As an attorney representing a client in the University of Washington’s student conduct process, the document has been prepared to offer you information about our hearing process.

The University of Washington’s student conduct process is designed to protect the rights of students while enabling the University to hold students accountable if they do engage in prohibited conduct. Protecting University students and the community, as well as helping students learn from mistakes and learn about accountability, are centering goals for the University. The University values fairness, respect, and transparency in its investigations and hearings. In protecting student rights, our approach is to conduct investigations and hold proceedings with sufficient guidance and explanation that students can fully participate and engage on their own. When students do obtain counsel, our goal is to help counsel understand how our process works and how to best function within it to do their job of advocating for their client.

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I. Introduction

Attorneys should review Chapter 478-121 of the Washington Administrative Code (WAC) and the applicable University policy on conduct (Student Governance and Policies “SGP” Chapters 209 and 210), before reading this guide. Reviewing those materials first will help set the stage for use of this guide. Student Conduct hearings are not modeled directly after criminal or civil
court proceedings. These processes can also differ greatly from institution to institution. While this guide often directly addresses issues that are a part of Title IX-related allegations, rules, and matters, the vast majority of the procedural and introductory information also applies to matters based wholly on academic and/or behavioral misconduct (i.e., SGP 209).

Our goal is to introduce the University’s process and provide additional explanation in some areas that are asked about frequently and about specific facets of our process. Ideally this will help reduce the number of unknowns about the University’s process and make it a more comfortable and productive environment for counsel. Of course attorneys are encouraged to ask these sorts of questions of the hearing office as well. This guide will convey the University’s expectations of participants in this process. One such expectation is setting an example of civility, courteous, and respectable treatment for the student parties and witnesses involved. The University expects that students’ advisors will help convey and exemplify these values as they participate in our process.

Finally, attorneys should note that this guide provides general information. Conduct officers’ and Hearing Officers’ decisions and rulings, as well as information or directives coming from either, are controlling if there is any conflict between them and the information in this guide.

II. Framework

This guide will provide some introductory background to the legal sources as well as a rough explanation of the primary phases of the process. A more thorough explanation of the legal sources and framework of the University’s conduct process is beyond the scope of this guide.

a. Sources

Three documents provide the majority of the rules and legal structure for the University’s student conduct process. These are: Chapter 478-121 WAC, SGP Chapter 209, and SGP Chapter 210. These documents overlap to a significant degree, particularly on procedural issues. SGP Chapter 210 is the policy that focuses on UW-specific sexual misconduct policies and procedures. SGP 209 focuses on academic and behavioral misconduct. The Department of Education’s 2020 federal Title IX regulations are currently contained and explained in Part VII of Chapter 478-121 of the WAC. See also 34 CFR Part 106. In some cases, the allegations are such that both SGP Chapters 209 and 210 are involved; in still other cases, allegations may include those defined by the Department of Education’s federal regulations (EDFR). Student conduct proceedings at the University of Washington are also conducted in accordance with the Washington Administrative Procedure Act (APA). See RCW Ch. 34.05. Chapter 10-08 of the WAC also provides guidance around procedural questions; this chapter, however, has more limited applicability for any allegations of EDFR prohibited conduct. For SGP 210 matters, the University’s Executive Orders Nos. 31 and 51 may also be relevant. Attorneys representing students in a University conduct matter are expected to be familiar with these rules. In
addition to these documents, staff at the University have attempted to convey other expectations and information through additional guides focused on specific topics.

b. Two Types of Proceedings

When a conduct proceeding does not include allegations of EDFR prohibited conduct, there are potentially two phases to a student conduct matter. When the University receives a report of conduct that may violate the Student Conduct Code, a conduct proceeding may be initiated. When this happens, a “brief adjudicative proceeding” begins. This phase is presided over by the Conduct Officer (or Investigator) who gathers information about the matter and then makes decisions based on the results. In some situations the Conduct Officer will decide that the matter needs to go to a full hearing. This would initiate a “full adjudicative proceeding.” A hearing is then held that is presided over by a Hearing Officer, who then makes decisions based on the hearing and the evidence in the record. The hearing will be covered in more detail later in this guide.

When a conduct proceeding includes allegations of EDFR prohibited conduct, additional allegations of UW policy will likely also be included. In these cases, an Investigator will conduct an investigation, just as they would during a brief adjudicative proceeding; however, parties will be able to review all of the evidence the Investigator has gathered and may consider in finalizing their investigative report. A hearing will occur in each of these cases.

