

MINUTES  
Board of Regents  
June 9, 2017

The Board of Regents of Washington State University (WSU) held a special meeting pursuant to call in Open Meeting at 7:30 a.m., Friday, June 9, 2017, in the Manor House at Chateau Ste. Michelle, Woodinville, Washington.

Present: Regent Ted Baseler, Chair; Regents Don Barbieri, Brett Blankenship, Scott Carson, Narek Danielyan, T. Ryan Durkan, Lura Powell, Ron Sims, and Mike Worthy. Also present were WSU staff members President Kirk Schulz, Provost and Executive Vice President Daniel Bernardo, WSU Vancouver Chancellor Mel Netzhammer, North Puget Sound at Everett Chancellor Paul Pitre, Associate Vice President and Chief Budget Officer Joan King, Vice President for Finance and Administration Stacy Pearson, Vice President for Student Affairs Mary Jo Gonzales, Vice President for Marketing and Communications Phil Weiler, Vice President for Government Relations Colleen Kerr, Vice President for Information Technology and CIO Sasi Pillay, Vice President for Academic Outreach and Innovation Dave Cillay, Vice President for Research Chris Keane, Interim Vice President for Advancement and WSU Foundation CEO Gil Picciotto, Dean, College of Arts and Sciences Daryll DeWald, Senior Associate Director of Athletics John Johnson, Senior Assistant Attorney General Danielle Hess, Chief of Staff Christine Hoyt, Executive Assistant to the Board of Regents Desiree Jacobsen, and guest speaker Kevin Reilly, an Association of Governing Board Consultant.

There were presentations and discussions as follows:

- Board Operations – 2017 Board of Regents Self-Assessment Results: Association of Governing Boards (AGB) consultant Dr. Kevin Reilly reviewed the 2017 Board of Regents Self-Assessment results and facilitated a discussion regarding opportunities where the Board and university senior leadership could work more collaboratively, strategically and effectively in the advancement of Washington State University.
- Corporate Relations and Strategies: President Kirk Schulz, Provost and Executive Vice President Dan Bernardo, Vice President for Research Chris Keane and Associate Vice President for Corporate Relations Alex Pietsch led a discussion on current university corporate relations and led a discussion on strategies for growing and improving those relations.
- President's 2017-2018 Goals: President Schulz presented his 2017-2018 goals for the Regents' consideration.
- Insights and Strategies for Marketing and Communication: Phil Weiler, WSU's new Vice President for Marketing and Communications, gave a presentation regarding his initial impressions and vision for moving the university forward in the area of Marketing and Communications.

An addition to the noted presentations, Vice President for Student Affairs Mary Jo Gonzales and Senior Assistant Attorney General Danielle Hess presented the following action item for board consideration.

### Action Item 1: Adoption of Student Conduct Rules

After Board discussion, it was moved and seconded that the Board of Regents adopt and make permanent the emergency rules governing adjudications of student conduct matters as proposed, with the exception of the addition of the word “affirmative” in two places in WAC 504-26-221(2). Carried (*Exhibit A*)

Following discussions, the Board held open time for a public comment period. There were no comments by members of the public.

The meeting adjourned at 3:00 p.m.

Approved by the Board of Regents at its meeting held September 22, 2017, at the Compton Union Building, Rooms 204, Pullman, Washington.

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Chair, Board of Regents

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Secretary, Board of Regents

## ACTION ITEM #1

### Adoption of Student Conduct Rules (Mary Jo Gonzales and Danielle Hess)

June 9, 2017

TO ALL MEMBERS OF THE BOARD OF REGENTS

SUBJECT: Adoption of rules governing student conduct matters

PROPOSED: That the WSU Board of Regents adopt and make permanent the emergency rules governing adjudications of student conduct matters.

SUBMITTED BY: Mary Jo Gonzales, Vice President for Student Affairs, and Danielle Hess, Senior Assistant Attorney General

#### BACKGROUND INFORMATION:

In December 2016, the Washington Court of Appeals held in *Arishi vs. WSU* that state colleges and universities must afford students a full adjudicative hearing when the student faces expulsion or allegations of sexual assault. WSU subsequently drafted and filed emergency rules modifying its student conduct process. These were presented to the Regents in January 2017.

The emergency rules offer a full adjudication when a student faces possible suspension for more than ten (10) instructional days, expulsion, or revocation of degree, or when a student organization faces loss of university recognition. Other matters are heard by a conduct officer.

