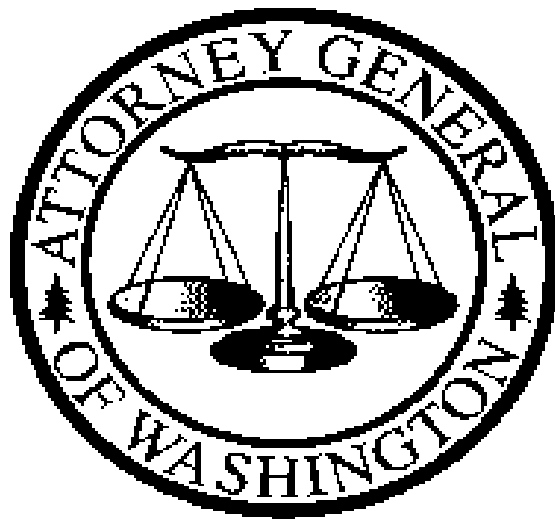


Student Conduct Academy

August 2017

Conference Materials



Monday, August 14, 2017 – Big Bend Community College
Tuesday, August 22, 2017 – South Seattle College

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STUDENT CONDUCT ACADEMY

Monday, August 14, 2017 – Big Bend Community College

Tuesday, August 22, 2017 – Seattle South College

Morning Session – 9:00 a.m. to Noon

- I. *Arishi*, the APA & Student Conduct in Washington State - Sr. AAG Derek Edwards
- II. Due Process and Applicable Laws and Regulations
 - A. Legal Authority
 - 1. Student Conduct Code
 - 2. Student Conduct Procedures
 - 3. Administrative Procedures Act and Model Procedures
 - 4. Court Rules and Rules of Evidence (persuasive, but not binding authority)
 - B. The Disciplinary Process
 - 1. Disciplinary Charges
 - 2. Notice of Disciplinary Meeting
 - 3. Finding of Responsibility and Sanction
 - 4. Notice of Appeal
 - 5. Hearing (BAP or Full Hearing depending on sanction)
- III. Evidence – AAGs Aileen Miller and Rick Brady
 - A. Documentary and Physical Evidence
 - 1. Witness Statements
 - 2. Investigation Reports
 - 3. Email and Texts
 - 4. Photographs
 - 5. Other documentation and physical evidence
 - B. Testimony
 - 1. Direct examination
 - 2. Cross examination
 - C. Evidentiary Objections
 - 1. Relevance
 - 2. Hearsay
 - 3. Character Evidence
 - 4. Assumes Facts Not In Evidence
 - 5. Nonresponsive
- IV. Preparing for a Hearing - AAGs Tom Angier & Bruce Marvin
 - A. Opening Statement
 - B. Identifying Witnesses
 - C. Identifying Exhibits
 - D. Organizing the Case, Witnesses, and Exhibits
 - E. Presenting Testimonial Evidence
 - F. Presenting Documentary and Physical Evidence
 - G. Closing Argument

LUNCH

Afternoon Session – 12:30 to 4 p.m.

- V. Mock Hearing – Academy Faculty
- VI. Skills Practice
- VII. Questions/Other Resources

Hypothetical Student Threatens Instructor



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Direct Examination: Faculty Member (Sidney Fendi)

Evidence

- Police Report
- Declaration
- Photo of Trashcan
- Email “Grade Appeal” with threat

Respondent Joe E. Student became upset because he received a C- in his fall quarter physics class. He confronts the instructor during office hours, the first week of the winter quarter and refuses to allow the faculty member to leave until she agrees to change the grade to a B. Faculty member in neighboring office calls security and student is escorted from the office. As he is escorted to a common area, Student says, “This is the type of shit that cause students to shoot up schools.”

In the parking lot, Student is seen kicking a hole in a trashcan before he gets into his car and speeds away.

Next day, Student sends an email to the VP of Academics, entitled “grade appeal” from his personal email account. At the end of the email, he states that the whole system is rigged against him and that “If this doesn’t get sorted out soon, there is going to be hell to pay.”

Police Report – Security Officer Emily Donaldson –

Date of Report - April 14, 2017

Date of Incident – April 11, 2017 – 9:30 a.m.

Respondent: Joe E. Student

Witness: Sidney Fendi, Faculty Member

Witness: Sam Georgeson, Faculty Member

Narrative.

On April 11, 2017 at approximately 9:30 a.m., I received a telephone call from a faculty member, Sam Georgeson, reporting a disruption in Room 715 of the C Building. I arrived at the scene at approximately 9:35 a.m. and found Joe E. Student standing in the doorway of Room 715, which is an office assigned to Sidney Fendi. Ms. Fendi was sitting in the chair behind her desk and was visibly upset. I identified myself to Mr. Student and asked what was going on. Mr. Student said, “nothing.” He then said that he and Ms. Fendi were “simply having a discussion about my last quarter’s grade.” I asked Mr. Student to step out of the doorway and into the hallway. Initially, he questioned why this was necessary, but ultimately agreed to accompany me down the hall to a lounge area. As we walked down the hall, he said “This is the kind of bull sh*t that causes students to shoot up schools.” I asked Mr. Student to wait with me in the lounge. He told me that he had “better things to do with his time” and left. I called the security office, explained the situation, and asked that another security officer track Mr. Student and, if necessary, escort him off the premises.

I went back to Ms. Fendi’s office and found her talking to Mr. Georgeson. I asked her if she was okay. She said that she was shaky, but that she thought she would be okay now that Mr. Student had left her office. She reported that Mr. Student was a student in her Introductory Physics class in fall quarter. He had been maintaining a B average until the final three weeks when he missed two quizzes and performed poorly on the final, which dropped his grade to a C-. For most of the quarter he had been quiet and kept to himself in the back of the class, but over the final three weeks of the winter quarter he had a couple of minor flare-ups with classmates.

She reported that Mr. Student approached her in her office that morning (April 11, 2017) with questions about his grade. She reviewed his grades with him and explained how his performance during the final three weeks had lowered his grade. He became increasingly agitated. She told him that he could appeal the grade, but he insisted that she change the grade immediately and became increasingly agitated. She refused to change the grade and moved toward the doorway to leave. He remained in the doorway and refused to let her through, which caused her to sit back down at her desk. She remembers him yelling that “no one leaves this room until this bullsh*t grade is fixed.” Her door was open at the time, so she thinks that this must have attracted

attention and caused Mr. Georgeson to call security. She reported that she was afraid of the student and expected the college to take steps to protect her. A declaration prepared by Dr. Fendi is attached as Exhibit A to this report.

Later that day, I received a report from a campus maintenance supervisor that a person fitting Mr. Student's description (Caucasian male with a beard and glasses, dressed in jeans and a Seahawks jersey) had kicked a hole in a trashcan in the parking lot that morning. I met with the supervisor in the parking lot and took pictures of the trashcan. A photograph of the trashcan is attached as Attachment B.

The following morning (April 12), I received a telephone call from the Vice President of Academics about an email she had received from Joe E. Student. The subject line of the email indicated that it was a grade appeal. The email explained that Mr. Student was challenging the C- he had received in the introduction to physics class and that he wanted it changed to a B. In the closing, Mr. Student wrote, "The whole system is rigged against me. If this doesn't get sorted out soon, there is going to be hell to pay." A copy of the email is attached as Attachment C.

ATTACHMENT A

**SKYLINE COLLEGE
STUDENT DISCIPLINE PROCEEDING**

In re Discipline of JOE E. STUDENT

DECLARATION OF SIDNEY FENDI,
Ph.D.

I, SIDNEY FENDI, declare under penalty of perjury under the laws of the state of Washington that the following is true and based upon my personal knowledge.

1. I am employed as a tenured faculty member in Skyline College's Physics Department. I have held this position for approximately 17 years. My duties in this position include instructing the entire physics curriculum at the College, including introduction to physics.

2. During fall quarter 2017, Joe E. Student was enrolled in my introduction to physics course. During the first 7 weeks of the class, Mr. Student sat at the back of the classroom, was relatively quiet, and earning a "B" average. During the last three weeks of the class, however, he missed two quizzes and did poorly on his final examination and, as a result, his grade dropped and he received a final grade of "C" for the course.

3. During the first week of the spring quarter, Mr. Student called me and arranged to meet me during my office hours to discuss his grade. We met in my office in the C building at 9:15 a.m. on April 11, 2017. Initially, the meeting was relatively cordial. I offered Mr. Student a seat, but he said that he preferred to stand. As we went over his final exam and his grades from the second half

of the class, Mr. Student became increasingly upset and argumentative. He told me that he needed at least a “B” to meet entrance requirements for the Skyline nursing program. When I suggested that he take the class over again, he became angry and said he didn’t have time for that. I explained that if he was dissatisfied with the grade, he should consider filing a grade appeal. At this point, he told me, “You are not listening to me. I don’t have time for this!” and slammed his hand down on the desk. At this point, I got up to leave, but he was blocking the door, yelling something like “No one is leaving this room until this grade is changed.”

4. At this point, I retreated behind my desk and the student and I stared one another down. Neither of us moved, although I remember that I was physically shaking. It was very intense. Then campus security arrived and asked the student to step out of the office. Initially, he refused, but ultimately, he left with security. Security returned a few minutes later and interviewed me. At that time, I told him that I was afraid for my safety and asked whether someone would be available to escort me to my car after class.

DATED this 17th day of April 2017, at Skyline, Washington.

Sidney Fendi, Ph.D.

ATTACHMENT B



ATTACHMENT C

To: Skyline Vice President of Academics < VP Academics@Skyline.edu >

From: Joe E. Student < big_dog@gmail.com >

Date: April 12, 2017 3:11 a.m.

RE: Grade Appeal

I am appealing the C- grade that I received last quarter in my Introduction to Physics class, which was taught by Sidney Fendi. I worked hard throughout the quarter and I know that I earned at least a B. This is particularly upsetting because I need this grade in order to qualify for the Skyline nursing program. This is the second time I've taken this class and I am beginning to think that the whole system is rigged against me. If this doesn't get sorted out soon, there is going to be hell to pay.

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Skyline Student Conduct Code & Procedures



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SKYLINE COLLEGE CODE OF STUDENT CONDUCT & STUDENT CONDUCT PROCEDURES

WAC 132X-120-001 – PROHIBITED STUDENT CONDUCT

The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to the following:

(1) Academic Dishonesty. Any act of academic dishonesty, including but not limited to cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) Other Dishonesty. Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) Obstruction or Disruption. Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity or (b) any activity that is authorized to

occur on college property, whether or not actually conducted or sponsored by the college.

(4) Assault, intimidation, harassment. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this paragraph, "bullying" is defined as severe or pervasive physical or verbal abuse involving a power imbalance between the aggressor and victim.

(5) Cyber-Misconduct. Cyber-stalking, cyber-bullying or on-line harassment. Use of electronic communications, including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, non-consensual recording of sexual activity, and non-consensual distribution of a recording of sexual activity.

(6) Property Violation. Damage to, or theft or misuse of, real or personal property or money of

- (a) the college or state;
- (b) any student or college officer, employee, or organization; or
- (c) any other member of the college community or organization; or
- (d) possession of such property or money after it has been stolen.

(7) Failure to Comply with Directive. Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally- authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050(2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.

(9) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) Alcohol , Drug, and Tobacco Violations.

(a) Alcohol. The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human

growth hormones as defined in RCW 69.41, or any other controlled substance under RCW 69.50, except as prescribed for a student's use by a licensed practitioner.

(d) Tobacco, electronic cigarettes and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) Lewd Conduct. Conduct which is lewd or obscene.

(12) Discriminatory conduct. Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age ; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification or any other legally protected classification.

(13) Sexual Misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual Harassment. The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) Sexual Intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing

conduct based on sex, including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual Violence. “Sexual Violence” is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent: knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the

responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age ; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual Misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

(15) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies, including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) Misuse of Electronic Resources. Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

(17) Unauthorized Access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) Safety Violations. Safety violation includes any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) Violation of Other Laws or Policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) Ethical Violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

WAC 132X-125-003 – DISCIPLINARY SANCTIONS & TERMS & CONDITIONS

(1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(a) **Disciplinary Warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written Reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary Probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Restitution. Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) Not in Good Standing. A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) No contact order. An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

WAC 132X -125-005 – STATEMENT OF JURISDICTION

- (1) The student conduct code shall apply to student conduct that occurs
 - (a) on college premises;
 - (b) at or in connection with college sponsored activities; or
 - (c) to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

- (2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

- (3) Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

- (4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case by case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

WAC 132X -125-010 – DEFINITIONS

The following definitions shall apply for purpose of this student conduct code:

- (1) “Student conduct officer” is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.
- (2) “Conduct review officer” is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.
- (3) “The president” is the president of the college. The president is authorized to
 - (a) delegate any of their responsibilities as set forth in this Chapter as may be reasonably necessary; and
 - (b) reassign any and all duties and responsibilities as set forth in this Chapter as may be reasonably necessary.
- (4) “Disciplinary action” is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.
- (5) “Disciplinary appeal” is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten (10) instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.
- (6) “Respondent” is the student against whom disciplinary action is initiated.
- (7) “Service” is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:
 - (a) hand-delivery of the document to the party; or
 - (b) by sending the document by email and by certified mail or first class mail to the party’s last known address.

Service is deemed complete upon hand-delivery of the document or upon the date the document is emailed and deposited in the mail.

(8) “Filing” is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official’s assistant; or

(b) by sending the document by email and first class mail to the specified college official’s office and college email address

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(9) “College premises” shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(10) “Student” includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, non-credit courses, on-line courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered “students” for purposes of this Chapter.

(11) “Business day” means a week-day, excluding weekends and college holidays.

(12) A “Complainant” is an alleged victim of sexual misconduct.

(13) “Sexual misconduct” has the meaning ascribed to this term in WAC 132X-125-001(13).