III. Conduct Processes and Student Engagement

a. Brief adjudicative phase (non-EDFR prohibited conduct allegations) and investigation phase (EDFR prohibited conduct allegations)

Student parties are expected to engage with the Conduct Officer or Investigator during the brief adjudicative phase, which is called the investigation phase if the allegations included EDFR prohibited conduct. Investigators and Conduct Officers can only assess the information that they are able to obtain; they do not have the ability to issue subpoenas or, for example, require cell phone or social media companies to send records. Certainly engagement from the parties helps the Investigator consider all perspectives and sources of information. Engagement is also a significant way in which student parties can advocate for themselves. Failing to engage can lead to reduced or completely missed opportunities.

The following are some of the ways in which student parties should be engaging with the Conduct Officer or Investigator:

- Participate in interviews with Investigator – There are usually two such interviews. One happens early in this phase, the latter usually happens after the Investigator has collected evidence from many sources so that the student party can respond to these results and answer any additional questions based on the information gathered. This is a clear
opportunity for a student party to share their account of events and provide their perspective on them. Whether the student wants to answer any or all of questions asked is, of course, something an attorney can advise them about. If a student chooses not to answer questions, negative inferences will not be drawn from their refusal, however the process will proceed and decisions will be made based on other available and admissible evidence. See WAC 478-121-263.

- Suggest witnesses to Investigator – During the investigation is the appropriate time for the student party to suggest people who may have knowledge about the alleged misconduct to the Investigator so that the Investigator might interview these witnesses. It is best to provide the names of people (and their contact information) as early on in the process as possible. It is possible that providing names later in the process (either the brief adjudicative or full hearing phases) that could have been provided early in the process may impact the process, as information that could have been considered will likely not be considered; further, sometimes, evidence is only permissible to be considered later in the process if it is new. Failing to identify evidence or suggest a witness if that evidence was known to exist before (but not brought to the Investigator’s attention) does not mean that that evidence or witness would be considered to be new at a later point in the process.

- Identify and provide documents and other evidence to Investigator – As with suggesting witnesses, the investigation is the appropriate time to provide relevant information for the Investigator’s consideration. Doing this later in the process (either during any hearing or during any appeal) may lead to increased scrutiny or to the documents and other evidence simply not being considered because they are not new, as explained above.

- Suggest follow-up questions to the Investigator for the other party – Usually after the Investigator has had a first interview with the student parties and witnesses, the Investigator will provide an oral summary of those discussions to each student party. The student party can then suggest follow-up questions for the Investigator to ask the other party or other witnesses. It is within the Investigator’s discretion whether to ask the questions, which means they might not get asked. Additionally, if they are asked, a witness might not respond to a second request from the Investigator to answer additional questions; despite the uncertainty about whether a witness will agree to answer questions during a follow up interview or in follow up emails, this is another opportunity to raise issues with the case.

- Respond to follow-up questions from Investigator – The Investigator may have follow-up questions for the student party. These may derive from suggested questions, or from other things the Investigator has been told in the course of their work. (Otherwise, see commentary above about whether student party refuses to answer questions.)
b. (Full) Hearing phase

If a case does not include any allegations of EDFR prohibited conduct, a “full hearing” is held. If the case involves allegations of EDFR prohibited conduct, a “hearing” is held. The term “full hearing” reflects the terminology related to a “full adjudicative proceeding” in the Washington APA. “Hearing” reflects that of the Title IX regulations. In this section, we will use the term “hearing” and note where any differences exist between a hearing involving EDFR allegations and a full hearing (not including EDFR allegations). When a hearing is initiated, the student parties will receive direction and information about the process from the hearing office. There are different stages within the hearing process that lead up to the actual hearing. Throughout these stages there are ways in which the student parties will be asked to engage. As with the brief adjudicative phase, these are not requirements, but they are opportunities for the student. It is not possible to make a definitive statement about engagement for all scenarios, however, it is most likely that the student party will be better served by engaging in the hearing process on at least some meaningful level.

A description of the different stages of the hearing process will be provided later. Here are some ways in which student parties can engage during the hearing phase:

- **Submission of Evidence and Submission of Witnesses Forms** – These forms are one way to tell the Hearing Officer what you think about the evidence that is in the Conduct Officer’s record and about who should be asked to testify at the hearing. These perspectives can also be shared during the Prehearing Conference, which may also be referred to as a prehearing meeting.

- **Prehearing Conference or Meeting** – The majority of the prehearing conference or meeting involves the Hearing Officer asking the parties for their perspectives about aspects of the case. These questions are primarily around documents, other evidence, and potential witnesses. The Hearing Officer will also ask to hear about any other problems, motions, requests, or issues that the parties want to raise.

- **Motions** – Students can submit motions prior to the prehearing conference or meeting. During the prehearing conference or meeting the Hearing Officer will ask whether there are motions parties would like to make and will set a formal motion schedule. (As an example of how the University emphasizes plain language instead of legal terminology, motions during the hearing process are often referred to as requests for the Hearing Officer to do or allow something.) Also see later section on motions.

