 478-121-413 Pleadings, briefs, and motions. (1) At appropriate stages of full adjudicative proceedings, the hearing officer will give all parties full opportunity to submit and respond to pleadings, motions, objections, and offers of settlement, including motions for summary judgment.

(2) At appropriate stages of full adjudicative proceedings, the hearing officer may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.

(3) The hearing officer has the discretion to decide and dispose of all issues raised in accordance with this section.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-413, filed 7/14/17, effective 8/18/17.]

WAC 478-121-415 Communications with hearing officer. All communications with the hearing officer, except for communications necessary to procedural aspects of maintaining an orderly process, must be in the presence of, or with a copy to, all other parties. Ex parte communications received by the hearing officer must be placed on the record, and all other parties must be informed of the ex parte communication and given an opportunity to respond on the record.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-415, filed 7/14/17, effective 8/18/17.]

WAC 478-121-417 Standard of proof in full hearings. The applicable standard of proof is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for prohibited conduct under the conduct code, the hearing officer must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of prohibited conduct.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-417, filed 7/14/17, effective 8/18/17.]

WAC 478-121-420 Continuances. The hearing officer has the discretion to grant postponements, continuances, extensions of time, and adjournments or upon a request of any party, if the party shows good cause.

A request for a continuance may be oral or written. If all parties do not agree to the continuance, the hearing officer may schedule a prehearing conference to receive argument or may rule on the request without argument.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-420, filed 7/14/17, effective 8/18/17.]

WAC 478-121-423 Testimony under oath or affirmation. In a full hearing, all testimony of parties and witnesses shall be made under oath or affirmation.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-423, filed 7/14/17, effective 8/18/17.]

WAC 478-121-425 Remote participation. At the discretion of the hearing officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing, including the testimony of witnesses, may be conducted by telephone, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place. Such measures

may be taken to accommodate concerns raised by a complainant, a respondent, or any witness.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-425, filed 7/14/17, effective 8/18/17.]

WAC 478-121-427 Initial order from full hearing. At the conclusion, the hearing officer will issue an initial order, which shall include all matters required by RCW 34.05.461(3). The hearing officer will serve the initial order to the parties, simultaneously and in writing. The initial order will include an explanation of how to request administrative review of the initial order and the time frame to do so.

If an administrative review is not requested within twenty-one days of service of the initial order, the initial order shall become the final order.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-427, filed 7/14/17, effective 8/18/17.]

WAC 478-121-430 Requesting administrative review from a full hearing. A party may request administrative review of the initial order from a full hearing based on the grounds as set forth in WAC 478-121-433.

A request for administrative review must be submitted in writing to the hearing officer within twenty-one days of the date of the initial order. If one of the grounds is to consider newly discovered evidence, that evidence must be provided with the request for review.

If an administrative review is not requested within twenty-one days the initial order shall become the final order.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-430, filed 7/14/17, effective 8/18/17.]

WAC 478-121-433 Grounds for administrative review from a full hearing. A party may request administrative review for any or all of the following reasons:

(1) To determine whether there was a material error that substantially affected the outcome of the fact finding or sanctioning;

(2) To consider newly discovered evidence, not reasonably available during the fact finding, that could substantially impact the outcome;

(3) To determine whether the sanction(s) imposed were appropriate for the violation committed and were not excessively lenient or excessively severe; or

(4) Any other grounds that would warrant modification, withdrawal, or reversal of the order.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-433, filed 7/14/17, effective 8/18/17.]

WAC 478-121-435 Notice of administrative review from a full hearing. If administrative review is requested, the university will

provide the parties notice, in writing, of the date the administrative review will be initiated and the identities of the reviewing officer(s) selected for the review panel. The parties will also be provided with information on how to petition for disqualification of any reviewing officer(s).

Other parties will be provided with a copy of the request for administrative review and notice of how to submit a written response. Responses must be submitted within five business days of service of the notice of administrative review.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-435, filed 7/14/17, effective 8/18/17.]