WAC 132X -125-015 – INITIATION OF DISCIPLINARY ACTION

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132X-125-003; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(5) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

WAC 132X -125-020 – APPEAL FROM DISCIPLINARY ACTION

- (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten (10) days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.
- (2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.
- (3) The parties to an appeal shall be the respondent and the conduct review officer.
- (4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.
- (5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.
- (6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.
- (7) The student conduct committee shall hear appeals from:
 - (a) the imposition of disciplinary suspensions in excess of ten (10) instructional days;
 - (b) dismissals; and
 - (c) discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.
- (9) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:
 - (a) suspensions of ten instructional days or less;
 - (b) disciplinary probation;
 - (c) written reprimands; and

- (d) any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.
- (10) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.
- (11) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:
 - (a) the dismissal of a sexual misconduct complaint; or
 - (b) any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.
- (12) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.
- (13) Except as otherwise specified in this Chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

WAC 132X-125-025 – BRIEF ADJUDICATIVE PROCEEDINGS – INITIAL HEARING

- (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.
- (2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the agency's view of the matter and (b) an opportunity to explain the party's view of the matter.
- (3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ten (10) days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten (10) days of service of the initial decision, the initial decision shall be deemed the final decision.
- (4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.
- (5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten (10) instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

WAC 132X-125-030 – BRIEF ADJUDICATIVE PROCEEDINGS - REVIEW OF AN INITIAL DECISION

- (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within ten (10) days of service of the initial decision.
- (2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.
- (3) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.
- (4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty (20) days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty (20) days after the request is submitted.
- (5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten (10) instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.
- (6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

WAC 132X -125-035 – STUDENT CONDUCT COMMITTEE

- (1) The student conduct committee shall consist of five members:
 - (a) Two full-time students appointed by the student government;
 - (b) Two faculty members appointed by the president;
 - (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.
- (2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.
- (3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.
- (4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the Committee for disqualification of a committee member.

WAC 132X-125-040 – APPEAL – STUDENT CONDUCT COMMITTEE

- (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedures Act, Chapter 34.05 RCW.
- (2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven (7) days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.
- (3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.
- (4) Upon request filed at least five (5) days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.
- (5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.
- (6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.
- (7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.
- (8) Communications between committee members and other hearing

participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a non-attorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four (4) business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

WAC 132X-125-045 – STUDENT CONDUCT COMMITTEE HEARINGS — PRESENTATIONS OF EVIDENCE.

- (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either (a) proceed with the hearing and issuance of its decision or (b) serve an decision of default in accordance with [RCW 34.05.440](#).
- (2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.
- (3) The chair shall cause the hearing to be recorded by a method that they selects, in accordance with [RCW 34.05.449](#). That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by [RCW 34.05.476](#), which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with [WAC 10-08-190](#).
- (4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.
- (5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.
- (6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with [RCW 34.05.452](#).
- (7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

WAC 132X-125-050 – STUDENT CONDUCT COMMITTEE—INITIAL DECISION

- (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.
- (2) Within twenty (20) days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with [RCW 34.05.461](#) and [WAC 10-08-210](#). The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.
- (3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.
- (4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.
- (5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

WAC 132X-125-055 – APPEAL FROM STUDENT CONDUCT COMMITTEE INITIAL DECISION

- (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten (10) days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.
- (2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.
- (3) The president shall provide a written decision to the party and the student conduct officer within twenty (20) days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.
- (4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.
- (5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

WAC 132X-125-060 – SUMMARY SUSPENSION

(1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two (2) business days of the oral notice.

(4) The written notification shall be entitled “Notice of Summary Suspension” and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college

campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The College will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

WAC 132X -125-100 – Sexual Misconduct Proceedings

Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Administrative Procedures Act Overview



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ADMINISTRATIVE LAW—WASHINGTON *

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*** DISCLAIMER** - The information and statements contained in these materials and the accompanying presentation are not to be construed as official views or interpretations of the Office of the Attorney General. Such information and statements represent the views of the presenter, Rick Brady, only. In addition, amendments to or interpretations of the APA may exist that render the points made herein erroneous.

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I. INTRODUCTION

Administrative law is the branch of law that defines and limits the activities of government agencies. Administrative agencies are bodies usually created by statute with delegated power to make rules, decide cases, and implement legislative policies. Despite a historical separation of powers objection (i.e., the same body exercises executive, legislative, and judicial functions), all states accept the delegation of multiple functions as a necessity in a large, complex society, provided that certain requisites are met. In Washington, most state agencies are governed by the Administrative Procedure Act (APA) [RCW 34.05], as well as by the particular RCW's (and some federal laws) governing the agency.

II. ADMINISTRATIVE PROCEDURE ACT

A. GENERAL PURPOSE AND SCOPE

The APA regulates the procedures of *state administrative agencies* when performing their legislative and adjudicative functions (i.e., *rulemaking* and *adjudicative proceedings*). The purpose of the APA is to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision-making.

B. WHAT IS A STATE AGENCY?

1. APA Definition

An “agency” is defined as any “*state board, commission, department, institution of higher education, or officer*” authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general. Each Washington institution of higher learning is a state agency..

2. APA Exclusions

The APA *does not apply* to the state militia, the department of corrections, or the board of clemency and pardons. Partial exclusions also exist for the board of industrial insurance appeals, the board of tax appeals, the department of labor and industries, the state personnel board, the higher education personnel board, and driver's license proceedings. The APA is also inoperative to the extent that it conflicts with federal law regarding the allocation of federal funds. Finally, the APA does not apply to internal prison disciplinary hearings, according to a judicially created exception.

C. DOES THE APA APPLY TO LOCAL AGENCIES?

For county and other local agencies, use a “function test” to determine whether the APA applies. If the agency performs a state function (e.g., reviews property values for state

taxation), the APA will probably apply. If the local agency does not implement state law in any way, the APA will not apply.

Note: While the APA does not apply to decisions of a local nature, its standards regarding the scope of judicial review may still be used. This concept of using the APA by analogy may apply to other APA provisions as well.

III. DELEGATION OF AUTHORITY

A. STATUTORY DELEGATION

Before an agency can act, it must have properly delegated authority from the legislative body. Washington recognizes broad delegations of authority to agencies to make rules and conduct adjudicative proceedings, provided the following conditions are met.

1. Adequate Standards

The Legislature must include adequate standards in a delegation of power to an administrative agency (i.e., who is to do what and under what circumstances). These standards control agency discretion and allow a court reviewing agency actions to determine whether the act is *ultra vires* (i.e., beyond scope of power). Standards may be found in the act itself, in legislative history, or even in the background of regulatory policing of an activity.

2. Procedural Protections

A delegation of power to an administrative agency should also provide some procedural protections to those affected by agency action. These procedural protections can be supplemented by the APA. In the rulemaking area, for example, the usual form is pre-rulemaking procedures for notice and an opportunity to comment.

IV. AGENCY LEGISLATIVE FUNCTIONS

A. WHAT IS A RULE?

The United States and Washington Constitutions ordinarily provide no right to notice and a hearing before an agency makes rules. Therefore, rulemaking procedures are established almost exclusively by statute. In Washington, the APA defines and prescribes the act of rulemaking by state agencies, and also provides that any person may petition an agency requesting the adoption, amendment, or repeal of any rule. Agencies must engage in prenotice inquiry prior to publication of proposed rules, and to justify significant rules through a cost/benefit analysis and other means. (See B.1. and B.6., *infra*.)

1. APA Definition

A “rule” means any agency *order, directive, or regulation of general applicability* (i) the violation of which subjects a person to a penalty or sanction; (ii) which establishes, alters, or revokes any procedure relating to agency hearings or to the enjoyment of benefits or privileges conferred by law; (iii) which establishes, alters, or revokes qualifications for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (iv) which establishes, alters, or revokes mandatory standards for any product or material that must be met before sale. The term also includes the *amendment or repeal* of a prior rule.

2. Specific Exclusions From Definition

The following actions are specifically excluded from the APA definition of rulemaking and therefore are *not* subject to the APA rulemaking procedures:

- a. *Statements of internal agency management* not affecting private rights;
- b. *Declaratory rulings*, i.e., interpretive and policy statements (see C.2., *infra*);
- c. *Traffic restrictions* established by the secretary of transportation; or
- d. *Rules of institutions of higher education* involving standards of admission, academic advancement or credit, graduation or the granting of degrees, employment relationships, or fiscal process.

B. APA RULEMAKING REQUIREMENTS

The following statutory procedures are required prior to adoption, amendment, or repeal of a rule by a state agency. (These procedures are supplemented by model rules of procedure or the agencies’ own rules.) Failure to substantially follow these procedural requirements voids the rule.

1. Prenotice Inquiry

At least **30 days** before filing a notice of proposed rulemaking (see 2., below), an agency must publish in the state register a statement of inquiry that identifies: (i) the specific statutory authority for the rule; (ii) the reasons why a new rule is needed and the goals of the new rule; (iii) coordination with other agencies; (iv) the process by which the rule might be developed, including negotiated rulemaking and pilot rulemaking; and (v) an explanation of how interested persons may participate in the development of the rule.

2. Notice

At least **20 days** prior to a rulemaking session, the agency shall cause notice to be filed in the state register. No later than three days after publication, notice must also be mailed to anyone requesting notice. In addition, institutions of higher education must also publish notice in the campus newspaper at least **seven days** prior to the rulemaking session. The notice must include, among other things:

- (i) Detailed reference to the **statutory authority** for adopting the rule;
- (ii) A **summary** of the proposed rule;
- (iii) A **short explanation** of the purpose and anticipated effects of the rule; and
- (iv) Information regarding the **time, manner, and place for public input**.

Note: Rules not adopted within 180 days are considered withdrawn.

3. Opportunity to Comment

Written comment about a proposed rule must be accepted by the agency if received by the date specified in the notice. The agency must also provide interested persons a reasonable opportunity to present oral comment at a rulemaking hearing open to the public. All written and oral comments must be fully considered by the agency and a record must be made of the hearing.

4. Concise Explanatory Statement and Rulemaking File

Before filing an adopted rule (see 7., *infra*), the agency must prepare a concise explanatory statement that identifies the reasons for adopting the rule, describes any differences between the proposed rule and the final rule and the reasons for them, and summarizes and responds to the substance of all comments received concerning the proposed rule. The concise explanatory statement must be provided to any person on request or from whom the agency received comment. Furthermore, the agency must maintain a rulemaking file for each proposed and final rule. This file must contain detailed information on the rule, including a copy of the concise explanatory statement.

5. Variance Between Proposed and Final Rule

If the rulemaking hearing results in a final rule substantially different from the rule proposed, the agency must either:

- (i) **File a supplemental notice** seeking additional public input; or
- (ii) **Withdraw the proposed rule** and commence a new rulemaking proceeding to adopt the substantially different rule.

If the agency adopts a rule that varies from the proposed rule without filing a supplemental notice, the general subject matter of the rule must remain the same as the proposed rule. The agency must briefly describe any changes and the principal reasons for adopting the changes. Within **60 days** of publication of the adopted rule, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule.

Note: Agencies are required to maintain a rulemaking docket with information about all pending rulemaking proceedings.

6. Publication

Each agency must file with the code revisor a certified copy of all rules it adopts. Except for emergency rules, all rules become effective **30 days** after the date of filing, unless a later date is specified in the rule. Interpretive and Policy Statements.

7. Policy and Interpretive Statements

When adoption of rules is not feasible, an agency is still encouraged under the

APA to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Such statements are not true “rules” and are advisory only. Consequently, the APA rulemaking procedures do **not** apply. However, the agency must publish in the state register information about the existence and availability of each new interpretative or policy statement it adopts, and agencies are encouraged to convert long-standing interpretative or policy statements into rules.

C. CHALLENGING AGENCY RULEMAKING

An action challenging the validity of a rule may be brought at any time, although actions challenging rulemaking procedures must be brought within two years after the effective date of the rule. [RCW 34.05.375] A court can declare a rule invalid under the following circumstances:

1. Ultra Vires

If the agency promulgates a rule that exceeds its delegated authority (i.e., is ultra vires), the rule is void; however, rules adopted under legislative authority are generally **presumed valid** and will be upheld upon judicial review if the rule is “reasonably consistent” with the statute being implemented.

2. Violation of APA Procedures

Rules that are not promulgated in “substantial compliance” with the APA rulemaking procedures are void. This applies only to state agencies. Local agencies must comply with their own agency procedures for rulemaking.

3. Violation of Constitution

Rules that violate any provision of the United States or Washington Constitutions are also void and will be struck down upon judicial review.

4. Arbitrary and Capricious

Finally, a rule will be declared void if it is arbitrary and capricious. In examining the reasonableness of a rule, a three-part test will be used to determine whether the agency acted in an arbitrary and capricious manner in adopting the rule:

- (i) First, the court should look at the agency's explanation of its own rule to see if it is clear.
- (ii) Next, the court should examine whether the agency used the appropriate statutory framework and whether it used correct factors in deciding the ruling.
- (iii) Finally, the court must decide if the agency reached its conclusion by some reasonable process. This decision will be made based on a review of the administrative record.

V. AGENCY ADJUDICATIVE FUNCTIONS

A. DISTINGUISHED FROM LEGISLATIVE FUNCTIONS

Agency adjudicative functions must be distinguished from legislative functions (rulemaking, above). Adjudicative functions (adjudicative proceedings) involve the rights, duties, privileges, and immunities of *specific parties*. Legislative functions involve agency adoption of statements of *general applicability* to implement law or govern agency operations.

B. APA DEFINITIONS

1. "Adjudicative Proceeding"

An "adjudicative proceeding" means a proceeding before an agency in which an *opportunity for a hearing* before that agency is required *by statute or constitutional right* before or after the issuance of an order by the agency. Adjudicative proceedings also include all cases of licensing and ratemaking in which an application for a license or rate change is denied (with some exceptions) or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

2. “Order”

An “order” means a *written statement of particular applicability* that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

C. APA REQUIREMENTS (STATUTORY DUE PROCESS)

In an adjudicative proceeding, the agency must comply with the following procedures, sometimes referred to as “statutory due process.”

1. Notice and Opportunity for a Hearing

While the right of a party to a hearing derives from other statutes or the United States or Washington Constitutions, the APA establishes procedures and time limits for requesting a hearing. The agency may establish its own requirements for requesting a hearing (e.g., in writing and directed to a specific address, within specified time limits). The agency must, however, allow at least 20 days to request a hearing from the time that notice is given of an opportunity for a hearing. Failure of a party to request a hearing within the time limits established by the agency constitutes a *waiver* of that party’s right to a hearing. Once a timely and proper request for a hearing is received, the agency must generally commence a hearing within 90 days.