Emergency rules are limited in duration and cannot be extended indefinitely. Therefore, in accordance with WSU's normal rulemaking process, the rules must be formally adopted by the Regents and made permanent. However, WSU's Student Conduct Process Task Force is in the process of developing recommendations for new permanent student conduct rules, which should be ready for adoption in 2018 and will replace these rules.

Pursuant to the agency rule-making process, the below process was followed:

- April 19: The emergency rules were published in the Washington State Register, with public notice about opportunity to provide public comment
- April 19-May 10: Written public comment period was held
- May 10: Public hearing was held

Additionally, WSU published several additional notices in the *Daily Evergreen*, through WSU announcements, on the CougSync website, and on the WSU rule-making website (which is accessible by a direct link from the WSU home page).

There were no comments received from the general public, oral or written, except for comments from the Office of Admissions providing process updates. Those process corrections will be incorporated into the new permanent conduct rules that will be brought back before the before, along with the final recommendations resulting from the work of the Student Conduct Process Task Force.

ATTACHMENTS: Proposed Rule WAC Chapter 504-04  
Proposed Rule WAC Chapter 504-26

AMENDATORY SECTION (Amending WSR 13-16-089, filed 8/6/13, effective 9/6/13)

**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. (~~The procedural rules of chapter 504-26 WAC apply to these 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.

(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.

(3) Appeals of parking violations. Appeals of parking violations are brief adjudicatory 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. §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 financial aid.

(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 brief adjudicative proceedings.

[Statutory Authority: RCW 28B.30.150. 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 89-23-117, filed 11/22/89, effective 12/23/89)

**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 the power to appoint (~~(committees or)~~) 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 read in the plural when the context demands.

[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 89-23-117, filed 11/22/89, effective 12/23/89)

**WAC 504-04-110 Adoption of model rules of procedure for formal (full) proceedings—Exceptions.** In formal proceedings (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~~ing))—Cameras—Recording devices.

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

~~((Other procedural rules adopted in this title and this chapter are supplementary to the model rules.))~~ (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.

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 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 89-23-117, filed 11/22/89, effective 12/23/89)

**WAC 504-04-120 Confidentiality of student, faculty and staff formal adjudicative proceedings.** In formal adjudicative proceedings, the presiding officer shall have the power to close all or part of the hearing to public observation. The presiding officer shall have the

power to impose reasonable conditions upon observation of the proceeding. The presiding officer also shall have the power to regulate the use of photographic and recording equipment. In the case of hearings involving discipline, termination, or medical withdrawal, hearings will normally be closed to public observation. In student conduct matters implicating Title IX, hearings will be closed to public observation.

[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 89-23-117, filed 11/22/89, effective 12/23/89)

**WAC 504-04-130 Advising and representation of parties.** Any person whose rights are in issue in a formal adjudicative proceeding shall have the right to have an adviser 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 permitted to act as a representative at the proceedings. The presiding officer shall have the power to impose reasonable conditions upon participation of advisors and representatives.

[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 89-23-117, filed 11/22/89, effective 12/23/89)

**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). In permitting discovery, reference shall be made to the civil rules applicable in court proceedings for guidance.

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

[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, § 504-04-140, filed 11/22/89, effective 12/23/89.]

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AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

**WAC 504-26-001 Preamble.** Washington State University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct. Students are expected to uphold and be accountable for these standards both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the university community.

Accordingly, the conduct process is nonadversarial to the extent possible, confidential except to the extent permitted by law and these standards of conduct (this chapter), and not to be considered analogous to court proceedings. Further, the conduct process is independent of any criminal or civil penalties. WSU permits students to have advisors in certain circumstances in the student conduct process, but the role of the advisor is very limited, except in full adjudications. Sanctions under these standards of conduct are intended to challenge students' moral and ethical decision making and help them bring their behavior into accord with university community expectations. When students are unable to conform their behavior to community expectations, the student conduct process may determine that they should no longer share in the privilege of participating in the university community. [Statutory Authority: RCW 28B.30.150. WSR 15-11-041, § 504-26-001, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-001, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-001, filed 5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-001, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-010 Definitions.** (1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).

(2) The term "appeals board" means any person or persons authorized by the vice president for student affairs to consider an appeal from a university conduct board's or conduct officer's determination, or a determination after a full adjudication, as to whether a student has violated the standards of conduct for students and any sanctions imposed.

(3) The term "cheating" includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the office of student

conduct. The policy for responding to allegations of scientific misconduct may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(4) The term "complainant" means any party, including the university, who submits a charge alleging that a student violated the standards of conduct for students.