- **(Full) Hearing** – Student parties will have different opportunities to be heard at the hearing, such as through the opening and closing remarks. Student parties will also have opportunities to have their cross-examination questions asked of witnesses. They will also have the option to testify themselves. Further details and procedures around these aspects of the hearing will be described in greater detail later.
c. Timely participation

It benefits student parties to engage and participate in a timely fashion. For example, if the student party has a document or a witness they want the Investigator to consider, providing such information as soon as possible will mean there’s a greater chance that it will be included in the investigation and resulting decisions, as investigations are time limited. Telling the Investigator at the last moment that there is someone else to talk to may or may not mean that the Investigator will be able to pursue the suggestion. The same is broadly true in the hearing phase, where the prehearing order is largely considered the document that settles who will be called as witnesses and what evidence will be considered. It is possible that late-identified sources of information will be allowed, but the process also strives for fairness and notice to all of the parties involved. Providing information late comes with increasing risk that it will not be allowed, as the other party may not have submitted information they would have liked after a due date because they presumed the due date was not able to be changed or moved.

Similarly, if a student party wants to hire legal counsel for representation, this should be done early in the process. The hearing process will likely not be delayed or continued to accommodate the time it takes for counsel to get up to speed, especially if this happens close to the date of the prehearing conference or the full hearing.

iv. Conduct Proceedings and Legal Counsel

a. Representation for Student Parties

Student parties are assigned a University-provided staff member as a resource. Complainants are provided with a staff resource (titles held by such support staff include “Confidential Advocate,” “Survivor Support & Advocacy,” and “Crime Victim Advocate”). Respondent students are provided with someone called a “Respondent Resource.” Both types of resource may accompany students throughout the conduct process and share and explain information about the process. Neither are attorneys, thus neither can speak for nor advocate for the student party during proceedings. In cases involving EDFR allegations, the resource may fill the role of “Support Advisor.”

Student parties may also be accompanied by an advisor during proceedings. Advisors can be, but don’t have to be, attorneys. If the advisor is not an attorney, then the advisor cannot speak during the process (either at the prehearing conference or the full hearing). If the advisor is an attorney, the attorney can advise and represent their client during the process. The University will not pay for an attorney.

In cases that involve EDFR allegations, student parties must be accompanied by a “Hearing Advisor” during a hearing. (The Hearing Advisor may be anyone the student party chooses.) If a student selects a Hearing Advisor prior to the hearing, the Hearing Advisor may accompany the
student to interviews and/or the pre-hearing meeting. During the hearing, the Hearing Advisor—who may or may not be an attorney—must ask verbally and in real time questions of the other party and other witnesses. If a party does not select their own Hearing Advisor, the University will provide a Hearing Advisor, who will generally be a University staff person who is familiar with student conduct hearings but who is not an attorney. Such a University-provided Hearing Advisor’s role is limited; they will meet with a party once before a hearing and then ask the questions the student has prepared for the other party and witnesses.

b. Authorization to Practice

Attorneys who are not licensed in Washington must fulfill the requirements for out of state attorneys before they will be allowed to advocate for their client in the University’s process. The out of state attorney must follow the steps laid out by Washington Supreme Court Admission and Practice Rule (APR) 8. The steps include paying a fee and submitting a form to the Washington State Bar Association (www.wsba.org). The attorney must also submit a motion to the University Hearing Officer. Completing these requirements may take time. The hearing process will not be delayed in order for out of state counsel to complete this process.

c. Family Educational Rights and Privacy Act (FERPA)

A student party must provide a completed and signed FERPA release before the University is permitted to provide any information to the student party’s attorney or advisor, including even acknowledging that the person is a student at UW. The Conduct Officer/Investigator can provide a FERPA form. If the matter is in the hearing phase, then the Hearing Coordinator (hadmin@uw.edu) can as well.

V. Legal Issues

The guide will highlight a few of the legal issues that arise. What is provided here should be considered informational as opposed to definitive. If, as counsel for a student party, you want to raise any such issues with the Conduct Officer/Investigator or Hearing Officer in your client’s case, you are certainly free to do so.

a. Jurisdiction

The University’s jurisdiction over student conduct is articulated in WAC 478-121-040 and/or WAC 478-121-600. Conduct officers/Investigator make a determination about the University’s jurisdiction over a conduct matter in the investigation or brief adjudicative phase.

