Meeting Synopsis:

1. Call to order
2. Review of the minutes from December 6th, 2016
3. Student Conduct Code presentation/discussion
4. Student reports (ASUW, GPSS)
5. Good of the order
6. Adjourn

1) Call to order

Laws called the meeting to order at 1:30 p.m.

2) Review of the minutes from December 6th, 2016

The minutes from December 6th, 2016 were approved as written.

3) Student Conduct Code presentation/discussion (Exhibit 1) (Exhibit 2)

Jill Lee (Executive Director, Compliance Services), Amanda Paye (Deputy Title IX/ADA Coordinator, Compliance Services), Ellen Taylor (Assistant Vice-President, Student Life), and Kara Blake (Project Manager, Compliance Services) were present in the meeting to discuss revisions to the Student Conduct Code (SCC).

Full adjudication process & general questions

Some of the recent changes to the Washington Administrative Code (WAC) language add the ability to conduct full adjudication processes in certain student conduct cases, as the change may be necessary given the Administrative Procedure Act (APA), Chapter 34.05 Revised Code of Washington (RCW). Specifically, a “full hearing” possibility has been added where suspension or dismissal of a respondent is possible, or if the alleged misconduct rises to the level of a felony. Lee explained faculty (and students in non-Title IX cases) would still play the main role during administrative review (a checks and balances investigation into the process as a whole). The guests noted despite the change, the aim of the revision process is still to create a swifter and more equitable process.

A member asked about the training of conduct officers. Lee noted Title IX conduct officers are attorneys who have strong familiarity with associated processes. Taylor explained non-Title IX conduct officers are not typically attorneys, but are full-time employees. Paye explained “hearing officers” will also be included in the process, and staffing procedures for these officers are still being finalized.
Querna asked if university social workers/counselors are available to students imbedded in misconduct cases. It was clarified those students do have access to the same resources as any other student. The guests mentioned that “confidential advocates” are also available to complainants to explain the process, be present at hearings, and to provide other resources. There will be 5-6 conduct officers available at any given time for non-Title IX cases at the UW, and four conduct officers for Title IX misconduct (these officers serve all campuses of the university).

After a question, Lee explained there have been 25-26 Title IX-related issues come through the UW Title IX Investigation Office on average, per year, whereas there have been approximately 200 non-Title IX cases per year (most of which go through a brief adjudicative process).

Laws suggested that the student conduct process would benefit from a committee that meets on a regular basis to discuss how well the new system is functioning, including assessing the amount of cases coming in and evaluating the overall efficiency of the new processes.

Ezeonwu noted that an educational video on the changes to the SCC (made available to council members) should be broadcasted widely with any SCC legislation, as it is very useful in bolstering understanding of the revised process.

**Specific revisions**

Lee began highlighting the main changes made since from the time of the last meeting in the redlined version of the WAC (Exhibit 1). She used the meeting’s SCC cover memo document and went chronologically through each of the 37 “specific revisions” (Exhibit 2). Questions relating to these changes are as follows:

- Revision #4 (page 11, Exhibit 1) – “Presiding officer” can relate to a hearing officer or conduct officer. Additionally, “Abuse of others” does not include all the kinds of abuse that may be perpetrated and responded to under Title IX (page 9).
- Revision #5 (page 13, Exhibit 1) – Members noted the word “materially” seems incorrect or redundant. The guests noted the word was added as it runs parallel to language found in the RCW, and so legal advisors recommended its use.
- Revision #10 (page 17, Exhibit 1) – There was a question about the phrase “one or more individuals.” The response was that if you use the word “staff,” sometimes hearing officers are not university staff. Additionally, the term only applies to initiating conduct proceedings.
- Revision #13 (page 18, Exhibit 1) – “the university official” will be changed to be made less restrictive (e.g. a university official), after the council voiced concern.
- Revision #25 (page 24, Exhibit 1) – This revision details full adjudicative proceedings and full hearings, which is a major change from the council’s last reading of the WAC.
- Revision #34 (page 27, Exhibit 1) – It was noted 30 days is the limit for the order to be submitted by the reviewing officer under 478-120-0066, so it may in fact occur sooner.
- Revision #36 (page 28, Exhibit 1) – It was noted making it so that a request for reconsideration must be directed to “the officer(s) who issued the final order” might be problematic if that person is unavailable for whatever reason, thus halting the process.
4) Student reports (ASUW, GPSS)

The item was missed due to time constraints.

5) Good of the order

Laws noted the revised WAC will go to the SEC as Class B legislation in February 2017, and the council must vote on it before that time. This may be done electronically, or in a normal meeting. The guests explained if members believe any additional changes for the WAC are necessary, they must be informed of those by the coming Friday January 6th.

6) Adjourn

The meeting was adjourned at 3:00 p.m.

Minutes by Joey Burgess, jmbg@uw.edu, council support analyst

Present: Faculty: Chris Laws (chair), Holly Barker, Mable Ezeonwu, Doug Brock
Ex-officio reps: Aileen Trilles, Katherine Querna, Carolyn Martin
Guests: Ellen Taylor, Amanda Paye, Jill Lee, Kara Blake
President’s designee: Lincoln Johnson

Absent: Faculty: Bruce Hevly, Jasmine Bryant, Christopher Campbell
Ex-officio reps: Kaitlyn Zhou, Tanya Kumar

Exhibits
Exhibit 1 – 12-27-16 3rd draft of WAC to FCSA
Exhibit 2 – 12-27-16 FCSA cover memo
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[REVISED WAC]
Student Conduct Code for the University of Washington

478-120-001 Statement of Authority

Pursuant to chapter 34.05 RCW and the authority granted by RCW 28B.20.130, the board of regents of the University of Washington has established the following rules regarding student conduct and student discipline. The University has also developed agency-level policies and procedures regarding the agency’s interpretations of these rules. **See Chapters 209 and 210 of Student Governance and Policies.**

I. APPLICATION OF THE STUDENT CONDUCT CODE

478-120-002 General Application of the Student Conduct Code

This conduct code applies to all students from the time of admission through the actual conferral of a degree, including any period between terms of enrollment.

The disciplinary sanctions specified in **WAC 478-120-0020**, up to and including suspension or dismissal, may be imposed on any student or student organization found responsible for prohibited conduct set forth in **WAC 478-120-006 through 0015** and as described in relevant University policies.

478-120-003 Application of Student Conduct Code to Research Misconduct

Research misconduct, as defined in **WAC 478-120-009**, is a form of prohibited conduct under this code. Federal rules and policies, however, regulate the handling of research misconduct matters when University research is supported by federal funding. These federal requirements are incorporated into the University’s Executive Order No. 61, Research Misconduct Policy, which governs the handling of research misconduct allegations against students participating in research on behalf of the University, as is further explained in that Executive Order. The disciplinary sanction provisions of this code, **WAC 478-120-0020 through 0021**, apply if there has been a finding of research misconduct against a student under Executive Order No. 61. The administrative review provisions of this code, **WAC 478-120-0044 through 478-120-0049**, apply to the extent such review is permitted by Executive Order No. 61, with the dean acting as the “conduct officer” when a research misconduct proceeding is involved.

478-120-004 Jurisdiction of the University

The scope of the University’s jurisdiction includes reports that prohibited conduct occurred:

a. on any University premises or in connection with any University-sponsored program or activity, regardless of the location of the program or activity; or

b. off campus (i.e., conduct that does not occur on University premises or in the context of a University-sponsored program or activity) where: the University reasonably determines that the conduct adversely affects a University interest or, has continuing adverse effects or may create a hostile environment on University premises or in the context of a University-sponsored program or activity.

Conduct matters may be initiated under the conduct code regardless of whether or not the incident in question is the subject of criminal or civil proceedings. Following a criminal conviction of a student that adversely affects a University interest, the University may initiate conduct proceedings and may accept the conviction as the evidentiary basis for establishing prohibited conduct under this code.
Nothing in this conduct code shall be construed to limit academic action that may be taken by schools, colleges, or programs against a respondent based on an established violation of this conduct code that demonstrates a failure to meet the academic and/or professional standards of the school, college, or program.

If a respondent withdraws from the University (or fails to reenroll) while a conduct proceeding is pending, the University may continue the fact finding and, if continued, the respondent will be provided with a continued opportunity to participate.