(5) The term "faculty member" for purposes of this chapter, means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "gender identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

(7) The term "may" is used in the permissive sense.

(8) The term "member of the university community" includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university. A person's status in a particular situation is determined by the vice president for student affairs or designee.

(9) The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for

students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

(10) The term "recognized student organization" means any number of persons who have complied with the formal requirements for university recognition.

(11) The term "shall" is used in the imperative sense.

(12) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, although not enrolled in this institution.

(13) The term "student conduct officer" means a university official authorized by the vice president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students.

(14) The term "university" means all locations of Washington State University.

(15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a student is found responsible by the board to have violated these standards of conduct.

(16) The term "academic integrity hearing board" means teaching faculty and student representatives who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(17) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(18) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or

controlled by the university (including adjacent streets and sidewalks).

(19) The vice president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.

[Statutory Authority: RCW 28B.30.150. WSR 16-08-014, § 504-26-010, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-010, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-010, filed 5/11/11, effective 6/11/11; WSR 07-11-030, § 504-26-010, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-010, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

**WAC 504-26-100 Composition of conduct and appeals boards.** (1) The university conduct board shall be composed of five individuals appointed by the vice president for student affairs and comprised of students and persons who are any category of university employee, including affiliate faculty and staff. The chairperson of the conduct board shall be named by the vice president for student affairs and shall be a university employee.

Any three persons constitute a quorum of a conduct board and may act, provided that at least one student and the chairperson are present.

(2) The appeals board shall be appointed by the vice president for student affairs. It shall be composed of three persons, including the chair. The chair shall be a university employee. The other members may be university employees, including affiliate faculty and staff, or students(~~(, provided that the student members have had at least one academic year of service on the university conduct board)~~). Three persons constitute a quorum of the appeals board.

[Statutory Authority: RCW 28B.30.150. WSR 15-11-041, § 504-26-100, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-100, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-100, filed 1/30/12, effective 3/1/12; WSR 06-23-159, § 504-26-100, filed 11/22/06, effective 12/23/06.]

**WAC 504-26-221 Sexual misconduct.** (1) Sexual misconduct is an egregious form of sex discrimination/sexual harassment. A number of acts may be regarded as sexual misconduct including, but not limited to, nonconsensual sexual contact (including sexual intercourse) and sexual exploitation. Sexual misconduct includes sexual assault and other sexual violence.

(2) Consent. Consent to any sexual activity must be clear, knowing, affirmative, and voluntary. Anything less is equivalent to a "no." Clear, knowing, affirmative, and voluntary consent to sexual activity requires that, at the time of the act, (~~(actual)~~) and throughout the sexual contact, all parties actively express words or conduct that a reasonable person would conclude demonstrates clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Consent is active; silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity.

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. (~~(Coercive behavior differs from seductive behavior based on the type of pressure someone uses to obtain consent from another.)~~) When an individual makes it clear through words or actions that (~~(he or she)~~) the individual does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate his or her unwillingness to engage in sexual activity; or

(c) (~~(The)~~) A reasonable person would or should know that the other person lacks the mental capacity at the time of the sexual ac-

tivity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if (~~(she or he)~~) the individual cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or (~~he or she~~) the individual lacks the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(3) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (or clothing covering any of those areas), or by causing another person to touch his or her own or another person's intimate body parts without consent and/or by force. Sexual contact also can include any intentional bodily contact in a sexual manner with another person's nonintimate body parts. It also includes nonconsensual sexual intercourse.

(4) Sexual exploitation occurs when a person takes nonconsensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above. Examples of sexual exploitation may include, but are not limited to:

- (a) Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person;
- (b) Invading another person's sexual privacy;
- (c) Prostituting another person;
- (d) Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, records, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where he or she has a reasonable expectation of privacy;
- (e) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection;
- (f) Exposing one's intimate parts in nonconsensual circumstances;
- (g) Sexually based stalking and/or bullying.

(5) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

[Statutory Authority: RCW 28B.30.150. WSR 14-11-025, § 504-26-221, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-221, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

**WAC 504-26-401 Complaints and student conduct process.** (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students.

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the standards of conduct for students. If a conduct officer determines that a complaint appears to state a violation of the standards of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing or ~~((as a university conduct board hearing))~~ referred for a full adjudication in accordance with chapter 504-04 WAC.

