Meeting Synopsis:

1. Call to order
2. Review of the minutes from January 3rd, 2017
3. Student Reports
4. Student Conduct Code
5. Final Draft of WAC for review and vote
6. Good of the order
7. Adjourn

1) Call to order

The meeting was called to order at 1:30 p.m.

2) Review of the minutes from January 3rd, 2017

The minutes from January 3rd, 2017 were approved as written.

3) Student Reports

Several student members were in Olympia due to deliberation of legislation affecting UW students.

There was some discussion of a new “bias incident response” tool/process at the UW. Barker explained though the tool and process have been developed, there are questions concerning how to most effectively disseminate information to faculty, staff, and students on their creation. It was noted the item would potentially return to the council in the next meeting.

4) Student Conduct Code (Exhibit 1) (Exhibit 2)

The council continued its consideration of Class B legislation altering the UW Student Conduct Code (SCC) within the Washington Administrative Code (WAC) (Exhibit 1). Laws reminded the council that the WAC portion of the revised SCC will be cemented first, with the local university policies to be ratified thereafter (via the Class B legislative process). He noted FCSA approval is the first step in the legislative process in order to make changes to the Student Conduct Code.

Jill Lee (Executive Director, Compliance Services) and Amanda Paye (Deputy Title IX/ADA Coordinator, Compliance Services) were present in the meeting to discuss revisions to the WAC portion of the SCC revisions since the time of the last FCSA meeting. They used a brief as part of their presentation (Exhibit 2).

Paye explained during discussion of the WAC in a recent Senate Executive Committee (SEC) meeting, “the role of the President in conduct proceedings was further discussed and there was agreement to
alter that role, with her concurrence. This change is consistent with faculty playing the role of reviewing officers. These revisions are reflected in WAC 478-120-0070 – Order from Administrative Review of Full Hearing and the removal of what was previously WAC 478-120-0068 - Authority of President of the University to Initiate Review” (Exhibit 2).

Lee reminded the council that as part of the changed SCC process, the university is anticipating creating training, web content, templates, and forms to operationalize the WAC and policies in a way that is transparent, understandable, and accessible to students.

There was some discussion of plagiarism at is it defined in the WAC (Exhibit 1, page 9). It was noted the language does not include information on “intention to plagiarize” versus accidental plagiarism (e.g. using “common knowledge” ideas without citation), and how the difference affects an allegation of plagiarism. Laws noted there have been no language changes at this time, but there is a plan to monitor the question after implementation.

*Final draft of WAC / specific revisions since last FCSA review*

The council read through and cross-referenced each specific revision to the WAC portion of the revised SCC using the brief provided by the guests, which lists changes made to the WAC chronologically (Exhibit 1) (Exhibit 2). Questions that arose during presentation of the revisions are as follows:

- Revision #2 (Exhibit 1, page 6) – It was noted the final phrase of the passage would be struck (beginning “with the”) before the document is forwarded to the SEC.
- Revision #4 (Exhibit 1, page 7) – It was clarified that “conduct hold” is used as a blanket term for varying categories of holds that appeared in the prior SCC WAC.
- Revision #6 (Exhibit 1, page 8) – A “Review Coordinator” has been added as a non-voting role on the review panel to aid with administrative needs/processes.
- Revisions #12 (Exhibit 1, page 19) – It was noted the intention was for a review panel to be made up of faculty and students, and a member suggested altering the language from “individuals” to “faculty and students” (first word, 478-120-0023). The council decided to alter the term from “individuals” to “faculty and staff.”
- Revision #13 (Exhibit 1, page 19) – It was noted the added section (Disqualification and Substitution of Presiding Officers and Reviewing Officers) would be made more clear via the local university policies.
- Revisions #14 (Exhibit 1, page 20) – There are ongoing questions concerning how conduct holds interact with Interim Protective Measures, and how they interact with other sanctions that may emerge.
- Revision #15 (Exhibit 1, page 21) – The revision designates email as the default communicative method for all university notices, and mail by posting as the primary alternative method.

*Additional discussion before vote*

Laws noted an outside group contacted by UW faculty (called FIRE) raised a handful of concerns over the SCC revisions. All of the concerns were noted as more pertinent to the local UW SCC policies than to the WAC. Some of the issues were largely based in semantics. There was some brief discussion of the nature of some of the concerns.
Zhou requested there be consideration of additional resources for international students who engage in the SCC process, including translation services. It was clarified any associated policy language would relate to the local university policies and not the WAC. A member mentioned that a targeted “international student orientation” is in development, which may potentially include information on the SCC.

After discussion subsided, the council approved forwarding the draft WAC language revising the SCC as Class B legislation to the Senate Executive Committee (SEC) by majority vote.