II. DEFINITIONS

478-120-005 Definitions

For the purposes of this conduct code, the following definitions apply:

1. Complainant

A "complainant" is the person who is the subject of the prohibited conduct, whether or not that person made a report that a violation of the code or this policy had been committed against them.

2. Conduct officer

"Conduct officer" is an individual who has the authority to initiate conduct proceedings under this code, including initiating conduct proceedings, completing fact finding, and issuing initial orders. A “conduct officer” under this code is considered a “presiding officer” under Chapter 34.05 RCW for the purpose of conducting a brief adjudicative proceeding.

3. Conduct proceedings

“Conduct proceedings” refers to brief adjudicative proceedings and full adjudicative proceedings, collectively, under Chapter 34.05 RCW.

4. FERPA

"FERPA" refers to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).

5. Full hearing

“Full hearing” refers to the hearing that occurs when a matter is designated as being appropriate for a full adjudicative proceeding, consistent with Section X of this code.

6. Hearing officer

A “hearing officer” is a “presiding officer” in a full hearing for the purpose of conducting a full adjudicative proceeding under Chapter 34.05 RCW.

7. Presiding officer

“Presiding officer” refers to conduct officers and hearing officers collectively.
8. **Respondent**

A "respondent" is any student or student organization charged with prohibited conduct under the conduct code.

9. **Reviewing officers**

“Reviewing officers” are those who conduct administrative reviews for the purpose of full adjudicative proceedings or brief adjudicative proceedings under Chapter 34.05 RCW.

10. **Review panel**

“Review panel” is a panel of reviewing officers selected from the pool of reviewing officers appointed to conduct administrative reviews under Section IX and/or Section XI.

11. **Student**

A “student” is any person enrolled in or taking courses at or through the university, either full-time or part-time, including credit, noncredit, online, and nondegree courses, and any person who has been notified of acceptance for admission by the university. A student who withdraws from a course or from the university, graduates, or completes courses after the date of an alleged violation, or who is not enrolled for a particular quarter or quarters, but has a continuing relationship with the university, is still considered a student for purposes of this conduct code.

12. **Student organization**

"Student organization" is a group of students that has complied with the requirements for university recognition or who otherwise are granted any rights or privileges by the university as a university affiliate. Student organizations include, but are not limited to, athletic teams or clubs, registered student organizations (RSOs), university service clubs, and sororities and fraternities. (Student organizations are also subject to the process and procedures outlined in the RSO Policy Guide and/or the organization's applicable recognition agreement.)

13. **University community**

The “University community” includes all University students, employees, guests of and visitors to the university, and other individuals affected by the conduct of a University student.

14. **University official**

"University official" is an employee of the university performing his or her assigned administrative, professional, or paraprofessional duties.

15. **University premises**

"University premises" includes all of the university's campus buildings, grounds, and facilities, all of its extension and research locations, and all other university-leased, owned, or managed buildings, grounds, and facilities, including its global learning centers and study abroad program sites, as well as university sponsored and/or hosted online platforms.
III. PROHIBITED CONDUCT

478-120-006 General Application

Prohibited conduct under this code includes, but is not limited to, the prohibited conduct described in WAC 478-120-006 through 0015 and relevant University policies. For additional interpretation of Prohibited Conduct, see Chapter 210 Student Governance and Policies – Student Conduct Policy for Discriminatory and Sexual Harassment, Intimate Partner Violence, Sexual Misconduct, Stalking, and Retaliation and Chapter 209 Student Governance and Policies – Student Conduct Policy for Academic and Research Misconduct and Behavioral Misconduct.

478-120-007 Aiding, and Assisting, and Attempting

Students may be found responsible for prohibited conduct if they:

a. Aid or assist another student or student organization in the commission of prohibited conduct;

b. Request, hire, or incite another person to commit prohibited conduct, either intending that the other person commit the prohibited conduct or with the knowledge that the other person intends to commit the prohibited conduct; or

c. Attempt to commit prohibited conduct.

478-120-008 Academic Misconduct

Academic misconduct includes:

a. "Cheating," which includes, but is not limited to:

i. The use of unauthorized assistance in taking quizzes, tests, or examinations, or completing assignments;

ii. The acquisition, use, or distribution of unpublished materials created by another student without the express permission of the original author(s);

iii. Using online sources, such as solution manuals, without the permission of the instructor to complete assignments, exams, tests, or quizzes; or

iv. Requesting, hiring, or otherwise encouraging someone to take a course, exam, test, or complete assignments for a student.

b. "Falsification," which is the intentional use or submission of falsified data, records, or other information including, but not limited to, records of internship or practicum experiences or attendance at any required event(s), or scholarly research.

c. "Plagiarism," which is the submission or presentation of someone else's words, composition, research, or expressed ideas, whether published or unpublished, without attribution. Plagiarism includes, but is not limited to:

i. The use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment; or

ii. The unacknowledged use of materials prepared by another person or acquired from an entity engaging in the selling of term papers or other academic materials.

d. Unauthorized collaboration.

e. Engaging in behavior specifically prohibited by an instructor in the course of class instruction or in a course syllabus.

f. Multiple submissions of the same work in separate courses without the express permission of the instructor(s).
g. Taking deliberate action to destroy or damage another’s academic work in order to gain an advantage for oneself or another.

h. The recording of instructional content without the express permission of the instructor(s), unless approved as a disability accommodation, and/or the dissemination or use of such unauthorized records.

478-120-009 Research Misconduct

"Research misconduct" is fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, as is further set forth in University Executive Order No. 61.

478-120-0010 Discriminatory Harassment and Sexual Harassment

1. Discriminatory harassment.

Discriminatory harassment includes verbal, physical, electronic, or other conduct based on an individual’s race, color, creed, religion, national origin, citizenship, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, disability, or veteran status when one of the conditions outlined in (a) or (b), below, is present:

a. Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person’s instruction, academic standing, employment, or participation in any University program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or

b. Such conduct creates a hostile environment, which is created when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual’s academic or work performance, ability to participate in or benefit from the University’s programs, services, opportunities, or activities, or the receipt of legitimately requested services when viewed through both a subjective and objective standard.

2. Sexual harassment

Sexual harassment is unwelcome sexual advances, requests for sexual favors or other verbal, physical, or electronic conduct of a sexual nature when one of the conditions outlined in (a) or (b), below, is present:

a. Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person’s instruction, academic standing, employment, or participation in any University program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or

b. Such conduct creates a hostile environment, which is created when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual’s academic or work performance, ability to participate in or benefit from the University’s programs, services, opportunities, or activities, or the receipt of legitimately requested services when viewed through both a subjective and objective standard.

478-120-0011 Intimate Partner Violence

Intimate partner violence includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate partner violence may include any form of prohibited conduct under this code, including sexual assault, stalking, and physical abuse of others.
Abuse of others includes assault and other forms of physical abuse of any person, or any conduct intended to threaten bodily harm or to endanger the health or safety of any person. Intimate partner violence may also include forms of economic or emotional abuse, including behaviors that are intended to intimidate, manipulate, humiliate, or isolate someone.

478-120-0012 Retaliation

Retaliation includes engaging or attempting to engage in any action, directly or indirectly, including through a third party, that is intended to harass, intimidate, threaten, harm or improperly influence any person because they:

- Make, or intend to make, a report, complaint, grievance, or allegation of prohibited conduct under any University policy or rule, or under any law;
- Participate in and/or cooperate with conduct proceedings; or
- Appear as a witness.

478-120-0013 Sexual Misconduct

1. Indecent Exposure

Indecent exposure includes the exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm, or is against generally accepted standards of decency. Breast feeding or expressing breast milk is not indecent exposure.

2. Sexual Assault

Sexual assault includes sexual contact with another person without, or that exceeds, that person's consent.

For the purposes of this subsection, "sexual contact" includes:

- Any intentional touching of the intimate parts of another person’s clothed or unclothed body, including but not limited to the mouth, neck, buttocks, anus, genitalia, or breast;
- Causing another person to touch their own or another’s body in the manner described above; or
- Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral-genital contact.