2. Unbiased Decision-Maker

The presiding officer will usually be one or more members of the agency or an administrative law judge. Any party to the hearing may petition for the disqualification of the presiding officer on grounds of bias, prejudice, interest, or any other cause for which a judge can be disqualified. Also, any person who has served as an investigator, prosecutor, or advocate in an adjudicative proceeding, or who is subject to the authority or direction of such a person, may *not* serve as a presiding officer in the same proceeding.

3. Hearing Procedures

a. Notice of Hearing

The agency must give at least *seven days’* advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The notice must include, among other things:

- (1) The *names and addresses* of all parties to whom notice is being given;
- (2) The *time, place, and nature* of the proceeding;
- (3) The *legal authority* for the hearing;

- (4) A reference to the *particular statutes and rules* involved; and
- (5) A short *statement of the matters asserted* by the agency.

b. Prehearing Procedures

Prior to the hearing, the presiding officer gives the parties the opportunity to submit pleadings, motions, and objections.

c. Procedures During the Hearing

(1) Questioning Under Oath

All testimony of parties and witnesses is made under oath. Where the parties are not prejudiced, the hearing may be conducted by telephone, television, or other electronic means.

(2) Relaxed Rules of Evidence

During the hearing, the presiding officer generally affords all parties the opportunity to present evidence, conduct cross-examination, submit rebuttal evidence, and argue. The presiding officer may exclude evidence on constitutional or statutory grounds, on the basis of an evidentiary privilege recognized in the courts, or because the evidence is irrelevant, immaterial, or unduly repetitious.

(a) Hearsay Generally Admissible

Hearsay is admissible if it is the kind of evidence that reasonably prudent persons rely on in the conduct of their affairs.

Note: Although evidence that would be inadmissible in a civil trial may be admitted, the presiding officer's findings of fact may *not* be based exclusively on such inadmissible evidence, *unless* the presiding officer determines that doing so would not unduly abridge the parties' opportunity to confront and rebut witnesses.

(b) Official Notice May Be Taken

In addition, official notice may be taken of any judicially cognizable facts, scientific facts within the agency's specialized knowledge, and codes or standards that have been adopted by any agency. The parties must be given notice of any material so noticed, and must be afforded an opportunity to contest the above facts.

(3) Ex Parte Communications

Ex parte communications between a party and the agency decision-maker(s) are generally improper. Such communications must be placed on the record and the parties must be given an opportunity to rebut or challenge the presiding officer. The presiding officer is, however, allowed to:

- (a) Communicate with other members of the agency making the decision; and
- (b) Obtain the aid or advice of personal assistants, legal counsel, or other agency employees who have not participated in the proceedings.

4. Written Agency Order

a. Initial and Final Orders

The presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available.

b. Content

Agency initial and final orders must be *in writing* and include:

- (i) A *statement of findings and conclusions* on all material issues of fact, law, or discretion. Findings of fact must be based exclusively on the record and on matters officially noticed; and
- (ii) A *statement of the available procedures and time limits* for seeking reconsideration or other administrative relief.

c. When Effective

Orders become effective when signed, but a party may not be required to comply with the order until the party is served with or has actual knowledge of the order.

d. Stay and Reconsideration

A party may submit a request for stay of effectiveness of a final order within ten days of its service. Denial of a stay by the presiding officer or agency head is not subject to judicial review. Within ten days of the service of a final order, a party may also file a petition for reconsideration, but such a petition is not a prerequisite for seeking judicial review.

D. APPEARANCE OF FAIRNESS DOCTRINE

1. Test

The entire hearing process must not only be actually fair, but also must not give rise to a conclusion that there was apparent unfairness, as judged by an objective, disinterested person.

Note: The appearance of fairness doctrine is not a constitutional due process doctrine, although it is similar to the requirement of an unbiased tribunal.

VI. JUDICIAL REVIEW OF AGENCY ACTION

A. PRECONDITIONS FOR REVIEW

1. Standing

a. Statutory Standing

A statute may specifically define the class of persons who have standing to challenge an agency action in the courts. For example, the APA gives standing to any person “*aggrieved or adversely affected*” by agency action. A person is “aggrieved or adversely affected” only when all three of the following conditions are present:

- (i) The agency action has *prejudiced or is likely to prejudice* the person;
- (ii) That *person’s interests* are among those that the agency was *required to consider* when it engaged in the agency action being challenged; and
- (iii) A judgment in favor of that person would *substantially eliminate* the prejudice caused or likely to be caused by the agency action.

2. Primary Jurisdiction

a. Definition

Arguably, both the agency and a court have initial jurisdiction over cases; the agency by statute and the court by general jurisdiction. Under the doctrine of primary jurisdiction, however, once an agency is set up and given jurisdiction over cases, the agency is automatically vested with exclusive original jurisdiction over those cases. The courts will generally defer to the agency and limit themselves to judicial review of the agency action. In determining whether to defer to the agency, the court will consider:

- (1) Whether there is adequate administrative machinery for resolution of the dispute;
- (2) The special competence of the agency; and
- (3) The likelihood of judicial interference with a pervasive scheme of administrative regulation.

b. Exceptions

A court will hear a case and not defer to the agency when:

- (1) The agency is powerless to grant the relief requested; or
- (2) The issues in the case solely involve questions of law.

3. Exhaustion of Remedies

a. Definition

The exhaustion of remedies doctrine provides that no one is entitled to judicial review of an agency adjudicative action until all available administrative remedies have been exhausted. The purpose of the doctrine is to assure that the individual has used all available agency methods for resolution of the issue and to assure that there has been a final decision by the highest level in the agency.

Note: It is important to note the difference between the doctrine of primary jurisdiction and exhaustion of remedies. **Primary jurisdiction** determines whether a court or an agency has **initial** jurisdiction over a case, while **exhaustion** determines whether **review** may be had of an agency action that is not the last agency word in the matter.

b. Exceptions

Exhaustion will not be required when:

- (1) A statute states that exhaustion is not required;
- (2) The agency remedy would be patently inadequate;
- (3) Exhaustion would be futile;
- (4) The grave irreparable harm that would result from having to exhaust remedies would clearly outweigh the public policy requiring exhaustion of remedies; or
- (5) There is a pure constitutional or jurisdictional objection.

4. Finality (Statutory) and Ripeness (Common Law)

a. Finality

Statutes usually require that an agency decision be “final” to be appealable. For example, interlocutory appeal of an order setting a union representation election is not allowed because further process is contemplated in the agency. In Washington, agency actions are reviewable when they “impose an obligation, deny a right, or fix some legal relationship as a consummation of the administrative process.”

b. Ripeness

Ripeness questions usually arise when a person seeks preenforcement review of a rule but has not suffered any harm as yet. Preenforcement review is allowed where:

- (i) The issue raised by the litigant is fit for review (i.e., there are no factual questions left to be resolved); and
- (ii) There would be a demonstrated hardship to the parties if they had to wait for an enforcement proceeding.

Note: The APA provides for a (preenforcement) declaratory judgment on the validity of a rule. (See B.1.a., below.)

B. METHODS OF REVIEW

1. Statutory Methods of Review—APA

If the APA applies, that statute provides the *exclusive* method for proceeding with the review. Appeal of an agency action is normally to the superior court and failure to raise an issue before the agency generally precludes raising the issue on appeal. The burden of demonstrating the invalidity of agency action is on the moving party and the superior court will grant relief only if the party is “*substantially prejudiced*” by the agency action.

a. Declaratory Judgment on Validity of Rules

The APA also provides that the validity of any rule may be determined upon petition for a declaratory judgment addressed to the Superior Court of Thurston County when it appears that the rule, or its threatened application, interferes with, impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner. The petitioner need not have first requested the agency to pass upon the validity of the rule in question.

b. Certification to Court of Appeals

Under the APA, appeal of an adjudicative proceeding is to the superior court, but a litigant has a right to ask the superior court to certify the case to the court of appeals. The court of appeals has discretion to accept the case and let the parties bypass the superior court.

2. Nonstatutory Methods of Review

If no statutory review mechanism is present, common law methods of review apply. These are typically available when an agency acts in a “judicial” capacity. (However, even nonjudicial acts of an agency are reviewable under the courts’ “inherent power of review.”) The most common methods of review are:

a. Certiorari

A writ of certiorari is used to review actions of a quasi-judicial tribunal.

b. Mandamus

Mandamus is generally used to compel a government official to perform a mandatory duty.

C. SCOPE OF REVIEW

An agency’s action or inaction (i.e., failure to perform a duty required by law) is subject to judicial review. Judicial review of disputed facts is generally confined to the agency record (with some limited exceptions). Issues of law are generally subject to total (de novo) review by the court. The specific scope of review for rulemaking and adjudicative proceedings is outlined below.

1. Rulemaking

A rule is generally reviewed by a petition for declaratory judgment addressed to the Superior Court of Thurston County. The petitioner need not have participated in the rulemaking proceeding upon which the rule is based. As noted in IV.D., *supra*, the court declares the rule *invalid* if it finds that the rule:

- a. Violates constitutional provisions;
- b. Exceeds the statutory authority of the agency;
- c. Was adopted without compliance with statutory rulemaking procedure; or
- d. Is arbitrary and capricious.

2. Adjudicative Proceedings

The court grants relief from an agency order when:

- a. The order (or the statute or rule on which the order is based) is in violation of constitutional provisions on its face or as applied;
- b. The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
- c. The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;
- d. The agency has erroneously interpreted or applied the law;
- e. The order is not supported by evidence that is substantial when viewed in light of the whole record;
- f. The agency has not decided all issues requiring resolution;
- g. A motion for disqualification of the presiding officer was improperly denied, or if no motion was made, facts are shown to support the grant of such a motion that were not known or reasonably discoverable at the appropriate time for the motion;
- h. The order is inconsistent with a rule of the agency (unless the agency explains the inconsistency and demonstrates a rational basis for it); or
- i. The order is arbitrary or capricious.

3. Other Agency Action

The APA provides that persons aggrieved by any other agency action not covered above, to include the agency's exercise of discretion or failure to perform a duty required by law, may be granted relief only if the action is:

- a. Unconstitutional;
- b. Outside the authority of the agency;
- c. Arbitrary or capricious; or
- d. Taken by persons who were not lawfully constituted as agency officials.

D. TIMELINESS OF REVIEW

1. General Time Limits

a. Rulemaking

An action to contest the procedural validity of a rule must be commenced within *two years* after the effective date of the rule. Challenges to the substance of a rule may be filed at any time.

b. Adjudicative Proceedings

A petition for judicial review of an order must be filed with the court and all parties within *30 days* after service of the final order.

c. Other Agency Action

A petition for judicial review of any other agency action other than adoption of a rule or entry of an order must be filed within *30 days* of the agency action (unless the petitioner did not know or could not reasonably have discovered that the agency had taken the action).

2. Variation From Time Limits

The APA provides that an agency may modify the time limits, above, by rule of the agency or the chief administrative law judge. Modifications are primarily allowed for those agencies that do not regularly meet or do not have a permanent staff. Any new time limits set by the agency must be reasonable under the circumstances.

E. TYPES OF RELIEF

1. General Remedies

After reviewing the agency action or failure to act, the court may:

- a. Order an agency to take action or exercise discretion required by law;
- b. Affirm or set aside agency action;
- c. Enjoin or stay the agency action;
- d. Remand the matter for further proceedings; or
- e. Enter a declaratory judgment order.

2. Special Remedies

a. Licensure

The sole remedy available to a person who is wrongfully denied licensure based on a failure to pass an examination administered by a state agency is the right to retake the examination free of the defect the court may have found in the examination procedure.

b. Monetary Relief

The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.

VII. OTHER RELATED STATUTES

A. INTRODUCTION

It is important to recognize that in addition to the APA, there are a number of other statutes regulating the conduct of all or certain agencies, and a familiarity with these statutes may be helpful in answering a bar question. A selected summary of the more significant statutes follows.

B. PROCEDURAL STATUTES

1. Open Meetings Act

Almost all meetings of governing bodies of public agencies (multimember policymaking bodies) must be open to the public. *Exceptions:* Executive sessions to consider various matters (e.g., national security, purchase of real estate, employee discipline if closed meeting is requested), licensing proceedings, quasi-judicial proceedings, strategy sessions for collective bargaining, and most APA proceedings except rulemaking.

a. Procedure

An agency must establish a regular meeting date by law or rule, and can call special meetings to consider a limited agenda. Generally, notice of special meetings must be given to members and to media who request it. Failure to abide by the Open Meetings Act can result in personal liability and will void final action taken in violation of the Act.

b. Construction

The statute and its broad declaration of public policy has been consistently construed in favor of openness; e.g., meetings of the faculty of the University of Washington Law School are governed by the Act. However, the Act is not violated by *independent* examination of documents by members of a governing body.

2. Public Records Act

This Act require the agency to make most public records (very broadly defined) available to *anyone* on request.

- a. The agency is required to establish access regulations and cooperate with records requests.
- b. There are exemptions from disclosure: a combination of categorical exemptions (e.g., medical files, investigative files; student records) and general exemptions. Records are exempt if their release would invade

privacy or impair vital governmental interests. The breadth of exemptions is judicially determined de novo.

- c. Failure to properly allow access subjects the agency to severe penalties of fines and attorneys' fees.

Proof Table



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Proof Table (Sample)

Jurisdiction			
Element	Facts	Witnesses	Exhibits
Student	Enrolled in Sidney Fendi's class	Fendi Student	Email (circumstantial) Registration Information
Events on campus (or impact campus)	Room 715 of C Building; Parking Lot	Fendi Gorgenson Campus Maintenance Supervisor	
Property Violation			
Element	Facts	Witnesses	Exhibits
Damage to personal property	Hole in garbage can Cost to replace	Campus Maintenance Supervisor	Photograph
Of the College	It was the College's Garbage Can	Campus Maintenance Supervisor	

Proof Table

Jurisdiction			
Element	Facts	Witnesses	Exhibits
Student			
Events on campus (or impact campus)			
[Insert] Violation			
Element	Facts	Witnesses	Exhibits

Witness Information



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Hearing Date:
Time:
Location:
Contact: [Name and Number]

WITNESS INFORMATION

You have been identified as a witness in a student disciplinary proceeding before a Hearing Officer/Disciplinary Board. This is not a court of law, but rather a part of our student discipline system for addressing complaints about student behavior. The purpose of the hearing is to ascertain the facts and determine whether a violation of the student conduct code occurred. The fact that allegations have been made and are taken seriously does not mean that they are true or that there was a violation of the code.