5) Good of the order

Nothing was stated for the good of the order.

6) Adjourn

Laws adjourned the meeting at 2:50 p.m.

Present: Faculty: Chris Laws (chair), Holly Barker, Doug Brock, Ann Culligan
Ex-officio reps: Aileen Trilles, Carolyn Martin, Kaitlyn Zhou
President’s designee: Lincoln Johnson
Guests: Amanda Paye, Jill Lee

Absent: Faculty: Mable Ezeonwu, Bruce Hevly, Jasmine Bryant, Christopher Campbell
Ex-officio reps: Tanya Kumar, Katherine Querna

Exhibits
Exhibit 1 – 17-2-7_Final_Draft_of_WAC_for_FCSA
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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 (“code”) that are set forth in Chapter 478-120 WAC. The University has also developed agency-level policies and procedures regarding the code pursuant to Chapter 34.05 RCW, 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

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.

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-XXX through 478-120-XXX, 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.

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.

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. **Attorney**
   "Attorney" is a person permitted to practice law in Washington State.

2. **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 this code had been committed against them.

3. **Conduct Hold**
   A “conduct hold” refers, collectively, to administrative notes on a student’s record, such as registration holds, degree holds, and transcript holds, that enable the conduct officer to monitor the registration and enrollment status of a student for the purpose of administering this code.

4. **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.

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

6. **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).

7. **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.

8. **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.

9. **Presiding Officer**
   “Presiding officer” refers to conduct officers and hearing officers collectively.
10. **Respondent**

A "respondent" is any student or student organization reported to have engaged in or charged with prohibited conduct under the conduct code.

11. **Review Coordinator**

A “review coordinator” is an individual who may be appointed to a review panel as a non-voting member who manages the administrative review process.

12. **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. The review panel may also include a “review coordinator.”

13. **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.

14. **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.

15. **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.

16. **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.

17. **University Official**

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

18. **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, 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:

a. Make, or intend to make, a report, complaint, grievance, or allegation of prohibited conduct under any University policy or rule, or under any law;

b. Participate in and/or cooperate with conduct proceedings; or

c. 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:

a. 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;

b. Causing another person to touch their own or another's body in the manner described above; or

c. 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:

a. Consent cannot be obtained when force or threat is used to gain consent;

b. Consent cannot be obtained where the respondent knew or reasonably should have known that the other person was incapacitated; or

c. 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 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 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 delegee.

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. In formal proceedings pursuant to RCW 34.05.413 through 34.05.476, the University of Washington adopts the model rules of procedure chapter 10-08 WAC – Model Rules of Procedure. In the case of a conflict between the model rules of procedure and these procedural rules, the procedural rules adopted in these rules shall govern.

Informal settlements may be conducted under the authority of RCW 34.05.060.

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 478-120-0044.

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.

To the extent feasible, the conduct officer’s record will be included in the record for the full hearing. The time of commencement of the full hearing shall be considered to be the time of commencement of the original conduct proceeding.

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

If it becomes apparent that a full adjudicative proceeding is necessary, is in the public interest, or is more appropriate to resolve issues affecting the participants, 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; and/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 Authority to Initiate Conduct Proceedings and Delegations of Authority in Conduct Proceedings

The following University officials may initiate conduct proceedings 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, engage in fact finding, hold hearings, and issue initial 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. Review panels may also include a review coordinator.
478-120-0023  Appointment of Reviewing Officers

Individuals may be appointed to the pool of available reviewing officers at any time by a University official with authority to appoint such individuals. Efforts will be made to ensure the pool includes available reviewing officers representing UW Seattle, UW Bothell, and UW Tacoma campuses. The appointment will be for a specific term, which may be extended at the discretion of a University official with authority to appoint such individuals, and will include any training and other conditions of service. See Student Governance and Policies 209 and 210.

478-120-0024  Selection of Review Panels

For each administrative review, an odd number of available reviewing officers will be selected from the pool, based on availability, to form the review panel. Those selected for the panel will designate a faculty member of the panel to act as chair, with efforts made that the chair be a representative from the campus where the respondent is enrolled.

478-120-0025  Disqualification and Substitution of Presiding Officers and Reviewing Officers

Consistent with RCW 34.05.425, any presiding officer or reviewing officer is subject to disqualification for bias, prejudice, interest, or any other applicable cause. Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification. The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination. An appropriate individual will then be substituted as a presiding or reviewing officer.

478-120-0026  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.

478-120-0027  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.