(a) ~~((When the allegation involves harm or threat of harm to any person or person's property and the accused disputes the facts and/or denies responsibility, the matter may be referred to the university conduct board for resolution.~~

~~(b))~~ If the possible or recommended sanction is suspension for greater than ten instructional days, expulsion ~~((or suspension))~~, rev-

ocation of degree, or loss of recognition of a student organization,  
the matter is referred (~~((to the university conduct board))~~) for a full  
adjudication in accordance with chapter 504-04 WAC.

~~((~~(e)~~))~~ (b) Matters other than those listed in (a) (~~(and (b))~~) of  
this subsection are heard by a conduct officer, unless the conduct of-  
ficer exercises his or her discretion to refer the matter (~~((to a con-  
duct board at any time before a decision is issued. A student may re-  
quest that a conduct board hear the case, but the final decision to  
refer the matter to the university conduct board for hearing is made  
by the university conduct officer and such decision is not subject to  
appeal))~~) for a full adjudication.

(4) The student conduct officer provides complainants who have  
been targets of alleged misconduct or who feel victimized thereby with  
names of university and community advocates or resources who may be  
able to help the complainant address his or her concerns about the be-  
haviors and provide support to the complainant throughout the conduct  
process. Upon request, a university advisor from the office of the  
dean of students is available to the complainant and the accused stu-  
dent to assist in understanding the student conduct process. Due to  
federal privacy law, the university may not disclose to the complain-  
ant any sanctions taken against the accused student, unless the com-  
plainant was the victim of a violent crime for which the accused was  
found responsible as defined under the Family Educational Rights and  
Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the  
accused student consents to such disclosure.

(5) All notifications and service under this chapter are deliv-  
ered either by electronic mail or other electronic means, delivered  
personally, or sent via regular U.S. mail. Notifications sent via reg-  
ular U.S. mail are sent to the party's last known address or the ad-  
dress on file with the university registrar. The student or recognized  
student organization is responsible for maintaining an updated mailing  
address on file with the registrar. Deadlines described in this chap-  
ter begin the date the notification is sent via electronic means, per-  
sonally delivered, or placed in regular U.S. mail.

(6) Throughout the conduct process, the complainant and the ac-  
cused student have the right to be assisted by an advisor they choose,  
at their own expense. Upon request, a university advisor from the of-  
fice of the dean of students is available to the complainant and the

accused student to assist in understanding the student conduct process. Except in full adjudications pursuant to chapter 504-04 WAC, the complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, nor to participate directly in any university conduct board hearing, conduct officer hearing, or other aspect of the conduct process. An advisor may communicate with the accused and recesses may be allowed for this purpose. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay and do not entitle either party to a delay.

(7) (~~The conduct officer or university conduct board's~~) Determinations in student conduct matters are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(8) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct board or conduct officer proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the university conduct board and/or the conduct officer shall have the discretion to determine admissibility of evidence.

[Statutory Authority: RCW 28B.30.150. WSR 15-11-041, § 504-26-401, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-401, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-401, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-401, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-401, filed 11/22/06, effective 12/23/06.]

**WAC 504-26-402 Conduct officer actions.** (1) Any student (~~((charged))~~) alleged by a conduct officer (~~((with a violation of))~~) to have violated any provision of standards of conduct for students is notified of the basis for the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the procedures in WAC 504-26-401(5).

Any request to extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer or presiding officer, as applicable.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding and enter a finding that the accused student or recognized student organization is not responsible for the alleged conduct violation;

(b) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises;

(c) Impose appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct; or

(d) Refer the matter (~~((to the university conduct board pursuant to WAC 504-26-401(3))~~) for a full adjudication in accordance with chapter 504-04 WAC.

(4) The conduct officer may consider the student's past contacts with the office of student conduct in determining an appropriate sanction and/or deciding whether to refer the case for a (~~((university conduct board hearing))~~) full adjudication.

(5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The

notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

[Statutory Authority: RCW 28B.30.150. WSR 16-08-014, § 504-26-402, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-402, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-402, filed 1/30/12, effective 3/1/12; WSR 11-11-031, § 504-26-402, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-402, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-402, filed 11/22/06, effective 12/23/06.]

NEW SECTION

**WAC 504-26-4031 Procedure for formal (full) adjudicative proceedings.** The procedures for formal adjudicative proceedings are contained in chapter 504-04 WAC. The terms "formal" and "full" in reference to adjudications have the same meaning and are used interchangeably.