The role of a witness is not that of an advocate or helper for one side; a witness's obligation is simply to tell the truth. You have been asked to be a witness because you know something about the incident or about matters directly related to the incident in question. You are asked to share that information at the proceeding.

The parties involved and the Hearing Officer/Disciplinary Board may ask you questions. You are asked to give truthful, thoughtful answers.

You will be waiting outside of the conference room before testifying. When it is your turn to testify, you will be sworn in and then asked questions. When the Hearing Officer/Disciplinary Board excuses you, you may leave. The hearing process can take time. While efforts are made to schedule your testimony and minimize your wait time, some of the process can take more (or less) time than originally planned. This is a natural part of the process and it is important that we devote the time necessary to fully and fairly hear a matter. To that end, your patience is appreciated.

As student disciplinary proceedings are confidential, you should not discuss the case outside the proceeding. This means not talking with anyone about this matter or events or people related to it, not texting about it, and not posting about it on social media. If anyone asks you about anything having to do with this matter simply change the subject and, if the person persists, tell them you have been asked by the College not to talk about it.

If you anticipate a scheduling conflict, notify the Student Conduct Office. Thank you for your availability and participation. We know that being a witness in a proceeding like this can be stressful and cause you to be anxious. But, this is an important matter and we know that you will do your best. To help you to fully participate and minimize your stress we provide the attached Tips for Testifying.

Thanks again, and please contact **[INSERT NAME]** if you have any questions or concerns.

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Tips for Testifying



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TIPS FOR TESTIFYING

1. **Be prepared.** Know your facts. Before testifying mentally review the events and go over your notes, if you have them. Do not memorize your testimony. Answer questions in your own words.
2. **Tell the truth, the whole truth, and nothing but the truth.** Answer briefly and accurately only about what you know. Do not embellish or assume.
3. **Do not guess or speculate.** If you do not know the answer, say you do not know the answer. If you must give an estimate, make sure that everyone understands your answer is an estimate.
4. **Listen carefully to the question.** Let the questioner finish before answering. Think before you speak. If you do not understand the question, ask that it be repeated or explained. If you once knew the answer, but do not now, answer that you do not recall. Do not look for assistance from other people who are present at the hearing.
5. **Answer only the question asked.**
6. **Speak clearly, loudly, and slowly.** Do not nod or make gestures. Your response needs to be audible so that an accurate recording can be made.
7. **Do not answer if an objection is made by a party.** Let the presiding officer rule on the objection, and then continue.
8. **If you make a mistake, admit it.** No one will hold a mistake against you, but they will hold it against you if it appears that you are lying or concealing the truth.
9. **Remain calm and composed.** Do not lose your temper and avoid being combative. Always be courteous and polite. Do not raise your voice.

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Evidentiary Objections



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EVIDENTIARY OBJECTIONS

A party can make evidentiary objections when the other party asks a question that, if answered, would let information into evidence that is unreliable, irrelevant, prejudicial, confusing or otherwise not helpful to deciding what the facts are.

The usual form of the objection is something like this: ***I object on the grounds that the question*** “calls for hearsay!,” “is cumulative!,” “is not authentic!,” “has been asked and answered!,” or “is irrelevant!.” Similarly, the same objections apply when a party seeks to admit a document into evidence.

This outline discusses the following common objections:

1. Relevance
2. Hearsay
3. Character Evidence
4. Assumes Facts Not In Evidence
5. Nonresponsive
6. Leading/Suggestive

Other objections include but are not limited to Argumentative, Incompetent, Leading, Calls for Speculation.

For more information about evidentiary objections, *see* Edward J. Imwinkelried, *EVIDENTIARY Foundations*, (9th ed. 2015). Professor Imwinkelried is a professor of law at the University of California at Davis and is an expert in the field of evidence. *Evidentiary Foundations* was first published approximately 20 years ago and is widely accepted among lawyers as a reliable source of practical information for dealing with real-world evidence issues; *see also* Washington State Court Rules: Rules of Evidence, found on the internet at: https://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=ER.

1. RELEVANCE

Definition	Exceptions
<p>Relevant evidence is that which influences the issues, having probative value in proving a fact. If evidence has the tendency to make an important (material) fact more or less probable than it would be without the evidence, it is relevant.</p> <p>Relevance is a matter of logic and experience.</p> <p>Most problems with relevance involve circumstantial evidence. It is evidence that tends to render probable a certain inference that is important to the case. Habit, custom, similar acts, flight and concealment are common kinds of relevant circumstantial evidence.</p>	<p>All evidence must be relevant, but relevant evidence can be excluded for other reasons, such as it being hearsay.</p> <p>Even if evidence is logically relevant, it may be legally irrelevant and hence inadmissible if its probative value is substantially outweighed by the danger that it will (i) unduly prejudice the fact finder, (ii) mislead or distract the fact finder, (iii) cause undue delay or waste time, (iv) raise collateral issues that have no bearing on the facts of the case, or (v) involve the presentation of needlessly cumulative evidence.</p>

2. HEARSAY

Definition	Examples	Exceptions
<p>Hearsay is testimony that is “in-court” about what another person said when they were “out-of-court” about “something,” and is offered as an attempt to prove the truth of that “something.”</p> <p>The critical question in determining whether the out-of-court statement is or isn’t hearsay is the purpose of the testimony. If the facts and terms of the utterance itself, rather than reference in the utterance to other facts are at issue, the utterance is not hearsay.</p> <p>For example, it is not hearsay if the testimony is simply offered to prove (i) that the words themselves were spoken, (ii) someone’s state of mind, (iii) that the declarant was conscious, or (iv) slander.</p>	<p>Rick said that Aileen copied Tom’s answers to the test.</p> <p>He couldn’t have assaulted her after midnight at the party because Dave said he was back at the apartment before 10:00 p.m., and <i>The Voice</i> was still on.</p>	<ol style="list-style-type: none"> 1. A statement by a party against their interest, or an admission that they did something or said something that they now deny. 2. Business and hospital records kept in the ordinary course of business. Also, public records. 3. Contemporaneous statements, i.e., those made as part of a transaction or event that give meaning to the event. 4. Former testimony or sworn statements can be admitted, usually if the declarant is now unavailable.

<p>However, unlike in a court of law where hearsay is prohibited (subject to several exceptions) in administrative hearings such as student conduct hearings hearsay evidence 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.</p>		<p>5. Spontaneous exclamation or excited utterance. These are statements made in connection with a startling occurrence rather than on reflection. Spontaneity is the key. Look! He's running the red light!</p> <p>6. State of Mind. If the declarant's state of mind is a fact at issue, testimony or evidence about their statements relative to their state of mind are admissible, e.g., <i>mental condition</i> (intent, motive, belief, assent) <i>emotional condition</i> (anger, fear, affection) or <i>physical sensation</i> (pain, discomfort, illness).</p> <p>7. Statements as to reputation.</p>
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3. CHARACTER EVIDENCE

Definition	Exceptions
<p>In general, evidence of a character trait cannot be used as circumstantial evidence of a person's conduct. For example, prove that a person is a cautious careful person in not admissible to prove that they drove their car in just that manner at a given point in time. Such evidence would be deemed irrelevant.</p> <p>Character witnesses must be reliable, and it is generally accepted that they must be a member of the community (residential, social or business) to which the party or witness whose character is at issue also belongs, and (ii) must have been a member of the community for a reasonable length of time.</p>	<p>The truthfulness of any witness is always relevant, except when the witness is also the defendant in a criminal trial. Similarly, in a student conduct hearing, the presiding officer may decide that testimony regarding the reputation of the accused for untruthfulness may be too prejudicial to allow.</p>

4. ASSUMES FACTS NOT IN EVIDENCE

Definition	Examples
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<p>A question of a witness (or interviewee) that assumes unproven facts to be true is objectionable. This is because asks the trier of fact assume the truth or accuracy of something for which no evidence has been introduced.</p>	<p>The classic example is the “When did you stop beating your brother?” question where there has been no evidence that the witness has ever struck their brother.</p> <p>“Did you know that ...,” “Have you heard ...?” are other types of questions that are likely to assume unproven facts.</p>
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5. NONRESPONSIVE

Definition	Examples	Exceptions
<p>An answer that goes beyond the scope of the questions and includes subject matter not called for by the question is nonresponsive.</p> <p><i>See DRAGNET (“Just the facts, sir.”)</i></p>	<p>Rambling answers, or narrations where the witness attempts to tell the “whole story” rather than simply answering the questions.</p>	<p>In the relatively informal setting of a student conduct hearing, the presiding officer may allow longer, narrative style answers if it will move the hearing along. But, objections should be made if the narrative includes hearsay, opinions, or assumes facts not in evidence.</p>

6. LEADING/SUGGESTIVE

Definition	Examples	Exceptions
<p>A question that suggests to a witness an answer the examiner desires is leading.</p> <p>To avoid leading questions, begin questions with such words as “How ...?”, “What ...?”, “Who ...?”, “Why ...?”, and “Where ...?”</p>	<p>A question that describes an incident in detail, and then asks “Is this the way it happened?” is a type of leading question because it provides a natural inference that the questioner desires a specific answer.</p> <p>“Did she not then put the money in her pocket?”</p>	<p>Leading questions may be allowed to refresh the recollection of a witness, or with disabled witnesses.</p> <p>Leading questions are proper in cross-examination except where it is clear that the witness is favorable to the cross-examiner’s position or client. To ask leading questions, use such phrases as “Isn’t it correct that ...?”, “Did ...?” and “Is...?”</p>

Hearing Preparation Outline/Checklist



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HEARING PREPARATION OUTLINE/CHECKLIST

I. Opening Statement

- A. Opening statement does not constitute evidence.
- B. Provides the Committee with a “roadmap” of what the student conduct officer hopes to establish at hearing.
- C. Identifies each element of the student conduct charge and links each element with supporting evidence.
- D. Informs the Committee how the Student Conduct Officer would like the Committee to rule.

II. Witness Identification

- A. Student/Respondent
 - 1. Establish the respondent is a student at the college (jurisdictional)
 - 2. Establish the respondent was at the scene of the incident on the relevant date and time that gave rise to the student conduct charges.
 - 3. Establish the relationship between the respondent and the victim or other relevant persons.
 - 4. If possible, establish other elements of violation based on respondent’s statements or actions (admissions).
- B. Victim
 - 1. Establish elements of violation based on victim’s observations and experience.
 - 2. If respondent made incriminating statements against her/himself (admissions) to victim, offer statement through victim testimony.
- C. Other Eyewitnesses
 - 1. To be relevant, an eyewitness should offer testimony that helps to establish one or more of the student conduct charge elements.
 - 2. If respondent made incriminating statements against her/himself (admissions) to witness, offer statement through witness testimony.
- D. Foundation Witnesses
 - 1. Documentary Evidence
 - a. Who can testify about the circumstances surrounding the preparation of the document/exhibit;
 - b. If a copy of the original, who can testify the document/exhibit is a true and accurate copy of the original; and
 - c. Who is responsible for storing/maintaining the document in the ordinary course of business?
 - 2. Photographic Evidence

- a. Who took the picture; or
 - b. Are there any witnesses that can testify that the scenes depicted in the photo are an accurate depiction of how the scene appeared on the relevant date and time?
- E. Supporting (Circumstantial) Evidence Witnesses
- 1. Evidence that indirectly supports elements of student conduct violation.
 - 2. Frequently used to establish motive, e.g., respondent took out large life insurance policy shortly before insured is killed in “accident.”
 - 3. Circumstantial Evidence Examples
 - a. Eyewitness testimony of victim’s injuries: circumstantial evidence that victim was assaulted.
 - b. Photos of victim’s injuries: circumstantial evidence that victim was assaulted.
 - c. Security video footage of respondent leaving the scene of the incident shortly after the incident took place.

III. Possible exhibits

- A. Documents
- 1. Security Office Reports
 - 2. Written statements
 - a. Respondent
 - b. Victim
 - c. Eyewitnesses
 - 3. Student Conduct Office Documents
 - a. Charging document
 - b. Student appeal document
 - c. Prior discipline and disciplinary conditions (Committee consideration may be limited to issue of sanctions).
 - 4. Academic Records
 - a. Syllabi
 - b. Grades
 - c. Scoring Sheets
 - d. Assignments
 - e. Class schedules
 - f. Program handbooks
 - 5. College Policies
- B. Photographs
- 1. Photos showing injuries to victim
 - 2. Damage to property photos
 - 3. Photos depicting the scene where the incident occurred

IV. Case Presentation Organization

- A. Order of Witnesses – depending on the case – no hard and fast rule.
- 1. Student/respondent

2. Victim
 3. Other eyewitnesses
 4. Exhibit foundation witnesses
 5. Supporting (circumstantial) evidence witnesses
- B. Exhibits – organize testimony of exhibit foundation witnesses so that most important exhibits are admitted first.

V. Evidence Presentation

- A. Testimonial evidence: ensure board chair swears in the witness.
- B. Exhibits:
1. Pre-mark all exhibits prior to the hearing
 2. Place pre-marked exhibits in binder and make 9 to 10 copies available at hearing
 - a. Members of the Committee (5)
 - b. Committee Advisor (1)
 - c. Respondent (and Complainant in Title IX cases) (1 to 2)
 - d. Copy for Student Conduct Officer (1)
 - e. Witness Copy (1)

VII. Closing

- A. The statements made in closing do not constitute evidence.
- B. Connect the *testimonial facts* from the hearing to the elements of the charges against the respondent.
- C. Connect each *exhibit* introduced at the hearing to the elements of the charges against the respondent.
- D. Explain and use the exhibits to corroborate the student conduct officer's witnesses' factual testimony.
- E. Explain and describe the circumstantial evidence that corroborates the student conduct officer's witnesses' factual testimony.
- F. Provide argument why the sanction and/or conditions set forth in the discipline letter are reasonable and appropriate under the circumstances.
- G. Tell the Committee how the College would like it to rule, i.e., "Affirm the finding of responsibility and uphold the sanction imposed in the Disciplinary Letter."