b. Standard of Proof

The applicable standard of proof is the "preponderance of evidence" standard. This means that, in order for a Respondent to be held responsible for prohibited conduct under the
conduct code, the Hearing Officer must conclude, based on all of the evidence in the record, that it is more likely than not that the Respondent engaged in an act or acts of prohibited conduct. This standard is much lower than the standard required for conviction in criminal court.

c. Evidence

Sections of WAC 478-121, SGP Chapter 209, and SGP Chapter 210 speak directly to evidence in conduct proceedings. In particular, WAC 478-121-250 thru 265 cover most, but not all, of the direction on evidence when no EDFR allegations are involved; WAC 478-121-675 delineates the evidentiary standards and rules with respect to cases that involve EDFR allegations. For cases that do not involve allegations of EDFR prohibited conduct, the Washington state rules of evidence may also provide a guide when those rules do not conflict with the Student Conduct Code. When considering allegations of EDFR prohibited conduct, the university is expressly prohibited from incorporating either federal or state evidentiary rules. That said, if a case involves both allegations of EDFR prohibited conduct and non-EDFR prohibited conduct, the University may consider additional evidentiary rules in making decisions about evidence relevant to the non-EDFR prohibited conduct allegations.

During the brief adjudicative proceeding or investigation phase, Conduct Officers (or Investigators) gather information about the matter from a variety of sources. Student parties are encouraged to provide information, documents, evidence, and suggestions of witnesses during this proceeding. The Investigator will assess the information and later, if the matter is going to be converted to a hearing, the Conduct Officer will make decisions about what information to include in the Conduct Officer’s Record. If the matter includes allegations of EDFR prohibited conduct, the Investigator must include all information and evidence that is related to the allegations in the investigation record. If allegations of EDFR prohibited conduct are included, both parties – and any advisors with whom they’re working during the investigation phase – will have the opportunity to review the evidence collected throughout the investigation as well as a draft investigation report. The parties may then provide feedback to the Investigator regarding the parties’ perspectives about the evidence. There is no such similar process if allegations of EDFR prohibited behavior are absent. Instead, the parties’ opportunity to provide feedback about what is relevant is a hearing, during which parties may state the Investigator did not correctly weigh specific evidence.

The admission of new evidence or new suggested witnesses becomes more restricted after the investigation phase. Once a hearing has been requested and/or parties have been notified of the hearing, new evidence or new witnesses can be offered or suggested. However, other parties will have the chance to share their objections (or perspectives), and the Hearing Officer will make the final decision on whether to admit the evidence or not. Similarly, if parties have objections to evidence included in the Conduct Officer’s Record, they will be able to request that the Hearing Officer remove evidence with the same opportunity for response from the other parties.
i. Discovery and Experts

Practitioners should take note that traditional discovery tools, like depositions or interrogatories, are not available in conduct proceedings. See WAC 478-121-405 & 478-121-670. Because they would be about an open matter and a matter involving students – whose information is protected under FERPA – public records requests to the University about an active case are unlikely to be productive.

Similarly, Hearing Officers have the authority to consult experts when they determine that expertise is needed on an issue related to the investigation. See SGP Chapters 209/210 Section 11.E. It is possible for parties to suggest a person to be asked to testify as an expert at the full hearing, but the decision whether to ask that person to testify is the Hearing Officer’s to make.

ii. Hearsay

Hearsay is generally admissible in student conduct proceedings. Where there are no allegations of EDFR prohibited conduct, the Code’s specific language on hearsay can be found at WAC 478-121-253(1). Therefore, this means that an argument that evidence is inadmissible because it is hearsay is typically not successful. On the other hand, perspectives about what weight the evidence should or should not have due to a lack of reliability (or other reason) have a better chance of being persuasive, and such perspectives may be part of a party’s closing statement.

In cases that involve allegations of EDFR prohibited conduct, hearsay is generally admissible if the Hearing Officer considers such evidence to be relevant and reliable. See WAC 478-121-253(1). If a party or witness, however, chooses not to testify at the hearing or if a party or witness refuses to submit to cross-examination, then the Hearing Officer may not consider any evidence or statements from that party—unless such statements are the conduct at issue itself. (In other words, if the case involve allegations of EDFR hostile environment sexual harassment, and evidence of such sexual harassment is contained in emails or text messages, those emails and text messages would be admissible even if the party who sent them chooses not to submit to cross-examination.) See WAC 478-121-675(1).

vi. Other Processes

The University recognizes that in some situations there is or has been a separate court process about the same or similar subject matter involving student parties. The University will not pause, delay, or cancel the student conduct proceedings to wait for the outcome of other proceedings.