[]

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-404 Procedure for academic integrity violations.** (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor shall assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the office of student conduct in writing, including the allegations, the student's admission, and the sanctions imposed.

(b) If the instructor is unable to meet with the student or if the accused student disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor shall make a determination as to whether the student did or did not violate the academic integrity

policy. If the instructor finds that the student was in violation, the instructor shall provide the student and the office of student conduct with a written determination, the evidence relied upon, and the sanctions imposed.

(c) The student has twenty-one days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) imposed to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by his or her instructor to have violated the academic integrity policy, the academic integrity hearing board shall make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Students who appear before the academic integrity board shall have the same rights to notice and to conduct a defense as enumerated in WAC 504-26-403 except:

(i) Notice of hearing and written orders shall be sent to the address provided by the student in the student's request for review (unless an address is not provided therein); and

(ii) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the student's first offense, the office of student conduct ordinarily requires the student to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the student's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the student's second offense, the student is ordinarily (~~required to appear before a university conduct board~~) referred for a full adjudicative hearing in accordance with chapter 504-04 WAC, with a recommendation that the student be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the student is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the student's case be (~~heard by the university conduct board~~) referred for a full adjudicative hearing, with a recommendation for dismissal from the university even if it is the student's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings shall be reported to the responsible instructor and the chair or dean.

[Statutory Authority: RCW 28B.30.150. WSR 16-08-014, § 504-26-404, filed 3/28/16, effective 4/28/16; WSR 11-11-031, § 504-26-404, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-404, filed 2/6/08, effective 3/8/08; WSR 07-11-030, § 504-26-404, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-404, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-406 Interim suspension.** In certain circumstances, the vice president for student affairs, or a designee, may impose an interim suspension prior to the university conduct board hearing or at any time prior to the university's final order.

(1) Interim suspension may be imposed only in situations involving an immediate danger to the health, safety or welfare of:

- (a) Any part of the university community or public at large; or
- (b) The student's own physical safety and well-being.

(2) Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other

students, employees, or invitees from members of the university community from completing their duties as employees or students, is conduct harmful to the welfare of members of the university community.

(3) During the interim suspension, a student may be denied access to the residence halls, and/or to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the vice president for student affairs or designee may determine to be appropriate.

(4) The vice president for student affairs or designee ordering an interim suspension prepares a brief written decision containing the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct for students), and the policy reasons for the interim suspension. The vice president of student affairs or designee sends copies of the decision by personal delivery, by regular U.S. mail, or by electronic mail to all persons or offices bound by it (including, at a minimum, the suspended student and the office of student conduct).

(5) The interim suspension does not replace the regular hearing process, which shall proceed to a conduct officer hearing or a full adjudicative hearing in accordance with chapter 504-04 WAC, as appropriate, as quickly as feasible(~~(, ordinarily within five working days of the notice of the interim suspension where the accused student has not consented to a longer time frame)~~)).

[Statutory Authority: RCW 28B.30.150. WSR 16-08-014, § 504-26-406, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-406, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-406, filed 5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-406, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-407 Review of decision in brief adjudications.** (1) The findings and sanctions rendered by the university conduct board or a conduct officer may be appealed by the complainant and accused student(s) in the manner prescribed in the decision letter containing the findings and sanctions. Such appeal must be made before twenty-one

days of the date of the decision letter. The director of student conduct provides a copy of the appeal request by one party to the other party (parties) as appropriate.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board or conduct officer decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board they shall be given an opportunity to do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and the conduct file for conduct board decisions or the conduct file for conduct officer decisions for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and take one of the following actions:

(a) Affirm, reverse, or modify the conduct board's or conduct officer's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board or conduct officer;

(c) Set aside the findings and sanctions or remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(4) The appeals board's decision shall be personally delivered, sent via regular U.S. mail, or electronically mailed to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s) or electronically mailed to the student's official university electronic mail account. It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeals board's decision letter is the final order and shall advise the student or recognized student organization that judicial review may be available. If the appeals board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed(~~(, except in cases involving expulsion or loss of recognition. In cases involving expulsion or loss of recognition, the appeals board decision is effective ten calendar days from the date the order is signed, unless the university president or designee provides written notice of additional review as provided in subsection (6) of this section.~~

~~(6) For cases involving expulsion or loss of recognition, the university president or designee may review a decision of the appeals board by providing written notice to the student or recognized student~~

~~organization no later than ten calendar days from the date the appeals board decision is signed.~~

~~(a) This review is limited to the record and purposes stated in subsection (2) of this section.~~

~~(b) Prior to issuing a decision, the president or designee shall make any inquiries necessary to determine whether the proceeding should be converted into a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).~~

~~(c) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the president or designee, they shall do so in writing.~~

~~(d) The president or designee's decision is in writing, includes a brief statement of the reasons for the decision, and is issued within twenty calendar days after the date of the appeals board order. The decision becomes effective as soon as it is signed and includes a notice that judicial review may be available)).~~

~~((7))~~ (6) Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the regular U.S. mail, or electronically mailed. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.