For the purposes of this subsection, "consent" means that at the time of and throughout the sexual contact, there are words or conduct that reasonably communicate freely given agreement between or among the parties to engage in the sexual contact. In addition:

- Consent cannot be obtained when force or threat is used to gain consent;
- Consent cannot be obtained where the respondent knew or reasonably should have known that the other person was incapacitated; or
- Consent cannot be given or granted by a person who is under the statutory age of consent in accordance with the Criminal Code of Washington Chapter 9A.44 RCW – Sex Offenses.

A respondent’s use of alcohol or drugs is not a valid defense to a charge of sexual assault, and a respondent will be held to the standard of a reasonable sober person in evaluating whether the respondent knew or reasonably should have known that the complainant was incapacitated.
3. Sexual Exploitation

Sexual exploitation involves taking nonconsensual or abusive advantage of another for the purposes of sexual arousal or gratification, financial gain, or other personal benefit. Examples of sexual exploitation include:

a. Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings or images of a private and sexual nature, including consensual sexual activity, without the consent of the subject(s);

b. Taking, making, sharing or directly transmitting photographs, films, or digital images of the private body parts of another person without that person's consent;

c. Prostituting another person; or

d. Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity.

478-120-0014 Stalking

Stalking means engaging in a course of conduct directed at another person that would cause a reasonable person to:

a. Fear for the person's safety or safety of others; or

b. Suffer substantial emotional distress.

For the purposes of this subsection, "course of conduct" means two or more acts including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Stalking also includes cyber-stalking such as through electronic media, the internet, social networks, blogs, cell phones, or text messages.

For the purposes of this subsection, "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

478-120-0015 Behavioral Misconduct

1. Abuse of Others

Abuse of others includes assault and other forms of physical abuse of any person, or any conduct intended to threaten bodily harm or to endanger the health or safety of any person.

2. Abuse of the Student Conduct Process

Abuse of the student conduct process includes:

a. Attempting to influence the impartiality or participation of any conduct-presiding officer or any reviewing officer;

b. Influencing or attempting to influence another person to commit an abuse of the student conduct process; or

c. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.
This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

3. Acts of Dishonesty

Acts of dishonesty include:
   a. Knowingly furnishing false information to any University official;
   b. Impersonating, or providing false information in the name of, any University official;
   c. Forging, altering, or misusing any University document or record, or instrument of identification;
   d. Falsely claiming an academic credential; and
   e. Providing dishonest or misleadingly incomplete information or answers on application forms or in response to other official University requests for information.

4. Alcohol Violations

The unlawful possession, use, distribution, or manufacture of alcohol.

5. Computer Abuses

Computer abuses include, but are not limited to:
   a. Unauthorized use of University computer resources;
   b. Use of another person's University user name and/or password;
   c. Use of University computing facilities and resources to interfere with the work of another student, an instructor, or other University official;
   d. Use of University computing facilities or resources to send intimidating, harassing, or threatening messages;
   e. Use of a computer or software to interfere with normal operations of the University's computing systems;
   f. Use of the University's computing facilities or resources in violation of any law, including copyright laws; and
   g. Any violation of the University's computer use policies.

6. Creating a Public Nuisance in Neighboring Communities

In furtherance of the University's interest in maintaining positive relationships with its surrounding communities, the University shall have the authority to hold students accountable under this conduct code for misconduct within any residential or commercial communities adjacent to a University campus. Conduct proceedings may be initiated if the University is made aware that a student or student organization has been contacted by a law enforcement agency regarding, and is determined to have engaged in, conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses, including, but not limited to, creating a public nuisance due to noise, residential disturbance, intentional destruction of property, urinating in public, or criminal trespass.
7. Disruption or Obstruction

Disruption or obstruction includes intentionally materially and substantially obstructing or disrupting, through words or conduct, the teaching or learning environment of any University educational setting, or any University functions or activities.

An instructor has the authority to exclude a student from any individual class session or other academic activity in which the student is materially disruptive or obstructive and may also make a report in accordance with this code and University policy.

8. Drug Violations

The possession, use, distribution, or manufacture of controlled substances (as defined in chapter 69.50 RCW or Title 21 U.S.C. Sec. 802) on University premises or during University sponsored activities where such possession, use, distribution, or manufacture is illegal under federal, state, or local law is prohibited. This includes the possession, use, distribution, or growing of marijuana in all forms during University sponsored activities or on University premises, including University housing.

9. Failure to Comply

Failure to comply includes, but is not limited to:
   a. Any failure to comply with the directions of any University officials acting in the performance of their duties;
   b. Any failure to identify oneself to University officials when requested to do so; or
   c. Any failure to comply with the rules, regulations, procedures, policies, standards of conduct, or any order or directive of the University or any of its schools, colleges, and departments.

10. Harassment or Bullying

Harassment or bullying is language or conduct that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person’s academic or work performance, or a person’s ability to participate in or benefit from the university's programs, services, opportunities, or activities, when viewed through both an objective and subjective standard. This includes harassment or bullying that occurs through electronic means, such as electronic media, the internet, social networks, blogs, cell phones, or text messages.

11. Hazing

Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person. Hazing activities may include, but are not limited to, encouraging or promoting the abuse of alcohol; striking another person whether by use of any object or any part of one's body; causing someone to experience excessive fatigue or physical and/or psychological shock; or causing someone to engage in degrading or humiliating games or activities that create a risk of serious mental, emotional, and/or physical harm. Consent of a victim or victims is not a defense to an allegation of hazing.
12. Possession or Use of Firearms, Explosives, Dangerous Chemicals, or Other Dangerous Weapons

Possession or Use of Firearms, Explosives, Dangerous Chemicals, or Other Dangerous Weapons includes unauthorized possession of firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on University premises, unless specifically authorized by the University President or delegatee.

Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instrument used in the propulsion of shot, shell, bullets, or other harmful objects by the:

a. action of gunpowder or other explosives;
b. action of compressed air; or
c. power of springs or other forms of propulsion.

This includes the exhibition or display of a replica of a dangerous weapon prohibited under this subsection if done in a manner and at a time or place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

13. Theft

Theft is the taking of property or services without express permission of the owner. This includes, but is not limited to, taking, possessing, or aiding another to take University property or services, or property belonging to members of the University community.

14. Unauthorized Keys, Entry, or Use

Unauthorized keys, entry, or use includes but is not limited to:

a. unauthorized possession, duplication, or use of keys (including conventional keys, key cards, or alphanumeric passcodes) to any University premises;
b. unauthorized entry upon or use of University premises or property; or
c. providing keys to an unauthorized person or providing access to an unauthorized person.

15. Unauthorized Recording

Unauthorized Recording includes, but is not limited to:

a. Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy; or
b. Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

When such recordings may fall within WAC 478-120-0013(3) - Sexual Exploitation, they will be addressed in accordance with that provision and related policies.

16. Vandalism

Vandalism includes maliciously damaging or misusing University property, or the property of any member of the University community.
17. Violation of Disciplinary Sanctions

Violation of disciplinary sanctions includes the violation of any term or condition of any final order issued under this conduct code or the failure to complete a disciplinary sanction in the specified time frame.

18. Violation of Law

Violation of law includes when a student has been convicted of a crime under any federal, state, or local law that adversely affects a university interest.

IV. CONDUCT PROCEEDINGS

478-120-0016 Form of Adjudicative Proceeding

All conduct proceedings under this code shall be conducted in accordance with Chapter 34.05 RCW – the Administrative Procedure Act and constitutional due process. If there is an irresolvable conflict between this code and the Administrative Procedure Act or constitutional due process, the Administrative Procedure Act and constitutional due process shall supersede these rules.

In applying this code, due consideration shall be given to the fact that the conduct process is administrative and not judicial in nature and that the rules of civil procedure only apply to the extent set forth in this code or in Chapter 34.05 RCW. In accordance with Chapter 10.08 Washington Administrative Code - Model Rules, where the University has adopted rules that differ from the Model Rules, this code will supersede the rules.

478-120-0017 Brief Adjudicative Proceedings

When conduct proceedings have been designated as brief adjudication proceedings under this code, they will be conducted in accordance with RCW 34.05.482 through 494 and the parties will receive notice as set forth in WAC 478-120-0030.