The University is also aware that student parties may have protection, anti-harassment, or other similar court-issued orders against the other student party and that a student may
obtain such an order during the course of the student conduct matter. Practitioners should be aware of the following points about this:

- Unless a student party has informed someone at the University, the University likely will not be aware of the existence of a court-issued no contact order. Even if a party tells an employee of the University about the existence of a court-issued order, that employee may not – and is likely not required to – share that information with others. It is up to the student parties involved to inform the University (especially the Conduct Officer and the hearing office) of any orders.

- Similarly, the University will likely not know if a court-issued order is violated. It is the student party’s responsibility to inform the University.

- Participating in the student conduct process may place a student party at risk of violating a court-issued no contact order. For example, provisions prohibiting communication with or about the other party could be violated by the student party speaking during the prehearing conference or prehearing meeting. A proximity provision could be violated by attending a hearing in person. The University cannot assess whether participation could violate a court order, as doing so is not within the University’s jurisdiction or purview.

- It is the responsibility of the student party to try to modify any court-issued order(s) for purposes of participating in the student conduct process. The University has no power to modify a court-issued order(s) or to assure students that participation does not risk violation.

- The student conduct process, including any hearing, will proceed whether or not a court-issued order is modified. In general, the University will not prevent a student party whose actions are restricted by the order from being physically present at the full hearing. Nor will the University prevent the student party who sought the order from being physically present. (A student party who is uncomfortable being in the same room as the other party can participate in another room or, for any case that includes an allegation of EDFR prohibited conduct, request that the entire hearing occur virtually through technology. If/when they testify, that party can require that other party has to participate outside of the hearing room.) Note that even though the University will not prevent a student party from being physically present at a hearing, the University also is unable to control or prevent the student who obtained a court-issued order from seeking to effectuate an unmodified order.

- The University can provide alternative sites where student parties can participate in the hearing remotely using audio/visual technology that will allow the student party to see witnesses, to hear all that is being said in the hearing room, and to themselves be heard and seen by those in the hearing room.
• The University can/may arrange for a police officer to be on site if there are safety considerations.

VII. Brief Adjudicative Proceeding or Investigation Phase

a. Intake

For cases that involve allegations of sexual misconduct, a student who would like to request that the University conduct an investigation and to file a formal complaint is asked to schedule an intake meeting. At the intake meeting, an Investigator explains the conduct process to the Complainant and asks the Complainant for various information required to identify both the Complainant and Respondent in the case. The Investigator also asks the Complainant questions to determine whether the University has jurisdiction to investigate the case and to determine what allegations, if any, may be appropriate. The Complainant has an opportunity to share the information they are able about the incident(s) that led to the Complainant requesting an investigation. The Investigator asks follow up questions about what the Complainant shares. If the Investigator anticipates that an investigation or conduct proceeding will open, the Investigator assesses the appropriateness of a temporary no contact directive throughout the duration of the conduct proceeding.

b. Initial Notification to Respondent and Complainant

Once the University receives information that a student’s conduct may have violated the University’s Student Conduct Code, the Respondent and Complainant receive a document informing them of the allegations and that a conduct proceeding opened. This document is called the Initial Notification. The document proposes times for the Respondent’s first investigative interview and requests a response from the Respondent. The document also shares a summary of what the Conduct Officer know to date about the alleged conduct and specifies which provisions of the Code the student is alleged to have violated. In addition, the document contains information about jurisdiction, applicable university policies, potential sanctions, the role of the Conduct Officer, and other background information. The students are notified that they have the right to request the Conduct Officer’s disqualification, the grounds for doing so, and the process to apply.

c. Common Participants

Once a student conduct matter has begun in the brief adjudicative proceeding or investigation phase, there may be several people involved. WAC 478-121-050 and WAC 478-121-615 provide definitions that explain many of the roles, such as Complainant, Conduct Officer, Hearing Advisor, Hearing Officer, Investigator, Respondent, and/or Support Advisor. In addition, here are a few other people who may be involved:
• **Assistant Attorney General (“AAG”)** – When allegations do not include EDFR prohibited conduct, the Conduct Officer may be advised by an AAG, and the AAG may even offer perspectives during the full hearing phase.

• **Complainant’s Resource** – Confidential advocates may be working with the Complainant to provide them support through the conduct process. The Complainant’s Resource, a confidential advocate, is not an attorney and cannot advocate for the Complainant in the full hearing phase like an attorney would. If a case involves allegations of EDFR prohibited conduct, this person may be the Complainant’s Support Advisor.

