



## **PUBLIC HEARING PROPOSED CHANGES TO**

**Chapter 132Y-300 of the Washington Administrative Code (Title IX)**  
**Chapter 132Y-125 of the Washington Administrative Code (Student Code of Conduct)**

**Date and Time:** Tuesday, November 10, 2020, 4:00pm

**Location:** Remote Hearing, via Zoom <https://zoom.us/j/94566170890>

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4:00pm **Welcome & Call to Order**  
Christina Castorena, Vice President, Student Services

4:05pm **Summary of Proposed Changes to:**  
**132Y-300 WAC, Title IX**  
**132Y-125 WAC, Student Code of Conduct**  
Mushka Rohani, Executive Director of Human Resources

4:15pm **Public Comment Period**  
Christina Castorena, Mushka Rohani

Public Comments and questions will be heard on the topic of the proposed changes to Chapter 132Y-300 and 132Y-125 WAC - Title IX, Student Code of Conduct. Participants should strive to keep their remarks to 3 minutes each, and will be asked to state their name.

Written comments on the topic of the proposed changes to Chapter 132Y-300 and Chapter 132Y-125 may also be submitted to Jorge de la Torre at [jorge.delatorrei@edcc.edu](mailto:jorge.delatorrei@edcc.edu) no later than Tuesday, November 10 at 4:00pm. Written comments should not exceed 300 words, include the commenter's name, and include the words "Public Comment" in the email subject line.

5:00pm **Adjournment\***  
Christina Castorena

*\*Meeting may be adjourned prior to 5:00pm if there are no further comments from the public*

Accommodations for attendees with disabilities can be provided when adequate notice is given.  
If you would like to request an accommodation, please contact Amber Marti:  
[amber.marti@edcc.edu](mailto:amber.marti@edcc.edu)



# PROPOSED RULE MAKING

**CR-102 (December 2017)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: October 02, 2020**

**TIME: 8:58 AM**

**WSR 20-20-071**

**Agency:** Edmonds College

☒ **Original Notice**

☐ **Supplemental Notice to WSR** \_\_\_\_\_

☐ **Continuance of WSR** \_\_\_\_\_

☒ **Preproposal Statement of Inquiry was filed as WSR** 20-17-125 ; or

☐ **Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

☐ **Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Chapter 132Y-300 Anti-discrimination and harassment policies and Chapter 132Y-125 Student code of conduct

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
November 10 <sup>th</sup> , 2020	4:00 pm	Via Zoom	Due to COVID-19 ,this meeting will be held online.

**Date of intended adoption:** November 10<sup>th</sup> (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Jorge de la Torre  
Address: 20000 68th Ave W, Lynnwood, WA 98036  
Email: [jorge.delatorre@email.edcc.edu](mailto:jorge.delatorre@email.edcc.edu)  
Fax:  
Other:  
By (date) Monday, November 2, 2020

**Assistance for persons with disabilities:**

Contact Amber Marti, Executive Assistant to Executive Director of HR  
Phone: 425-640-1036  
Fax:  
TTY:  
Email: [amber.marti@email.edcc.edu](mailto:amber.marti@email.edcc.edu)  
Other:  
By (date) Monday, November 2, 2020

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purpose of these proposed changes is to update the existing rules to comply with recent changes to Federal Title IX policy 34. C.F.R. Part 106. .

**Reasons supporting proposal:** The proposed rules will provide guidance, clarity, and consistency to the student code of conduct and anti-discrimination and harassment policy. Changes to the WAC have been proposed in response to the recent changes to Federal Title IX regulations, including an updated definition of sexual harassment, the rule of due process in the grievance process, changes to jurisdiction, and the right to a hearing with provisions for cross-examination.

