



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017)
(Implements RCW 34.05.350
and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: July 30, 2024

TIME: 4:28 PM

WSR 24-16-052

Agency: Edmonds College

Effective date of rule:

Emergency Rules

- ☐ Immediately upon filing.
☒ Later (specify) August 1, 2024

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- ☐ Yes ☒ No If Yes, explain:

Purpose: To bring Edmonds College into compliance with new Title IX federal regulations. The Edmonds College Board of Trustees adopted these emergency rules in an open public meeting on July 29, 2024 and approved the emergency rules effective upon filing, resolution # 24-7-1.

Citation of rules affected by this order:

New:
Repealed:
Amended: WAC 132Y-125 and WAC 132Y-300
Suspended:

Statutory authority for adoption: RCW 28B.50.140(13), RCW 34.05, 20 U.S.C. §1092(F), Title IX of the Education Amendments of 1972, Department of Education April 2024 Title IX Regulations Final Rule

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- ☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

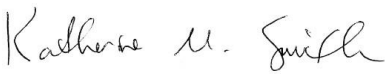
On April 19, 2024, the U.S. Department of Education released its Final Rule under Title IX. This rule requires institutions of higher education to adopt investigative and disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

Note: If any category is left blank, it will be calculated as zero.
No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	20	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:				
	New	_____	Amended	_____ Repealed _____
The number of sections adopted on the agency’s own initiative:				
	New	_____	Amended	_____ Repealed _____
The number of sections adopted in order to clarify, streamline, or reform agency procedures:				
	New	_____	Amended	20 Repealed _____
The number of sections adopted using:				
Negotiated rule making:	New	_____	Amended	_____ Repealed _____
Pilot rule making:	New	_____	Amended	_____ Repealed _____
Other alternative rule making:	New	_____	Amended	_____ Repealed _____
Date Adopted: July 30, 2024			Signature: 	
Name: Katherine M. Smith				
Title: Title IX Coordinator				

WAC 132Y-125-001 Student code of conduct. (1) **Authority.** The Edmonds College board of trustees, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president for student services or their designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

(2) **Statement of student rights.** As members of the Edmonds 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:

(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) **Prohibited student misconduct.** The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team, or living group, who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit((7)) 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: 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 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 defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.~~

~~(ii) Stalking is 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 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 accordance 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 har-~~

assment 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.** The term "sexual harassment" means unwelcome sexual or gender-based conduct including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

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

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

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

(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. 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. 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. 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. 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. 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." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.~~

~~(r) **Retaliation.** 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 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.)) **Abuse of others**, as defined in WAC 132Y-125-010.~~

~~(b) **Abuse in later life.**~~

~~(i) Neglect, abandonment, economic abuse, or willful harm of an adult aged 60 or older by an individual in an ongoing relationship of trust with the victim; or~~

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

~~(iii) Does not include self-neglect.~~

~~(c) **Academic dishonesty.** Any act of academic dishonesty, including:~~

~~(i) Cheating - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.~~

~~(ii) Plagiarism - Taking and using as one's own, without proper attribution, the ideas, writings, work of another person, or artificial intelligence, in completing an academic assignment. Prohibited~~

conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

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

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

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

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

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

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

(e) **Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(f) **Cannabis, drug, and tobacco violations.**

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

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

(iii) Tobacco, electronic cigarettes, and related products. The use, distribution, or sale of tobacco, electronic cigarettes, and related products is prohibited on and within all college owned, leased, or managed property. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

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

al recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

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

(i) **Discriminatory harassment,** as defined in WAC 132Y-125-010.

(j) **Ethical violation,** as defined in WAC 132Y-125-010.

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

(l) **Harassment or bullying,** as defined in WAC 132Y-125-010.

(m) **Hazing,** as defined in WAC 132Y-125-010.

(n) **Indecent exposure,** as defined in WAC 132Y-125-010.

(o) **Lewd conduct,** as defined in WAC 132Y-125-010.

(p) **Misuse of electronic resources,** as defined in WAC 132Y-125-010.

(q) **Property violation,** as defined in WAC 132Y-125-010.

(r) **Retaliation,** as defined in WAC 132Y-125-010.

(s) **Safety violations,** as defined in WAC 132Y-125-010.

(t) **Sex discrimination,** as defined in WAC 132Y-125-010.

(u) **Title IX retaliation,** as defined in WAC 132Y-125-010.

(v) **Unauthorized access,** as defined in WAC 132Y-125-010.

(w) **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 housing, traffic, and parking rules.

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

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

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

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

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

(4) 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)) (5) **Corrective action, disciplinary sanctions, terms and conditions.** Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students ((according to

~~the student code of conduct hearing procedures)) or college-sponsored student organizations, athletic teams, or living groups found responsible for violating this code.~~

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

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

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance 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~~) an expulsion 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) **Disciplinary suspension.** (~~Dismissal~~) Expulsion from the college and from the student status for a stated period of time. There (~~may~~) will be no refund of tuition or fees for the quarter in which the action is (~~taken~~) imposed.

(e) (~~Dismissal~~) **Expulsion.** 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.~~) (f) **Hazing sanctions.**

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

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

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

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

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

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

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

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

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

~~(d) **No contact directive.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.~~

~~(e) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as 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.~~

~~(f) **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 pro-~~

ceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

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

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

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

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

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-005 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students or student ~~((conduct))~~ groups that occurs:

(a) On college premises;

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

(c) ~~((To off-campus conduct that,))~~ Off college premises, if in the judgment of the college, ~~((adversely affects))~~ the conduct has an adverse impact on the college community ~~((or)),~~ the pursuit of its objectives, or the ability of a student or staff member to participate in the college's programs and activities.

(2) Jurisdiction extends to~~((, but is not limited to,))~~ locations in which students are engaged in ~~((official))~~ college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the ~~((associated))~~ students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, on-line 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))~~ they gain admission to the college through the ~~((actual receipt))~~ last day of enrollment or award of ~~((a))~~ any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of ~~((actual))~~ enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The ~~((student conduct officer))~~ college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

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

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

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

(1) "Abuse of others" means assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

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

((+2)) (3) "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)) (4) "Complainant" means individuals who are alleged to have been subjected to prohibited conduct, including a student or employee, or a person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(5) "Complaint" means a written or oral request that can be objectively understood as a request for the college to investigate and make a determination about prohibited conduct.

(6) "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.

((+4)) (7) "Confidential employee" means a college employee whose communications are privileged and confidential under federal or state law. An employee's status as a confidential employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.

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

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

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

(9) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

((+5)) (10) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ((ten)) 10 instructional days or an expulsion are heard by the student conduct ((appeals board)) committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

((+6)) (11) "Disciplinary sanction" means consequences imposed on a respondent following a determination that the respondent violated the college's policy prohibiting sex discrimination.