• **Respondent Resource** – This is a person provided by the University as a resource for the Respondent. This person provides support to the Respondent as well as information about the hearing process. Like any confidential advocate, the Respondent Resource cannot advocate at the full hearing like an attorney would. If a case involves allegations of EDFR prohibited conduct, this person may be Respondent’s Support Advisor. It is also possible the Respondent resource may be the Respondent’s Hearing Advisor if the Respondent requests this of the Respondent resource, and the Respondent resource agrees.

d. **Investigative Interview**

The Conduct Officer or Investigator will reach out to the Respondent directly (via email) to schedule the first investigative interview. Mostly likely, the Conduct Officer will suggest a few possible meeting options and will try to accommodate the student’s schedule to the extent possible. If you are representing a student party and want to be included in this scheduling, you will need to have your client sign a FERPA release so that the Conduct Officer and the University have permission to communicate with you about the student. In fact, a Conduct Officer or Investigator may not respond to any communications from you until the student party has signed this release; do not be surprised if you’ve contacted the Investigator several times, and you do not hear from them. The Investigator has likely sent the release to the student party you represent, and that student party may not yet have returned the release with a signature. (Rather than contact the Investigator several times, it is likely best for you to contact the student party and ask them to sign and return the release or—if the student party has not yet received a release—instruct the student party to email the Investigator and ask for one to be sent to the student.) If a student party does not engage with the Conduct Officer about the investigative interview, the investigation will still proceed.

As counsel to the student party, you are able to attend your client’s investigative interview (whether it’s the initial interview or a follow-up). You may advise your client, but you may not speak on their behalf during the interview or disrupt or interfere with the conduct proceeding, specifically during the interview. See SGP Chapters 209 and 210 Section 10.O. The Conduct Officer can ask you to leave if they determine that you are being offensive, disrespectful, or uncivil. The Investigator will likely take written notes during the interview; though a party may review those notes following the interview, the party may not receive a copy of those notes.
until and unless all of the evidence is shared. If a hearing will occur, parties will receive all of
the evidence that is either related to the allegations, if EDFR prohibited conduct has been
alleged, or that is part of the Conduct Officer’s record, if EDFR prohibited conduct was not
alleged.

e. Interviews of other witnesses

The investigation typically includes interviews with other individuals who may have knowledge
about the matter. These other individuals might be students or other people who are
suggested by the student parties, or they might be identified through other means. Advisors to
student parties do not have a right to present at the Conduct Officer’s interviews with these
other people.

f. Second (follow up) interviews

The usual investigative sequence proceeds first with interviews with the student parties, then
with interviews with other individuals who may know about the case, and then a second (or
follow up) interview with the student parties. In the second interview, the Conduct
Officer/Investigator may ask the party similar questions to before to clarify or confirm the
party’s answers as well as new questions based on information that has otherwise been
received over the course of the investigation. All of the rules and expectations of advisors for
the initial investigative interview remain in place for the second (and any other) interview.

g. Next Steps

Where allegations do not include EDFR prohibited conduct

Once they have completed their investigation, the Conduct Officer will make a decision about
the matter. That decision takes into account the alleged conduct and the standard of evidence
(preponderance of evidence) to determine what happens next. There are three possible
decisions:

1. Based on the available evidence the Conduct Officer finds that the preponderance of
evidence does not indicate (and that another reasonable fact finder would agree that the
evidence does not indicate) that the Respondent is responsible for violating the Student
Conduct Code.

2. The Conduct Officer considers the evidence and allegations and then decides that they – or
another reasonable fact finder – do or could find that the evidence indicates the
Respondent is responsible for violating the Student Conduct Code. The Conduct Officer
then determines what an appropriate sanction may be based on the conduct alleged and
evidence gathered. If the Conduct Officer determines an appropriate sanction would not
reasonably include suspension or dismissal as possibilities, the Conduct Officer issues an
initial order with a finding of responsibility and with a specified sanction that does not
include either suspension or dismissal.
3. If a Conduct Officer determines that they or another reasonable fact finder could find that the preponderance of evidence could indicate the Respondent is responsible for violating the Student Conduct Code and if the Conduct Officer believes that suspension or dismissal reasonably may be among appropriate sanctions, the Conduct Officer must convert the matter to a full hearing. Other than the fact that the Conduct Officer has made a decision that has sent the matter to a full hearing, the Conduct Officer’s interpretation of the evidence is not binding or instructive and cannot be relied upon by the Hearing Officer during the hearing process. The Hearing Officer, instead, will exercise independent judgment after assessing the evidence and make a determination about the case.

The first two decisions can be appealed immediately by requesting administrative review. (See later section on administrative review.) The third decision is the only one that sends the matter to the full hearing process. (And, after the hearing occurs and a decision is issued, that decision also can be administratively reviewed at the request of either party.)