<b>Statutory authority for adoption:</b> RCW 28B.50.140			
<b>Statute being implemented:</b>			
<b>Is rule necessary because of a:</b> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> Federal Law?  Federal Court Decision?  State Court Decision? </div> <div> <input checked="" type="checkbox"/> Yes   <input type="checkbox"/> No  <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No  <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No </div> </div>			
If yes, CITATION:			
<b>Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:</b>			
<b>Name of proponent:</b> (person or organization) Edmonds College			<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental
<b>Name of agency personnel responsible for:</b>			
	Name	Office Location	Phone
Drafting:	Amber Marti	Clearview, Room 122	425-640-1036
Implementation:	Christina Castorena	Lynnwood Hall, Room 142	425-640-1668
Enforcement:	Mushka Rohani	Clearview, Room 122	425-640-1647
<b>Is a school district fiscal impact statement required under RCW 28A.305.135?</b>			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here:			
<p>The public may obtain a copy of the school district fiscal impact statement by contacting:</p> <p>Name:</p> <p>Address:</p> <p>Phone:</p> <p>Fax:</p> <p>TTY:</p> <p>Email:</p> <p>Other:</p>			
<b>Is a cost-benefit analysis required under RCW 34.05.328?</b>			
<input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: Name: Address: Phone: Fax: TTY: Email: Other:			
<input checked="" type="checkbox"/> No: Please explain: Not a listed agency listed under 5.a.i.			
<b>Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:</b>			
This rule proposal, or portions of the proposal, <b>may be exempt</b> from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):			
<input checked="" type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.			

Citation and description:

- ☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.
- ☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.
- ☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:
- |   |   |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |
- ☐ This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.  
Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- ☒ No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_
- ☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

Signature:

Date: 10/02/2020

Name: Mushka Rohani

Title: Executive Director of Human Resources



**WAC 132Y-125-001 Student code of conduct.** (1) **Authority.** The Edmonds ((Community)) College board of trustees, acting pursuant to RCW 28B.50.140((14)) (13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president for student services or their designee. The student conduct officer or delegee shall serve as the principal investigator and administrator for alleged violations of this code.

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

The following rights are guaranteed to each student within the limitations of statutory law and college policies necessary to achieve the educational goals of the college(~~(, and also acting pursuant to Edmonds Community College Academic Freedom Policy (B.1.4))~~):

(a) **Academic freedom.**

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

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

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

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

(b) **Due process.**

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

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

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

(3) **Student misconduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which includes, but is not limited to, any of the following:

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

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

(ii) Plagiarism including, but not limited to, presenting or submitting another person's, entities', and/or sources' ideas, words, or other works in an instructional course without assigning proper credit.

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

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

(b) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

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

(ii) Tampering with an election conducted by or for college students; or

(iii) Knowingly furnishing false information, or failing to furnish accurate and honest information, in response to the request or requirement of a college officer or employee.

(c) **Obstruction or ((disruption of:)) disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise hinders:

(i) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(ii) Any operation of the college, including the infringement on the rights of another member(s) of the college community; or

(iii) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(d) **Assault, intimidation, harassment.** Unwanted touching, assault, battery, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(i) Bullying is ~~((physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and))~~ defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(ii) Stalking is ~~((intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent.~~

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

~~(B) Reasonable fear is a fear that a reasonable person in the same situation would experience under most circumstances)) defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.~~

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

(f) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property, or money of:

(i) The college or state;

(ii) Any student, college official, employee, or college affiliated or sponsored organization; or

(iii) Any other member of the college community, or organization; or

(iv) Possession of such property or money after it has been stolen.

(g) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of their duties, including refusal to properly identify oneself to such a person when requested to do so.

(h) **Weapons.** Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm, unless previously authorized in writing by the president or designee.

(i) **Hazing.** Hazing includes, but is not limited to, any initiation into or affiliation with a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(j) **Tobacco violation.** Violation of the college's Tobacco (~~Use—Smoking on Campus Policy (C-6.3.520))~~) and Smoke-Free Policy HR 8.0.

(k) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(l) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(m) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW except in ac-

cordance with a lawful prescription for that student by a licensed health care professional.

(n) **Lewd conduct.** Conduct which is lewd, or obscene.

(o) **Discrimination.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy, marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; any other legally protected classification; or any violation of the college's nondiscrimination policy.

(p) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132Y-125-130. (prohibited conduct under Title IX).