(12) "Discriminatory harassment" means:

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

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

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental, or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

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

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

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

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

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

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

((+7)) (15) "Harassment or bullying" means the conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic

or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

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

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

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

(16) "Hazing" means any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college-sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. Hazing does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing.

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

(18) "Investigation procedure" is the process the college uses to initiate, informally resolve, and/or investigate allegations that an individual has violated college policies prohibiting sex discrimination or sex-based harassment.

(19) "Lewd conduct" means conduct which is lewd, or obscene.

(20) "Mandatory reporters" are all college employees, excluding confidential employees. Mandatory reporters are required to report conduct that could reasonably constitute sex discrimination to the Title IX coordinator.

(21) "Misuse of electronic resources" means the theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

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

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

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

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

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

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

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

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

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

(22) "Peer retaliation" means retaliation by a student against another student.

(23) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(24) "Preponderance of the evidence" means on a more probable than not basis.

(25) "President" is the president of Edmonds ((Community)) College. The president is authorized to delegate any of 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)) (26) "Program" or "programs and activities" means all operations of the college.

(27) "Property violation" means damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

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

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

(30) "Respondent" is ((the student against whom disciplinary action is initiated)) an individual who has been alleged to have violated the student conduct code or college's policy prohibiting sex discrimination.

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

((10)) (32) "Safety violations" include nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety

equipment and triggering false alarms or other emergency response systems.

(33) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

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

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

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

((+11+)) (34) "Sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

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

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

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

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

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

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

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

(c) Sexual violence includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(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 (fondling) is any actual or attempted intentional sexual touching, however slight, with any body part or object, by a person upon another person that is without con-

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

(iv) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

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

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

(A) The length of the relationship;

(B) The type of relationship; and

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

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

(36) "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((-))" for the purposes of this code.

((+12+)) (37) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

((+13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132Y-125-001.) (38) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education; and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(39) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organi-

zations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(40) "Summary suspension" means an emergency suspension of a student respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 132Y-125-060.

(41) "Supportive measures" means the reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

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

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

(42) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy. "Title IX coordinator" is the individual responsible for processing Title IX complaints and conducting or overseeing formal investigations and informal resolution processes.

(43) "Title IX personnel" includes the Title IX coordinator and designees, investigators, student conduct officers, and decision makers at both the hearing and appeal level, responsible for administering the college's sex discrimination investigation and disciplinary procedures; facilitators of the informal sex discrimination resolution process; and any other employees who are responsible for implementing the college's sex discrimination investigation or sex discrimination disciplinary procedures for students or have the authority to modify or terminate supportive measures.

(44) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by the college, a student, or an employee or other person authorized by the college to provide aid, benefit, or service under the college's education program or activity, for the purpose of interfering with any right or privilege secured by college policies and procedures prohibiting sex discrimination, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for sex discrimination. Nothing in this definition precludes the college from requiring an employee to provide aid, benefit, or service under the college's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

(45) "Unauthorized access" means the 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.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

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 respondent, the vice president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.~~

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

~~(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.~~

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

~~(a) Exonerate the respondent and terminate the proceedings; 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.)~~ (1) Any member of the college community may file a complaint

against a student or student group for possible violations of the student conduct code.

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

(a) Sex discrimination, including sex-based harassment. The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

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

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

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

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

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

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

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

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

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

(9) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an

opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(10) Within 10 calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

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

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132Y-125-001; or

(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.

(12) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

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

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-020 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132Y-125-015, the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ((twenty-one)) 21 calendar 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, complainant, if any, and the conduct review officer.

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

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

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

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

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

(b) ((Dismissals; and)) Expulsions;

(c) Sex discrimination, including sex-based harassment cases; and

(d) 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))~~ 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

~~((9) Except as provided elsewhere in these rules, disciplinary 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 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-025 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which 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 the respondent and the student conduct officer within ~~((ten))~~ 10 calendar days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((ten))~~ 21

calendar 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))~~ 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

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 ~~((ten))~~ 21 calendar 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))~~ 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within ~~((twenty))~~ 20 calendar days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ~~((ten))~~ 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

~~((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 protec-~~

tion, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.))

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

WAC 132Y-125-035 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;
(b) Two faculty members appointed by the president;
(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The ~~((administrative staff member))~~ faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

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

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness; in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member ~~((pursuant to RCW 34.05.425(4)))~~.

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

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

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

WAC 132Y-125-040 ~~((Appeal--))~~ Student conduct committee—Prehearing. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW ~~((and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there~~

~~is a conflict between these rules and chapter 10-08 WAC, these rules shall control)).~~

(2) The student conduct committee chair shall serve all parties with written notice of any hearing not less than seven calendar days in advance of the hearing date(~~(, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045))~~). The chair may shorten this notice period if both parties agree, and may continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) a statement that retaliation is prohibited.

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

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

- (a) The conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by ~~((a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer))~~ an advisor of their choice, which may be an attorney retained at the party's expense. The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the

student conduct officer may also be represented by ((a second appropriately screened)) an assistant attorney general.

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

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

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

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

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

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

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

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

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

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

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

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

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

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

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later

than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

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

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

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

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

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

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

WAC 132Y-125-045 Student conduct committee ((hearings))—Presentation((s)) of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that ((he/she)) they select((s)), in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the college's case (~~for imposing disciplinary sanctions~~).

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witness by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

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

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

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

(i) Spousal/domestic partner privilege;

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

(iii) Clergy privileges;

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

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

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

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

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

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether

questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

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

WAC 132Y-125-050 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form ~~((it))~~, written or verbal, the committee wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within ~~((twenty))~~ 20 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate ~~((discipline))~~ sanctions, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by ~~((the respondent))~~ a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

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

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

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

WAC 132Y-125-055 ~~((Appeal from student conduct committee initial decision.))~~ Student conduct committee—Review of initial decision.

(1) ~~((A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee))~~ Any party, including a complainant in sex-based harassment cases, may appeal the committee's initial decision to the president by filing a notice of appeal with the

president's office within ~~((twenty-one))~~ 21 calendar days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The ~~((notice of))~~ written appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. ~~((If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.))~~ Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

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

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) ~~((The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.~~

~~((4))~~ Upon receiving a timely appeal, the president or designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

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

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

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

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

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

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)) calendar days of the oral notice.

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

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

((DISCIPLINE)) PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-125 ((Order of precedence.)) Procedures for cases involving allegations of sexual misconduct. ((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.)) The college recognizes its responsibility to investigate, resolve, implement supportive and corrective measures, and monitor the educational environment and workplace to promptly and effectively stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, the college has enacted and adopted the following Title IX sex discrimination investigation procedure (procedure) for purposes of receiving and investigating allegations of sex discrimination arising within the college's educational programs and activities. Any individual found responsible for engaging in sex discrimination in violation of college policy may be subject to disciplinary action up to and including dismissal from the college's educational programs and activities.