Where allegations do include EDFR prohibited conduct
Once they believe they have completed their investigation based on the available documentary evidence and known witnesses, the Investigator – in a case involving allegations of EDFR prohibited conduct – compiles all of the evidence that is related to the allegations and begins writing an investigative report. Prior to the completion of the investigative report, the Investigator provides to each party all of the related evidence and a draft report for the parties’ review and feedback. The parties’ advisors, if any at this point in the process, also receive the evidence and draft report. The parties may submit feedback to the Investigator indicating differences in the relevance of evidence and/or identifying additional evidence that the Investigator may want to consider now that the party may more fully understand the context and scope of what has been provided and gathered during the investigation. After receiving feedback from both parties, the Investigator finalizes the investigative report and submits it and the evidence to the Hearing Officer so that a hearing may occur.

h. Contact with student parties

Student parties are not allowed to have contact with each other. A Temporary No Contact Direction is typically included with the Initial Notification. The provisions around no contact with the other student party also apply to a student party’s attorney or advisor. This means that the attorney should not be contacting the other student party to discuss anything, including settlement possibilities. If a represented student party wants to explore settlement, their attorney should contact the Investigator and/or the assistant attorney general advising that Conduct Officer. It would be permissible for that attorney to contact counsel for the other student party (if that party is represented).
VIII. Full Adjudicative Proceedings and Hearings

a. Overview

There is a sequence of steps that will take place for the full hearing process. Many of these steps are similar to the flow of events that occur in other litigation processes. This graphic shows the major steps and includes some of the aspects of each step and when, on average, they usually will happen.

The University’s (full) hearing process is conducted with the fact in mind that these proceedings prioritize working with and being responsive to the students directly involved. These student parties are often not represented by legal counsel and have never been part of a legal proceeding. One thing this means is using less formality than is found in a typical courtroom environment. In terms of tone, this means being respectful and collegial. While the proceedings are adversarial, acrimonious or aggressive approaches will not be tolerated, especially if such behavior is aimed at student participants.

The Hearing Officer will begin the prehearing conference/meeting and the (full) hearing with introductions and asking what each participant would like the others in the hearing to call them. The Hearing Officer will ask participants to refer to the Hearing Officer by their first name, as opposed to Mr./Ms. [Hearing Officer], Judge, or Your Honor. (At the same time, it is not a problem if participants do want to use more formal language.) Another example is that the Hearing Officer will not be wearing a suit and does not expect participants to, either. Business casual is completely appropriate for the full hearing.
Practitioners will also likely observe that the hearing office takes steps to reduce the amount of legalese used in proceedings and will spend more time explaining processes to students. This is done for multiple reasons, including to help ensure that students who are not represented can understand what is happening and to provide transparency to students about what is happening. The subject matter of the hearings and, often, even the hearing process itself can be traumatizing for student parties. Providing transparency and explanation can help mitigate this. As an example, while the term “motion” (as in “make a motion” or “submit a motion”) may be used, the Hearing Officer will also characterize motions as “requests for the Hearing Officer.” Practitioners do not need to concern themselves with translating their typical advocacy language during the process. If the Hearing Officer feels they need to explain or translate a term being used for the student parties, they will do so.

In the beginning of the prehearing conference/meeting, the (full) hearing, and when bringing in a new witness, the Hearing Officer will typically share their preferred pronouns and ask the other participants what pronouns they would like to be used for themselves. Participants will be expected to use the pronouns identified by each individual involved. This practice is in place to further encourage an environment of empathy and respect.

b. Initiation & Scheduling

Parties will know that the hearing process has been initiated when they receive a letter from the Conduct Officer or from the hearing office; regardless of who sends the letter, the student party will receive it via email. The hearing office will communicate with the parties to provide the Conduct Officer’s record (which is a compilation of the evidence from their investigation) and to inquire about scheduling. The University works to balance the need to resolve conduct matters as quickly as possible with the importance of respecting students’ need to have time to prepare as well as their other educational responsibilities. This means, for example, that hearings will not be scheduled during final exam periods or academic year breaks (i.e. winter or spring).

The hearing office tries to work with all of the parties to determine each party’s scheduling needs and conflicts. Most likely this will happen through an email asking parties to share their availability. The hearing office will then schedule the prehearing conference/meeting and the (full) hearing. The (full) hearing may be scheduled initially for multiple days; the hearing length may be later reduced if, for example, fewer witnesses are going to be asked to testify than were originally thought to be needed. Once this schedule is set parties can ask for changes. The earlier such requests are made the greater chance they will have of being granted by the Hearing Officer. In general, requests for scheduling changes based on counsel needing time to prepare because they were brought on board late in the process are less likely to be granted.