WAC 478-121-437 Procedures for administrative review from a full hearing. (1) When the reviewing officer(s) conducts an administrative review, the reviewing officer(s) shall:

(a) Personally consider the whole record or such portions of it as may be cited by the parties;

(b) Exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer(s) upon notice to all the parties;

(c) Afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument to explain the party's position but any such argument shall not be considered as evidence;

(d) Review information submitted to the review panel in the request for review or response to request for review; and

(e) Review newly discovered evidence, if the basis for seeking administrative review is that newly discovered evidence has become available; however the review of newly discovered evidence is limited to determining whether the newly discovered evidence warrants remanding the matter for further proceedings.

(2) In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officers' opportunity to observe the witnesses.

(3) Decisions by a panel of reviewing officers will be determined by majority vote.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-437, filed 7/14/17, effective 8/18/17.]

WAC 478-121-440 Communications with reviewing officers. All communications with reviewing officers, except for communications necessary to procedural aspects of maintaining an orderly process, must be in the presence of, or with a copy to, all other parties. Ex parte communications received by reviewing officers must be placed on the record, and all other parties must be informed of the ex parte communication and given an opportunity to respond on the record.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-440, filed 7/14/17, effective 8/18/17.]

WAC 478-121-443 Order from administrative review of a full hearing. (1) Within thirty calendar days of receipt of all response(s) submitted by the parties or oral argument, if any, whichever is later, the reviewing officer(s) will issue an order, which will include the outcome, any sanction, and a brief statement of the reasons for the outcome. All parties will receive simultaneous, written notification of the outcome of the review.

(2) The reviewing officer(s) may reach one of the following results:

(a) Conclude there is no basis for remand or alteration of sanctions, and issue a final order disposing of the proceeding;

(b) Remand for further fact finding or review if newly discovered evidence may have impacted the result or if the record demonstrates material error with instructions to the presiding officer who entered the initial order;

(c) Increase or reduce the sanction(s), and issue a final order disposing of the proceeding; or

(d) Issue a final order disposing of the proceeding or remand the matter for further proceedings on any other grounds that would warrant modification, withdrawal, or reversal of the order, with instructions to the presiding officer who entered the initial order.

(3) When issuing orders under this section, the order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

(4) The reviewing officer(s) will serve the order to the parties, simultaneously and in writing.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-443, filed 7/14/17, effective 8/18/17.]

WAC 478-121-445 Process following remand from administrative review of a full hearing. (1) If the proceeding is remanded, the initial order will be rescinded and the reviewing officer(s) will describe, in writing, the reasons for the remand. Following remand, additional proceedings will be conducted as necessary to address the reasons for the remand.

(2) At the conclusion, the hearing officer will issue an initial order, which shall include all matters required by RCW 34.05.461(3). The hearing officer will serve the initial order to the parties, simultaneously and in writing. The initial order will include an explanation of how to request administrative review of the initial order and the time frame to do so.

(3) If an administrative review is not requested within twenty-one days of service of the initial order, the initial order shall become the final order.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-445, filed 7/14/17, effective 8/18/17.]

WAC 478-121-447 Reconsideration of final orders. Within ten days of the service of a final order or within ten days of the date an initial order becomes a final order, any party may file a request for reconsideration. The request shall be directed to the officer(s) who issued the final order and state in writing specific reasons for the

request. Upon receipt, the officer(s) shall promptly serve all other parties with a copy of the request for reconsideration.

Unless the request for reconsideration is automatically deemed to have been denied under WAC 478-121-450, the request shall be disposed of by the officer(s) who issued the final order, if reasonably available. The disposition shall be in the form of a written order denying the request, granting the request and dissolving or modifying the final order, or granting the request and setting the matter for further hearing.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-447, filed 7/14/17, effective 8/18/17.]