478-120-0028  Conduct Hold on Student Record

A conduct office or other designated 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, or in conjunction with a disciplinary sanction under this code. A conduct hold may prohibit restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the university until the hold has been removed. If a conduct hold is put in place pending or during a conduct proceeding, the student will be notified of the hold and be advised how to
raise an objection about the hold or request that it be made less restrictive. The hold will remain in place until lifted by the conduct office or other designated University official with authority to do so.

Implementation of any conduct hold does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

478-120-0029 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 Chapter 209 Student Governance and Policies – Student Conduct Policy for Academic and Research Misconduct and Behavioral Misconduct.

478-120-0030 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 a University official with authority to do so.

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).

478-120-0031 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.

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.

478-120-0032 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 presiding officers and reviewing officer(s) in writing. Service is complete at the moment the e-mail is sent to the e-mail address. If there is no email on record, 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 presiding officer or reviewing officer(s) via e-mail or other electronic means as determined by the 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 will be responsible for 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. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

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

478-120-0033 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, 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 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. For additional guidance, see Chapters 209 and 210 Student Governance Policies.

478-120-0034 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.

478-120-0035 Burden of Proof

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

478-120-0036  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 regarding its interpretations of these rules, including in Chapters 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.

478-120-0037  Relevant Evidence, Hearsay, and Character Evidence
Evidence, including hearsay, is 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 may exclude from consideration evidence that is not relevant. The presiding officer may also exclude from consideration evidence that is immaterial or unduly repetitious.

In general, the presiding 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.

478-120-0038  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, or absence of mistake. The presiding officer will determine the relevance and admissibility of this evidence.

478-120-0039  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.
478-120-0040 Experts

Consistent with RCW 34.05.452(5), 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.

478-120-0041 Self-incriminating Evidence

No student shall be compelled to give self-incriminating evidence and a negative inference will not be drawn from a refusal to 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.

478-120-0042 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

478-120-0043 Notice of Conduct Proceeding and Investigative Interview

The conduct officer will provide notice to the parties, in writing, of the commencement of conduct proceedings, which will include information on how to petition for disqualification of the conduct officer 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.

478-120-0044 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”).

478-120-0045 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 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.

478-120-0046 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

478-120-0047 Requesting Administrative Review

A party may request administrative review of the initial order based on the grounds as set forth in WAC 478-120-0048.

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, the initial order shall become the final order.

478-120-0048 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. To determine whether the issue and interests involved warrant a full hearing.

478-120-0049 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) selected for the review panel. The parties will also be provided with information on how an opportunity to petition for disqualification of any reviewing officer(s) 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.

478-120-0050 Procedures for Administrative Review

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

a. The conduct officer’s record and fact finding;
b. Information submitted to the review panel in the request for review or response to request for review; and
c. 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.

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

478-120-0051 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;

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.

478-120-0052 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.

X. FULL ADJUDICATIVE PROCEEDINGS AND FULL HEARING

478-120-0053 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. The notice will include information on how to petition for disqualification of the hearing officer.

478-120-0054 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.

478-120-0055  Discovery

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

478-120-0056  Subpoenas

The hearing officer may issue subpoenas. The parties may also 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. The requesting party is responsible for serving the subpoena upon the witness. 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.

478-120-0057  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.

478-120-0058  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.
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.

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.

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.

Testimony under Oath or Affirmation

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

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.

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

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 478-120-0066.
A request for administrative review must be submitted in writing to the hearing 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 the initial order shall become the final order.

478-120-0066 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.

478-120-0067 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) selected for the review panel. The parties will also be provided with information on how an opportunity to petition for disqualification of any reviewing officer(s) 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.

478-120-0068 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.

478-120-0069  Communications with Reviewing Officers

All communications with reviewing officers, 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 reviewing officers 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.

478-120-0070  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.

478-120-0071  Process Following Remand from Administrative Review from Full Hearing

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, the president or the president's delegate may determine that the initial order should be 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. 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**

**478-120-0072 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 478-120-0073, 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.

**478-120-0073 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**

**478-120-0074 Privacy 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.

478-120-0075 Recordkeeping
Records related to conduct proceedings shall be maintained consistent with RCW 34.05.494, RCW 34.05.476, university records retention policies, and other relevant policies.

478-120-0076 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: January 26, 2017
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: Final Draft of Student Conduct Code WAC and 1st Draft of Policies

Thank you again for your efforts in working with us toward improvements in our student conduct process. Following for your review and approval is:

- Final draft of WAC for FCSA, which contains redlined changes that have been made to the previous draft WAC you previously reviewed.

In addition, both for context for the WAC and for your review:

- 1st drafts of the companion policies, Chapter 209 and 210 Student Policies and Governance for discussion, anticipating a vote on March 7, 2016 (content from the WAC is, again, replicated and shaded in gray in the policies).

