

Proposed Revisions to the Evergreen Student Conduct Code October 20, 2017

The Evergreen Student Conduct Code (Code) is a rule (WAC 174-123), adopted by the College as part of the Washington Administrative Code. The Code defines expectations for student behavior, describes potential consequences for violations of those expectations, and sets forth procedures the College must follow to ensure due process protections for students who allegedly have violated the Code.

Revisions to the Code ensure that it remains in compliance with state and federal laws and that the behavioral standards and procedures in the Code meet the needs of the College's students, faculty, staff, and of the community at large. The Code was last revised in 2012.

Overview of Proposed Revisions

While there are updates and changes in nearly every section of the Code, the major revisions fall into five areas:

- 1) General - Prohibited Conduct
- 2) Sexual Misconduct - Prohibited Conduct
- 3) Interim Suspension
- 4) Restorative Justice
- 5) Procedural Review
- 6) Appeals Procedures

Minor revisions include the following:

- Name change from *Student Conduct Code* to *Code of Student Rights and Responsibilities*
- General definitions are expanded and revised to utilize more inclusive language
- Rights and responsibilities are more explicitly delineated
- Criteria for submitting a request for reconsideration to the Appeal Board decision is added
- Timelines were shortened or specified in several sections (Notice of Hearing, Board determination, Reconsideration request).

Rationale for Major Revisions

1) General - Prohibited Conduct (WAC 174-123-070)

Definitions of prohibited conduct were refined or expanded in order to be current and more explicit. The following definitions were added or changed substantially:

- Disorderly conduct
- Disruptive behavior in the classroom
- Cyber-Misconduct
- Intimidation or harassment
- Obstructive behavior in conduct conferences or hearings

In addition prohibited conduct is framed in two broad categories: conduct related to community and conduct related to persons. This revision elevates the College's expectations for behavior in the context of institutional values.

2) Sexual Misconduct – Prohibited Conduct (WAC 174-123-070 (2. s. and 3.)

The additions and revisions in this section seek to provide definitions of prohibited conduct, consent, and procedures which ensure compliance with state and federal laws as well as guidance from the U.S. Department of Education, Office for Civil Rights regarding how institutions address sexual misconduct under Title IX law. In addition Jurisdiction (WAC 174-123-050) was expanded to include allegations of sexual misconduct occurring off-campus.

3) Interim Suspension (WAC 174-123-100)

The current Code affords for an immediate suspension of a student from the college for an interim period prior to the completion of an investigation of an alleged code violation, *if the student's alleged act of misconduct is of such a serious nature that continued enrollment at the college presents a threat to the safety, health, or welfare of any member of the college community, or the protection of personal or college property.*

The proposed revision affords for an interim suspension *if there is probable cause to believe that the respondent has violated any provision of the Code and presents a substantial or ongoing danger to the physical, mental, or emotional safety of members of the college community; or poses an ongoing threat of substantial disruption of, or interference with, teaching, learning or the operations of the college.*

This change refines the standard which must be met to take this action. A broader range of conduct could be considered and more allegations of sexual misconduct would meet this standard. This revision affords a necessary tool to uphold community and individual safety. In addition, the proposed revision clarifies that interim measures short of suspension may be imposed.

4) Restorative Justice

The proposed revisions enhance and reinforce the College's commitment to offering and utilizing restorative justice approaches to conflict resolution. When a student takes responsibility for their actions they may be offered an opportunity to participate in a restorative justice process which is intended to be educational. This change elevates the values in the Social Contract as well as enact educational measures that reinforce the value of taking personal responsibility for one's decisions and actions.

5) Procedural Review (NEW)

The proposed revisions include a new codified approach to submitting and resolving a complaint related to the administration of the Code. This is intended to ensure students are aware of the options for addressing concerns and an appropriate entity is tasked with resolving the complaint.

6) Appeals Procedures (WAC 174-123-170)

The proposed revisions specify that students may have an attorney represent them in cases that could result in suspension or expulsion or in cases involving sexual misconduct. An option to utilize a Brief Adjudicative Proceeding for some appeals is added. The Appeal Board membership is

changed from three students, one faculty, and one staff to one student, one faculty and one staff. The current Code offers a 20 calendar day window to submit an appeal and the proposed revisions offer a 10 calendar day window.