Application of this procedure is restricted to allegations of sex discrimination, which includes, but is not limited to, allegations of sex-based harassment, as those terms are defined within this code. Nothing in this procedure limits or otherwise restricts the college's ability to investigate alleged misconduct and pursue discipline based on violations of other federal, state, and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in the college's code of student conduct.

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 or a college-sponsored student organization, athletic team, or living group, 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)) sex-based harassment, as defined in WAC 132Y-125-010.~~

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-135 Title IX ((jurisdiction)) investigation procedure. ~~((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 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.)) (1) **Title IX coordinator investigation duties.** During an investigation, the Title IX coordinator or a delegate is responsible for:~~

~~(a) Accepting, evaluating, and processing all sex discrimination and sex-based harassment complaints, reports, or referrals;~~

~~(b) Conducting an intake meeting with the complainant and, at that time, notifying the complainant, or the individual who reported the conduct if the complainant is unknown, of the college's Title IX investigation and disciplinary procedures, as well as the informal resolution process if appropriate and available. After providing this information, the Title IX coordinator will ascertain whether the complainant would like the college to proceed with an investigation of the sex discrimination complaint, and, if so, will initiate a com-~~

plaint subject to the procedure and factors set forth in this procedure.

(c) Addressing and resolving, if possible, questions regarding confidentiality raised by parties and witnesses;

(d) Determining whether a complaint should be dismissed during the investigation phase, and if so, notifying the complainant or the parties (if respondent has been notified of the complaint) of the reasons for the dismissal, and providing the complainant or parties with information about the procedure for filing an appeal of the dismissal;

(e) When a party is a student employee and the allegations involve sex-based harassment, making a fact-specific inquiry into whether the party's primary relationship with the college is to receive an education and whether alleged sex-based harassment occurred while the party was performing employment-related work and, based on this inquiry, determine whether the party should be treated as a student or an employee under this investigation procedure and related disciplinary procedures;

(f) Maintaining accurate records of all complaints, reports, and referrals;

(g) Retaining investigation files, complaints, reports, and referrals in compliance with applicable records retention periods or federal or state law, whichever is longer;

(h) Conducting an impartial investigation of a complaint or assigning the investigation to an impartial investigator and overseeing the investigation;

(i) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation and making revisions to supportive measures as circumstances may require;

(j) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and to the appropriate disciplinary authority in compliance with this investigation procedure;

(k) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to college disciplinary authorities and administrators.

(2) **Filing a complaint.** Any employee, student, applicant, or visitor who believes that they have been the subject of sex discrimination in violation of the college policies, should report the incident or incidents to the Title IX coordinator. The complaint can be in writing or oral. If the complaint is against the Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

(3) **Title IX coordinator initiated complaint.** In the absence or withdrawal of any or all allegations in a complaint, the Title IX coordinator may file a complaint based on their evaluation of the following factors:

(a) A complainant's request not to proceed with initiation of a complaint;

(b) A complainant's reasonable safety concerns regarding initiation of a complaint;

(c) The risk additional acts of sex discrimination would occur if the complaint is not initiated;

(d) The severity of the alleged sex discrimination, including whether the discrimination if established, would require the removal

of the respondent from campus or imposition of other disciplinary sanction(s) to end the discrimination and prevent its recurrence;

(e) The age and relationship of the parties;

(f) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;

(g) The availability of evidence to assist a decision maker with determining whether sex discrimination occurred; and

(h) Whether the college could end the alleged sex discrimination and prevent its recurrence without initiating an investigation and disciplinary procedure.

If, upon evaluating these and any other relevant factors, the Title IX coordinator determines that the alleged conduct poses an imminent threat to the health or safety of the complainant or to other members of the college community or that the alleged conduct prevents the college from ensuring equal access on the basis of sex to its educational programs and activities, then the Title IX coordinator may initiate a complaint.

When initiating a complaint, the Title IX coordinator will provide the complainant with advance notice of this decision and an opportunity to appropriately address reasonable concerns about the complainant's safety or the safety of others, including the provision of supportive measures.

Regardless of whether a complaint is initiated under this section, the Title IX coordinator must take other prompt and effective steps, in addition to those steps necessary to implement remedies for the individual complainant, to ensure that sex discrimination does not continue or recur within the college's educational programs and activities.

The analysis set forth above need not be performed if the Title IX coordinator reasonably determines that the alleged conduct could not constitute sex discrimination.

(4) **Principles of investigation applicable to sex discrimination complaints.** The college shall provide an adequate, reliable, and impartial investigation of complaints of sex discrimination by:

(a) Treating complainants and respondents equitably;

(b) Presuming that the respondent is not responsible for the alleged misconduct unless or until a determination of responsibility is reached after completion of the investigation and disciplinary processes;

(c) Having the investigation conducted by a neutral and unbiased investigator without a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent.

(d) Having the investigator make findings of fact based on the preponderance of the evidence standard;

(e) Placing the burden on the college, not the parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred;

(f) Objectively evaluating all evidence that is relevant and not otherwise impermissible under this code, including both inculpatory and exculpatory evidence, and provide credibility determinations that are not based solely on a person's status as a complainant, respondent, or witness;

(g) Providing an equal opportunity for parties to present fact witnesses and other inculpatory or exculpatory evidence that is relevant and not otherwise impermissible;

(h) Providing 10 calendar days for each party to review and submit written comments on the draft investigation report and, upon request, to review relevant and not otherwise impermissible evidence gathered by the investigator before finalizing the investigation report; and

(i) Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the investigation procedure. Such steps shall not prevent the parties from using the information or evidence for related disciplinary proceedings or litigation related to the complaint of sex discrimination.

(5) **Confidentiality.** The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, offer appropriate supportive measures and/or take disciplinary action, and comply with the federal and state law, as well as college policies and procedures. Although the college will attempt to honor complainant requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

Confidential employees, when acting in their confidential capacity, will maintain confidentiality of information shared by a complainant and are not required to report conduct that may reasonably constitute sex discrimination to the Title IX coordinator. When a confidential employee learns of conduct that reasonably may constitute sex discrimination, the confidential employee must explain:

(a) Their status as a confidential employee, including the circumstances under which they are not required to notify the Title IX coordinator about the possible sex discrimination;

(b) How the complainant can contact the Title IX coordinator to make a complaint about the possible sex discrimination; and

(c) That the Title IX coordinator may offer and coordinate supportive measures, as well as initiate an informal resolution process or investigation pursuant to these investigation procedures.

The Title IX coordinator will inform the complainant about the college's sex discrimination investigation and disciplinary processes and attempt to obtain consent from the complainant before commencing an investigation of alleged sex-based 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.

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 disclose the complainant's identity only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this investigation procedure.