(i) **Sexual harassment.** ~~((Conduct includes, but is not limited to, engaging in))~~ The term "sexual harassment" means unwelcome sexual or gender-based conduct including unwelcome sexual advances, requests for sexual favors, ((or other sexual conduct, including)) quid pro quo harassment, and other verbal, nonverbal, ~~((electronic or social media communication,))~~ or physical ~~((touching))~~ conduct of a sexual or a gendered nature that is sufficiently ~~((serious))~~ severe, persistent, or pervasive as to ~~((deny or limit, and that does deny or limit, based on sex,))~~ :

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

(B) Alter the terms or conditions of employment for a college employee(s); and/or

(C) Create((s)) an intimidating, hostile, or offensive environment for other campus community members~~((, or violation of the college's sexual harassment policy))~~.

(ii) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(iii) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

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

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

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



(D) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

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

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

(F) Dating violence ((means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

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

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

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

(aa) The length of the relationship;

(bb) The type of relationship; and

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

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

(F) Consent:)). Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

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

(II) Suffer substantial emotional distress.

For the purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

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

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

(q) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy, marital status; age; religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." ~~((as defined in (p)(i) of this subsection.))~~ Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(r) **Retaliation.** ~~((Retaliation against any individual for reporting, providing information, exercising one's own rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.))~~ Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such a person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

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

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

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

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

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

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

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

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

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

(ix) Failure to comply with the college's regulation on appropriate use of college information technology resources or the electronic use policies as established by the college.

(t) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(u) **Safety violation.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of

the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(v) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(w) **Abuse or misuse of hearing procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(i) Falsification or misrepresentation of information;

(ii) Disruption, or interference with the orderly conduct of a proceeding;

(iii) Interfering with someone else's proper participation in a proceeding;

(iv) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness, including retaliation;

(v) Attempting to influence the impartiality of, or harassing or intimidating a student conduct committee member; or

(vi) Failure to comply with any disciplinary sanction(s) imposed under ((EdCC's)) Edmonds College's student conduct code.

(x) **Ethical violation.** The breach of any generally recognized and/or published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or program.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal investigation or prosecution.

(4) **Sanctions.** Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the student code of conduct hearing procedures.

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

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

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

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

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the sanction is taken.

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

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

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

(c) **No contact/trespass order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility for a stated period of time.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

**WAC 132Y-125-005 Statement of jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises ~~((, to conduct that occurs))~~;

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

or

(c) To off-campus conduct that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as

well as during the academic year and during periods between terms of actual enrollment.

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

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

**WAC 132Y-125-010 Definitions.** The following definitions shall apply for purposes of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays and/or college closures.

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

(3) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions, in accordance with the procedures of this code. ~~((The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.))~~

(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

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

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

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

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

(7) ~~((The))~~ President is the president of Edmonds Community College. The president is authorized to delegate any of ~~((his or her))~~ their responsibilities as set forth in this chapter, and as may be reasonably necessary; and reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(8) "Complainant" is an alleged victim of sexual misconduct.

(9) "Respondent" is the student against whom disciplinary ((pre-  
ceedings have been initiated or who has received sanctions)) action is  
initiated.

~~((9))~~ (10) "Service" is the process by which a document is of-  
ficially delivered to a party. Unless otherwise provided, service upon  
a party shall be accomplished by:

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

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

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

~~((10))~~ (11) "Student" includes all persons taking courses at or  
through the college, whether on a full-time or part-time basis, and  
whether such courses are credit courses, noncredit courses, online  
courses, or otherwise. Persons who withdraw after allegedly violating  
the code, who are not officially enrolled for a particular term but  
who have a continuing relationship with the college, or who have been  
notified of their acceptance for admission are considered "students."

~~((11))~~ (12) "Student conduct officer" is a college administra-  
tor designated by the ((vice)) president ((for student services)) to  
be responsible for implementing and enforcing the student conduct  
code. ((The vice president for student services is authorized to reas-  
sign any and all of the student conduct officer's duties or responsi-  
bilities as set forth in this chapter as may be reasonably necessa-  
ry.))