478-120-0018 Conversion to Full Adjudicative Proceeding

Prior to the conclusion of a brief adjudicative proceeding, the conduct officer shall make any inquiries necessary to ascertain whether the proceeding should be converted to a full adjudicative proceeding under RCW 34.05.413 through 34.05.476 – Administrative Procedures Act. If converted, the conduct officer will take steps necessary to initiate a full hearing and a hearing officer will be assigned.

If not converted by the conduct officer, the parties will be given an opportunity to request a full hearing per Section IX – Brief Adjudicative Proceeding Administrative Review.

478-120-0019 Full Adjudicative Proceeding

When the issues and interests involved warrant a full adjudicative proceeding, a full hearing will be held in accordance with Section X of this code that is in compliance with RCW 34.05.413 through 34.05.476. Factors that may be considered as guidelines to determine whether the issues and interests involved warrant the use of a full adjudicative proceeding consistent with this code will be defined in University policy, including Chapters 209 and 210 Student Governance and Policy.
V. DISCIPLINARY SANCTIONS

478-120-0020 Disciplinary Sanctions

One or more of the following disciplinary sanctions may be imposed for any violation of this conduct code:

a. **Disciplinary reprimand.** A respondent may be issued a written disciplinary reprimand.
b. **Restitution.** A respondent may be required to make restitution for damage or other loss of property and for injury to persons. The university may put a conduct hold in place if the respondent fails to pay or to make in writing University-approved arrangements to pay restitution.
c. **Disciplinary probation.** A respondent may be placed on disciplinary probation (meaning formal conditions are imposed on the respondent’s continued attendance). The time period for the disciplinary probation and any conditions shall be specified. Failure to fulfill conditions of the disciplinary probation in a timely manner will extend the probationary period (and the conditions) and may result in additional disciplinary sanctions.
d. **Loss of privileges.** A respondent may be denied specified privileges for a designated period of time such as the privilege to participate in a particular campus activity and may be restricted from any or all University premises for a specific duration.
e. **Suspension.** A respondent may be suspended (i.e., temporarily separated) from the University for a specified period of time. Conditions of suspension may be imposed and will be specified. Except as otherwise specified in the final order, all conditions must be fulfilled before the end of the suspension period. Failure to fulfill all conditions of suspension in a timely manner will extend the suspension period and any conditions, and may result in additional disciplinary sanctions. The University may put a conduct hold in place during the suspension period.
f. **Dismissal.** A respondent may be dismissed (i.e., permanently separated) from the University.
g. **Sanctions for hazing.** In addition to other sanctions, a student who is found responsible for participating in hazing of another shall forfeit any entitlement to state funded grants, scholarships, or awards for a specified period of time.

In determining an appropriate sanction for a violation of this code, factors that may be considered include, but are not limited to:

a. The seriousness, severity, persistence, or pervasiveness of the prohibited conduct;
b. The nature or violence (if applicable) of the prohibited conduct;
c. The impact on the complainant and/or University community;
d. The respondent’s past disciplinary record with the University;
e. Whether the respondent has accepted responsibility for the prohibited conduct;
f. The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning; or
g. Any other mitigating, aggravating, or compelling factors that the presiding officer determines to be relevant and admissible.

The use of alcohol or drugs by a respondent will not be considered a mitigating factor in imposing discipline.

If a respondent withdraws from the University (or fails to reenroll) before completing a sanction, the sanction must be completed prior to or upon the respondent’s reenrollment, depending on the nature...
of the sanction. Completion of disciplinary sanctions may be considered in applications for readmission to the University.

478-120-0021 Effective Date of Sanctions

Sanctions will be implemented when a final order becomes effective in the university’s conduct proceeding. An order that states it is a final order becomes effective when it is served. An initial order that becomes a final order because no administrative review was requested or initiated becomes effective on the day after the period for requesting review has expired.

VI. INITIATING CONDUCT PROCEEDINGS

478-120-0022 Brief Adjudicative Proceedings

All conduct proceedings under this code shall be conducted as brief adjudicative proceedings under Chapter 34.05 RCW – the Administrative Procedures Act.

478-120-0022 Authority to Initiate Conduct Proceedings and Delegations of Authority in Conduct Proceedings

The following University officials may initiate disciplinary action under this conduct code:

a. The vice-president for student life at University of Washington Seattle;

b. The chancellors at University of Washington Bothell and Tacoma;

c. Deans of a school or college (including the graduate school) at University of Washington Seattle; and

d. Deans or directors of any school or program at University of Washington Bothell or Tacoma.

The above named university officials may delegate the authority to one or more individuals to initiate conduct proceedings, hold conduct hearings, engage in fact finding, and issue initial and final orders under this conduct code. They may also establish student or student-faculty-staff hearing bodies to advise or to act for them in conduct proceedings.

For the purpose of completing administrative reviews under Sections IX and XI of this code:

a. the Chair of the Faculty Senate will appoint one or more faculty to be included in a pool of available reviewing officers; and

b. the president, vice-president for student life at University of Washington Seattle, or the chancellors at University of Washington Bothell and Tacoma may appoint one or more students to be included in a pool of available reviewing officers.

Review Panels, composed of multiple reviewing officers, may be created to complete administrative reviews under Sections IX and XI of this code. The officials and the Chair of the Faculty Senate or their delegates may also delegate authority to faculty, students, and/or staff to act as reviewing officers under this conduct code.

478-120-0023 Initiating Conduct Proceedings

Conduct proceedings may be initiated when the University receives any direct or indirect report of conduct that may violate this code, which may include, but is not limited to, a police report, an incident
report, a witness statement, other documentation, or a verbal or written report from a complainant, witness, or other third party.

Conduct matters may be initiated under the conduct code regardless of whether or not the incident in question is the subject of criminal or civil proceedings.

478-120-0024 Decision Not to Initiate a Conduct Proceeding

If the conduct officer decides not to initiate a conduct proceeding when requested by a complainant who, otherwise, would be a party to the proceeding, the conduct officer will provide the complainant with a written decision, including a brief statement of the reasons and of any other options for review.

478-120-0025 Conduct Hold on Student Record

A conduct office or other University official may place a conduct hold on the student’s record if the student is the respondent in a pending report of prohibited conduct or a pending conduct proceeding under this code. A conduct hold may prohibit the student from registering for classes, requesting an official transcript, or receiving a degree from the university until the hold has been removed. The respondent will be notified of the hold and the hold will remain in place until lifted by a conduct office or other University official with authority to do so.

478-120-0026 Parties

The parties to conduct proceedings are typically the University and the respondent. In accordance with Chapter 210 Student Governance and Policies – Student Conduct Policy for Discriminatory and Sexual Harassment, Intimate Partner Violence, Sexual Misconduct, Stalking, and Retaliation, in cases involving Sexual Harassment, Discriminatory Harassment, Sexual Misconduct, Intimate Partner Violence, Stalking, or Retaliation, the complainant is also a party. In addition, the University may designate other individuals, such as a complainant, as a party to other types of conduct proceedings, or allow individuals to intervene in conduct proceedings. For additional guidance, see in accordance with Chapters 209 and 210 Student Governance and Policies.

478-120-0027 Interim Protective Measures

After receiving a report of prohibited conduct, the University may implement interim protective measures, in addition to other supportive measures, that impact a respondent at any time prior to the conclusion of a conduct proceeding. When implemented, the respondent will be advised on how to raise an objection about the interim measure or request that it be made less restrictive. Interim measures will remain in place until lifted or modified by the University official who implemented the interim protective measures.

Implementation of any interim measure does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code. A respondent who fails to comply with any interim protective measures may, however, be charged with a “failure to comply” pursuant to WAC 478-120-0015(9).

478-120-0028 Emergency Authority of the University

If there is reasonable cause to believe that a student’s conduct represents a threat to the health, safety, or welfare of the University or any member of the University community, or poses an ongoing threat of
substantially disrupting or materially interfering with University activities or operations, the president, the president’s delegate, the vice president for Student Life for UW Seattle or delegates, and the chancellors of the University of Washington Bothell and Tacoma campuses or delegates may immediately suspend that student from participation in any or all University functions, privileges, or locations. The University community includes all University students, employees, guests of and visitors to the University, and other individuals affected by the conduct of a University student.

