

## ACTION ITEM #2

### Proposed Revision to WAC 504-04 Practice and Procedure (Mary Jo Gonzales/Danielle Hess)

November 16, 2018

TO ALL MEMBERS OF THE BOARD OF REGENTS

SUBJECT: WSU All Campuses, Revision to WAC 504-04 Practice and Procedure

PROPOSED: That the Board of Regents adopt revisions to WAC 504-04 Practice and Procedure

SUBMITTED BY: Mary Jo Gonzales, Vice President for Student Affairs

SUPPORTING  
INFORMATION:

In January 2017, WSU drafted and filed emergency rules modifying its student conduct process as a result of the *Arishi vs. WSU* decision, which was issued by the Washington Court of Appeals in December 2016. The rules provided for formal adjudicative hearings in certain serious student conduct matters and were codified in WAC 504-04. These were later made permanent.

With the upcoming implementation of new rules resulting from the student conduct task force process, the procedures for formal adjudications of student conduct matters will be moved out of WAC 504-04 and into WAC 504-26 (Standards of Conduct for Students). This will ensure that the student conduct process is integrated into one chapter of the WAC.

The proposed changes to 504-04 remove the procedures pertaining to student conduct adjudications and refer the reader to WAC 504-26. There also are some minor updates throughout the chapter to conform to current practices. A copy of the proposed rules is attached.

A public hearing on the proposed rules was held on November 6, 2018. The rules are now ready for approval by the Regents. If approved, the changes to WAC 504-04 will be effective in Spring 2019, at the same time as the changes to WAC 504-26.

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

**WAC 504-04-010 Matters subject to brief adjudication.** The following proceedings are matters to be treated as brief adjudications pursuant to RCW 34.05.482 through 34.05.491:

(1) Student conduct proceedings (~~((Student conduct proceedings under chapter 504-26 WAC are treated as brief adjudications, except for matters involving sanctions of suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a student organization, which shall be referred for a full (formal) adjudication in accordance with this chapter))~~), except for matters involving sanctions of suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a recognized or registered student organization. The procedural rules of chapter 504-26 WAC apply to all student conduct proceedings.

(2) Appeals of residency determinations. If a hearing is required by law or constitutional right, appeals of residency determinations under RCW 28B.15.013 are brief adjudicative proceedings conducted by the office of (~~(admissions)~~) the registrar.

(3) Appeals of parking violations. Appeals of parking violations are brief (~~(adjudicatory)~~) adjudicative proceedings conducted pursuant to applicable rules. See WAC 504-13-860, 504-14-860, 504-15-860, and 504-19-860.

(4) Hearings on student records. Hearings pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. (~~((§))~~) Sec. 1232g are to be brief adjudicative proceedings conducted pursuant to the rules of chapter 504-21 WAC.

(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the office of (~~(scholarships and)~~) student financial (~~(aid)~~) services.

(6) (~~(Emergency withdrawal of students. Proceedings to disenroll students for medical or psychological reasons are brief adjudicative proceedings conducted by the office of student affairs.~~

~~(7))~~) Discipline and termination of student employees. When required by law, hearings for the termination of or imposition of disciplinary measures on student employees (~~(shall be)~~) are brief adjudicative proceedings.

[Statutory Authority: RCW 28B.30.150. WSR 17-13-049, § 504-04-010, filed 6/15/17, effective 7/16/17; WSR 13-16-089, § 504-04-010, filed 8/6/13, effective 9/6/13; WSR 07-02-034, § 504-04-010, filed 12/26/06, effective 1/26/07. Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. WSR 89-23-117, § 504-04-010, filed 11/22/89, effective 12/23/89.]

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

**WAC 504-04-020 Appointment of presiding officers for all adjudicative proceedings.** The president of Washington State University or his or her designee (~~((shall have))~~) has the power to appoint members of the faculty, staff, and student body; administrative law judges; members in good standing of the Washington state bar association; the president or his or her designee; a person or entity with whom the university contracts; or any combination of the above to be presiding officers for formal and brief adjudicative proceedings. When more than one individual is designated to be the presiding officer, one person shall be designated by the president or (~~((president's))~~) designee to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters. The term "presiding officer" as used in this chapter (~~((shall be))~~) is read in the plural when the context demands.  
[Statutory Authority: RCW 28B.30.150. WSR 17-13-049, § 504-04-020, filed 6/15/17, effective 7/16/17. Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. WSR 89-23-117, § 504-04-020, filed 11/22/89, effective 12/23/89.]

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

**WAC 504-04-110 Adoption of model rules of procedure for formal (full) (~~((proceedings))~~) adjudications—Exceptions.** In formal (~~((proceedings))~~) adjudications (also referred to as full adjudications) pursuant to RCW 34.05.413 through 34.05.476, Washington State University follows the Administrative Procedure Act (chapter 34.05 RCW) and hereby adopts the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC, with the following exceptions (~~((and modifications))~~):

(1) WAC 10-08-190 Adjudicative proceedings—Cameras—Recording devices.

See WAC 504-04-120 which determines the use of cameras and recording devices at adjudicative proceedings.