(13) "Sexual misconduct" has the meaning ascribed to this term in  
WAC 132Y-125-001.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective  
6/29/15)

**WAC 132Y-125-015 Initiation of disciplinary action.** (1) All  
disciplinary actions will be initiated by the student conduct officer.  
If that officer is the subject of a complaint initiated by the re-  
spondent, the vice president for student services shall, upon request  
and when feasible, designate another person to fulfill any such disci-  
plinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary ac-  
tion by serving the respondent with written notice directing him or  
her to attend a disciplinary meeting. The notice shall briefly de-  
scribe the factual allegations, the provision(s) of the conduct code  
the respondent is alleged to have violated, the range of possible  
sanctions for the alleged violation(s), and shall also specify the  
time and location of the meeting. At the meeting, the student conduct  
officer will present the allegations to the respondent and the re-  
spondent shall be afforded an opportunity to explain what took place.  
If the respondent fails to attend the meeting after proper service of  
notice, the student conduct officer may take disciplinary action based  
upon the available information.

(3) Within ten days of the initial disciplinary meeting, and af-  
ter considering the evidence in the case, including any facts or argu-  
ment presented by the respondent, the student conduct officer shall  
serve the respondent with a written decision setting forth the facts  
and conclusions supporting his or her decision, the specific student

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

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

(a) Exonerate the respondent and terminate the proceedings; or

(b) Impose a disciplinary sanction(s), as described in WAC 132Y-125-001 (4) and (5).

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(5) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

**WAC 132Y-125-020 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

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

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

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

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

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

(b) Dismissals; and

(c) Disciplinary cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

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

- (a) Suspensions of ten instructional days or less;
- (b) Probation;
- (c) Written reprimands; and

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

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

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

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

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

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

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

**WAC 132Y-125-025 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer (~~((designated by the vice president for student services))~~). The conduct review officer shall not participate in any case in which (~~((he or she is))~~) they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

(a) An opportunity to be informed of the agency's view of the matter; and

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

(3) The conduct review officer shall serve an initial decision upon (~~((both the parties))~~) the respondent and the student conduct officer within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~((twenty-one))~~) ten days of service of the initial decision, the initial decision shall be deemed the final decision.



(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

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

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

**WAC 132Y-125-030 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within (~~(twenty-one)~~) ten days of service of the initial decision.

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

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

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

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

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

**WAC 132Y-125-060 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or
- (c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

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

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

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

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

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

(5) If the respondent chooses to appeal the summary suspension, the conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

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

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

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

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision, which shall include a

brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal; and

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

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

#### NEW SECTION

**WAC 132Y-125-125 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Edmonds College's standard disciplinary procedures, WAC 132Y-125-005 through 132Y-125-060, these supplemental procedures shall take precedence.

#### NEW SECTION

**WAC 132Y-125-130 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Edmonds College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

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

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

#### NEW SECTION

**WAC 132Y-125-135 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

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

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

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit

it Edmonds College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Edmonds College's student conduct code, WAC 132Y-125-001.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

#### NEW SECTION

**WAC 132Y-125-140 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
  - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
  - (ii) An advisor may be an attorney; and
  - (iii) Edmonds College will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

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

#### NEW SECTION

**WAC 132Y-125-145 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132Y-125-040. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appear-

ance with the committee chair with copies to all parties and the student conduct officer.

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

#### NEW SECTION

**WAC 132Y-125-150 Rights of parties.** (1) Edmonds College's student conduct procedures, WAC 132Y-125-040, and this supplemental procedure shall apply equally to all parties.

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

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

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

#### NEW SECTION

**WAC 132Y-125-155 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the

privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

#### NEW SECTION

**WAC 132Y-125-160 Initial order.** (1) In addition to complying with WAC 132Y-125-050, the student conduct committee will be responsible for conferring and drafting an initial order that:

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

(2) The committee chair will serve the initial order on the parties simultaneously.

#### NEW SECTION

**WAC 132Y-125-165 Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132Y-125-055.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Y-125-100	Supplemental sexual misconduct procedures.
WAC 132Y-125-105	Supplemental definitions.
WAC 132Y-125-110	Supplemental complaint process.
WAC 132Y-125-115	Supplemental appeal rights.



AMENDATORY SECTION (Amending WSR 15-12-069, filed 5/29/15, effective 6/29/15)

**WAC 132Y-300-005 Statement of policy.** Edmonds Community College provides equal opportunity in education and employment and does not discriminate on the basis of protected classes as required by state and federal law. Prohibited discrimination and/or harassment of protected classes includes sexual harassment.