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

(6) **Notice of investigation and other notice requirements.** Upon receiving a complaint of sex discrimination, the Title IX coordinator will initiate the investigation by serving the respondent and the complainant with a notice of investigation in advance of their initial interviews. This notice will be served sufficiently in advance to allow the parties adequate time to prepare for their initial interviews.

If a complaint includes allegations of sex-based harassment and the college has reasonable concerns for the safety of any person as a result of providing a notice of investigation, service of the notice may be reasonably delayed in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

The notice of investigation must:

(a) Include a description of the college's sex discrimination investigation and disciplinary procedures, including descriptions of procedures applicable to sex-based harassment and informal resolution processes, if applicable;

(b) Sufficient information for the parties to respond to the allegations, including the identities of the parties, a description of the alleged discriminatory conduct, and the time and location of the alleged incident, to the extent this information is available to the college;

(c) A statement that retaliation is prohibited;

(d) Information that the parties are entitled to have an advisor of their choice and at their own expense, available during the investigation and any disciplinary proceedings and that the advisor may be, but is not required to be an attorney, and that during the investigation, the advisor's role will be limited to attending meetings or interviews with the party and providing advice to the party; and

(e) A statement that the parties are entitled to an equal opportunity to access a description of the relevant, not otherwise impermissible evidence and that both parties shall have an equal opportunity to review such evidence upon request.

In cases involving allegations of sex-based harassment, the notice of investigation shall also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the applicable disciplinary procedure and prior to such a determination, the parties will have the opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(ii) A statement that the parties are entitled to an equal opportunity to access the investigative report describing the relevant, not otherwise impermissible evidence, and that both parties shall have an equal opportunity to review this evidence upon request; and

(iii) A notice that the college's student conduct code prohibits students from knowingly making false statements or knowingly submitting false information during an investigation or disciplinary proceeding.

Amended notice of investigation. If, during the course of the investigation, the college decides to investigate sex discrimination allegations against a party that are not included in the original notice of investigation, the college will issue an amended notice of investigation to both parties that includes this additional information and complies with the applicable notice requirements set forth above.

Notice of meetings and interviews. In cases involving allegations of sex-based harassment, the college shall provide written notice to parties whose participation is invited or expected of the date, time, location, participants, and purposes of all meetings or proceedings with sufficient time for the party to prepare to participate.

(7) **Investigative process.** During the investigation, the investigator:

(a) Will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence;

(b) Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact-specific determination that a party poses a threat to the health, safety, or welfare of another party and/or witnesses or when contact with a party and/or witness is prohibited by court order. A college-imposed no contact order shall be no broader than is necessary to protect the threatened party or witness and must provide the party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness or party; and

(c) Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, to any investigation related meeting or interview. Advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney advising a party must enter a notice of appearance with the Title IX coordinator and the investigator at least five business days before the initial interview or meeting they plan to attend, so the college can secure its own legal representation, if necessary.

(d) In cases involving allegations of sex-based harassment, the investigator will provide both parties and their respective advisors with an equal opportunity to review the draft investigation report and to inspect and review relevant and not otherwise impermissible evidence upon request. After disclosure of the report, each party will receive 10 calendar days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a party fails to submit a written response within 10 calendar days, the party will be deemed to have waived their right to respond and the investigator will finalize the report without this information.

(e) During sex discrimination and sex-based harassment investigations under this procedure, the investigator may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to:

(i) Spousal/domestic partner privilege;

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

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

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

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

(vi) Other legal privileges identified in RCW 5.60.060.

(f) 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:

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

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

(g) Upon completion of the investigation, the Title IX coordinator will distribute the final investigation report to the parties. The Title IX coordinator will also provide the investigation report and the evidence gathered during the investigation to the student conduct officer, who is responsible for determining whether pursuing disciplinary action is warranted.

(8) Dismissal of complaint during investigation - Right to appeal. During an investigation, a sex discrimination complaint may be dismissed, in whole or in part, for the following reasons:

(a) The respondent cannot be identified, after the college has taken reasonable steps to do so;

(b) The respondent is not participating in the college's educational programs or activities;

(c) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint, and any remaining allegations would not constitute sex discrimination, even if proven. In cases involving allegations of sex-based harassment, the college must obtain the complainant's withdrawal in writing before dismissal.

(d) The conduct alleged by the complainant, even if proven, would not constitute sex discrimination; or

(e) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

The complainant and the respondent (if the respondent has been notified of the complaint) may appeal the dismissal of a complaint pursuant to the appeal process outlined in this code.

If the dismissal occurs during the investigation, the Title IX coordinator will provide the complainant or the complainant and the respondent (if the respondent has been notified of the complaint) written notice explaining:

(i) Why dismissal was necessary or desirable;

(ii) The right to appeal the dismissal and a description of the procedure for appealing the dismissal; and

(iii) If applicable, notice that the complaint is being referred to an appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

If the dismissal involves an allegation of sex-based harassment and the parties have both been notified of the investigation, the notice of dismissal will be served on the parties simultaneously.

When a complaint is dismissed, the Title IX coordinator will, at a minimum:

(A) Offer supportive measures to the complainant as appropriate;

(B) If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and

(C) Take other prompt and effective steps, as appropriate, to ensure that sex discrimination does not continue or recur within the college's education program or activity.

Dismissal of a sex discrimination complaint does not preclude the college from investigating and pursuing discipline based on allega-

tions that a respondent violated other federal or state laws and regulations, college conduct policies, and/or other codes and contractual provisions governing student and employee conduct.

(9) **Supportive measures.** The Title IX coordinator must offer and coordinate supportive measures to both the complainant and the respondent. Supportive measures may vary depending on the circumstances and what the college may determine to be reasonably available. Supportive measures may include, but are not limited to:

- (a) Counseling;
- (b) Extensions of deadlines and other course-related adjustments;
- (c) Campus security escort services;
- (d) Increased security and monitoring of certain areas of the campus;
- (e) Restrictions on contact applied to one or more parties;
- (f) Leaves of absence;
- (g) Changes in class, college work, college housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and
- (h) Training and education programs related to sex-based harassment.

Supportive measures may not be imposed for punitive or disciplinary purposes and must not unreasonably burden either party. Supportive measures must be designed to protect the safety of the parties and/or the college's educational environment, or to provide support to the parties during the formal or informal resolution processes.

The Title IX coordinator may modify or terminate supportive measures during or after formal or informal resolution procedures are completed, as the parties' and/or the college's circumstances change.