HEARING PREPARATION HYPOTHETICAL

Jim and Sid were roommates and students in Skyline College's nursing program. Over the summer after their first year, Jim asked Sid to move out and stopped returning Sid's phone calls. On December 6, 2017, during the last week of fall quarter, just before Jim was scheduled to take an important final exam, Sid texted a photo of Jim's cat, "Cuddles," being held by the scruff of her neck with the following caption: "CUDDLES NEEDS YOU TO ANSWER SID'S PHONE CALLS!!!!" Jim was so concerned about Cuddles that he was unable to take the exam. Security footage from Jim's apartment captured Sid outside Jim's apartment shortly after the text was sent. When campus security questioned Sid, he said that Jim owed him money and that the text "was a joke."

The College initiated a disciplinary action against Sid alleging he violated WAC 132X-125-001(4) & (5):

(4) Assault, intimidation, harassment. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this paragraph, "bullying" is defined as severe or pervasive physical or verbal abuse involving a power imbalance between the aggressor and victim.

(5) Cyber-Misconduct. Cyber-stalking, cyber-bullying or on-line harassment. Use of electronic communications, including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, non-consensual recording of sexual activity, and non-consensual distribution of a recording of sexual activity.

The Student Conduct Officer finds that Sid is responsible for violating both provisions of the student conduct code and issues a one-quarter suspension. Sid appeals.

FORMS & SAMPLE DOCUMENTS



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Discipline Proceeding Notice



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NOTICE OF STUDENT CONDUCT PROCEEDING

[DATE]

[NAME]

[ADDRESS]

[EMAIL ADDRESS]

Dear _____,

I have received a referral that indicates you may have engaged in behavior that violated the Student Code of Conduct. Specifically, it has been reported that you **[SUMMARY OF BEHAVIOR, INCLUDING DATE AND LOCATION OF ALLEGED MISCONDUCT]**.

Based on the information available, it appears that your actions may be in violation of the following provisions of the _____ College Student Code of Conduct:

- WAC 132__-120-____ (____) **[Describe and set forth elements of violation]**.

As outlined in the Student Conduct Code, WAC 132__-120-____, I am scheduling a disciplinary meeting with you. The purposes of this meeting will be to:

- Review the conduct and resolution process and answer any questions you may have;
- Allow you to provide your perspective on what happened; and
- Discuss the charges and possible sanctions in the event that you are found responsible for violating the Code.

The meeting is scheduled for **[DATE]**. If you choose not to attend this meeting, a decision regarding your responsibility for these allegations, as well as any sanctions/consequences, may be made in your absence. You may wish to review the Student Conduct Code prior to our meeting, located online at **[LINK TO APPLICABLE WASHINGTON ADMINISTRATIVE CODE CHAPTER]**.

Please check in for your meeting at **[INSERT MEETING LOCATION]**, five minutes prior to your meeting time. If you have questions prior to this meeting, or if you need to reschedule, please contact **[INSERT APPROPRIATE NAME AND CONTACT INFORMATION]**.

Sincerely,

[STUDENT CONDUCT OFFICER]

cc:

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Via US Mail Postage Prepaid

[NAME]
[ADDRESS]

Via Email

[EMAIL]

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this ____ day of _____ 20____, at _____, WA.

[SIGNATURE]

**SKYLINE COLLEGE
STUDENT CONDUCT OFFICE**

NOTICE OF STUDENT CONDUCT PROCEEDING

October 14, 2017

Joe E. Student
123 Stadium Way
Skyline, Washington 98000
Joe.student@skyline.edu

Dear Mr. Student:

I have received a referral alleging that you have violated the Skyline College Student Code of Conduct. Specifically, I have received the following allegations regarding your behavior over the past two weeks

- On October 7, 2017, at approximately 10:00 a.m., you allegedly had a conversation with a fellow student in the Student Union about an experience you had with the Registrar's Office in which you became so angry and threatening that the student reported the incident to college authorities because he didn't want anyone to "to get shot or something."
- On October 8, 2017, at approximately 1:00 p.m., in a conversation with a professor in the computer lab, you allegedly threatened to assault the Vice President of Student Services and the Director of IT.
- On October 8, 2017, in Harrison Hall, at approximately 3:00 p.m., you confronted your physics teacher in a threatening and intimidating manner regarding a grade.
- On October 10, 2017, at approximately 1:30 a.m., you used your campus email address to send emails containing abusive, threatening, and intimidating language to the President, the Vice President of Student Services, and the IT Director.
- On October 11, 2017, at approximately 2 p.m. in Parking Lot C, you threatened to assault the Director of Public Safety and broke a traffic barricade belonging to the College.

Based on the information available, it appears that your actions may be in violation of the following provisions of the Skyline College Student Code of Conduct:

- WAC 132X-125-001(4) Assault, intimidation, harassment. Engaging in verbal abuse, threats, intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.
- WAC 132X-125-001(5) Cyber-Misconduct. Cyber-bullying or on-line harassment. Use of electronic communications, like email, to harass, abuse, bully, or engage in other

conduct that harms, threatens or is reasonably perceived as threatening the health or safety of another person.

- WAC 132X-125-001(6) Property Violation. Damage to personal property belonging to the College.
- WAC 132X-125-001(16) Misuse of Electronic Resources. Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes but is not limited to: . . . (i) Failure to comply with the college's electronic use policy.

If you are found responsible for one or all of these violations, you may be subject to any of the sanctions set forth in WAC 132X-125-003, up to and including dismissal from the College.

As outlined in the Student Code of Conduct, WAC 132X-125-015(2), I am scheduling a disciplinary meeting with you. The purposes of this meeting will be to:

- Review the conduct and resolution process and answer any questions you may have;
- Allow you to provide your perspective on what happened; and
- Discuss the charges and possible sanctions in the event that you are found responsible for violating the Code.

The meeting is scheduled for **October 16, 2017, at 2:00 p.m.** If you choose not to attend this meeting, I am authorized to make a decision regarding your responsibility for these allegations, as well as any sanctions/consequences, in your absence. You may wish to review the Student Code of Conduct prior to our meeting, located online at [www:\\hyperlinkskylinewac_132X_125](http://www.hyperlinkskylinewac_132X_125)

Please check in for your meeting at my office at **Room 115, Skyline Student Services Building**, five minutes prior to your meeting time. If you have questions prior to this meeting, need special accommodations, or need to reschedule, please contact my assistant, Jerry Standifer, at (509) 111-2222.

Sincerely,

Fairleigh Just
STUDENT CONDUCT OFFICER

cc:

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Via US Mail Postage Prepaid

Joe E. Student
123 Stadium Way
Skyline, WA 98000

Via Email

Joe.student@skyline.edu

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 17th day of April 2017, at Skyline, Washington.

Signature

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Summary Suspension Notice



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SUMMARY SUSPENSION NOTICE

[DATE]

[RESPONDENT]

[ADDRESS]

[EMAIL ADDRESS]

Via Email and First Class Mail

Ms./Mr. [RESPONDENT]:

Please be advised that you have been summarily suspended from attendance at _____ College. **While this suspension is in place, you are prohibited from entering College property for any reason whatsoever without written permission from me or my designee.** Violation of this order can result in arrest and criminal prosecution.

This summary suspension is based upon the following allegations:

[Describe incident, including date, time and location.]

This alleged behavior violates the following provisions of the student code of conduct:

[Cite and quote applicable student conduct code provision(s).]

WAC 132X-125-060(2) of the Student Code of Conduct states that the College may summarily suspend a student when the College has probable cause to believe that (1) the student has violated the student conduct code, and (2) the student “presents an immediate danger to the health, safety, or welfare of members of the college community,” or the student “poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.”

Based upon the allegations described above, I have determined that the College has probable cause to believe that you have violated the WAC 132H-125-030(4) of the student conduct code and that you pose an imminent danger to the health, safety, and welfare of members of the college community and that your presence on campus would result in a substantial threat of ongoing disruption of the educational process.

Pursuant to WAC _____ [SUMMARY SUSPENSION WAC], you are scheduled for a summary suspension hearing at [ENTER MEETING DATE AND TIME] with [HEARING REVIEW OFFICER in [MEETING LOCATION]. This letter is my written permission authorizing you to enter the campus grounds for the purpose of attending this meeting. **Upon entering campus grounds you must go directly to the meeting location.** Upon completion of the meeting you must exit the campus grounds immediately.

At this hearing, the Hearing Review Officer will determine whether the College has probable

cause, i.e., a reasonable basis, for continuing to impose the summary suspension and whether there are less restrictive alternatives to imposing a suspension. Prior to attending the meeting, you may want to review the College's student conduct code and student disciplinary procedures, which are available for review at [HYPERLINK]. If you have questions about this suspension notice, I encourage you to contact my office if you have any questions. If the Hearing Review Officer issues an Order upholding the suspension, the Hearing Review Officer will explain your appeal options in their order.

If you are not available at the above meeting time please the Hearing Review Officer's assistant at [TELEPHONE NUMBER] to reschedule as soon as possible.

Sincerely,

[STUDENT CONDUCT OFFICER]

cc:

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Via US Mail Postage Prepaid

[NAME]
[ADDRESS]

Via Email

[EMAIL ADDRESS]

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this ____ day of _____ 20____, at _____, WA.

[SIGNATURE]

SUMMARY SUSPENSION NOTICE

July 11, 2017

Joe E. Student
123 Rosebrook Terrace
Skyline, Washington
Joey.Student@Skyline.edu

Via Email and First Class Mail

Mr. Student:

Please be advised that you have been summarily suspended from attendance at Skyline College. **While this suspension is in place, you are prohibited from entering College property for any reason whatsoever without written permission from me or my designee.** Violation of this Order can result in arrest and criminal prosecution.

This summary suspension is based on the following allegations:

1. At approximately 2:00 p.m. on July 11, 2016, you entered the library and told a Skyline College librarian that you “want to shoot teachers and students.”
2. Shortly after your physics class at approximately 3:15 p.m., you told a fellow student that you wanted to shoot the instructor.
3. During a meeting, at approximately 4:00 p.m. on July 11, 2017, you told the Student Conduct Officer that you had fantasies about using a gun on someone.

These allegations, if true, violate the following provision(s) of the Skyline Student Conduct Code:

WAC 132X-125-001(4). Assault. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person’s property.

WAC 132X-125-060(2) of the Student Code of Conduct states that the College may summarily suspend a student when the College has probable cause to believe that (1) the student has violated the student conduct code, and (2) the student “presents an immediate danger to the health, safety, or welfare of members of the college community,” or the student “poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.”

Based upon the allegations described above, I have determined that there is probable cause to believe that you have violated WAC 132H-125-030(4) of the student conduct code and that you pose an imminent danger to the health, safety, and welfare of members of the college community and that your presence on campus would result in a substantial threat of ongoing disruption of the educational process.

Pursuant to WAC 132X-125-060, you are scheduled for a summary suspension hearing at 9 a.m. on Wednesday, February 3, 2016 with the Vice President of Student Services, in his office in room 231 on the fifth floor of the Student Services Building. This letter is my written permission authorizing you to enter the campus grounds for the purpose of attending this meeting. Upon entering campus grounds you must go directly to the meeting location. Upon completion of the meeting you must exit the campus grounds immediately.

At this hearing, the Vice President of Student Services will determine whether the College has probable cause, i.e., a reasonable basis, for continuing to impose the summary suspension and whether there are less restrictive alternatives to imposing a suspension. Prior to attending the meeting, you may want to review the College's student conduct code and student disciplinary procedures, which are available for review at: www://SkylineConductCode. If you have questions about this suspension notice, I encourage you to contact my office. If the Hearing Review Officer issues an Order upholding the suspension, the Hearing Review Officer will explain your appeal options in their order.

If you are not available at the above meeting time please the Vice President of Student Services Assistant, John Rotten at 509 333 7878 to reschedule as soon as possible.

Sincerely,

Skyline College Student Conduct Officer

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Via US Mail Postage Prepaid

Joe E. Student
123 Stadium Way
Skyline, WA 98000

Via Email

Joe.student@skyline.edu

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 11th day of July 2017, Skyline, WA.

Signature

Disciplinary Letter



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NOTICE OF DISCIPLINE

[DATE]

[NAME]

[ADDRESS]

[EMAIL ADDRESS]

Dear _____:

Thank you for meeting with me on [DATE] to discuss the student conduct charges against you. Also present were [NAMES IF APPLICABLE]. I scheduled this disciplinary meeting to discuss and receive your side of the story regarding allegation that on [DATE, LOCATION, AND DESCRIPTION OF MISCONDUCT].

Based upon my investigation into the allegations and the information you provided during the disciplinary meeting, I find that you are responsible for violating the following provisions of the _____ College Student Conduct Code.

- WAC 132__-120-___ - [Describe and set forth elements of violation].
- WAC 132__-120-___ - [Describe and set forth elements of violation].

Having found you responsible for this violation, I am imposing the following disciplinary sanction(s) and conditions pursuant to WAC 132__-120-___:

[Sanction with beginning and end dates conditions.]

You have the right to appeal this decision. To appeal this decision you must file a written Notice of Appeal with the Vice President of Student Services within [APPEAL PERIOD] days of receiving this notice as provided in WAC 132__-__-___. If you appeal this decision, the sanction shall become effective upon final resolution of the appeal process. If you do not appeal this decision, the disciplinary suspension shall become effective [APPEAL PERIOD] days after your receipt of this Notice.

A copy of the student conduct code and the student conduct procedures can be found at [HYPERLINK]. If you have any questions about this Notice or the appeal process, please contact my assistant, [NAME], at [TELEPHONE NUMBER].

Sincerely,

[STUDENT CONDUCT OFFICER]

cc:

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Via US Mail Postage Prepaid

[NAME]
[ADDRESS]

Via Email

[EMAIL ADDRESS]

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this ____ day of _____ 20____, at _____, WA.

[SIGNATURE]

SKYLINE COLLEGE
STUDENT CONDUCT OFFICE

NOTICE OF DISCIPLINE

March 19, 2017

Joe E. Student
123 Stadium Way
Skyline, WA 98000
Joe.student@skyline.edu

Dear Mr. Student:

Thank you for meeting with me on March 17, 2017, to discuss the student conduct charges against you. Also present was Assistant Dean of Students, Angela Meerson.

