

# ACTION ITEM #1

## Amendments to WAC Chapter 504-26 – Standards of Conduct for Students (John Fraire)

TO ALL MEMBERS OF THE BOARD OF REGENTS

**SUBJECT:** Amendments to WAC Chapter 504-26 – Standards of Conduct for Students

**PROPOSED:** That the Board of Regents approve the updates of rules regarding standards of conduct for students. The updates are due to changes in federal law, specifically updates to the Violence Against Women Act of 1994 and changes in the federal Office for Civil Rights' interpretation of universities' obligations under Title IX.

**SUBMITTED BY:** John Fraire, Vice President for Student Affairs and Enrollment

**SUPPORTING INFORMATION:** This revision updates the following university rules regarding standards of conduct for students. Changes in federal law, specifically the 2013 reauthorization of and amendments to the Violence Against Women Act of 1994, 42 U.S.C. § 13925, as well as changes in best practices regarding Title IX compliance, require updates to this chapter. The sections being changed or added are:

504-26-200: Jurisdiction of the standards of conduct for students  
Definitions are incorporated into Washington State University's Executive Policy 15.

504-26-204: Abuse of self or others  
Updated to include domestic or intimate partner violence.

504-26-220: Discrimination and discriminatory harassment  
Updated to include discriminatory harassment and expand definitions and inclusions.

504-26-221: Sexual misconduct  
Updates and expands definition of sexual misconduct, consent, mental capacity to consent, coercion, sexual exploitation, and adds that use of alcohol or other drugs is not a valid defense to violation of this policy.

504-26-222: Harassment  
Updates definition of harassment other than sexual or discriminatory harassment.

504-26-223: Stalking

Updates and expands the definition of stalking.

504-26-227: Sexual harassment

New section added on sexual harassment.

504-26-230: Retaliation

New section added on retaliation.

Notice of proposed changes was published in the Washington State Register on April 2, 2014 and on April 14, 2014, and April 16, 2014 in the Daily Evergreen. No comments were received, oral or written, from the public regarding this proposal.

# Procedures and Forms Review Request

Office of Procedures, Records, and Forms  
Washington State University  
Pullman, WA 99164-1225  
Telephone: 509-335-2005  
FAX: 509-335-3969

## INSTRUCTIONS:

Please review the attached and return to the Office of Procedures, Records, and Forms by the indicated "Respond" date.

REQUEST DATE February 25, 2014	RESPOND BY DATE March 4, 2014
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SECTION OR FORM NAME Washington State University: Standards of Conduct for Students	WAC	NUMBER 504-26-**	DRAFT 2
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REVIEWER John Fraire	RESPONSIBLE OFFICIAL John Fraire
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INFORMATIONAL COPY	TYPE OF CHANGE Substantive Revision	RESPONSIBLE OFFICE Student Affairs and Enrollment
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**DESCRIPTION**  
This revision updates the following university rules regarding standards of conduct for students. Changes in federal law, specifically the 2013 reauthorization of and amendments to the Violence Against Women Act of 1994, 42 USC Section 13925, require updates to this chapter. The sections being changed or added are:

- 504-26-200: Jurisdiction of the standards of conduct for students.
- 504-26-204: Abuse of self or others.
- 504-26-220: Discrimination and discriminatory harassment.
- 504-26-221: Sexual misconduct.
- 504-26-222: Harassment.
- 504-26-223: Stalking.
- 504-26-227: Sexual harassment.
- 504-26-230: Retaliation.

NOTE: In order to meet the Code Reviser's filing deadlines and to stay on our timeline, with the goal of making the Board of Regents agenda for their May meeting, we are requesting your response by March 4th.

Return comments or approval to Deb Bartlett, Procedures, Records, and Forms.

PREVIOUS REVIEWERS		PREVIOUS REVIEWERS	
NAME	OFFICE	NAME	OFFICE
Danielle Hess	AGO		
Adam Jussel	Student Standards & Accountability		
Kim Anderson	OEO		
Melynda Huskey	Dean of Students		

REVIEWER'S COMMENTS

The reviewer marks one of the boxes below and signs the form.

- I concur.  
  I concur in general. See comments.  
  I do not concur. See comments.  
  I defer comments.