WAC 478-121-450 Denial of request for reconsideration. The request for reconsideration is automatically deemed to have been denied if, within twenty days from the date the request for reconsideration is timely submitted, the officer(s) who issued the final order does not either:

- (1) Dispose of the request; or
- (2) Serve the parties with a written notice specifying the date by which the request will be acted upon.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-450, filed 7/14/17, effective 8/18/17.]

WAC 478-121-453 Privacy in full hearings. (1) In accord with the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99) (FERPA), all meetings or reviews conducted under this code generally will be held in closed session out of respect for the privacy of all the students involved.

(2) In a full hearing, the hearing officer may close parts of a hearing under any provision of law expressly authorizing closure or under a protective order entered by the hearing officer pursuant to applicable rules and the hearing officer may order the exclusion of witnesses upon a showing of good cause.

(3) Students may, at their sole discretion, waive their rights under FERPA in writing. The scope of any FERPA waiver and any protective order entered by the hearing officer will determine who can have access to information that would otherwise be protected from disclosure by FERPA, including without limitation who can be present at any hearing held in a full adjudicative proceeding under this code. If the hearing is open to public observation, the presiding officer shall conduct the hearing in a room that will accommodate a reasonable number of observers. The hearing officer may issue a protective order to exclude from the hearing any persons who are disruptive of the proceedings and may limit the number and activities of the observers as necessary to protect the safety of the participants and observers and to assure a fair hearing.

(4) To ensure the privacy of all students involved, no cameras or recording devices shall be permitted except for the official recording by the university; however, if FERPA or other federal or state law implicated by RCW 34.05.040 does not preclude it, then any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional re-

cordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption. If a party intends to make a recording of the proceeding, the party shall advise the hearing officer prior to the prehearing conference so that any issues related to making an additional recording can be addressed prior to the full hearing.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-453, filed 7/14/17, effective 8/18/17.]

PART VI RECORDKEEPING

WAC 478-121-500 General recordkeeping. Records related to conduct proceedings shall be maintained consistent with RCW 34.05.476 and 34.05.494, university records retention policies, and other relevant policies.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-500, filed 7/14/17, effective 8/18/17.]

WAC 478-121-510 Disciplinary record. Any final order resulting from conduct proceedings shall become a part of the respondent's disciplinary record. Student disciplinary records are "education records" as defined by FERPA and may only be disclosed consistent with FERPA and chapter 478-140 WAC.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-510, filed 7/14/17, effective 8/18/17.]

PART VII COMPLIANCE WITH DEPARTMENT OF EDUCATION FEDERAL REGULATIONS REGARDING SEXUAL HARASSMENT

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

- (1) The EDFR prohibited conduct occurs in a university education program or activity; and
- (2) The EDFR prohibited conduct is against a person in the United States.

EDFR prohibited conduct that does not meet both of these requirements or is reported by a person who is not eligible to file a formal complaint under WAC 478-121-625 is subject to Parts II through V of this code.

For the purposes of Part VII of this code, "education program or activity" includes locations, events, or circumstances over which the

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-600, filed 3/11/21, effective 4/11/21.]

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

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

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

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

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

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

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

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

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

(3) EDFR dating violence. EDFR dating violence is an act or acts of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be determined based on the length and type of relationship as well as the frequency of interaction between the individuals involved in the relationship.

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

in common, or by a person who is cohabitating with or has cohabitated with the complainant as an intimate partner.

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

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-605, filed 3/11/21, effective 4/11/21.]

WAC 478-121-610 Consent for purposes of EDFR prohibited conduct.

Consent means that at the time of and throughout the sexual contact, there are words or conduct that reasonably communicate freely given agreement between or among the persons engaging in the sexual contact.

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

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

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

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

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

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

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

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

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

(3) As used in the definition of consent, incapacity means an individual lacks the ability to understand the facts, nature, extent, or

implications of the sexual contact for any reason including, but not limited to, being asleep, unconscious, unaware that the sexual contact is occurring, mentally or physically impaired due to an intellectual or other disability, or mentally or physically incapacitated due to the effects of alcohol or other drugs.