I scheduled this disciplinary meeting to discuss and receive your side of the story regarding the following allegations:

- On October 7, 2017, at approximately 10:00 a.m., you allegedly had a conversation with a fellow student in the Student Union about an experience you had with the Registrar's Office in which you became so angry and threatening that that the student reported the incident to college authorities because he didn't want anyone to "to get shot or something."
- On October 8, 2017, at approximately 1:00 p.m., in a conversation with a professor in the computer lab, you allegedly threatened to assault the Vice President of Student Services and the Director of IT.
- On October 8, 2017, in Harrison Hall, at approximately 3:00 p.m., you confronted your physics teacher in a threatening and intimidating manner regarding a grade.
- On October 10, 2017, at approximately 1:30 a.m., you used your campus email address to send emails containing abusive, threatening, and intimidating language to the President, the Vice President of Student Services, and the IT Director.
- On October 11, 2017, at approximately 2:00 p.m., in Parking Lot C, you allegedly threatened to assault the head of Director of Public Safety and broke a traffic barricade belonging to the College.

Based upon my investigation into the allegations and the information provided during the disciplinary meeting, I find that you are **not** responsible for the student conduct during the conversation with the fellow student on October 7, 2017.

I am, however, finding that you are responsible for the remaining allegations, which violate the following provisions of the Skyline College Student Conduct Code:

- WAC 132X-125-001(4) Assault, intimidation, harassment. Engaging in verbal abuse, threats, intimidation, harassment, bullying or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.
- WAC 132X-125-001(5) Cyber-Misconduct. Cyber-bullying or online harassment. Use of electronic communications, like email, to harass, abuse, bully, or engage in other conduct that harms, threatens or is reasonably perceived as threatening the health or safety of another person.
- WAC 132X-125-001(6) Property Violation. Damage to personal property belonging to the College.

Having found you responsible for these violations, I am imposing the following sanction(s) and conditions, pursuant to 132X-125-003:

- Disciplinary suspension through April 1, 2018.
- Trespassed from the Skyline Campus through April 1, 2018.
- No contact with the complaining parties or individuals identified in this document through April 1, 2018.
- Participate and complete an anger management program before re-enrollment.

You have the right to appeal this decision. To appeal this decision you must file a written notice of appeal with the Vice President of Student Services within 10 days of receiving this Notice as provided in WAC 132X-125-020(1).

If you appeal this decision, the disciplinary suspension will be effective upon final resolution of the appeal process. If you do not appeal this decision, the disciplinary suspension will be effective 10 days after your receipt of this Notice. A copy of the student conduct code and the student conduct procedures can be found at www.skylinecollegestudentconduct.ext. If you have any questions about this Notice or the appeal process, please contact my assistant, Jerry Standifer, at (509) 111-2222.

Sincerely,

FAIRLEIGH JUST
Student Conduct Officer

cc: Aldo Andrews, Skyline College Security

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Via US Mail Postage Prepaid

Joe E. Student
123 Stadium Way
Skyline, WA 98000

Via Email

Joe.student@skyline.edu

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 17th day of August 2017, at Skyline, WA.

Signature

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Witness Statement Form



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Declaration Form



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**[NAME OF COLLEGE]
STUDENT DISCIPLINE PROCEEDING**

In re Discipline of **[NAME OF
RESPONDENT]**

**DECLARATION OF [NAME OF
DECLARANT]**

I, **[NAME OF DECLARANT]**, declare under penalty of perjury under the laws of the state of Washington that the following is true and based upon my personal knowledge.

1. **[INSERT BRIEF DESCRIPTION OF DECLARANT AND THEIR
RELATIONSHIP TO THE COLLEGE]**

2. **[INSERT DESCRIPTION OF EVENTS GIVING RISE TO STUDENT
CONDUCT PROCEEDING]**

3. ...

4. ...

DATED this _____ day of _____ 20__ at _____, Washington.

[NAME OF DECLARANT]

[If the declarant refers to documents in their declaration, the documents should be assigned exhibit numbers and attached to the declaration.]

DECLARATION OF **[NAME OF
DECLARANT]**ERROR! REFERENCE
SOURCE NOT FOUND.

1

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Via US Mail Postage Prepaid

[NAME]
[ADDRESS]

Via Email

[EMAIL]

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this _____ day of August 2017, at _____, WA.

[SIGNATURE]

Hearing Script for Chair

Simple Case



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INTRODUCTIONS

Good [morning/afternoon]. I am now convening the Student Discipline Committee Hearing for [INSERT STUDENT’S NAME]. It is [DATE OF HEARING] and the time is [TIME] a.m./p.m.

My name is _____, and I will be serving as the chair of the Student Discipline Committee.

Please note that today’s hearing is being tape-recorded. This recording will serve as the official verbatim records of today’s hearing and is the property of the College. Because this session is being recorded, it is important that everyone speak loudly enough to be recorded and avoid gestures or non-verbal responses that cannot be recorded.

(Introduce members of the Committee.)

Would the members of the Student Conduct Committee please introduce themselves for the record?

Assistant Attorney General _____, will be advising the Committee today.

Would the respondent please introduce himself for the record?

Would the Student Conduct Officer please introduce herself for the record?

Would any individuals who are here today as possible witnesses introduce themselves for the record?

PURPOSE OF HEARING

[RESPONDENT], you are here today appealing the administration’s imposition of a three-day suspension based upon allegations that you violated Skyline College’s Student Conduct Code, WAC _____, which prohibits acts of _____. Specifically, the administration has alleged that you _____.

Before we proceed, I would like clarification on the following:

1. Are you contesting whether the alleged incidents of misconduct took place?
2. Are you contesting the discipline that was imposed?

EXHIBITS

Does the Respondent have any documents they would like to have entered as exhibits at this time?

Does the Student Conduct Officer have any objections to admission of this proposed exhibit?

If no objection is raised, the Exhibit is entered into evidence.

If an objection is raised, what is the objection?

Confer with AAG and announce decision. Admitted/Not Admitted/Admitted subject to conditions.

Does the Student Conduct Officer have any documents they would like to have entered as exhibits at this time?

If no objection is raised, the Exhibit is entered into evidence.

If an objection is raised, what is the objection?

Confer with AAG and announce decision. Admitted/Not Admitted/Admitted subject to conditions.

OPENING STATEMENTS

An opening statement is a roadmap that guides the Committee about what the party intends to prove at the hearing. It include a recitation of the facts that the party hopes to establish at the hearing. Opening Statements are not evidence (*although it may make sense to swear in both the Student Conduct Officer and the Respondent, as parties frequently attempt to testify during Opening Statements*).

Would the Student Conduct Officer like to make an opening statement?

Would the Respondent like to make an opening statement?

TESTIMONY

The Student Conduct Officer may call their first witness.

OATH

Please raise your right hand.

Do you swear or affirm that you will tell the truth, and nothing but the truth?

Please state and spell your name for the record.

The witness is sworn, you may proceed.

Student Conduct Officer conducts direct examination.

Respondent conducts cross-examination.

Committee asks questions.

Student Conduct Officer conducts re-direct.

Repeat as necessary until College has offered all its witnesses.

Does the College have any additional witnesses to call?

If not, then the College's case is closed.

RESPONDENT may call their first witness.

OATH

Please raise your right hand.

Do you swear or affirm that you will tell the truth, and nothing but the truth?

Please state and spell your name for the record.

The witness is sworn, you may proceed.

Respondent conduct direct examination.

Student Conduct Officer conduct cross examination.

Committee asks questions.

Respondent conducts re-direct.

Repeat as necessary until accused student has completed their case.

REBUTTAL WITNESSES

Does the Student Conduct Officer have any witnesses s/he would like to call in rebuttal to the testimony presented by Respondent or Respondent's witnesses?

CLOSING ARGUMENTS

A Closing Argument is an opportunity for the parties to summarize the testimony and evidence offered at the hearing and present argument as to why the Committee should find in their favor.

Would the Student Conduct Officer like to present a closing argument?

Would the Respondent like to present a closing argument?

All testimony, evidence, and arguments have been received by the Committee. These proceedings are now closed.

The Committee will issue an initial order within 20 calendar days from today's date.

APPEAL RIGHTS

If either party is dissatisfied with the Committee's order, they may file an appeal with the President. The appeal must be filed within 21 calendar days of the party's receipt of the Committee's Order.

**Hearing Script for Chair
Title IX Case**



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**THE STUDENT CONDUCT COMMITTEE CHAIR
TITLE IX HEARING SCRIPT**

1. Good Afternoon. For the record, today is _____, 20____. The time is _____ a.m./p.m and we are in room _____ in the _____ Building at the _____ College.
2. This proceeding will be tape recorded.
3. My name is _____ and I am _____ at the College. I will be serving as the chair of the Board at today’s hearing.
4. The other members of the committee will now introduce themselves (**ask them to identify themselves for the record**).
5. Also present are _____ who is the advisor to the Board; and _____, who helps the Board administer the hearing.
6. _____, Student Conduct Officer, will be presenting the case on behalf of the College.
7. Respondent, _____, is **present/not present**¹ and is accompanied by _____, who is serving as their advisor.
 - a. ***If student has chosen not to have an attorney or advisor read:*** It’s my understanding that you were informed of your right to be represented by an attorney or assisted by an advisor in this proceeding and have chosen to represent yourself during this proceeding without assistance from an attorney or advisor. Is that correct?
 - b. I want to confirm you have had the opportunity to review copies of the evidence submitted. ___ Yes ___No. And that you do/do not have objections to the admission of the evidence.
 - c. I also want you to tell us if you cannot hear anything that we are saying during the hearing.
8. Complainant, _____, is **present / not present** and is accompanied by, _____, who is serving as their advisor.
 - a. ***If student has chosen not to have an attorney or advisor read:*** It’s my understanding that you were informed of your right to be represented by an attorney or assisted by an advisor in this proceeding and have chosen to represent yourself during this proceeding without assistance from an attorney or advisor. Is that correct?
 - b. I want to confirm you have had the opportunity to review copies of the evidence submitted. ___ Yes ___No. And that you do/do not have objections to the admission of the evidence.

¹ It is important to reference whether either the Respondent or the Complainant will be participating by telephone, Skype, or some other electronic means.

- c. I also want you to tell us if you cannot hear anything that we are saying during the hearing.
9. The Complainant and Respondent are responsible for presenting their cases today. [They can confer with their advisor throughout the proceeding.] However, like all witnesses, the Respondent and Complainant cannot confer with anyone, including their advisors, to formulate answers in response to questions posed while they are testifying.
 10. This proceeding will be as informal as practical within the requirements of the Administrative Procedures Act. Evidence and testimony will be accepted through the Board chair and, when deemed appropriate, admitted into the record. All witnesses will be sworn in before testifying.
 11. In addition, any member of the Committee may ask any question he or she may have at any time, although I would encourage the Committee to wait until after DIRECT and CROSS EXAMINATION by the parties.
 12. Are there any preliminary matters?
 13. The Student Conduct Code Appeals Board has been convened to hear Complainant's appeal of the Student Conduct Officer's determination that Respondent is not responsible for violating **WAC _____ (stalking), WAC _____ (harassment), and WAC _____ (physical abuse)** of the College Student Conduct Code (the Conduct Code).
 14. The issue before the Board is whether there is sufficient evidence to support a finding that the Respondent is responsible for these alleged violations. If a finding of responsible is made, the Board will impose what it determines to be appropriate disciplinary sanctions and/or conditions, as authorized and set forth in WAC _____. If a finding of not responsible is made, the Student Conduct Office's determination will be upheld.

ORDER OF PRESENTATION

15. First, COMPLAINANT will present witnesses and may choose to testify.
16. RESPONDENT and COLLEGE will then have an opportunity to cross-examine their witnesses and the COMPLAINANT may then provide re-direct testimony based on information elicited during the CROSS-EXAMINATIONS.
17. ***If the Complainant testifies, Respondent must submit their questions in writing to the Board chair and will not be allowed to directly question the Complainant.***
18. At the conclusion of COMPLAINANT'S case, COLLEGE will call its witnesses and present its evidence. RESPONDENT and COMPLAINANT will then conduct cross-examination, followed by any redirect by the COLLEGE.
19. Once COLLEGE concludes its case, the RESPONDENT can call witnesses and, if they

choose, testify on his own behalf. The COLLEGE and COMPLAINANT can CROSS-EXAMINE each of Respondent’s witnesses, and RESPONDENT can provide re-direct testimony. ***If the Respondent testifies, Complainant must submit their questions in writing to the Board chair and will not be allowed to directly question the Respondent.***

- 20. At the end of the case, each party will have the opportunity to provide a CLOSING ARGUMENT based on the evidence provided here today.

Are there any questions?

WITNESS IDENTIFICATION/SWEARING IN

- 21. Before we get started, I would ask that the parties identify for the record the witnesses or person that will be presenting testimony to this Committee today?

[The student may not know their statement is actually testimony. Sometimes the College representative doesn’t understand this either. So you may need to assist them at this point by saying to the student “[name], since you will be presenting your case, you will be providing testimony.”]

At this time, I would ask for those persons testifying to raise their right hand:

Do you agree to tell the truth, the whole truth, and nothing but the truth in providing testimony before the Board at this hearing?

You need to have each person say yes on the record.

- _____ [Complainant] do you so affirm?
- _____ [Respondent] do you so affirm?
- _____ [Student Conduct Officer] do you so affirm?

OPENING STATEMENTS

- 22. The first step in the process is the opening statement. An opening statement is a brief roadmap that a party provides to the Board to help them understand the evidence you will be presenting during the hearing. The Opening Statement is not evidence.

- _____ [Complainant], would you like to make an opening statement?
- _____ [Student Conduct Officer], would you like to make an opening statement before the case is presented?
- _____ [Respondent], would you like to make an opening statement before the case is presented?

PRESENTATION OF THE CASE

23. Complainant will now present the case in support of the appeal. Complainant, you may call your first witness.

SWEARING IN THE WITNESSES:

Do you swear or affirm that you will tell the whole truth and nothing but the truth?

[witness responds]

Please state and spell your name for the record.

[witness responds]

Complainant, you may ask your questions

Cross Examination – Student Conduct Officer Andrea do you have questions?

Cross Examination – Respondent do you have questions?

Board Questions – Does the Board have any questions?

Redirect – Complainant do you have any follow-up questions?

Repeat until COMPLAINANT's case is done. *If Complainant finishes presenting their case but has not testified, you may want to ask whether the Complaint has chosen not to testify (note: this does not preclude another party from calling the Complainant to testify).*

Exhibits – If the Student provided any documents for consideration at the hearing you will need to formally admit them into evidence.

Admission: Complainant are you asking the Board to admit into evidence any Exhibits. [If yes, then mark with Students Name and Number] Complainant is moving for admission of Exhibits __ through __ into evidence.