If, at any point during the sex discrimination investigation or disciplinary proceeding, a party becomes dissatisfied with their supportive measures or undergoes a change of circumstances that warrants revisions to their supportive measures, the party may submit a request to revise their supportive measures to the Title IX coordinator. The Title IX coordinator will respond to such a request within 10 calendar days. If the party disagrees with the Title IX coordinator's decision, they may submit a written appeal to the vice president for human resources, or their designee, within five calendar days of receiving the Title IX coordinator's decision. Review of the appeal shall be performed by an impartial employee with authority to modify or reverse the Title IX coordinator's decision to provide, deny, modify or terminate supportive measures applicable to the party seeking review. Challenged supportive measures will be reviewed to determine whether they are meeting the purposes set forth above.

In cases involving allegations of sex discrimination other than sex-based harassment and retaliation, the college is not required to alter the alleged discriminatory practice(s) for the purpose of providing a supportive measure.

(10) **Emergency removal.** If a respondent poses an immediate threat to the health and safety of the college community, or an immediate threat of significant disruption to college operations, the college's student conduct officer, after consulting with the Title IX coordinator, may summarily suspend the student respondent pursuant to WAC 132Y-125-060. The summary suspension shall remain in place pending completion of the investigation and final resolution of any resulting disciplinary proceedings.

(11) Complaint resolution and consolidation. Complaints submitted to the Title IX coordinator may be resolved through either informal or formal resolution processes.

(a) Informal resolution. Under appropriate circumstances and only if the complainant and the respondent voluntarily agree, the parties may pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegation involves:

(i) A complainant who is a minor or a vulnerable adult; or

(ii) A respondent poses an immediate threat to the health, safety, or welfare of a member of the college community;

If informal resolution is appropriate, the parties may explore resolution through:

(A) Guided conversations or communications conducted by the Title IX coordinator, the vice president for enrollment and student services, or some other mutually agreed upon third party;

(B) A structured resolution process conducted by a trained mediator; or

(C) Voluntary agreement between the parties to alter either or both parties' college work or class schedules and/or college student housing arrangements.

A proposal to engage in informal resolution should be provided to the parties in the notice of investigation or after the notice of investigation has been served on both parties.

Before engaging in informal resolution, the college must provide written notification to the parties of their rights and responsibilities. This notice shall explain:

(I) The allegations;

(II) The requirements of the informal resolution process;

(III) That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and initiate or resume the formal resolution process;

(IV) That the parties' agreement to a resolution at the conclusion of the informal resolution process will prevent the parties from initiating or resuming the formal resolution process;

(V) That the potential terms of any informal resolution agreement will only be binding on the parties to the agreement; and

(VI) What information the college will retain from the informal resolution process and how that information will be used, if the process is not successful and the formal resolution process is initiated or resumed.

Because the informal resolution process is voluntary, either party may withdraw from the process at any time, at which point the formal resolution process will resume.

If the parties voluntarily resolve a complaint, the college will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the complaint has been closed.

If the parties agree to an informal resolution process, the college will commence informal resolution within 10 calendar days after the parties agree to this option and conclude within 21 calendar days of beginning that process; subject to reasonable delays and extensions for good cause shown.

(b) Formal resolution. Formal resolution means that the complainant's allegations of sex discrimination will be subjected to a formal investigation by an impartial and unbiased investigator. The investigation may be conducted by the Title IX coordinator. The results of the investigator's report will be shared with the parties, the Title

IX coordinator, as well as the appropriate disciplinary authority who is responsible for determining whether disciplinary proceedings are warranted.

(12) Consolidation of complaints. Complaints of sex discrimination may be consolidated when the complaints are against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Y-125-140	Initiation of discipline.
WAC 132Y-125-145	Prehearing procedure.
WAC 132Y-125-150	Rights of parties.
WAC 132Y-125-155	Evidence.
WAC 132Y-125-160	Initial order.
WAC 132Y-125-165	Appeals.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

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~~) sex discrimination and sex-based harassment.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-300-010 Procedures. (1) **Introduction.** Edmonds 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 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~~) college's educational programs and activities and/or termination of 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 Title IX coordinator, 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~~) Sex discrimination, Sex-based harassment.

Title: (~~EO/AA Office~~) Human Resources, Title IX Coordinator

Office: Edmonds (~~Community~~) College

20000 - 68th Ave. W.

Clearview Building, Room 122

Lynnwood, WA 98036

(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 must be submitted in writing.) Definitions. For purposes of this procedure, the following definitions apply:

(a) "Complainant" means individuals who are alleged to have been subjected to prohibited conduct, including a student or employee, or a person other than a student or employee who was participating or attempting to participate in a college education program or activity at the time of the alleged discrimination.

(b) "Complaint" means a written or oral request that can be objectively understood as a request for the college to investigate and make a determination about prohibited conduct.

(c) "Confidential employee" means a college employee whose communications are privileged and confidential under federal or state law. An employee's status as a confidential employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.

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

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

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

(e) "Disciplinary action" is the process by which discipline is imposed for a violation of college policy or procedure.

(f) "Disciplinary appeal" is the process by which an aggrieved party can appeal discipline imposed.

(g) "Disciplinary sanction" means consequences imposed on a respondent following a determination that the respondent violated the college's policies prohibiting discrimination and harassment.

(h) "Discriminatory harassment" means unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to create an intimidating, hostile, or offensive environment for other campus community members. Discriminatory harassment may include written, social media, and electronic communications not otherwise protected by law.

(i) "Employee" includes any individual employed by Edmonds College.

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

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

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

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

(k) "Investigation procedure" is the process the college uses to initiate, informally resolve, and/or investigate allegations that an individual has violated college policies prohibiting discrimination or harassment.

(l) "Mandatory reporters" are all college employees, excluding confidential employees. Mandatory reporters are required to report conduct that could reasonably constitute discrimination or harassment.

(m) "Pregnancy or related conditions" means:

(i) Pregnancy, childbirth, termination of pregnancy, or lactation;

(ii) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(iii) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(n) "President" is the president of Edmonds College. The president is authorized to delegate any of their responsibilities as set forth in this procedure, and as may be reasonably necessary; and reassign any and all duties and responsibilities as set forth in this procedure as may be reasonably necessary.

(o) "Program" or "programs and activities" means all operations of the college.

(p) "Protected status" includes a person's race; color; creed/religion; national origin; presence of any sensory, mental, or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(q) "Relevant" means related to the allegations of discrimination and harassment under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged discrimination or harassment occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination or harassment occurred.

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

(s) "Respondent" is an individual who has been alleged to have violated college policies or procedures prohibiting discrimination and harassment.

(t) "Retaliation" means intimidation, threats, coercion, or discrimination against any person by the college, a student, or an employee or other person authorized by the college to provide aid, benefit, or service under the college's education program or activity, for the purpose of interfering with any right or privilege secured by college policies and procedures prohibiting discrimination or harassment, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for discrimination or harassment. Nothing in this definition precludes the college from requiring an employee to provide aid, benefit, or service under the college's

ge's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

(u) "Sex discrimination" which includes sex-based harassment, occurs when a respondent causes more than de minimis (insignificant) harm to an individual by treating them differently from an otherwise similarly situated individual based on:

- (i) Sex stereotypes;
- (ii) Pregnancy or related conditions;
- (iii) Sexual orientation; and
- (iv) Gender identity.