(2) (~~((WAC 10-08-040 Adjudicative proceedings Notice of hearing. In addition to this model rule regarding notice, the provisions in WAC 504-26-401(5) and 504-26-403 (1) and (2) apply.~~

~~((3) The parties in a student conduct matter implicating Title IX of the Civil Rights Act of 1964 (Title IX) shall include the complainant(s) if the complainant(s) notifies the university that she/he wishes to participate as a party.~~

~~((4) WAC 10-08-120 Adjudicative proceedings—Subpoenas. In determining whether to issue, quash, or modify a subpoena to a complainant/witness in a student conduct matter implicating Title IX,~~

~~the presiding officer shall give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal office for civil rights. In such cases, the party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.~~

~~(5) Cross examination. As required by RCW 34.05.449, cross examination of witnesses shall be permitted to the extent necessary for full disclosure of all relevant facts and issues. However, in a student conduct matter implicating Title IX, the complainant and respondent shall not be permitted to cross examine each other directly. The preferred method of cross examination in all student conduct matters is through written questions submitted to, and asked by, the presiding officer. The presiding officer may decline to ask cross examination questions that are irrelevant, immaterial, or unduly repetitious. In accordance with evidence rule 412, a complainant's sexual history generally will not be admissible. All questions submitted by the parties will be retained as part of the agency record. At the request of either participating party in a student conduct matter implicating Title IX, the requesting party shall be permitted to participate remotely, or in a different room, in accordance with chapter 504-26 WAC.~~

~~(6) Discovery. Depositions, interrogatories, and medical examinations of parties as part of discovery are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process, in accordance with RCW 34.05.446.~~

~~(7) Standard of proof. The standard of proof in student conduct proceedings is preponderance of the evidence.~~

~~(8) Administrative review in full adjudications. Within twenty days of service of an initial order resulting from a full adjudication in a student conduct proceeding, or a different time period as specified in the initial order, a student or student organization may appeal the decision to the university president or designee, who reviews the matter in accordance with RCW 34.05.464. Complainants in student conduct matters shall be afforded the same right to appeal as respondents. The university president or designee, of his or her own initiative, may review any initial order resulting from a full adjudication. The decision of the president shall be the final order of the university. If no appeal is initiated, the initial order following a full adjudication becomes the final order of the university after twenty-one days, or the day after the appeal period specified in the initial order, whichever is sooner.)) Chapter 504-26 WAC sets forth exceptions and modifications to the model rules of procedure for formal hearings involving student discipline.~~

(3) The university's faculty manual sets forth exceptions and modifications to the model rules of procedure for formal hearings involving faculty discipline.

(4) Other procedural rules adopted in this title and this chapter are supplementary to the model rules. In the case of a conflict between the model rules and procedural rules adopted by Washington State University, the procedural rules adopted by the university (~~shall~~) govern.

[Statutory Authority: RCW 28B.30.150. WSR 17-13-049, § 504-04-110, filed 6/15/17, effective 7/16/17. Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. WSR 89-23-117, § 504-04-110, filed 11/22/89, effective 12/23/89.]

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

**WAC 504-04-120 Confidentiality of student, faculty, and staff formal adjudicative proceedings.** In formal adjudicative proceedings, the presiding officer (~~shall have~~) has the power to close all or part of the hearing to public observation. The presiding officer (~~shall have~~) has the power to impose reasonable conditions upon observation of the proceeding. The presiding officer also (~~shall have~~) has the power to regulate the use of photographic and recording equipment. In the case of hearings involving discipline, termination, or (~~medical withdrawal~~) administrative cancellation of enrollment, hearings (~~will~~) are normally (~~be~~) closed to public observation. In student conduct matters, including those implicating Title IX, hearings (~~will be~~) are closed to public observation in accordance with WAC 504-26-025.

[Statutory Authority: RCW 28B.30.150. WSR 17-13-049, § 504-04-120, filed 6/15/17, effective 7/16/17. Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. WSR 89-23-117, § 504-04-120, filed 11/22/89, effective 12/23/89.]

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

**WAC 504-04-130 Advising and representation of parties.** Any person whose rights are in issue in a formal adjudicative proceeding (~~shall have~~) has the right to have an (~~adviser~~) advisor present during any stage of the proceedings. However, only persons admitted to the practice of law in the state of Washington, including licensed legal interns (~~pursuant to admission to practice rule 9, shall be~~), are permitted to act as (~~a~~) representatives at the proceedings. The presiding officer (~~shall have~~) has the power to impose reasonable conditions upon participation of advisors and representatives.

[Statutory Authority: RCW 28B.30.150. WSR 17-13-049, § 504-04-130, filed 6/15/17, effective 7/16/17. Statutory Authority: RCW 34.05.220,

28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. WSR 89-23-117, § 504-04-130, filed 11/22/89, effective 12/23/89.]

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

**WAC 504-04-140 Discovery.** Discovery in formal hearings may be permitted at the discretion of the presiding officer, (~~except as provided in WAC 504-04-110(6)~~) unless specific limitations apply. In permitting discovery, reference (~~shall~~) must be made to the civil rules applicable in court proceedings for guidance.

The presiding officer (~~shall have~~) has the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

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