~~((8))~~ (7) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

[Statutory Authority: RCW 28B.30.150. WSR 16-08-014, § 504-26-407, filed 3/28/16, effective 4/28/16; WSR 15-11-041, § 504-26-407, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-407, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-407, filed 1/30/12, effective 3/1/12; WSR 11-11-031, § 504-26-407, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-407, filed 2/6/08, effective 3/8/08; WSR 07-11-030, § 504-26-407, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-407, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

**WAC 504-26-601 Interpretations.** Except in full adjudications, any question of interpretation or application of the standards of conduct for students is referred to the vice president for student affairs or designee for final determination.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-601, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

**WAC 504-26-001 Preamble.** Washington State University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct. Students are expected to uphold and be accountable for these standards both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the university community.

Accordingly, the conduct process is nonadversarial to the extent possible, confidential except to the extent permitted by law and these standards of conduct (this chapter), and not to be considered analogous to court proceedings. Further, the conduct process is independent of any criminal or civil penalties. WSU permits students to have advisors in certain circumstances in the student conduct process, but the role of the advisor is very limited, except in full adjudications. Sanctions under these standards of conduct are intended to challenge students' moral and ethical decision making and help them bring their behavior into accord with university community expectations. When students are unable to conform their behavior to community expectations, the student conduct process may determine that they should no longer share in the privilege of participating in the university community. [Statutory Authority: RCW 28B.30.150. WSR 15-11-041, § 504-26-001, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-001, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-001, filed 5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-001, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-010 Definitions.** (1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).

(2) The term "appeals board" means any person or persons authorized by the vice president for student affairs to consider an appeal from a university conduct board's or conduct officer's determination, or a determination after a full adjudication, as to whether a student has violated the standards of conduct for students and any sanctions imposed.

(3) The term "cheating" includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the office of student

conduct. The policy for responding to allegations of scientific misconduct may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(4) The term "complainant" means any party, including the university, who submits a charge alleging that a student violated the standards of conduct for students.

(5) The term "faculty member" for purposes of this chapter, means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "gender identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

(7) The term "may" is used in the permissive sense.

(8) The term "member of the university community" includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university. A person's status in a particular situation is determined by the vice president for student affairs or designee.

(9) The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for

students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

(10) The term "recognized student organization" means any number of persons who have complied with the formal requirements for university recognition.

(11) The term "shall" is used in the imperative sense.

(12) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, although not enrolled in this institution.

(13) The term "student conduct officer" means a university official authorized by the vice president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students.

(14) The term "university" means all locations of Washington State University.

(15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a student is found responsible by the board to have violated these standards of conduct.

(16) The term "academic integrity hearing board" means teaching faculty and student representatives who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(17) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(18) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or

controlled by the university (including adjacent streets and sidewalks).

(19) The vice president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.

[Statutory Authority: RCW 28B.30.150. WSR 16-08-014, § 504-26-010, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-010, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-010, filed 5/11/11, effective 6/11/11; WSR 07-11-030, § 504-26-010, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-010, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

**WAC 504-26-100 Composition of conduct and appeals boards.** (1) The university conduct board shall be composed of five individuals appointed by the vice president for student affairs and comprised of students and persons who are any category of university employee, including affiliate faculty and staff. The chairperson of the conduct board shall be named by the vice president for student affairs and shall be a university employee.

Any three persons constitute a quorum of a conduct board and may act, provided that at least one student and the chairperson are present.

(2) The appeals board shall be appointed by the vice president for student affairs. It shall be composed of three persons, including the chair. The chair shall be a university employee. The other members may be university employees, including affiliate faculty and staff, or students. Three persons constitute a quorum of the appeals board.

[Statutory Authority: RCW 28B.30.150. WSR 15-11-041, § 504-26-100, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-100, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-100, filed 1/30/12, effective 3/1/12; WSR 06-23-159, § 504-26-100, filed 11/22/06, effective 12/23/06.]