Preventing a person from participating in a program or activity consistent with their gender identity constitutes more than de minimis harm and is prohibited.

(v) "Sex-based harassment." For purposes of this procedure, sex-based harassment is a type of discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

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

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

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

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

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

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

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

(iii) Sexual violence. Sexual violence 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 (fondling). 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 either wholly or half re-

lated. Descendant includes stepchildren and adopted children under the age of 18.

(D) Statutory rape (rape of a child). Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, or stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(F) Dating violence. 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:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the persons involved in the relationship.

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

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

(y) "Supportive measures" means the reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(i) Restoring or preserving a party's access to college programs or activities, including measures that are designed to protect the safety of the parties or the college's educational environment; or

(ii) Providing support during the college's investigation and disciplinary procedures, or during any informal resolution process.

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

(z) "Title IX coordinator" is the administrator responsible for processing complaints of discrimination and harassment, including sex

discrimination and sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

(aa) "Title IX personnel" includes the Title IX coordinator and designees, investigators, and decision makers responsible for administering the college's sex discrimination investigation and disciplinary procedures; facilitators of the informal sex discrimination resolution process; and any other employees who are responsible for implementing the college's sex discrimination investigation or sex discrimination disciplinary procedures for employees or have the authority to modify or terminate supportive measures.

(bb) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by the college, a student, or an employee or other person authorized by the college to provide aid, benefit, or service under the college's education program or activity, for the purpose of interfering with any right or privilege secured by college policies and procedures prohibiting sex discrimination, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for sex discrimination. Nothing in this definition precludes the college from requiring an employee to provide aid, benefit, or service under the college's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

(3) **Training requirements.**

(a) All employees shall undergo training on the following topics:

(i) The definition and scope of sex discrimination and sex-based harassment under this procedure;

(ii) The college's obligation to address sex discrimination in its education programs and activities;

(iii) Employee responsibility, upon learning of a student's pregnancy or related condition, to provide the student with the Title IX coordinator's contact information and information about available assistance; and

(iv) Employee obligations to notify the Title IX coordinator about conduct that may reasonably be sex discrimination.

(b) Title IX personnel - In addition to the required training for all employees, Title IX personnel shall undergo training on the following topics:

(i) The college's procedures for sex discrimination and sex-based harassment involving a student;

(ii) How to conduct an investigation;

(iii) How to serve impartially without prejudgment of facts, conflicts of interest, or bias;

(iv) Use of technology during an investigation or hearing;

(v) The definition of relevance as used for purposes of evaluating evidence and questions for purposes of this investigation procedure;

(vi) Effective report writing; and

(vii) Informal resolution facilitators: Procedures for the college's informal resolution process.

(c) Title IX coordinator and designees.

In addition to the required training for all employees and for Title IX personnel, the Title IX coordinator and any designees shall undergo training on the following topics:

(i) How to ensure the college's compliance with its Title IX obligations;
(ii) How to offer and coordinate supportive measures;
(iii) Specific actions to prevent discrimination and ensure equal access upon learning of a student's pregnancy or related conditions; and

(iv) The college's recordkeeping system and requirements.

All sex discrimination training materials will be made available for review upon request.

(4) **Title IX coordinator investigation duties.** During an investigation, the Title IX coordinator or a delegate is responsible for the following:

(a) Accepting, evaluating, and processing all discrimination and harassment complaints, reports, or referrals;

(b) Conducting an intake meeting with the complainant and, at that time, notifying the complainant, or the individual who reported the conduct if the complainant is unknown, of the college's sex discrimination investigation and disciplinary procedures, as well as the informal resolution process, if appropriate and available. After providing this information, the Title IX coordinator will ascertain whether the complainant would like the college to proceed with an investigation of the discrimination or harassment complaint;

(c) Initiating a complaint subject to factors set forth in this procedure;

(d) When a party is a student employee and the allegations involve sex-based harassment, making a fact-specific inquiry into whether the party's primary relationship with the college is to receive an education and whether alleged sex-based harassment occurred while the party was performing employment-related work and, based on this inquiry, determine whether the party should be treated as a student or an employee under this investigation procedure and related disciplinary procedures;

(e) Addressing and resolving, if possible, questions regarding confidentiality raised by parties and witnesses;

(f) Determining whether a complaint should be dismissed during the investigation phase, and if so, notifying the complainant or the parties (if respondent has been notified of the complaint) of the reasons for the dismissal, and providing the complainant or parties with information about the procedure for filing an appeal of the dismissal;

(g) Maintaining accurate records of all complaints, reports, and referrals;

(h) Retaining investigation files, complaints, reports, and referrals in compliance with applicable records retention periods or federal or state law, whichever is longer;

(i) Either conducting an impartial investigation of a complaint or assigning the investigation to an impartial investigator and overseeing the investigation;

(j) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation and making revisions to supportive measures as circumstances may require;

(k) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and to the appropriate disciplinary authority in compliance with this procedure; and

(1) Recommending nondisciplinary corrective measures to stop, re-mediate, and/or prevent recurrence of discriminatory conduct to college disciplinary authorities and administrators.

(5) **Filing a complaint.** Any employee, student, applicant, or visitor who believes that they have been the subject of discrimination or harassment in violation of the college policies, should report the incident or incidents to the college's Title IX coordinator. The complaint can be in writing or oral. If the complaint is against the Title IX coordinator, the complainant should report the matter to the vice president for human resources for referral to an alternate designee.

For complainants who wish to submit a written complaint, a formal complaint form is available online at ((www.edec.edu/titleix/)) https://cm.maxient.com/reportingform.php?EdmondsCC&layout_id=6. Hard-copies 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 nondiscrimination and harassment policy and procedures.

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.edec.edu/titleix/>.