In such an emergency situation, the University official placing the student on emergency suspension shall issue a written order to be served upon the student describing the terms of the emergency suspension and the reasons for the emergency suspension. The order shall advise the student how to raise an objection about the emergency suspension or request that it be made less restrictive. The University may also put a conduct hold in place during the emergency suspension period.

The order shall be effective immediately. The proceeding shall then be referred to the appropriate conduct office and the proceeding shall proceed as quickly as feasible. The emergency suspension shall remain in effect until lifted or revised by a University official with authority to do so or until a final order is entered in the proceeding. Once a final order is entered in the proceeding, any emergency suspension shall be lifted and the sanction, if any, will be imposed.

478-120-0029 Service of Notices, Filings, and Orders and Time Limits

Service of all University notices under this code will be sent by electronic mail (e-mail) addressed to the party’s University-issued e-mail address. An alternative e-mail address may be provided to the conduct presiding officers and reviewing officer(s) in writing. Service is complete at the moment the e-mail is sent to the e-mail address. In the alternative, service may also be accomplished by personal service or by posting it in the United States mail, properly addressed, and postage prepaid. Service by mail is complete upon deposit in the United States mail.

The parties are permitted to file documents with the conduct presiding officer or reviewing officer(s) via e-mail or other electronic means as determined by the conduct presiding officer or reviewing officer(s). Receipt of such documents will be determined by the date of the e-mail. For documents that must be shared with other parties, the university conduct officer will be responsible for delivery service of such documents, as above.

In computing any period of time under this conduct code, the day of service of any order, notice, or other document is not counted. The last day of the applicable period of time is counted. If the last day of the applicable period of time falls on a Saturday, Sunday, or official state holiday (which includes the day after Thanksgiving), the period ends on the next business day.

The time limit for seeking administrative review of an initial order is based upon the date of service of the initial order.

478-120-0030 Participation of Advisors and Attorneys

The parties to conduct proceedings may, at their own expense, be accompanied by an advisor of their choice, including an attorney, throughout the conduct proceedings. In a brief adjudicative proceeding, while an advisor may provide support and advice, but an advisor may not speak on behalf of the student or disrupt or interfere with any aspect of the otherwise directly participate in a brief adjudicative proceeding, as determined by the conduct officer. In a full adjudicative proceeding, including any pre-
hearing matters, if the party’s advisor is an attorney, the attorney may advise and represent the party, but the advisor may not disrupt or interfere with any aspect of the proceeding, as determined by the hearing officer or reviewing officer(s). For additional guidance, see as set forth in Chapters 209 and 210 of the Student Governance Policies.

478-120-0031 Consolidation

If there are multiple conduct proceedings involving common issues or parties, the parties may request or the presiding officer may decide to consolidate the proceedings. This decision is within the sole discretion of the presiding officer.

478-120-0032 Burden of Proof

The burden of proof in conduct proceedings rests with the University.

VII. EVIDENCE

478-120-0033 Evidence in Conduct Proceedings

The following evidentiary provisions apply to conduct proceedings under this code. In applying this code, due consideration shall be given to the fact that the conduct process is administrative and not judicial in nature and that rules of evidence only apply to the extent set forth in this code or in Chapter 34.05 RCW. The university has also developed agency-level guidance policies and procedures regarding its interpretations of these rules, including in Chapter 209 and Chapter 210 of Student Governance and Policies.

While brief adjudicative proceedings do not require the application of rules of evidence, the conduct officer will be guided by the principles underlying the Washington Rules of Evidence when they do not conflict with the code or relevant University policies.

478-120-0034 Relevant Evidence, Hearsay, and Character Evidence

Evidence, including hearsay, is relevant admissible if, in the judgment of the presiding officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. In a full hearing, however, the hearing officer shall not base a finding exclusively on such inadmissible evidence unless the hearing officer determines that doing so would not unduly abridge the parties’ opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the initial order.

The presiding officer will determine the admissibility and relevance of all evidence, including that offered by the parties and/or witnesses, and shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer and may exclude from consideration evidence that is not relevant. The conduct officer may also exclude from consideration evidence that is immaterial or unduly repetitious.

In general, the conduct officer will not consider statements of personal opinion or statements as to any individual’s general reputation or any character trait, unless the presiding officer considers such evidence to be relevant and admissible.
The presiding officer may take official notice of some material that was not offered as evidence by the parties. In full adjudicative proceedings, the process for taking official notice is set forth in RCW 34.05.452.

478-120-0035 Prior or Subsequent Conduct of the Respondent

Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, knowledge, identity, pattern, knowledge, intent, motive, or absence of mistake. The presiding conduct officer will determine the relevance and admissibility of this evidence.

478-120-0036 Prior Sexual History

The sexual history of the parties or witnesses will not be used to prove character or reputation. Evidence related to the prior sexual history of the parties or witnesses is generally not relevant to the determination of a violation of this code and will be considered only in limited circumstances. The presiding officer will determine the relevance of this evidence.

478-120-0037 Experts

Presiding officers may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. This information will be summarized in the initial order.

Generally, results of polygraph examinations are not considered relevant, even if offered voluntarily.

478-120-0038 Self-incriminating evidence

No student shall be compelled to give self-incriminating evidence and a negative inference will not be drawn. However, a negative inference can be drawn from a refusal to testify or to answer a particular question participate at any stage of the conduct proceeding. The presiding officer may, however, proceed with the conduct matter and reach a finding based on other available and admissible evidence.

478-120-0039 Criminal Conviction

The presiding officer may accept a conviction of a crime under any federal, state, or local law as the evidentiary basis for establishing prohibited conduct under this code when the elements of that crime establish prohibited conduct under this code that adversely affects a university interest.

VIII. BRIEF ADJUDICATIVE PROCEEDINGS

478-120-0040 Notice of Conduct Proceeding and Investigative Interview Conduct Hearing

The conduct officer will provide notice to the parties, in writing, of the commencement of conduct proceedings, which will include information on how to raise an objection regarding bias or conflict of interest.

The conduct officer will also schedule an investigative interview with the respondent as part of the fact-finding process conduct hearing with the respondent. The purpose of the conduct hearing and fact finding is to provide the respondent with the opportunity to participate in the conduct proceeding, including to receive an explanation of the process, review the allegations, present evidence and witnesses, respond to evidence provided by others, and present questions for others.
478-120-0041  Fact Finding
Before taking action in a brief adjudication proceeding, the conduct officer shall give each party an opportunity to be informed of the agency’s view of the matter and to explain the party’s view of the matter. This process includes, without limitation, conducting fact finding and providing the parties with the opportunity to participate in the conduct proceeding by explaining the process to the parties and allowing them to review the allegations, provide evidence, identify witnesses with relevant knowledge, respond to evidence provided by others, and provide the conduct officer with suggested questions for others (collectively, “fact finding”).

478-120-0042  Standard of Proof for Conduct Hearing and Fact Finding
The applicable standard of proof in the conduct hearing and fact finding is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for a violation of this conduct code, the conduct officer must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of conduct prohibited by this code.

478-120-0043  Initial Order
At the conclusion of the fact finding, the conduct officer will prepare an initial order. If the respondent is found responsible, the conduct officer will impose a sanction. The conduct officer will serve the initial order to the parties, simultaneously and in writing. The initial order will include a brief written statement of the reasons for the decision and an explanation of how to request administrative review of the initial order and the timeframe to do so.

IX.  BRIEF ADJUDICATIVE PROCEEDING ADMINISTRATIVE REVIEW FROM FACT FINDING

478-120-0044  Requesting Administrative Review
A party may request administrative review of the initial order based on the grounds as set forth in WAC 478-120-0046.

A request for administrative review must be submitted in writing to the conduct officer within 21 days of the date of service of the initial order. The party requesting the review will be provided with an opportunity to explain the reasons for seeking review. If one of the grounds is to consider newly discovered evidence, that evidence must also be provided with the request for review.

If an administrative review is not requested within 21 days of service of the initial order or the President has not sought a review of the proceeding in accordance with WAC 478-120-00XX, the initial order shall become the final order.