~~((1) Harassment is defined, for the purpose of this policy, as unwelcome and unauthorized incidents and/or patterns of conduct or speech that are:~~

~~(a) Persistent, pervasive, or severe; and~~

~~(b) Based on an association or perceived association with a protected class and which:~~

~~(i) The respondent either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the complainant; and~~

~~(ii) Renders the college environment (including the environment for employees, students, and visitors) hostile, intimidating, or demeaning for the complainant.~~

~~(2) Sexual harassment is a form of sex discrimination. Sexual harassment is defined, for the purpose of this policy, as unwelcome sexual advances, requests, and other unwelcome conduct of a sexual nature where:~~

~~(a) Submission to such conduct is made, either expressly or implicitly, a term or condition of an individual's employment or education; or~~

~~(b) Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or~~

~~(c) Such unwelcome conduct is sufficiently persistent, pervasive, or severe to have the effect of substantially interfering with any individual's academic or professional performance.~~

~~(3) Sexual harassment conduct includes, but is not limited to, engaging in unwelcome sexual advances; requesting sexual favors; engaging in other sexual behaviors including verbal, nonverbal, electronic or social media communication; or physically touching that would create an intimidating, hostile, or offensive educational environment or substantially interfere with a reasonable person's work or educational performance.))~~

AMENDATORY SECTION (Amending WSR 15-12-069, filed 5/29/15, effective 6/29/15)

**WAC 132Y-300-010 Procedures.** (1) **Introduction.** Edmonds ((Community)) College, hereinafter referred to as "the college," recognizes its responsibility for investigating and resolving incidents; implementing corrective measures; monitoring the educational environment and workplace; and implementing regulations to stop, remediate, and prevent discrimination and harassment based on an individual's association ~~((or perceived association))~~ with protected classes as required by law. To this end, the college has enacted a policy prohibiting discrimination against and harassment of members of these protected

classes and procedures that deal with complaints and violations of the policy. Any individual found to be in violation of the policy will be subject to disciplinary action up to and including expulsion from the college or dismissal from employment.

Any employee, student, or visitor who is the alleged subject of discrimination or harassment should report the incident or incidents to the EO/AA office, Title IX coordinator identified below. If the complaint is against that officer, the complainant should report the matter to the president's office for referral to an alternate designee.

**Civil Rights:** Equal Opportunity/Affirmative Action (EO/AA).

**Title IX:** Gender Discrimination, Sexual Harassment, and Sexual Violence.

Title: EO/AA Office, Title IX Coordinator

Office: Edmonds Community College

20000 - 68th Ave. W.

Clearview Building, Room 122

Lynnwood, WA 98036

~~((The EO/AA office, Title IX coordinator or designee:~~

~~• Will accept all complaints and referrals from college employees, students, and visitors.~~

~~• Will make determinations regarding how to handle requests by complainants for privacy.~~

~~• Will keep accurate records of all complaints and referrals for the required time period.~~

~~• May conduct investigations or assign and oversee investigations conducted by others.~~

~~• May impose interim remedial measures to protect parties during investigations of discrimination or harassment.~~

~~• Will issue written findings of fact on completed investigations.~~

~~• May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate action.~~

~~(2) **Definitions.**~~

~~(a) Complainant. Any employee, student, or visitor of the college who is the alleged subject of discrimination or harassment due to an association or perceived association with a protected class.~~

~~(b) Complaint. A description of facts that allege violation of the college's nondiscrimination and harassment policy.~~

~~(c) Consent. Knowing, voluntary, and clear permission, by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.~~

~~Individuals cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when that person knows, or should know, that the other individual is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.~~

~~(d) Discrimination. The unfavorable treatment of a person based on an individual's association or perceived association with a protected class. Harassment is a form of discrimination.~~

~~(e) Harassment. Unwelcome and unauthorized incidents and/or patterns of conduct or speech that are persistent, pervasive, or severe and based on an association or perceived association with a protected class; and which the respondent either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the complainant, and renders the college environment (including the environment for employees, students, and visitors) hostile, intimidating, or demeaning for the complainant. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:~~

- ~~• Epithets, "jokes," ridicule, mockery, or other offensive or derogatory conduct focused upon an individual's membership in a protected class.~~