~~(3) **Confidentiality and right to privacy.** The college will seek to protect the privacy of the 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, as well as the college's policy and procedures.~~

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 prevent their recurrence, and implement such measures if reasonably feasible.~~

~~(4)) and student services departments.~~

~~(a) Title IX coordinator initiated complaint.~~

~~(i) In the absence or withdrawal of any or all allegations in a complaint, the Title IX coordinator may file a complaint based on their evaluation of the following factors:~~

~~(A) A complainant's request not to proceed with initiation of a complaint;~~

~~(B) A complainant's reasonable safety concerns regarding initiation of a complaint;~~

~~(C) The risk additional acts of discrimination or harassment would occur if the complaint is not initiated;~~

~~(D) The severity of the alleged sex discrimination or harassment, including whether the discrimination if established, would require the removal of the respondent from campus or imposition of other disciplinary sanction(s) to end the discrimination or harassment and prevent its recurrence;~~

~~(E) The age and relationship of the parties, including whether the respondent is a college employee;~~

~~(F) The scope of the alleged discrimination or harassment, including information suggesting a pattern, ongoing discrimination or harassment, or discrimination or harassment alleged to have impacted multiple individuals;~~

~~(G) The availability of evidence to assist a decision maker with determining whether discrimination occurred; and~~

~~(H) Whether the college could end the alleged discrimination or harassment and prevent its recurrence without initiating an investigation and disciplinary procedure.~~

~~(b) If, upon evaluating these and any other relevant factors, the Title IX coordinator determines that the alleged conduct poses an imminent threat to the health or safety of the complainant or to other members of the college community, or that the alleged conduct prevents the college from ensuring equal access on the basis of sex to its programs and activities, then the Title IX coordinator may initiate a complaint.~~

(c) When initiating a complaint, the Title IX coordinator will provide the complainant with advance notice of this decision and an opportunity to appropriately address reasonable concerns about the complainant's safety or the safety of others, including the provision of supportive measures.

(d) Regardless of whether a complaint is initiated under this section, the Title IX coordinator must take other prompt and effective steps, in addition to those steps necessary to implement remedies for the individual complainant, to ensure that discrimination or harassment does not continue or recur within the college's programs and activities.

(e) The analysis set forth above need not be performed if the Title IX coordinator reasonably determines that the alleged conduct could not constitute discrimination or harassment.

(6) Confidentiality.

(a) The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, offer appropriate supportive measures and/or take disciplinary action, and comply with the federal and state law, as well as college policies and procedures. Although the college will attempt to honor complainant requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(b) Confidential employees, when acting in their confidential capacity, will maintain confidentiality of information shared by a complainant and are not required to report conduct that may reasonably constitute discrimination or harassment. When a confidential employee learns of conduct that reasonably may constitute discrimination or harassment, the confidential employee must explain:

(i) Their status as a confidential employee, including the circumstances under which they are not required to notify the Title IX coordinator about the possible sex discrimination;

(ii) How the complainant can contact the Title IX coordinator to make a complaint about the possible discrimination; and

(iii) That the Title IX coordinator may offer and coordinate supportive measures, as well as initiate an informal resolution process or investigation pursuant to this procedure.

(c) The Title IX coordinator will inform the complainant about the college's discrimination and harassment investigation and disciplinary processes and attempt to obtain consent from the complainant before commencing an investigation. 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.

(d) 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 disclose the complainant's identity only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this procedure.

(e) 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 prevent their recurrence, and implement such measures if reasonably feasible.

(7) Notice of investigation and other notice requirements.

Notice of investigation. Upon receiving a complaint of discrimination or harassment, the Title IX coordinator will initiate the investigation by serving the respondent and the complainant with a "Notice of Investigation" in advance of their initial interviews. This notice will be served sufficiently in advance to allow the parties adequate time to prepare for their initial interviews.

If a complaint includes allegations of sex-based harassment and the college has reasonable concerns for the safety of any person as a result of providing a notice of investigation, service of the notice may be reasonably delayed in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

The notice of investigation must include:

(a) Description of the college's discrimination and harassment investigation and disciplinary procedures, including descriptions of procedures applicable to sex-based harassment and informal resolution processes, if applicable;

(b) Sufficient information for the parties to respond to the allegations, including the identities of the parties, a description of the alleged discriminatory conduct, and the time and location of the alleged incident, to the extent this information is available to the college;

(c) A statement that retaliation is prohibited;

(d) Information that the parties are entitled to have a representative of their choice and at their own expense, available during the investigation and any disciplinary proceedings and that the representative may be, but is not required to be an attorney, and that during the investigation, the representative's role will be limited to attending meetings or interviews with the party and providing advice to the party; and

(e) A statement that the parties are entitled to an equal opportunity to access a description of the relevant, not otherwise impermissible evidence and that both parties shall have an equal opportunity to review such evidence upon request.

In cases involving allegations of sex-based harassment, the notice of investigation shall also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the applicable disciplinary procedure, and prior to such a determination, the parties will have the opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(ii) A statement that the parties are entitled to an equal opportunity to access the investigative report describing the relevant, not otherwise impermissible evidence, and that both parties shall have an equal opportunity to review this evidence upon request; and

(iii) Notice that the college's employment policies prohibit employees from knowingly making false statements or knowingly submitting false information during an investigation or disciplinary proceeding.

Amended notice of investigation. If during the course of the investigation, the college decides to investigate discrimination or harassment allegations against a party that are not included in the original investigation notice, the college will issue an amended notice of investigation to both parties that includes this additional information and complies with the applicable notice requirements set forth above.

Notice of meetings and interview. In cases involving allegations of sex-based harassment, the college shall provide written notice to parties whose participation is invited or expected of the date, time, location, participants, and purposes of all meetings or proceedings with sufficient time for the parties to prepare to participate.

(8) **Investigation process.** During the investigation, the investigator:

(a) Will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence;

(b) Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact-specific determination that a party poses a threat to the health, safety, or welfare of another party and/or witnesses or when contact with a party and/or witness is prohibited by court order. A college-imposed no contact order shall be no broader than is necessary to protect the threatened party or witness and must provide the party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness or party;

(c) Will allow each party to be accompanied by a representative of their choosing, who may be an attorney, to any investigation related meeting or interview. Representatives' roles during the investigation meetings or interviews will be limited to providing support and advice to the party. Representatives will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney advising a party must enter a notice of appearance with the Title IX coordinator and/or the investigator at least five business days before the initial interview or meeting they plan to attend, so the college can secure its own legal representation, if necessary; and

(d) Will, in cases involving allegations of sex-based harassment, provide both parties and their respective representatives with an equal opportunity to review the draft investigation report and to inspect and review relevant and not otherwise impermissible evidence upon request. After disclosure of the report, each party will have 10 calendar days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a written response is not received by a party within 10 calendar days, the party will be deemed to have waived their right to respond and the investigator will finalize the report without this information.

(e) During sex discrimination and sex-based harassment investigations under this procedure, the investigator may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:

(i) Spousal/domestic partner privilege;

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

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

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

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

(vi) Other legal privileges identified in RCW 5.60.060.

(f) 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:

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

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

(g) Upon completion of the investigation, the Title IX coordinator will distribute the final investigation report to the parties. The Title IX coordinator will also provide the investigation report and the evidence gathered during the investigation to the vice president for human resources, who is responsible for determining whether pursuing disciplinary action is warranted.