**WAC 504-26-221 Sexual misconduct.** (1) Sexual misconduct is an egregious form of sex discrimination/sexual harassment. A number of acts may be regarded as sexual misconduct including, but not limited to, nonconsensual sexual contact (including sexual intercourse) and sexual exploitation. Sexual misconduct includes sexual assault and other sexual violence.

(2) Consent. Consent to any sexual activity must be clear, knowing, affirmative, and voluntary. Anything less is equivalent to a "no." Clear, knowing, affirmative, and voluntary consent to sexual activity requires that, at the time of the act, and throughout the sexual contact, all parties actively express words or conduct that a reasonable person would conclude demonstrates clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Consent is active; silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity.

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. When an individual makes it clear through words or actions that the individual does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate his or her unwillingness to engage in sexual activity; or

(c) A reasonable person would or should know that the other person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or

another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if the individual cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or the individual lacks the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(3) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (or clothing covering any of those areas), or by causing another person to touch his or her own or another person's intimate body parts without consent and/or by force. Sexual contact also can include any intentional bodily contact in a sexual manner with another person's nonintimate body parts. It also includes nonconsensual sexual intercourse.

(4) Sexual exploitation occurs when a person takes nonconsensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above. Examples of sexual exploitation may include, but are not limited to:

(a) Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person;

(b) Invading another person's sexual privacy;

(c) Prostituting another person;

(d) Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, records, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where he or she has a reasonable expectation of privacy;

(e) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection;

(f) Exposing one's intimate parts in nonconsensual circumstances;

(g) Sexually based stalking and/or bullying.

(5) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

[Statutory Authority: RCW 28B.30.150. WSR 14-11-025, § 504-26-221, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-221, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

**WAC 504-26-401 Complaints and student conduct process.** (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students.

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the standards of conduct for students. If a conduct officer determines that a complaint appears to state a violation of the standards of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing or referred for a full adjudication in accordance with chapter 504-04 WAC.

(a) If the possible or recommended sanction is suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a student organization, the matter is referred for a full adjudication in accordance with chapter 504-04 WAC.

(b) Matters other than those listed in (a) of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter for a full adjudication.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the accused student consents to such disclosure.

(5) All notifications and service under this chapter are delivered either by electronic mail or other electronic means, delivered personally, or sent via regular U.S. mail. Notifications sent via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar. The student or recognized student organization is responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in this chapter begin the date the notification is sent via electronic means, personally delivered, or placed in regular U.S. mail.

(6) Throughout the conduct process, the complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Except in full adjudications pursuant to chapter 504-04 WAC, the complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, nor to participate directly in any university conduct board hearing, conduct officer hearing, or other aspect of the conduct process. An advisor may communicate with the accused and recesses may be allowed for this purpose. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time

for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay and do not entitle either party to a delay.

(7) Determinations in student conduct matters are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(8) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct board or conduct officer proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the university conduct board and/or the conduct officer shall have the discretion to determine admissibility of evidence.

[Statutory Authority: RCW 28B.30.150. WSR 15-11-041, § 504-26-401, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-401, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-401, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-401, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-401, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-402 Conduct officer actions.** (1) Any student alleged by a conduct officer to have violated any provision of standards of conduct for students is notified of the basis for the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the procedures in WAC 504-26-401(5).

Any request to extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer or presiding officer, as applicable.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under considera-

tion, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding and enter a finding that the accused student or recognized student organization is not responsible for the alleged conduct violation;

(b) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises;

(c) Impose appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct; or

(d) Refer the matter for a full adjudication in accordance with chapter 504-04 WAC.

(4) The conduct officer may consider the student's past contacts with the office of student conduct in determining an appropriate sanction and/or deciding whether to refer the case for a full adjudication.

(5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

[Statutory Authority: RCW 28B.30.150. WSR 16-08-014, § 504-26-402, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-402, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-402, filed 1/30/12, effective 3/1/12; WSR 11-11-031, § 504-26-402, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-402, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-402, filed 11/22/06, effective 12/23/06.]

#### NEW SECTION

**WAC 504-26-4031 Procedure for formal (full) adjudicative proceedings.** The procedures for formal adjudicative proceedings are contained

in chapter 504-04 WAC. The terms "formal" and "full" in reference to adjudications have the same meaning and are used interchangeably.