478-120-0045  Grounds for Administrative Review
A party may request administrative review for any or all of the following reasons:

a. To determine whether there was a material error that substantially affected the outcome of the fact finding or sanctioning;
b. To consider newly discovered evidence, not reasonably available during the fact finding, that could substantially impact the outcome; or

c. To determine whether the sanction(s) imposed were appropriate for the violation committed and were not excessively lenient or excessively severe; or

d. To determine whether the issues and interests involved warrant a full hearing.

478-120-0046 Notice of Administrative Review

If administrative review is requested, the University will provide the parties notice, in writing, of the date the administrative review will be initiated and the identities of the reviewing officer(s). The parties will be provided with an opportunity to raise an objection regarding bias or conflict of interest prior to the administrative review.

Other parties will be provided with a copy of the request for administrative review and notice of how to submit a written response. Responses must be submitted within five (5) business days of service of the notice of administrative review.

478-120-0047 Procedures for Administrative Review

When the reviewing officer(s) conducts an administrative review, the review is based on:

a. The conduct officer’s conduct hearing record and fact finding;

b. Information submitted to the review panel in the request for review or response to request for review; and

c. Additional evidence, if the basis for seeking administrative review is that newly discovered evidence has become available; however the review of newly-discovered evidence is limited to determining whether the newly-discovered evidence warrants remanding the matter for further proceedings.

Decisions by a panel of reviewing officers will be determined by majority vote.

478-120-0048 Order from Administrative Review

Within 20 days after the request is submitted, the review panel will issue an order, which will include the outcome, any sanction, and a brief statement of the reasons for the outcome. All parties will receive simultaneous, written notification of the outcome of the review.

The reviewing officer(s) may reach one of the following results:

a. Conclude there is no basis for remand or alteration of sanctions, and issue a final order disposing of the proceeding;

b. Remand for further fact finding or review if newly discovered evidence may have impacted the result or if the record demonstrates material error; or

c. Increase or reduce the sanction(s) and issue a final order, if the increased sanction does not warrant a full hearing; or

d. Conclude whether the proceeding should be converted to a full adjudicative proceeding and, if so, take steps necessary to initiate a full hearing.

If the review panel does not issue an order within 20 days after the request is submitted, the request for review is deemed to be denied.
Process Following Remand from Administrative Review or Conversion

If the proceeding is remanded or converted to a full adjudicative hearing following administrative review, the initial order will be rescinded and the reviewing officer(s) will describe, in writing, the reasons for the remand or conversion.

Following remand, additional proceedings will be conducted as necessary to address the reasons for the remand or conversion and will be conducted in accordance with the relevant sections of this code. The conduct officer will prepare an initial order. If found responsible, the conduct officer will impose a sanction. The conduct officer will deliver the initial order to the parties, simultaneously and in writing. The initial order will include an explanation of the conduct officer’s reasoning and how to request administrative review of the initial order.

If an administrative review is not requested within 21 days or the President has not sought a review of the proceeding in accordance with WAC 478-120-0042, the initial order shall become the final order.

X. FULL ADJUDICATIVE PROCEEDINGS AND FULL HEARING

Notice of Full Hearing

The hearing officer shall set the time and place of the full hearing and give not less than seven days advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter.

Pre-hearing Conferences

The hearing officer upon his or her own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

(a) Simplification of issues;
(b) The necessity or desirability of amendments to the pleadings;
(c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;
(d) Limitations on the number and consolidation of the examination of witnesses;
(e) Procedural matters;
(f) Distribution of written testimony and exhibits to the parties prior to the hearing;
(g) Such other matters as may aid in the disposition or settlement of the proceeding.

Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

Following the prehearing conference, the presiding officer shall issue an order. Orders are effective when they are served. The hearing officer may, at his or her discretion, hold more than one prehearing conference and issue orders modifying any prehearing order.

In any proceeding the presiding officer may, in his or her discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this rule. The presiding officer shall state on the record the results of such conference.
478-120-0052 Discovery

Discovery, including depositions, interrogatories, requests for production, entry onto land for inspection or other purposes, and physical and mental examinations, is not available in conduct proceedings under this code.

478-120-0053 Subpoenas

The parties may request that the hearing officer issue subpoenas or a party’s attorney of record may also issue a subpoena in whose behalf the witness is required to appear at a full hearing. In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, such testimony may be by telephone, television, or other electronic means.

478-120-0054 Protective Orders

The hearing officer may enter protective orders, which limit the admissibility of evidence or condition it on specified criteria necessary to protect a party or a witness from annoyance, embarrassment, oppression, or undue burden or expense, or to comply with any applicable law.

478-120-0055 Pleadings, Briefs, and Motions

At appropriate stages of full adjudicative proceedings, the hearing officer will give all parties full opportunity to submit and respond to pleadings, motions, objections, and offers of settlement, including motions for summary judgment.

At appropriate stages of full adjudicative proceedings, the presiding officer may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.

The hearing officer has the discretion to decide and dispose of all issues raised in accordance with this section.

478-120-0056 Communications with Hearing Officer

All communications with the hearing officer, except for communications necessary to procedural aspects of maintaining an orderly process, must be in the presence of, or with a copy to, all other parties. Ex parte communications received by the hearing officer must be placed on the record, and all other parties must be informed of the ex parte communication and given an opportunity to respond on the record.

478-120-0057 Standard of Proof

The applicable standard of proof is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for prohibited conduct under the conduct code, the hearing officer must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of prohibited conduct.

478-120-0058 Continuances

The hearing officer has the discretion to grant postponements, continuances, extensions of time, and adjournments or upon a request of any party, if the party shows good cause.
A request for a continuance may be oral or written. If all parties do not agree to the continuance, the presiding officer may schedule a prehearing conference to receive argument or may rule on the request without argument.

478-120-0059  **Testimony under Oath or Affirmation**

In a full hearing, all testimony of parties and witnesses shall be made under oath or affirmation.

478-120-0060  **Remote Participation**

At the discretion of the hearing officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing, including the testimony of witnesses, may be conducted by telephone, video, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place. Such measures may be taken to accommodate concerns raised by a complainant, a respondent, or any witness.

478-120-0061  **Initial Order from Full Hearing**

At the conclusion, the hearing officer will issue an initial order, which shall include all matters required by RCW 34.05.461(3). The hearing officer will serve the initial order to the parties, simultaneously and in writing. The initial order will include an explanation of how to request administrative review of the initial order and the timeframe to do so.

If an administrative review is not requested within 21 days of service of the initial order, the initial order shall become the final order.

XI.  **ADMINISTRATIVE REVIEW FROM FULL HEARINGS**

478-120-0062  **Requesting Administrative Review**

A party may request administrative review of the initial order from a full hearing based on the grounds as set forth in WAC 478-120-0063.

A request for administrative review must be submitted in writing to the hearing conduct officer within 21 days of the date of the initial order. If one of the grounds is to consider newly discovered evidence, that evidence must be provided with the request for review.

If an administrative review is not requested within 21 days or the President has not sought a review of the proceeding in accordance with WAC 478-120-0066, the initial order shall become the final order.

478-120-0063  **Grounds for Administrative Review**

A party may request administrative review for any or all of the following reasons:

a. To determine whether there was a material error that substantially affected the outcome of the fact finding or sanctioning;

b. To consider newly discovered evidence, not reasonably available during the fact finding, that could substantially impact the outcome;

c. To determine whether the sanction(s) imposed were appropriate for the violation committed and were not excessively lenient or excessively severe; or

d. Any other grounds that would warrant modification, withdrawal, or reversal of the order.
Notice of Administrative Review

If administrative review is requested, the University will provide the parties notice, in writing, of the date the administrative review will be initiated and the identities of the reviewing officer(s). The parties will be provided with an opportunity to raise an objection regarding bias or conflict of interest prior to the administrative review.

Other parties will be provided with a copy of the request for administrative review and notice of how to submit a written response. Responses must be submitted within five (5) business days of service of the notice of administrative review.

Procedures for Administrative Review from a Full Hearing

When the reviewing officer(s) conducts an administrative review, the reviewing officer(s) shall:

a. personally consider the whole record or such portions of it as may be cited by the parties;

b. exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer(s) upon notice to all the parties;

c. afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument to explain the party’s position but any such argument shall not be considered as evidence;

d. review information submitted to the review panel in the request for review or response to request for review; and

e. review newly-discovered evidence, if the basis for seeking administrative review is that newly-discovered evidence has become available; however the review of newly-discovered evidence is limited to determining whether the newly-discovered evidence warrants remanding the matter for further proceedings.