(9) **Dismissal of complaint during investigation - Right to appeal.** During an investigation, a discrimination or harassment complaint may be dismissed, in whole or in part, for the following reasons:

(a) The respondent cannot be identified, after the college has taken reasonable steps to do so;

(b) The respondent is not participating in the college's programs or activities and is not employed by the college. The college's discretion to dismiss a sex-based harassment complaint lodged against a former employee may be limited by RCW 28B.112.070, which requires the college to complete investigations into allegations of sexual misconduct by employees directed at student complainants unless the complainant requests otherwise;

(c) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint, and any remaining allegations would not constitute discrimination or harassment, even if proven. In cases involving allegations of sex-based harassment, the college must obtain the complainant's withdrawal in writing before dismissal;

(d) The conduct alleged by the complainant, even if proven, would not constitute discrimination or harassment; or

(e) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) The complainant and the respondent (if the respondent has been notified of the complaint) may appeal the dismissal of a complaint.

(g) If the dismissal occurs during the investigation, the Title IX coordinator will provide the complainant or the complainant and the respondent (if the respondent has been notified of the complaint) written notice explaining:

(i) Why dismissal was necessary or desirable;

(ii) The right to appeal the dismissal and a description of the procedure for appealing the dismissal; and

(iii) If applicable, notice that the complaint is being referred to an appropriate disciplinary authority.

(h) If the dismissal involves an allegation of sex-based harassment and the parties have both been notified of the investigation, the notice of dismissal will be served on the parties simultaneously.

(i) When a complaint is dismissed, the Title IX coordinator will, at a minimum:

(i) Offer supportive measures to the complainant as appropriate;

(ii) Offer supportive measures to the respondent, if notified and as appropriate; and

(iii) Take other prompt and effective steps, as appropriate, to ensure that sex discrimination does not continue or recur within the college's programs or activities.

(j) Dismissal of a discrimination or harassment complaint does not preclude the college from investigating and pursuing discipline based on allegations that a respondent violated other federal or state laws and regulations, college conduct policies, and/or other codes and contractual provisions governing employee conduct.

(10) **Supportive measures.** In cases involving allegations of sex-based harassment, the Title IX coordinator must offer and coordinate supportive measures to both the complainant and the respondent. Supportive measures may vary depending on the circumstances and what the college may determine to be reasonably available. Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other work-related adjustments; campus security escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in work-related activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(a) Supportive measures may not be imposed for punitive or disciplinary purposes.

(b) Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties and/or the college's educational environment, or to provide support to the parties during the formal or informal resolution processes.

(c) The Title IX coordinator may modify or terminate supportive measures during or after formal or informal resolution procedures are completed, as the parties' and/or the college's circumstances change.

(d) If, at any point during the sex discrimination investigation or disciplinary proceeding, a party becomes dissatisfied with their supportive measures or undergoes a change of circumstances that warrants revisions to their supportive measures, the party may submit a request to revise their supportive measures to the Title IX coordinator. The Title IX coordinator will respond to such a request within 10 calendar days. If the party disagrees with the Title IX coordinator's decision, they may submit a written appeal to the vice president of human resources or their designee within five calendar days of receiving the Title IX coordinator's decision. Review of the appeal shall be performed by an impartial employee with authority to modify or reverse the Title IX coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to the party seeking review. Challenged supportive measures will be reviewed to determine whether they are meeting the purposes set forth above.

(e) In cases involving allegations of sex discrimination other than sex-based harassment and retaliation, the college is not required to alter the alleged discriminatory practice(s) for the purpose of providing a supportive measure.

(11) **Emergency removal.** If an employee respondent poses an immediate threat to the health and safety of the college community or an immediate threat of significant disruption to college operations, the president or designee, after consulting with the Title IX coordinator,

may place an employee on administrative leave. The administrative leave shall remain in place pending completion of the investigation and final resolution of any resulting disciplinary proceedings.

(12) **Complaint resolution and consolidation.** Complaints submitted to the Title IX coordinator may be resolved through either informal or formal resolution processes.

(a) Informal resolution. Under appropriate circumstances, and only if the complainant and the respondent voluntarily agree, the parties may pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegation involves:

(i) A complainant who is a minor or a vulnerable adult;

(ii) A respondent poses an immediate threat to the health, safety, or welfare of a member of the college community;

(iii) An employee, who is alleged to have engaged in sex-based harassment of a student complainant.

If informal resolution is appropriate, the parties may explore resolution through:

(A) Guided conversations or communications conducted by the Title IX coordinator, a human resource representative, or some other mutually agreed upon third party;

(B) A structured resolution process conducted by a trained mediator; or

(C) Voluntary agreement between the parties to alter either or both parties' college work.

(D) A proposal to engage in informal resolution should be provided to the parties in the notice of investigation or after the notice of investigation has been served on both parties.

Before engaging in informal resolution, the college must provide written notification to the parties of their rights and responsibilities. This notice shall explain:

(I) The allegations;

(II) The requirements of the informal resolution process;

(III) That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and initiate or resume the formal resolution process;

(IV) That the parties' agreement to a resolution at the conclusion of the informal resolution process will prevent the parties from initiating or resuming the formal resolution process;

(V) That the potential terms of any informal resolution agreement will only be binding on the parties to the agreement; and

(VI) What information the college will retain from the informal resolution process and how that information will be used, if the process is not successful and the formal resolution process is initiated or resumed.

Because the informal resolution process is voluntary, either party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the parties voluntarily resolve a complaint, the college will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the complaint has been closed.

If the parties agree to an informal resolution process, the college will commence informal resolution within 10 calendar days after the parties agree to this option and conclude within 21 calendar days of beginning that process; subject to reasonable delays and extensions for good cause shown.

(b) Formal resolution. Formal resolution means that the complainant's allegations of discrimination or harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigation may be conducted by the Title IX coordinator. The results of the investigator's report will be shared with the parties, the Title IX coordinator, as well as the appropriate disciplinary authority who is responsible for determining whether disciplinary proceedings are warranted.

(c) Consolidation of complaints. Complaints of discrimination and harassment may be consolidated when the complaints are against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of discrimination or harassment arise out of the same facts or circumstances.

(13) 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.

~~((+5))~~ **(14) 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.

~~((+6))~~ **(15) 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.

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

WAC 132Y-300-015 Other remedies. (1) **Criminal complaints.** Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

~~((City of Edmonds Police Department
<http://www.edmondswa.gov/government/departments/police.html>))~~

City of Lynnwood Police Department

~~((<http://www.ci.lynnwood.wa.us/Public-Safety/Police-Department>))~~
<https://www.lynnwoodwa.gov/Government/Departments/Police-Department>

Snohomish County Sheriff's Department

<http://snohomishcountywa.gov/210/Sheriff>

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(2) **Other discrimination complaint options.** Discrimination and harassment complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission
(~~(www.hum.wa.gov/index.html)~~) <https://www.hum.wa.gov/>

U.S. Department of Education Office for Civil Rights
<http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission
www.eeoc.gov