Since your last review, we have provided the draft WAC to the Senate Executive Committee as an information item and, also, we have sought input from other process partners, including faculty and conduct officers.

As part of our review, we have also completed a further review of the requirements of the full adjudicative proceedings under Chapter 34.05 RCW – the Administrative Procedures Act and, also, the Chapter 10-08, WAC - Model Rules of Procedures. Because the current code contains provisions relating to full adjudicative proceedings and because the recent court decision has resulted in the decision to include those full proceedings in the revised WAC, efforts have been made to borrow current language when it is consistent with the new model and roles and/or to borrow language from the APA itself. This has resulted in a WAC that appears more complex on its face than we would have hoped, but one that both complies with the APA and also retains to the extent possible certain process improvements we identified that could be retained.

**Overall Comments**

- During the Senate Executive Committee meeting, the role of the President in conduct proceedings was further discussed and there was agreement to alter that role, with her concurrence. This change is consistent with faculty playing the role of reviewing officers. These revisions are reflected in WAC 478-120-0070 – Order from Administrative Review of Full Hearing and the removal of what was previously WAC 478-120-0068 - Authority of President of the University to Initiate Review.

- We are already anticipating creating training, web content, templates, and forms to “operationalize” the WAC and policies in a way that is transparent, understandable, and accessible to students.

- The Rules Coordination Office will do the final numbering, check internal number references, etc. (and ** has been used as a placeholder for internal references within the draft policies that remain
Specific Revisions

1. WAC 478-120-001 – Statement of Authority revised to bring language more into alignment with the APA.

2. Given that the full adjudicative proceedings provisions have been added to the WAC, the internal citations to Research Misconduct need to be reviewed and reconciled with Executive Order No. 61.

3. As in current code and given the complexity of the full adjudicative proceedings under the APA, a definition of “attorney” was added as a “person permitted to practice law in Washington State.”

4. Per feedback from SEC and faculty process partners, a definition of “Conduct Holds” was added to clarify their purpose and we have revised WAC 478-120-0028 – Conduct Holds to further clarify that they are also used to monitor completion of disciplinary sanctions. A placeholder has been noted in the draft policies for further clarification.

5. Definition of “Respondent” was revised to acknowledge that some action may necessarily occur between the time a report is received and prior to charging a respondent.

6. The role of a “review coordinator” was added throughout to allow for the possibility of creating a role to provide support to the review panels in administrative reviews, much like a hearing examiner (a non-voting member).

7. WAC 478-120-0016 – Form of Adjudicative Proceeding revised to more closely align with APA language and, also, with the University’s WAC 478-108-110 – Adoption of Model Rules of Procedure.

8. An acknowledgement was added that the University may conduct “informal settlements” under the APA of conduct matters, which appears in current conduct code.

9. Clarification was added in WAC 478-120-0018 – Conversion to Full Adjudicative Proceeding that the conduct officer’s record from the brief adjudicative proceeding will become part of the record in the full hearing.

10. WAC 478-120-0019 – Full Adjudicative Proceeding was revised to more closely align with APA language.

11. WAC 478-120-0021 – Effective Date of Sanctions was revised to allow for possible post-dating and the actual effective date will be included in the final order.

12. WAC 478-120-0023 – Appointment of Reviewing Officers and WAC 4789-120-0024 – Selection of Review Panels are being offered to FCSA as proposed language in response to feedback about including some information in the WAC about this process. This was intended as “high level” language to allow for further discussion during development of policies (or this language can be moved to policies if FCSA would prefer).
13. WAC 478-120-0025 - Disqualification and Substitution of Presiding Officers and Reviewing Officers added from the APA and is consistent with the APA’s requirements, including that the individual whose disqualification is requested determines whether to agree to disqualification. Other sections revised throughout to use the term “disqualification,” which more closely aligns to APA.

14. WAC 478-120-0030 – Interim Protective Measures revised to remove reference to “supportive measures,” which has caused confusion since there is no other reference to supportive measures in WAC (these are described in policy).

15. WAC 478-120-0032 – Service of Notices, Filings, and Orders and Time Limits revised to clarify when service by mail may occur and, also, to add language from APA relating to computing periods of time.

16. WAC 478-120-0056 – Subpoenas revised to clarify that the hearing officer may issue subpoenas and that the requesting party is responsible for serving the subpoena.

17. WAC 478-120-0069 – Communications with Reviewing Officers added to already-existing language regarding communications with the hearing officer.

18. WAC 478-120-0075 – Recordkeeping revised to include a reference to the recordkeeping provision for brief adjudicative proceedings under the APA.