- ~~• Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.~~

- ~~• Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender, or any other protected class.~~

~~(f) Protected class. A group of individuals who are protected under state or federal laws, including laws that prohibit discrimination on the basis of age, citizenship, color, creed, disability, gender identity or expression, genetic information, marital status, national origin, pregnancy, race, religion, sex, sexual orientation, use of service animal, or veteran/military status.~~

~~(g) Resolution. The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline.~~

~~(h) Respondent. An individual who is a member of the campus community who allegedly discriminates against or harasses another person.~~

~~(i) Sexual harassment. Unwelcome sexual advances, requests, and other unwelcome conduct of a sexual nature where submission to such conduct is made, either expressly or implicitly, a term or condition of an individual's employment or education; or submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or such unwelcome conduct is sufficiently persistent, pervasive, or severe to have the effect of substantially interfering with any individual's academic or professional performance. Two types of sexual harassment include:~~

- ~~(i) Hostile environment sexual harassment. A form of harassment that occurs when the conduct is sufficiently persistent, pervasive, or severe and so objectively offensive that it has the effect of altering the terms or conditions of an employee's employment or substantially limiting the ability of a student to participate in or benefit from the college's educational programs, social programs, and/or student housing.~~

- ~~(ii) Quid pro quo sexual harassment. A form of harassment that occurs when an individual in a position of real or perceived authority makes receiving a benefit conditional upon granting of sexual favors.~~

~~Examples of conduct that may qualify as sexual harassment include:~~

- ~~• Persistent comments or questions of a sexual nature.~~
- ~~• A supervisor who gives an employee a raise in exchange for submitting to sexual advances.~~

- ~~An instructor who promises a student a better grade in exchange for sexual favors.~~
- ~~Sexually explicit statements, questions, jokes, or anecdotes.~~
- ~~Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.~~
- ~~Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.~~
- ~~Persistent, unwanted attempts to change a professional relationship to an amorous relationship.~~
- ~~Direct or indirect propositions for sexual activity.~~
- ~~Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.~~

~~(j) Sexual violence. A type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.~~

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

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

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

~~(iv) Dating violence is violence by a person who has been in a romantic or intimate relationship with the complainant. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.~~

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

~~(3)) (2) **Filing a complaint.** The college encourages the timely reporting of any incidents of alleged discrimination or harassment. Any employee of, student of, or visitor to the college may file a complaint. Complaints ((may)) must be submitted in writing ((or verbally)).~~

For complainants who wish to submit a written complaint, a formal complaint form is available online at [www.edcc.edu/titleix/](http://www.edcc.edu/titleix/). Hardcopies of the complaint form are available at the following locations on campus: Human resources office((,)) and vice president for student services office. Any person submitting a discrimination or harassment complaint shall be provided with a written copy of the college's non-discrimination and harassment policy and procedures.

((4)) The proposed content is designed to assist you with filing a discrimination and/or harassment complaint. Please write clearly

and focus on the alleged discriminatory and/or harassing conduct. The complaint should include as much information regarding the incident(s) giving rise to the complaint as possible, including the location, date, and time of the alleged incident(s); the name of the individual or group whom the complaint is against, if known; a description of the incident(s); and the remedy sought.

You may attach additional documents if needed. Please include your contact information (phone, email, mailing address), sign, and return your complaint to the EO/AA office, Title IX coordinator or designee. A link to an online reporting form is located at <http://www.edcc.edu/titleix/>.

**(3) Confidentiality and right to privacy.** The college will seek to protect the privacy of the ~~((individuals involved))~~ complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, comply with the state and federal laws, ~~((and follow))~~ as well as the college's policy and procedures. ~~((The college cannot guarantee complete confidentiality. The EO/AA office, Title IX coordinator or designee will determine how to handle requests for privacy.~~

~~The EO/AA office, Title IX coordinator or designee will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks for their name to not be revealed to the respondent or that the college not investigate the allegation, the EO/AA office, Title IX coordinator or designee will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the EO/AA office, Title IX coordinator or designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:~~

- ~~• The seriousness of the alleged sexual violence;~~
- ~~• The age of the complainant;~~
- ~~• Whether the sexual violence was perpetrated with a weapon;~~
- ~~• Whether the respondent has a history of committing acts of sexual violence or has been the subject of other sexual violence complaints;~~
- ~~• Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and~~
- ~~• Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).~~