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AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-404 Procedure for academic integrity violations.** (1)  
Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor shall assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the office of student conduct in writing, including the allegations, the student's admission, and the sanctions imposed.

(b) If the instructor is unable to meet with the student or if the accused student disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor shall make a determination as to whether the student did or did not violate the academic integrity policy. If the instructor finds that the student was in violation, the instructor shall provide the student and the office of student conduct with a written determination, the evidence relied upon, and the sanctions imposed.

(c) The student has twenty-one days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) imposed to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by his or her instructor to have violated the academic integrity policy, the academic integrity hearing board shall make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Students who appear before the academic integrity board shall have the same rights to notice and to conduct a defense as enumerated in WAC 504-26-403 except:

(i) Notice of hearing and written orders shall be sent to the address provided by the student in the student's request for review (unless an address is not provided therein); and

(ii) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the student's first offense, the office of student conduct ordinarily requires the student to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the student's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the student's second offense, the student is ordinarily referred for a full adjudicative hearing in accordance with chapter 504-04 WAC, with a recommendation that the student be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the student is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the student's case be referred for a full adjudicative hearing, with a recommendation for dismissal from the university even if it is the student's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings shall be reported to the responsible instructor and the chair or dean.

[Statutory Authority: RCW 28B.30.150. WSR 16-08-014, § 504-26-404, filed 3/28/16, effective 4/28/16; WSR 11-11-031, § 504-26-404, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-404, filed 2/6/08, effective 3/8/08; WSR 07-11-030, § 504-26-404, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-404, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-406 Interim suspension.** In certain circumstances, the vice president for student affairs, or a designee, may impose an interim suspension prior to the university conduct board hearing or at any time prior to the university's final order.

(1) Interim suspension may be imposed only in situations involving an immediate danger to the health, safety or welfare of:

- (a) Any part of the university community or public at large; or
- (b) The student's own physical safety and well-being.

(2) Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from members of the university community from completing their duties as employees or students, is conduct harmful to the welfare of members of the university community.

(3) During the interim suspension, a student may be denied access to the residence halls, and/or to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the vice president for student affairs or designee may determine to be appropriate.

(4) The vice president for student affairs or designee ordering an interim suspension prepares a brief written decision containing the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct for students), and the policy reasons for the interim suspension. The vice president of student affairs or designee sends copies of the decision by personal delivery, by regular U.S. mail, or by electronic mail to all persons or offices bound by it (including, at a minimum, the suspended student and the office of student conduct).

(5) The interim suspension does not replace the regular hearing process, which shall proceed to a conduct officer hearing or a full adjudicative hearing in accordance with chapter 504-04 WAC, as appropriate, as quickly as feasible.

[Statutory Authority: RCW 28B.30.150. WSR 16-08-014, § 504-26-406, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-406, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-406, filed 5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-406, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-407 Review of decision in brief adjudications.** (1) The findings and sanctions rendered by the university conduct board or a conduct officer may be appealed by the complainant and accused student(s) in the manner prescribed in the decision letter containing the findings and sanctions. Such appeal must be made before twenty-one days of the date of the decision letter. The director of student conduct provides a copy of the appeal request by one party to the other party (parties) as appropriate.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board or conduct officer decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board they shall be given an opportunity to do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the univer-

sity conduct board hearing and the conduct file for conduct board decisions or the conduct file for conduct officer decisions for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and take one of the following actions:

(a) Affirm, reverse, or modify the conduct board's or conduct officer's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board or conduct officer;

(c) Set aside the findings and sanctions or remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(4) The appeals board's decision shall be personally delivered, sent via regular U.S. mail, or electronically mailed to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s) or electronically mailed to the student's

official university electronic mail account. It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeals board's decision letter is the final order and shall advise the student or recognized student organization that judicial review may be available. If the appeals board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed.

(6) Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the regular U.S. mail, or electronically mailed. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.

(7) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

[Statutory Authority: RCW 28B.30.150. WSR 16-08-014, § 504-26-407, filed 3/28/16, effective 4/28/16; WSR 15-11-041, § 504-26-407, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-407, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-407, filed 1/30/12, effective 3/1/12; WSR 11-11-031, § 504-26-407, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-407, filed 2/6/08, effective 3/8/08; WSR 07-11-030, § 504-26-407, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-407, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

**WAC 504-26-601 Interpretations.** Except in full adjudications, any question of interpretation or application of the standards of conduct for students is referred to the vice president for student affairs or designee for final determination.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-601,  
filed 11/22/06, effective 12/23/06.]