In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officers’ opportunity to observe the witnesses.

Decisions by a panel of reviewing officers will be determined by majority vote.

Order from Administrative Review of Full Hearing

Within 30 calendar days of receipt of all response(s) submitted by the parties or oral argument (if any), whichever is later, the reviewing officer(s) will issue an order, which will include the outcome, any sanction, and a brief statement of the reasons for the outcome. All parties will receive simultaneous, written notification of the outcome of the review.

The reviewing officer(s) may reach one of the following results:

a. Conclude there is no basis for remand or alteration of sanctions, and issue a final order disposing of the proceeding;

b. Remand for further fact finding or review if newly discovered evidence may have impacted the result or if the record demonstrates material error with instructions to the presiding officer who entered the initial order;

c. Increase or reduce the sanction(s), and issue a final order disposing of the proceeding; or
d. Issue a final order disposing of the proceeding or remand the matter for further proceedings on any other grounds that would warrant modification, withdrawal, or reversal of the order, with instructions to the presiding officer who entered the initial order.

When issuing orders under this section, the order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

If the imposed sanction resulting from an administrative review is dismissal, the reviewing officer(s) will issue an initial order. The reviewing officer will serve the initial order to the parties, simultaneously and in writing, and to the President’s office.

Otherwise, the order issued will be a final order. The reviewing officer will serve the order to the parties, simultaneously and in writing.

478-120-0067 Process Following Remand from Administrative Review

If the proceeding is remanded, the initial order will be rescinded and the reviewing officer(s) will describe, in writing, the reasons for the remand. Following remand, additional proceedings will be conducted as necessary to address the reasons for the remand.

At the conclusion, the hearing officer will issue an initial order, which shall include all matters required by RCW 34.05.461(3). The hearing officer will serve the initial order to the parties, simultaneously and in writing. The initial order will include an explanation of how to request administrative review of the initial order and the timeframe to do so.

If an administrative review is not requested within 21 days of service of the initial order, the initial order shall become the final order.

478-120-0068 Authority of President of the University to Initiate Review

Upon receiving notice of an initial order of dismissal from an administrative review under this section, Notwithstanding any other provisions of this code, and before an initial order issued under this conduct code becomes final, the president or the president’s delegate may determine that the initial order should be further reviewed. Notice of the president's (or president's delegate's) decision to review any initial order under this subsection shall be provided to all parties. Any such review shall be in accordance with RCW 34.05.464 and/or 34.05.491. If the president or delegate has not initiated a review within 10 days of the date of the initial order, then the order will become final.

XII. RECONSIDERATION OF FINAL ORDERS IN FULL ADJUDICATIVE PROCEEDINGS

478-120-0069 Reconsideration of Final Orders

Within ten days of the service of a final order or within 10 days of the date an initial order becomes a final order, any party may file a request for reconsideration. The request shall be directed to the officer(s) who issued the final order and state in writing specific reasons for the request. Upon receipt, the officer(s) shall promptly serve all other parties with a copy of the request for reconsideration.

Unless the request for reconsideration is automatically deemed to have been denied under WAC 478-120-0070, the request shall be disposed of by the officer(s) who issued the final order, if reasonably available. The disposition shall be in the form of a written order denying the request, granting the
request and dissolving or modifying the final order, or granting the request and setting the matter for further hearing.

478-120-0070 Denial of Request for Reconsideration

The request for reconsideration is automatically deemed to have been denied if, within twenty days from the date the request for reconsideration is timely submitted, the officer(s) who issued the final order does not either:
(a) Dispose of the request; or
(b) Serve the parties with a written notice specifying the date by which the request will be acted upon.

XIII. PRIVACY AND RECORDS

478-120-0071 Privacy of Educational Records in Full Hearings

In accord with the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99) (FERPA), all meetings or reviews conducted under this code generally will be held in closed session out of respect for the privacy of all the students involved.

In a full hearing, the hearing officer may close parts of a hearing under any provision of law expressly authorizing closure or under a protective order entered by the presiding officer pursuant to applicable rules and the presiding officer may order the exclusion of witnesses upon a showing of good cause.

Students may, at their sole discretion, waive their rights under FERPA in writing. The scope of any FERPA waiver and any protective order entered by the presiding officer will determine who can have access to information that would otherwise be protected from disclosure by FERPA, including without limitation who can be present at any hearing held in a full adjudicative proceeding under this code. If the hearing is open to public observation, the presiding officer shall conduct the hearing in a room that will accommodate a reasonable number of observers. The presiding officer may issue a protective order to exclude from the hearing any persons who are disruptive of the proceedings and may limit the number and activities of the observers as necessary to protect the safety of the participants and observers and to assure a fair hearing.

To ensure the privacy of all students involved, no cameras or recording devices shall be permitted except for the official recording by the university; however, if FERPA or other federal or state law implicated by RCW 34.05.040 does not preclude it, then any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption. If a party intends to make a recording of the proceeding, the party shall advise the presiding officer prior to the prehearing conference so that any issues related to making an additional recording can be addressed prior to the full hearing.

478-120-0072 Recordkeeping

Records related to conduct proceedings shall be maintained consistent with RCW 34.05.476, university records retention policies, and other relevant policies.
478-120-0073  Disciplinary Record

Any final order resulting from conduct proceedings shall become a part of the respondent's disciplinary record. Student disciplinary records are "education records" as defined by FERPA and may only be disclosed consistent with FERPA and chapter 478-140 WAC.
Date: December 27, 2016

To: Faculty Council on Student Affairs

From: Jill Lee, Executive Director, Compliance Services
       Ellen Taylor, AVP, Student Life
       Amanda Paye, Deputy Title IX/ADA Coordinator, Compliance Services

Re: Third Draft of Student Conduct Code WAC and Rough Draft of Policies

Thank you again for your efforts in working with us toward improvements in our student conduct process. As you are aware, work has been done to revise the prior draft of the Washington Administrative Code relating to student conduct to incorporate full adjudicative proceedings under Chapter 34.05 RCW – the Administrative Procedures Act into the process. Because the current code contains provisions relating to full adjudicative proceedings, efforts have been made to borrow that language when it is consistent with the new model and roles. Also, given the inherent complexity of full adjudicative proceedings under the APA, efforts will be made to develop additional guidance, forms, templates, and educational materials consistent with the process.

Following for your review are:

- 3rd Draft of WAC for FCSA, which contains redlined changes that have been made to the 2nd draft WAC you previously reviewed;
- 3rd Draft of WAC for FCSA with redlines “accepted” in the event you wish to review a full “clean” version of the WAC; and
- Rough drafts of the companion policies, Chapter 209 and 210 Student Policies and Governance, with the WAC incorporated and shaded in gray.

Although the policies are not final drafts, we have provided them to you at this stage for context should you wish to see how we anticipate developing policies that will further explain and implement the draft WAC. Please note that many of the provisions in Chapter 210 Student Policies and Governance are required policy statements under federal law and/or guidance.

Overall Comments

- **Full adjudicative proceedings** – New sections have been added to incorporate full adjudicative proceedings into the process, including when and how they are utilized:
  - Section IV – describes when brief adjudicative proceedings or full adjudicative proceedings would be utilized and when a proceeding would be “converted” to a full adjudicative proceeding;
  - Section VIII describes the brief adjudicative proceeding process; and
  - Section X describes the full adjudicative proceeding process.
- **Administrative Reviews** – because the standards and process for conducting administrative reviews from brief adjudicative proceedings and full adjudicative proceedings are different, we’ve added language describing administrative reviews to the end of each of those sections.
- **Reorganization** – Full sections have been reorganized for a better flow, such as moving former Section X Evidence up to Section VII because it applies to both brief adjudicative proceedings and full adjudicative proceedings.
- **Terminology** – To align with the roles and procedures described in full adjudicative proceedings under the APA, we are using the following terminology throughout the process (more thorough definitions have been included in the new Section II. Definitions section):
"Conduct officer" refers to the individual(s) who is the presiding officer in a brief adjudication proceeding;

"Conduct proceedings" refers to both brief adjudicative proceedings and adjudicative proceedings, collectively;

"Full hearing" refers to the hearing and process under the full adjudicative proceedings provisions of the APA;

"Hearing officer" refers to the individual(s) who is the presiding officer in a full hearing;

"Presiding officer" refers to conduct officers and hearing officers collectively;

"Reviewing Officer" refers to the person or persons who conduct administrative reviews; and

"Review panel" is a panel of reviewing officers selected from the pool of reviewing officers appointed to conduct administrative reviews.