REVIEWER'S SIGNATURE/DATE

**WAC 504-26-200 Jurisdiction of the ((university)) standards of conduct for students.** The ((university)) standards of conduct for students shall apply to conduct that occurs on university premises, at university sponsored activities, and to off-campus conduct that adversely affects the university community and/or the pursuit of its objectives. Each student is responsible and accountable for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. Definitions from these standards are incorporated into the Washington State University's Executive Policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct. The university has sole discretion to determine what conduct occurring off campus adversely impacts the university community and/or the pursuit of university objectives.

[Statutory Authority: RCW 28B.30.150. WSR 11-11-031, § 504-26-200, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-200, filed

2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-200, filed 11/22/06, effective 12/23/06.]

**WAC 504-26-204 Abuse of self or others.** Physical abuse, threats, intimidation, and/or other conduct which threatens or endangers the health or safety of any person, including one's self, including, but not limited to, domestic or intimate partner violence.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-204, filed 11/22/06, effective 12/23/06.]

**WAC 504-26-220 Discrimination and discriminatory harassment.** Discrimination or discriminatory harassment on the basis of race((~~τ~~—~~col-  
or~~)); sex/gender; sexual orientation; gender identity/expression;((~~τ~~)) religion;((~~τ~~—ancestry)) age; color; creed;((~~τ~~ )) national or ethnic origin;((~~τ~~—age,~~τ~~—gender)) physical, mental, or sensory disability (in-  
cluding disability requiring the use of a trained service ani-  
mal);((~~τ~~)) marital status((~~τ~~)); genetic information; and/or status as  
an honorably discharged veteran ((~~status, sexual orientation, gender  
identity, or mental, physical, or sensory disability is prohibited in  
conformity with federal and state laws~~)) or member of the military;  
and as defined in Washington State University's Executive Policy 15,

which prohibits discrimination, sexual harassment, and sexual misconduct.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-220, filed 11/22/06, effective 12/23/06.]

**WAC 504-26-221 Sexual misconduct.** (1) Sexual misconduct is ~~((any sexual activity with another that is unwanted and nonconsensual. Sexual misconduct includes physical contact as well as voyeurism.))~~ 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, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, ~~((there are))~~ actual words or conduct ~~((demonstrating freely given agreement to sexual activity-silence))~~ demonstrate clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Silence or passivity is

not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

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

(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 does not want sex 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 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 in-

fluence 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 cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or he or she 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 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 06-23-159, § 504-26-221, filed 11/22/06, effective 12/23/06.]

**WAC 504-26-222 Harassment (other than sexual harassment or discriminatory harassment).** ((Conduct)) Harassment is conduct by any

means that is severe, persistent, or pervasive~~((, or persistent))~~, and is of such a nature that it would cause a reasonable person in the victim's position substantial emotional distress and undermine his or her ability to work, study, or participate in his or her regular life activities or participate in the activities of the university, ~~((and))~~ and/or actually does cause the victim substantial emotional distress and undermines the victim's ability to work, study, or participate in the victim's regular life activities or participate in the activities of the university.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-222, filed 11/22/06, effective 12/23/06.]

**WAC 504-26-223 Stalking.** ~~((Intentionally and repeatedly harassing or following a person and intentionally or unintentionally placing the person being followed or harassed in))~~ (1) Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(a) Fear for his or her safety or the safety of others;

(b) ~~((fear))~~ Fear ~~((ef))~~ for ~~((physical))~~ harm to ~~((one's self))~~ his or her property or ~~((physical harm to another person or another's))~~ the property of others; or

(c) Suffer substantial emotional distress.

(2) ((This)) Stalking includes, but is not limited to, conduct occurring in person, electronically, or through a third party.

[Statutory Authority: RCW 28B.30.150. WSR 11-11-031, § 504-26-223, filed 5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-223, filed 11/22/06, effective 12/23/06.]

NEW SECTION

WAC 504-26-227 Sexual harassment. Sexual harassment includes behavior defined in Washington State University's Executive Policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

NEW SECTION

WAC 504-26-230 Retaliation. Retaliation includes any act that would dissuade a reasonable person from making or supporting a complaint, or participating in an investigation, under the standards of conduct for students (this chapter). Retaliatory behavior includes action or threat of action that could negatively affect another's employment, education, reputation, or other interest. It also includes

retaliation as defined in Washington State University's Executive Policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.