~~If the college is unable to honor a complainant's request for privacy, the EO/AA office, Title IX coordinator or designee will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.~~

~~If the college decides not to conduct an investigation or take disciplinary action because of a request for privacy, the EO/AA office, Title IX coordinator or designee will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.~~

**(5) Investigation procedure.** Upon receiving a complaint, the college shall commence an impartial investigation. The EO/AA office, Ti-

the IX coordinator or designee shall be responsible for overseeing all investigations. The EO/AA office, Title IX coordinator or designee may conduct investigations. If the investigation is assigned to someone other than the EO/AA office, Title IX coordinator or designee then the complainant and respondent shall be notified of the appointment of an investigator.

(a) Interim measures. The EO/AA office, Title IX coordinator or designee may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of noncontact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student code of conduct or the college's employment policies and collective bargaining agreements.

(b) Investigation. Complaints shall be thoroughly and impartially investigated. The investigation shall include, but will not be limited to, interviewing the complainant and the respondent, interviewing relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring urgent circumstances. At the conclusion of the investigation, the investigator(s) shall set forth findings and recommendations in writing. If the investigator(s) is a designee, the investigator(s) shall send a copy of the findings and recommendations to the EO/AA office, Title IX coordinator or designee. The EO/AA office, Title IX coordinator or designee shall consider the findings and recommendations and determine, based on a preponderance of evidence, whether a violation of the nondiscrimination and harassment policy occurred, and, if so, what steps will be taken to resolve the complaint, remedy the effects of the violation on the complainant, and prevent the violation's recurrence. Possible remedial steps may include, but will not be limited to, referral for voluntary training/counseling, development of a remediation plan, a noncontact order, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the college's student code of conduct or the college's employment policies and collective bargaining agreements.

(c) Written notice of decision. The EO/AA office, Title IX coordinator or designee will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended in an effort to resolve the complaint, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommendations in an effort to resolve the complaint, such as a finding that the complaint is or is not meritorious or a recommendation that the respondent not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

(d) Informal dispute resolution. Informal dispute resolution processes, such as mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a

dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(e) ~~Final decision/reconsideration.~~ Either the complainant or the respondent may seek reconsideration of the decision by the EO/AA office, Title IX coordinator or designee. Requests for reconsideration must be submitted in writing to the EO/AA office, Title IX coordinator or designee within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven days, the decision becomes final. If a request for reconsideration is received, the EO/AA office, Title IX coordinator or designee shall respond within 14 days. The EO/AA office, Title IX coordinator or designee shall either deny the request or will issue an amended decision. Any amended decision is final and no further reconsideration is available.

(6)) Although the college will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(a) The Title IX coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged discrimination or sexual harassment. If a complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

(i) The seriousness of the alleged sexual harassment;

(ii) The age of the complainant;

(iii) Whether the sexual harassment was perpetrated with a weapon;

(iv) Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;

(v) Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and

(vi) Whether relevant evidence about the alleged incident can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

(b) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this grievance procedure.

(c) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and pre-

vent their recurrence, and implement such measures if reasonably feasible.

(4) Publication of nondiscrimination and harassment policy and procedures. The policy and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or designee. Individuals who believe they have been subjected to discrimination or harassment will be provided a copy of the policy and procedures.

((+7)) (5) Limits to authority. Nothing in these procedures shall prevent the president or designee from taking immediate disciplinary action in accordance with the college's policies and procedures, and federal, state, and/or municipal rules and regulations.

((+8)) (6) Retaliation, intimidation, and coercion. Retaliation by, for, or against any participant (including complainant, respondent, witness, investigator, or EO/AA office, Title IX coordinator or designee) is expressly prohibited. Retaliatory action of any kind taken against a participant who is seeking redress under the nondiscrimination and harassment policy and using these procedures is prohibited and is subject to discipline. Individuals who think they have been retaliated against, intimidated, or coerced should contact the EO/AA office, Title IX coordinator or designee immediately.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Y-300-001	Preamble.
WAC 132Y-300-020	Complaint content.