- WAC 478-120-003 Research Misconduct - These revisions do not affect the Research Misconduct provisions that were previously reviewed, other than housekeeping corrections will be made once final numbering is in place.

- Numbering - The Rules Coordination Office will finalize the numbering system consistent with regulatory requirements.

Specific Revisions

1. The references to how a criminal conviction may be utilized to initiate a conduct proceeding and may impact a student in the student conduct process has been reorganized to better fit the APA model. Conviction for a crime that affects a University interest is listed as a form of prohibited conduct (new WAC 478-120-0015(18) Violation of Law) and, the conviction can be considered as evidence per WAC 478-120-0039.

2. Upon doing more outreach and exploration with UW schools and colleges that conduct their own academic misconduct matters, we have added a provision from the current code that does not limit schools from taking action related to academic and/or professional misconduct to avoid any unintended consequences.

3. Definition section (Section II) added to clarify roles, for ease of reference, and provide appropriate references to APA.

4. Updates have been made throughout regarding roles of “conduct officer,” “presiding officer,” “hearing officer,” and “reviewing officer(s).”

5. WAC 478-120-0015(7) Disruption or Obstruction revised to reflect the effect of the conduct as opposed to the intent of the individual who engaged in the conduct.

6. New Section IV Conduct Proceedings describes when brief adjudicative proceedings or full adjudicative proceedings would be utilized and when a proceeding would be “converted” to a full adjudicative proceeding.
7. Under **WAC 478-120-0020 Disciplinary Sanctions**, clarification added that any other mitigating, aggravating, or compelling factors that the presiding officer determines to be relevant and admissible will be considered in determining sanctions.

8. Clarification added to **WAC 478-120-0021 Effective Date of Sanctions** regarding when sanctions are implemented to address situations where an initial order becomes final without further action.

9. Reference to Brief Adjudicative Proceedings removed (it was in the prior draft as WAC 478-120-0022) due to need to add more detail in **Section IV Conduct Proceedings**.

10. **WAC 478-120-0022 Authority to Initiate Conduct Proceedings and Delegations of Authority in Conduct Proceedings** revised to add to authority to appoint additional roles for full adjudicative proceedings. Further review will be done to clarify the role students can play in brief adjudicative proceedings versus full adjudicative proceedings.

11. **WAC 478-120-0024 Decision Not to Initiate a Conduct Proceeding** to clarify what information is provided if a conduct proceeding is not initiated.

12. **WAC 478-120-0026 Parties** revised to allow individuals to seek to “intervene” in a conduct proceeding per the APA (relevant forms and instruction will be created to describe how this process is implemented).

13. **WAC 478-120-0027 Interim Protective Measures** revised to provide a process for the respondent to raise an objection to the interim measure or request that it be made less restrictive (similarly to emergency suspension).

14. Moved definition of “University community” to **Section II Definitions** so that it applies throughout the WAC.

15. **WAC 478-120-0030 Participation of Advisors and Attorneys** revised to clarify roles in brief adjudicative proceedings versus full adjudicative proceedings with further description of the University’s practices and procedures for implementation to be added to policies.

16. **WAC 478-120-0033 Evidence in Conduct Proceedings** and **WAC 478-120-0034 Relevant Evidence, Hearsay, and Character Evidence** revised to clarify application of Rules of Evidence for different types of proceedings. Overall, presiding officers are given discretion in the APA to make certain decisions relating to evidence and that discretion may not be reduced or removed through rulemaking, so we have attempted to avoid any appearance of that in this section.

17. **WAC 478-120-0035 Prior or Subsequent Conduct of the Respondent** revised to bring into alignment with Washington State Rules of Evidence, since the concept was “borrowed” from the rules of evidence.
18. WAC 478-120-0038 Self-Incriminating Evidence added to WAC evidentiary provisions and revised to confirm that a negative inference is not drawn if a respondent refuses to participate (had intended to include in policies, but was moved into WAC evidentiary provisions).

19. To avoid confusion when referring to “hearings,” in Brief Adjudicative Proceedings versus Full Adjudicative Proceedings, terms “investigative interview” and “fact finding” used and purpose of each clarified by adding WAC 478-120-0041 Fact Finding.

20. Although the “preponderance of evidence” standard applies in both brief adjudicative proceedings and full adjudicative proceedings, “Standard of Proof” appears in both Section VIII Brief Adjudicative Proceedings and Section IX Full Adjudicative Proceedings for ease of reference.

21. Because the standards and process for conducting administrative reviews from brief adjudicative proceedings and full adjudicative proceedings are different, provisions relating to administrative reviews appear in both Section VIII Brief Adjudicative Proceedings and Section IX Full Adjudicative Proceedings.

22. WAC 478-120-0045 Grounds for Administrative Review revised to add that the reviewing officers in a brief adjudicative proceeding may consider whether the matter should be “converted” to a full adjudicative proceeding.

23. WAC 478-120-0048 Order from Administrative Review revised to bring timeframes into alignment with brief adjudicative proceedings and to add step if reviewing officer(s) conclude that a full hearing should be initiated.

24. WAC 478-120-0049 Process Following Remand from Administrative Review or Conversion revised because brief adjudicative proceedings and full adjudicative proceedings diverge at this point.

25. Added Section X. Full Adjudicative Proceedings and Full Hearing to provide an overview of provisions relating to full adjudicative proceedings under the APA; attempting to strike a balance between adding references to the APA and adding full language from the APA where necessary.

26. Per the APA, the parties must be given seven days’ notice of a full hearing and individuals must be permitted to request to intervene, which is referenced in WAC 478-120-0026 and WAC 478-120-0050 (a process and forms will be created to implement this step).

27. WAC 478-120-0051 Pre-hearing Conferences added to describe and clarify the purpose and process for pre-hearing conferences, which can be very useful in working through issues prior to the full hearing.

28. To maintain the educational tone of the conduct proceedings and avoid extending the time periods required to complete the adjudicative process and to reduce the burden on our students, WAC 478-
120-0052 Discovery clarifies that discovery is not available in the revised process.

29. Provisions were added relating to Subpoenas, Protective Orders, and Pleadings, Briefs, and Motions consistent with the full adjudicative proceedings under the APA – some of which is discretionary by the hearing officer and some of which is required by the APA.

30. WAC 478-120-0056 Communications with Hearing Officer provides limits on when a party may have direct communications with the hearing officer without the involvement of the other parties.

31. Provisions relating to Continuances, Testimony, and Remote Participation relating to full hearings have also been added.

32. WAC 478-120-0061 Initial Order from Full Hearing has been added with a reference to the APA as it is proscriptive regarding the information that must be contained in an initial order (again, templates and other forms will be created to simplify the implementation of this process for those involved).

33. As stated in #21 because the standards and process for administrative reviews differ, Section XI Administrative Review from Full Hearings has been added to the end of the Formal Adjudicative Proceeding section.

34. In WAC 478-120-0066 Order from Administrative Review of Full Hearing, recommended providing review panel with 30 days to conduct administrative review from a full hearing; however, the number of days is somewhat discretionary.

35. WAC 478-120-0066 Order from Administrative Review of Full Hearing and WAC 478-120-0068 Authority of the President revised to reconcile when the president may elect to initiate a review of an initial order.

36. In accordance with APA a separate section has been added, WAC 478-120-0069 Reconsideration of Final Orders in Full Adjudicative Proceedings, which allows parties to seek reconsideration of a final order issued at any stage of a full adjudicative proceeding (templates/forms will be created to assist in implementing this process).

37. Because full hearings may be now held, WAC 478-120-0070 Privacy of Educational Records has been revised to add language from the current code regarding when and how students may waive their privacy rights in a hearing. Clarification has been added regarding when a party may seek a transcript of the proceeding.