These changes are intended to ensure compliance with the Administrative Procedures Act as well as Title IX law and guidance. These changes also improve the timeliness with which appeals are conducted and concluded. Concerns about timeliness were a top priority from students and the reduction in the size of the Board membership reflect a tool to involve student, faculty and staff stakeholders as well as a more efficient model. The aim is to support outcomes which occur within a reasonable timeframe and serve the needs and interests all parties involved.

Process to Date

Winter and Spring 2017

On March 8, 2017, the College published in the Washington State Register a pre-proposal notice of inquiry, announcing the intention to propose a revision to the Code and inviting comment.

During the winter and spring of the 2016-17 academic year staff reviewed and recommended revisions to the Code to address the following:

- the need for more current definitions,
- improved clarity in processes, and
- greater compliance with the Office of Civil Rights guidance and interpretation of Title IX law.

In May the preliminary revisions were published on the website for the community to review. This work included a summary and an invitation to provide feedback during open forums or online. Five open forums were held during May and four community members participated. Six comments were submitted online during this time.

Staff involved in this work included: Andy Corn, Executive Associate to the Vice President for Student Affairs; Erin Lewis, former Senior Resident Director for Student Conduct; Kelly Schrader, Title IX Administrator; Andrea Seabert Olsen,

Senior Conduct Administrator; and Nikki Williams, Administrative Assistant to the Vice President for Student Affairs.

Summer 2017

In light of student concerns and questions about the Code shared in May, faculty, staff and the student Presidential Equity Advisors (PEAs) were asked to undertake a deeper review of the Code between July 9 and August 30. This group built on the revisions identified previously and engaged in a deep dive to understand the current Code, review codes at other colleges, consider additional rights that could be included, and examine more specificity with regard to obstruction of teaching and learning.

Assistant Attorney Generals, Rick Brady and Aileen Miller; faculty, Nancy Koppelman and Lee Lyttle, as well as staff – Kelly Schrader; Ray Lader, Senior RD/Conduct Officer; Nikki Williams; Andrea Seabert Olsen; Casey Lalonde, trained investigator; LaToya Johnson, Administrative Assistant for the VP/VP for Equity and Inclusion; and assigned staff mentors to the PEAs, Ivana Trottman, Jadon Berry, and Ignacio “Nacho” Alarcon contributed to this work.

Fall 2017

In September student Presidential Equity Advisor, Brandon Ellington; Ray Lader; Kelly Schrader; and LaToya Johnson generated revisions to the Code that sought to reflect the insights and recommendations of the student Presidential Equity Advisors. Nancy Koppelman, Casey Lalonde, Lee Lyttle, Andrea Seabert Olsen, and Nikki Williams offered feedback and suggestions on this work. Rick Brady offered counsel and feedback on the recommended revisions to this group and the Vice President for Student Affairs on October 4, 2017.

The Board of Trustees were presented with a brief update on the work at the September 20, 2017 meeting.

The President and Senior Leadership Group were presented with an overview of the recommended revisions and counsel by Rick Brady on October 3, 2017.

Proposed Next Steps

The Board of Trustees will discuss the proposed revisions at a meeting on October 27, 2017.

Proposed revisions will be shared with the community during Weeks 6 through 10 of Fall 2017. Feedback may be shared through open forums, to be scheduled and advertised, and online at <http://www.evergreen.edu/studentaffairs/student-conduct>.

Feedback will be reviewed during December 2017. If substantive changes are identified, an additional review period will be offered in early winter quarter. If minor changes are identified, the text of the proposed Code will be finalized and the college will file the text with the Office of the Code Reviser in early January.

The text will be published in the Washington State Register 14 to 42 days after filing. The College must wait at least 20 days after publication before holding a formal rule-making hearing.

Following the hearing, the College may adopt a final rule, which would become effective 31 days after filing with the Office of the Code Reviser.