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-610, filed 3/11/21, effective 4/11/21.]

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-615, filed 3/11/21, effective 4/11/21.]

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

(2) Upon receipt of a report as provided under subsection (1) of this section, the Title IX coordinator, or designee, will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-620, filed 3/11/21, effective 4/11/21.]

WAC 478-121-625 Formal complaint. (1) Only a complainant or the university's Title IX coordinator may file a formal complaint. At the

time of filing a formal complaint, a complainant must be participating in or attempting to participate in a university education program or activity. The authority to initiate conduct proceedings provisions outlined in WAC 478-121-215 (1) and (2) do not apply to Part VII of this code.

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

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

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

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

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-625, filed 3/11/21, effective 4/11/21.]

WAC 478-121-630 Dismissal of a formal complaint. (1) Mandatory dismissal. In accordance with the Department of Education federal regulations, the university will dismiss a formal complaint for purposes of Title IX and its implementing regulations if the alleged conduct:

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

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

(c) Did not occur against a person in the United States; or

(d) Was alleged by or in respect to a complainant who is not participating in or attempting to participate in a university education program or activity.

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-630, filed 3/11/21, effective 4/11/21.]

WAC 478-121-635 Appeal from a dismissal of a formal complaint.

(1) A party may appeal a dismissal of a formal complaint or dismissal of any allegations in a formal complaint on any of the following bases:

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

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-635, filed 3/11/21, effective 4/11/21.]

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-640, filed 3/11/21, effective 4/11/21.]

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-645, filed 3/11/21, effective 4/11/21.]

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

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

plaint so that each party may meaningfully respond to the evidence prior to the conclusion of the investigation.

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

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-650, filed 3/11/21, effective 4/11/21.]

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-655, filed 3/11/21, effective 4/11/21.]

WAC 478-121-660 Determination regarding responsibility. (1)

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-660, filed 3/11/21, effective 4/11/21.]

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

- (a) Procedural irregularity affected the outcome of the matter;
- (b) A material error substantially affected the outcome of the fact finding or sanctioning;
- (c) New evidence that was not reasonably available at the time the determination regarding responsibility and/or dismissal was made could affect the outcome of the matter; and/or
- (d) A university official involved in the formal complaint investigation or adjudication had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter.

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

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

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

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

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

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

of responsibility, the appeal and/or response to the appeal, and/or any newly discovered evidence;

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

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

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-665, filed 3/11/21, effective 4/11/21.]

WAC 478-121-670 Service and time—Subpoenas—No discovery. (1)

Service of all university notices will be sent by electronic mail (email) addressed to the parties' university-issued email addresses unless either party provides an alternative and preferred email address. Parties are permitted to file documents, provide evidence, and respond to investigators, the hearing officer, or other individuals responsible for appeals via email. Service is complete at the moment the email is sent to the email addresses.

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

(3) Typically, the period from commencement of a proceeding conducted under Part VII of this code to the issuance of the investigative report, inclusive of the time parties may review the draft report and provide feedback will not exceed eighteen weeks. The period from issuance of an investigative report to the date of the hearing will not exceed seven weeks. Finally, the period from the hearing to the determination of responsibility, inclusive of the time frames required by the Department of Education federal regulations in light of those required to comply with state law for any appeal, will not exceed twenty-two weeks. Investigators and the hearing officer, or design-

nee(s), will notify the parties in writing of any delay in the proceedings and the cause for such delay. Delays are permissible for good cause, which may include, and not be limited to, the absence or unavailability of a party or witness, scheduling conflicts, concurrent law enforcement activity, holidays, or academic calendar breaks.

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-670, filed 3/11/21, effective 4/11/21.]

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

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

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

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

the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent.

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-675, filed 3/11/21, effective 4/11/21.]

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

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

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-680, filed 3/11/21, effective 4/11/21.]

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

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-685, filed 3/11/21, effective 4/11/21.]