Student Conduct Officer do you have any objection?

Respondent, do you have any objection?

Response

- **No Objection**: Complainant's Exhibits ___ through __ are admitted into evidence.
- **Objection**: If an objection is made, listen to the objection and then confer with AAG.
 - You can then: (1) admit exhibits into evidence over the objection of the person objecting; (2) admit only some of the exhibits into evidence; (3) indicate that a decision on whether to admit any exhibit will be taken under advisement and noted in the Board's final order.

- **Conclusion:** Do you rest your case at this time? [**Are you done with your case?**]
-

24. **COLLEGE presents its case.**

Cross Examination – Complainant do you have questions?

Cross Examination – Respondent do you have questions?

Board Questions – Does the Board have any questions?

Redirect – Student Conduct Officer do you have any follow-up questions?

Repeat until College’s case is done. *If Complainant finishes presenting their case but has not testified, you may want to ask whether the Complaint has chosen not to testify (note: this does not preclude another party from calling the Complainant to testify).*

Exhibits – If Student Conduct Officer provided any documents for consideration at the hearing you will need to formally admit them into evidence.

Admission: Andrea are you asking the Board to admit into evidence any Exhibits. [If yes, then mark with Students Name and Number] Student Conduct Officer is moving for admission of Exhibits ___ through ___ into evidence.

Complainant, do you have any objection?

Respondent, do you have any objection?

Response

- **No Objection:** Student Conduct Officer’s Exhibits ___ through ___ are admitted into evidence.
- **Objection:** If an objection is made, listen to the objection and then confer with AAG.
 - You can then: (1) admit exhibits into evidence over the objection of the person objecting; (2) admit only some of the exhibits into evidence; (3) indicate that a decision on whether to admit any exhibit will be taken under advisement and noted in the Board’s final order.

Conclusion: Do you rest your case at this time?

25. **RESPONDENT presents their case.**

Cross Examination – Student Conduct Officer do you have questions?

Cross Examination – Complainant do you have questions

Board Questions – Does the Board have any questions?

Redirect – Respondent do you have any follow-up questions

Repeat until Respondent’s case is done. *If Complainant finishes presenting their case but has not testified, you may want to ask whether the Complaint has chosen not to testify*

(note: this does not preclude another party from calling the Complainant to testify).

Exhibits – If Respondent provided any documents for consideration at the hearing you will need to formally admit them into evidence.

Admission: Respondent are you asking the Board to admit into evidence any Exhibits. [If yes, then mark with Students Name and Number] Respondent is moving for admission of Exhibits __ through __ into evidence.

Student Conduct Officer, do you have any objection?
Complainant, do you have any objection?

Response

- **No Objection**: Respondent’s Exhibits ___ through ___ are admitted into evidence.
- **Objection**: If an objection is made, listen to the objection and then confer with AAG.
 - You can then: (1) admit exhibits into evidence over the objection of the person objecting; (2) admit only some of the exhibits into evidence; (3) indicate that a decision on whether to admit any exhibit will be taken under advisement and noted in the Board’s final order.

Conclusion: Do you rest your case at this time? [**Are you done presenting your case?**]

CLOSING ARGUMENT

26. A closing argument is the opportunity for the parties to argue their case. The purpose is to tell the Board what conclusions the party believes that the Board should draw from the evidence, what findings the party believes the Board should make, and tell the Board how the party wants the Board to rule. Closing argument is not evidence.

Complainant do you want to make a closing argument?
Complainant makes argument

Student Conduct Officer do you want to make a closing argument?
Student Conduct Officer makes argument

Respondent do you want to make a closing argument?
Respondent makes argument

This HEARING is adjourned for the Committee to deliberate prior to reaching a decision. The decision will not be issued today, but will be delivered to the Parties in writing within 20 days of the close of this hearing.

(All people except the Committee and its advisor should exit.)

General Notes

You control the hearing, so you can go off the record if you need to ask me questions, conduct a short break, etc. If you do go off the record, you should always say “We will take a five-minute break” and when you reconvene say “We are now back on the record.”

The hearing is required to be transcribed under our state’s Administrative Procedure Act (APA). Therefore, you will need to make sure that people (witnesses and Committee members) are speaking loud enough to be recorded and that people are making audible answers (and not just nodding there heads up and down or side to side).

The APA requires that a witness at the hearing give sworn testimony. The easiest way to do this is to swear in all the witnesses at the beginning of the hearing. However, you can swear each witness in at the time they appear to testify if you prefer.

Any party (the College or student) may present documents to the Board for inclusion in the agency record of the hearing. The College should always have enough copies of any documents for each member of the Committee and the student. The student may not be prepared with copies. In the latter case, it may be necessary to take a short break so that copies can be made for everyone.

Students often don’t have exhibits. However, if any are presented you can use the student’s last name to identify their exhibits. Example: “(Name of Student) has handed the Committee a letter from his professor with the date of _____. Are you wanting this document to be entered into evidence? Then we will mark the exhibit Jones Exhibit 1.”

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Witness & Exhibit List



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Hearing date: _____, 20__ - ____ a.m./p.m.

WITNESS AND EXHIBIT LIST
In re Discipline of [RESPONDENT'S NAME]

College Witnesses

Respondent Witnesses

PROPOSED EXHIBITS

Ex. #	Description	Date	# of pages	Admitted	Offered by
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	

				Y/N	
				Y/N	
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				Y/N	
				Y/N	
				Y/N	

Hearing date: March 30, 2017 – 9:30 a.m.

**WITNESS AND EXHIBIT LIST
In re Discipline of Jody Student**

College Witnesses

Jennifer Reiter, Director of Skyline College Computing Center
Denise Houser, Skyline College Security Officer
Sidney Haller, Student
Jody Student, Respondent

Respondent Witnesses

Jody Student, Respondent
Kelly Karen, Student

PROPOSED EXHIBITS

Ex. #	Description	Date	# of pages	Admitted	Offered by
1	Notice of Summary Suspension	02/21/12	2	Y / N	Admin.
2	Initial Disciplinary Order (Corrected)	02/29/12	3	Y / N	Admin
3	Respondent's Written Notice of Appeal	02/29/12	1	Y / N	Admin
4	Skyline College Conduct Incident Report RE Jody Student	02/17/12	17	Y / N	Admin
5	Trespass Admonishment	02/21/12	1	Y / N	Admin
6	Skyline College Instruction Computing, Student Rights and Responsibilities in Instructional Computing Facilities	03/13/12	3	Y / N	Admin.
7	Skyline College Policies , Procedures and Guidelines, Computing Resources Appropriate Use Policy	03/13/12	3	Y / N	Admin
8	Network Intrusion Detection	03/16/12	1	Y / N	Admin

9	MySkyline Account Activation Screen		1	Y / N	Admin
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	
				Y / N	

Stipulated Exhibit List



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Direct Examination



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Witness is sworn in by Chair. (“Do you swear or affirm to tell the truth?”)

Background

Please state and spell your name for the record.

What is your position at Skyline College? (Director of IT)

How long have you held this position?

What training do you have in the area of IT?

What are your duties as Director of IT?

How many staff do you supervise?

Please turn to what has been marked as EXHIBIT 8 (*INSERT DESCRIPTION OF DOCUMENT*).

Do you recognize this document?

Would you describe it for us?

Is this a true and correct copy of the Message System operating manual?

(MOVE TO HAVE EXHIBIT ADMITTED INTO EVIDENCE IF THIS HAS NOT BEEN DONE IN ADVANCE.)

Do your duties at Skyline include maintaining the “ABC Alert” Emergency Message System (EMS)?

What is the Emergency Message System?

What types of applications are used to send the emergency message? (Twitter, Email, Text Messages, etc.)

Why does the college have this system?

Who is authorized to send messages out on the EMS?

- ***Only four individuals have access. (Name individuals if possible.) President, VP Admin, Director of Public Safety, and VP of HR.***

Who are the recipients of the EMS alerts? (All Skyline students and staff.)

How many recipients are there? (In excess of 4,000.)

Respondent and Frodo Lives Email

Do you know Respondent Student?

In what context have you gotten to know him?

Please turn to what has been marked as EXHIBIT 4 – (“Frodo Lives” email).

Do you recognize this exhibit?

Can you describe it for us?

Is this a true and correct copy of this email?

(MOVE TO HAVE EXHIBIT ADMITTED INTO EVIDENCE IF NECESSARY.)

How did it first come to your attention?

What did you do once you learned that the email had been sent on the ABC Alert EMS?

Who did you talk to?

Did anyone help you?

What did you learn during your investigation?

PERPETRATOR IDENTIFIED

Who did you determine was responsible for the Frodo email?

What did you do after you identified Mr. Student as the perpetrator of the Frodo email?

- ***Spoke with VP of Student Services – shut down Student’s account with ABC computing.***

Did you receive any communications from Mr. Student after the event?

What did he say?

Did he say anything about the Frodo message? *(Only if witness needs prompting.)*

What was your response to his request that his account be reinstated?

Attempt to Cloak Identity

During your investigation, did you find Mr. Student took steps to cover his tracks?

What would have happened if he had not deleted this information?

How did you identify him?

Assistance Provided by Student

Once he was caught, was Student cooperative?

What information did he share?

Based on your contact with Mr. Student, did you reach any conclusions regarding his motives for sending Frodo message?

College Computer Use Policies

As the Campus Safety Director, are you familiar with the policies the College has in place regarding student use of college technology?

Please turn to what has been marked as EXHIBIT 10 – Computing Resources Appropriate Use Policy.

Are you familiar with Exhibit 10?

What is it?

Is this a true and correct copy of the policy?

Are you required to use this policy while exercising your duties at the college?

(MOVE TO ADMIT INTO EVIDENCE IF NECESSARY.)

What purpose does the policy serve?

What is prohibited?

- Used in accordance with local, state, and federal law.
- Not used to transmit communications when doing so would violate law or regulation.
- Prohibits using someone else's password.

- Prohibits using network to gain unauthorized access to any computer system.

What are consequences for violating this policy

- “Failure to comply may result in loss of access to College computing resources, as well as administrative, civil, or criminal action under Washington State or federal law.”

Please turn to what has been marked as EXHIBIT 9 – (Welcome to my ABC page – shrink wrap – agree to abide by all Skyline and Instructional computing use policies).

Do you recognize this document?

What is it?

Is this a true and correct copy of this document?

(MOVE TO ADMIT IF NECESSARY.)

Have you researched whether Mr. Student reviewed this page?

When, where, how?

Impacts on College

How did Mr. Student’s actions impact the College?

Did action undermine confidence in Emergency system?

How much additional time did you and your team have to work to identify the issue over the weekend of February 18?

Describe how Student’s actions disrupted teaching at the College – (has caused college to revoke heightened privileges and interfered with ability to offer some classes).

What other repercussions (students will no longer be trusted users) (turned off student privileges – lower level – interfered with instructor’s ability to teach class)?

Hypothetical Opening Outline



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Hypothetical Opening Outline

- I. Introduction
 - A. Good Morning
 - B. For the record – My name is...
 - C. Student Conduct Officer for Skyline College

- II. My goal for opening: provide roadmap/outline of anticipated evidence
 - In short – anticipate evidence will establish
 - A. On 12/6/17 Sid violated the student conduct code by engaging in conduct that constituted an assault – a threat of harm against the property of another person; and
 - B. On the same date Sid also violated the student conduct code by engaging in conduct that constituted cyber-misconduct – the use of electronic messaging to threaten the health of another person
 - C. The College concluded these violations did in fact occur and issued a suspension prohibiting Sid from attending classes during the 2018 winter quarter

- III. In particular, evidence will establish that:
 - A. Jim and Sid were roommates for almost a year
 - B. Students in College’s nursing program
 - C. Early summer 2017: Jim asked Sid to move out of the apartment
 - D. Jim stopped returning Sid’s telephone calls
 - E. Sid upset over Jim’s failure to return calls
 - F. Just before final exam
 - 1. Sid texted photo of Jim’s cat (Cuddles)
 - 2. Photo shows Cuddles being held by scruff of her neck
 - 3. Text message said the following: “CUDDLES NEEDS YOU TO ANSWER SID’S PHONE CALLS!!!!”
 - G. Sid’s behavior was very upsetting to Jim – so upsetting to Jim’s emotional health that he was unable to take a final exam that was scheduled on the same day he received the text from Sid

- IV. The evidence will consist of testimony and exhibits
 - A. Testimony
 - 1. Sid
 - 2. Jim
 - 3. Campus security officer that interviewed Sid
 - 4. Sid admitted to officer that he sent the text but said it “was a joke”
 - 5. Sid also told officer that Jim owed him money
 - 6. Will hear from other campus personnel that will testify about security footage showing Sid outside Jim’s apartment shortly after the text was sent
 - B. Anticipated exhibits will include:
 - 1. Text message with photo
 - 2. Security footage showing Sid outside Jim’s apartment shortly after the text was sent

- V. Bottom Line, at the conclusion of the presentation of the evidence I will be asking you on behalf of the college to:
 - A. One, find that Sid violated the student conduct code by engaging in threatening conduct against Jim;
 - B. Two, find that he also violated the student conduct code by committing cyber misconduct; and
 - C. Three, ask you to affirm the student conduct office's decision to suspend Sid from the College for winter quarter, 2018.

Hypothetical Closing Outline



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Hypothetical Closing Outline

I. Introduction

A. Thank you for willingness to sit on conduct board – without you, student conduct hearing process would not be possible

B. Want to talk about

1. First, the legal framework for how you may want to analyze this case;
 - At the same time I will also talk about the particular facts of the case in the context of the legal framework
2. I will also discuss the sanction imposed by the student conduct office and why it is appropriate in this case

II. Legal framework for how to decide the case

A. **Standard of Proof – More likely than not**

“Preponderance of evidence” means that it must be shown it is *more likely than not* that the Student Conduct Code violation did in fact occur.

B. **Credibility**

For purpose of determining credibility, among the factors that you may consider is *the reasonableness of each witness’ testimony or statements in the context of all of the other evidence* – Here,

1. Sid testified he does not remember telling the security officer that Jim owed him money
2. But he did testify he remembers:
 - a. All other aspects of the meeting with the security officer – including
 - b. Meeting with the security officer; and
 - c. Telling the security officer the text “was a joke”
3. I submit to you that Sid’s testimony (*not remembering telling the officer that Jim owed him money*) is not reasonable and therefore not credible
 - a. It’s very convenient for Sid to testify he doesn’t remember telling the security officer that Jim owed him money – despite the fact that he remembers every other aspect of the meeting.
 - b. The fact that in Sid’s mind Jim owes him money, is the reason (motive) for Sid to make the threats that he did. The security footage supports this – Sid looks angry in the security footage – not like he just pulled a joke on Jim
 - c. If Sid can deny he told the security officer Jim owes him money – Sid can argue there is no reason or motive to believe that what he did with Cuddles was nothing more than a joke

III. Legal framework for how to decide the case (cont.)

A. Circumstantial Evidence

1. Direct evidence

“direct evidence” refers to evidence that is given by a witness who has directly perceived something at issue in this case.

2. Circumstantial evidence

The term “circumstantial evidence” refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

Here: Security footage is circumstantial evidence of the fact that Sid was in the vicinity of the Cuddles during the relevant time-frame

3. Circumstantial evidence and direct evidence are of equal weight or value. One is not more important or less important than the other

B. Elements

1. Assault, intimidation, harassment

a. *An act or behavior*

- The act or behavior at issue here is the text message and picture sent by Sid to Jim – No dispute the text and picture was sent to Jim by Sid
 - Jim’s testimonial description of the text he received from Sid
 - Security officer’s description of Sid’s admissions
 - Exhibit 1: the text message and picture

b. *That is reasonably perceived as threatening*

- Holding another person’s cat by the scruff of the cat’s neck with the caption “Cuddles needs you to answer Sid’s phone calls!!!!” constitutes a threat
- If Jim doesn’t answer Sid’s calls there will be consequences to the cat, and possibly Jim
- Under the circumstances of this case there is no other way Sid’s behavior can be perceived – answer his phone calls or bad things will happen

c. *To the health or safety*

- The picture demonstrates Cuddles is being harmed
- Combined, the picture and text message: “Cuddles needs you to answer Sid’s phone calls!!!!” is another way of saying if Jim doesn’t answer Sid’s calls – future harm will fall on Cuddles or Jim

d. *Of another person or another person’s property*

- Jim is the owner of Cuddles

Applying the preponderance of evidence standard of proof (more likely than not), the evidence offered in this hearing has established that Sid violated the prohibition against Assault, intimidation, or harassment (WAC 132X-125-001(4)).

IV. Legal framework for how to decide the case (cont.)

A. Elements (cont.)

1. Cyber-Misconduct

a. *Use of electronic communication, including instant messaging*

- No dispute that Sid used an electronic communication (text message) to send the picture of Cuddles and message
Same argument as “*an act or behavior*” argument above
 - Jim’s testimonial description of the text he received from Sid
 - Security officer’s description of Sid’s admissions
 - Exhibit 1: the text message and picture

b. ***To engage in conduct which harms or threatens
or
is reasonably perceived as threatening***

- The fact that Jim was so upset after seeing the text that he was unable to take the final exam demonstrates that Sid’s conduct *harmed* Jim’s emotional health
- Alternatively: Same argument as “*reasonably perceived as threatening*” argument above
 - Holding another person’s cat by the scruff of the cat’s neck with the caption “Cuddles needs you to answer Sid’s phone calls!!!!” constitutes a threat
 - Under the circumstances of this case there is no other way Sid’s behavior can be perceived – answer his phone calls or bad things will happen to Jim

c. ***The health or safety of another person***

- The fact that Jim was so upset after seeing the text that he was unable to take the final exam demonstrates that Sid’s conduct *harmed* Jim’s emotional health
- Same argument as second bullet immediately above

Applying the preponderance of evidence standard of proof (more likely than not), the evidence offered in this hearing has established that Sid violated the prohibition against cyber-misconduct (WAC 132X-125-001(5)).

V. Taking into consideration the actions by Sid, a one-quarter suspension is an appropriate and reasonable sanction

- A. Sid’s actions involved threats of harm
- B. Not threats of harm to property, but threats of harm to a living, breathing animal; and another person
- C. Under these circumstances, a one-quarter suspension is more than reasonable

VI. Conclusion

For all of these reasons, I would ask that the Committee uphold the determination that Sid is responsible for violating both provisions of the Student Conduct Code and uphold the imposition of a one-quarter sanction.

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Witness Impeachment



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WITNESS IMPEACHMENT AND REFRESHING THE WITNESS'S RECOLLECTION

Witness Impeachment. This can take place when a witness says something different in court than they said before, and you want to explore this inconsistency to cast doubt on the witness's credibility. Impeachment is not directly asking a witness to admit to being a liar or to admit that they remembered something incorrectly. The liar won't admit to lying and the honest but mistaken witness won't know they are mistaken. Impeachment is the process of introducing circumstantial evidence that shows the likelihood that the witness doesn't understand the need to tell the truth, is mistaken or has an incomplete recollection, or is lying.

In a nutshell, you want to commit the witness to their current testimony, and then confront the witness with their prior inconsistent statement. In essence, you are challenging their credibility.

Any party, including the party calling the witness, may challenge the credibility of a witness. Ways to do this include: (i) asking the witness about a time in the past when they said something different than they are now saying, (ii) introducing a document into evidence that reflects negatively on the witness's truthfulness or knowledge, (iii) showing that the witness is biased, (iv) challenging their character by properly showing they have been untruthful in the past, or (v) showing a defect of capacity, ability, or opportunity in the witness to observe, remember, or recount the matters about which they testified.

- You've spoken about this before, correct?
- It was when you were interviewed by the investigator?
- And your student advisor was also there with you?
- And the investigator asked you about this?
- And you told him you were telling the truth?
- And you also made a written statement about this?
- And you had a chance to review the written statement?
- And you did review it?
- And you signed it, didn't you, swearing that it was true?
- Just like you swore to the truth here today?
- And I am going to show you what is marked as Exhibit 10.
- This is your signature, isn't it?
- And this is your written statement?
- Can you read what is written on _____?

Refreshing a Witness's Recollection. Sometimes a witness will say "I don't know," or "I don't remember." Technically, it is improper to attempt to refresh a witness's recollection when they say "I don't know" (but you could perhaps impeach them as per above). Therefore, especially with a friendly witness, you should try to elicit a response that demonstrates a failure of recollection. For example, "Are you saying you don't remember?" or "Are you sure you don't know?" or "Is it more likely you don't remember?" If the witness expresses a failure of recollection or a possible failure of recollection, you can then attempt to refresh their recollection. You should state in your question what you are suggesting will refresh his recollection. For example, "Would looking at your witness statement refresh your recollection?" or "Would looking at a video of the event refresh your recollection?" Even if the witness persists with "I don't know," the finder of fact will be dubious of the testimony when you present the witness with items that would naturally refresh their recollection.

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Scripts for Calling Witnesses



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SCRIPTS FOR CALLING WITNESSES AND ADMITTING EVIDENCE

CALLING A WITNESS

The following script is for the introduction of a witness who is a college employee, but the same principles apply when you are calling a student or a party who is unaffiliated with the college.

I call [NAME OF WITNESS] to the stand.

Witness is sworn in by the Chair

Please state and spell your name for the record.

What is your position at Skyline College?

How long have you held this position?

If applicable: What training do you have in the area of [AREA OF EXPERTISE]?

What are your duties as [POSITION]?

ADMITTING EVIDENCE

The following script is for the introduction of documentary evidence.

Please turn to what has been pre-marked as Exhibit ____.

Do you recognize this exhibit?

Can you describe it for us?

Is this a true and correct copy?

If the exhibit has not already been admitted, the Student Conduct Officer continue as follows:

I move to have this document admitted as Exhibit ____.

Chair will ask other parties whether there are any objections, which may require argument before the Chair and the Committee makes a ruling.

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Sample Notice of Hearing



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Parties who fail to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with RCW 34.05.434.

This hearing will be conducted under the authority of RCW Chapter 28B.50, RCW Chapter 34.05, and WAC Chapter [STUDENT CONDUCT CHAPTER CITATION].

You may contact the [STUDENT SERVICES ADMINISTRATOR] in advance of the hearing to request an interpreter if you have limited English or hearing impaired, or if you need other accommodations during the hearing process.

PREHEARING ORDER [*optional*]

[THE NOTICE MAY INCLUDE A PREHEARING ORDER REQUIRING THE PARTIES TO EXCHANGE WITNESS LISTS AND PROPOSED EXHIBITS AT A CERTAIN DATE PRIOR TO THE HEARING].

DATED at _____, Washington, this ____ day of _____ 20__.

_____/S/_____
[NAME OF COMMITTEE CHAIR]
Chair, Student Conduct Committee
[MAILING ADDRESS]
[TELEPHONE]

[NAME], Committee Member
[NAME], Committee Member
[NAME], Committee Member
[NAME], Committee Member

[NAME OF COMMITTEE COUNSEL]
Assistant Attorney General
Counsel for the Student Conduct Committee

Parties Contact Information

Respondent:

Name
Address
Telephone

Student Conduct Officer:

Name
Address
Telephone

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

[RESPONDENT’S NAME]
[ADDRESS]
[EMAIL ADDRESS]

Email and U.S. Mail Postage Prepaid

[STUDENT CONDUCT OFFICER’S NAME] **Email and Hand-delivered**
[ADDRESS]
[EMAIL ADDRESS]

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this _____ day of August 2017 at _____, Washington.

Signature

SKYLINE COLLEGE, DISTRICT XXXIX
STUDENT CONDUCT COMMITTEE

In the Disciplinary Matter of:

JOE E. STUDENT,

Respondent.

NOTICE OF HEARING &
PREHEARING ORDER

The Skyline College Student Conduct Committee to:

Joe E. Student, Respondent and

Fairleigh Just, Student Conduct Officer, Skyline College

YOU ARE HEREBY NOTIFIED that the administrative hearing in the above-referenced case is scheduled for:

DATE: October 18, 2017

TIME: 1:00 p.m.

LOCATION: Skyline Student Services Building, Room 201

This adjudicative proceeding is to determine whether Respondent violated WAC 132X-125-001(4) and (6), as alleged in the October 1, 2017 Disciplinary Letter from Student Conduct Officer Fairleigh Just to Respondent. The letter alleges that on September 28, 2017, at approximately 9:00 a.m., Respondent verbally assaulted and abused an instructor and, later that morning, kicked a hole in a garbage can belonging to the College. If the Respondent is deemed to have violated the provisions of the student conduct code alleged, the Student Conduct Committee will determine whether to affirm, reverse, or modify the sanction and/or impose any other disciplinary sanction in accordance with WAC 132X-125-003.

NOTICE OF HEARING [&
PREHEARING ORDER *OPTIONAL*]

Pursuant to RCW 34.05.434, the names, addresses, and telephone numbers of the presiding officer, the parties to whom notice is given, and their representatives are attached and incorporated herein by reference.

Parties who fail to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with RCW 34.05.434.

This hearing will be conducted under the authority of RCW Chapter 28B.50, RCW Chapter 34.05, and WAC Chapter 132X-125.

You may contact the Vice President of Student Success in advance of the hearing to request an interpreter if you have limited English or are hearing impaired, or if you require other accommodations during the hearing process.

PREHEARING ORDER

The Parties are **HEREBY ORDERED** to provide the Chair and to exchange among themselves the following no later than the close of business on **October 13, 2017**.

- A. Lists of witnesses they intend to call at the hearing.
- B. Any proposed exhibits they would like to be considered at the hearing.

DATED at Skyline, Washington, this 8th day of October 2017.

_____/S/
Suzanne Smiley
Chair, Student Conduct Committee
1800 Student Services Building
Skyline College
Skyline, WA 98000
Tel: 555-475-0000

Jim Johnson, Committee Member
Beverly Apsted, Committee Member
Darren Riley, Committee Member
Nathan Divots, Committee Member

Albert Merrill
Assistant Attorney General
Counsel for the Student Conduct Committee

Parties Contact Information

Respondent:

Joe E. Student
123 Fairweather Lane
Skyline, WA 98000
Tel. 555-123-9898

Student Conduct Officer:

Fairleigh Just
Student Conduct Officer
Skyline College
Student Services Bldg., Room 301
Skyline, WA 98000
Tel. 555-475-0001

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Joe E. Student

123 Fairweather Lane
Skyline, WA 98000
Joe.Student@skyline.edu

Email and U.S. Mail Postage Prepaid

Fairleigh Just

Student Conduct Officer
Skyline College
Student Services Bldg., Room 301
Skyline, WA 98000
Fairleigh.Just@skyline.edu

Email and Hand-delivered

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 8th day of October 2017 at Skyline, Washington.

_____/s/_____
Signature

Small Group Exercise – Proof Table



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Small Group Exercise

SBCTC Student Conduct Academy, August 22, 2017

Direct Examination of Professor Sidney Fendi

Hypothetical at Pages 3-9 of the Materials

DIRECTIONS – Direct Examination	NOTES
<p>Read hypothetical and think about the reason(s) you are calling Professor Fendi as a witness.</p> <ul style="list-style-type: none"> • What is it that Prof. Fendi will help you prove? <ul style="list-style-type: none"> ○ What sections of the Skyline College Student Conduct Code has Joe Student violated during his interaction with Professor Fendi? <i>See Pages 10-17.</i> ○ Identify the elements of the violation(s) using the attached proof table. <i>See Pages 58-59.</i> ○ Formulate 4 or 5 open-ended questions that begin with words Who, When, Where, What, and How that help establish one or more of the elements. <p>Go around the table, each person asking the next question.</p>	
Calling a Witness	Follow-Up Questions
What is your name? (Please state and spell your name for the record.)	
Please answer my questions verbally as the tape recorder cannot record nodding heads. Can you do that for me?	
If there is an objection, please do not answer or stop talking until the panel chair makes a ruling on the objection.	
What is your position at the College?	
How long have you been employed by the College?	
Are you familiar with Respondent?	
Direct Examination Questions	
1.	
2.	

3.	
4.	
5.	

Introducing an Exhibit	
Please turn to what has been previously marked as Exhibit No. 10.	
Do you recognize this document?	
Can you describe it for us?	
Is this a true and complete copy?	
I move that Exhibit No. 10 be entered into evidence (<i>assuming it has not been admitted earlier in the proceeding</i>).	

Proof Table

Jurisdiction			
Element	Facts	Witnesses	Exhibits
_____ Violation			
Element	Facts	Witnesses	Exhibits