c. Expectations

The University expects that students’ advisors will help convey and exemplify the values of
respect and civility during our process. For example, student parties will often both be present in the hearing room for the (full) hearing. We will not allow a student party (or anyone else) to stare down or try to intimidate another student party or witness. Or to interrupt or belittle anyone. Hearing Officers do have the option of removing participants (including advisors or attorneys) who are being intimidating or disruptive; that said, Hearing Officers prefer to have everyone participating fully and appropriately in the process. Please help your client to understand this and to model appropriate behavior for them.

   d. Language

The University recognizes and respects that individuals who are reporting that they have been affected by sexual violence may have preferences related to language and terminology. Terms such as “victim” or “survivor” can be applicable to individuals in this situation. The University will typically use “Complainant” or “Respondent” but will generally allow the parties to use the terms they prefer when referring to themselves. Participants in the process will be expected to respect the individual’s decision. Also, there are University support staff who may work directly with complainant students in the process whose job titles incorporate survivor or victim terminology.

While survivor, victim, or other similar terms may be used and respected in the University's processes, University staff involved in conduct matters do not draw inferences about the veracity of an account of sexual violence from the terminology used by a Complainant or by those working with a Complainant.

   e. Evidence, the Conduct Officer’s Record, and the Prehearing Conference

When a matter is converted for hearing, the hearing office receives a record of the investigation, including the evidence gathered. This record, referred to as the Conduct Officer’s Record, contains the evidence gathered and used during the investigation. This record also includes a document that summarizes the investigation process, the evidentiary results, and the allegations of code violations that will be considered in the full hearing. Typically this document is called the Summary of Evidence.

In most cases, along with testimony taken during the hearing, the Conduct Officer’s Record provides the majority of the evidence that will be considered by the Hearing Officer. It is not, however, a static or unalterable record. Parties can make objections to what is in the Conduct Officer’s Record. The Hearing Officer might also take steps to change or remove parts of it. In addition, parties can request that additional evidence or witnesses be added to what the Hearing Officer will consider. The prehearing conference/meeting provides the primary opportunity to make requests about evidence. Such requests can be first made through the use of the forms provided by the hearing office in advance of the prehearing conference. Parties can submit these forms, called the Submission of Evidence and Submission of Witnesses forms, before the prehearing. The forms provide a way for parties to explain the
reasons for their requests, whether they want to remove evidence in the Conduct Officer’s Record or add to it. The Hearing Officer will likely prompt parties to make and explain evidentiary requests during the prehearing conference/meeting. During that discussion parties will also be able to share their perspectives in response to other parties’ requests. In the prehearing order, the Hearing Officer will make rulings about the record and about who will be asked to testify at the full hearing.

The prehearing conference/meeting includes other elements. One large part of the conference will consist of the Hearing Officer explaining what happens during the (full) hearing and answering questions about it. The Hearing Officer will also cover rules for communicating with the hearing office. The prehearing order is usually sent to the parties a week after the prehearing conference.

f. Motions

Motions (or requests for the Hearing Officer) are a part of the University’s hearing process, but they are not used very often and should be limited. If requests are made they can be done less formally. Requests written in an email are sufficient and preferred to motions on pleading paper. The hearing office prefers that motions not be longer than necessary. The Hearing Officer will set a motion/request schedule during the prehearing conference/meeting. Motions are usually due about a week after the prehearing conference, responses usually a week later. Absent advance permission from the Hearing Officer, replies to responses from other parties are not allowed. This is one of many ways in which the student conduct process does not operate as a court.

Proposed orders, prehearing briefs, and post-hearing briefs are not allowed. Parties can ask the Hearing Officer for permission to submit such documents. They will only be accepted if the Hearing Officer first grants the request. See WAC 478-121-413.

g. Informal Settlement

Parties may agree to settle the conduct matter at any point before the Hearing Officer issues the initial order. The hearing office will not be involved in settlement discussions and does not need to be updated or informed about them, unless there is some reason to do so (e.g., parties want to continue the proceedings in order to further explore settlement). Once a settlement has been agreed to and finalized, then the hearing office should be notified so that remaining proceedings can be cancelled.

If one of the student parties in a matter is not represented, counsel for the other student party should not initiate discussions with the unrepresented party(ies), at least not initially. Instead, counsel should begin discussions by going through the Conduct Officer/Investigator and/or other specifically designated individuals like the AAG working with the Conduct Officer.
h. Day of (Full) Hearing

The University's values of fairness and respect will be followed throughout the (full) hearing process. The responsibility to ensure this lies primarily with the Hearing Officers but help from other University staff, counsel, and advocates is essential as well. Throughout the (full) hearing process, although especially on the day(s) of the hearing, the Hearing Officer will facilitate an efficient and effective proceeding and protect all participants from harassment and undue embarrassment. This means, for example, not allowing a witness or party to be ambushed during questioning or lines of questioning that are victim blaming and/or intended to embarrass the witness. Fair treatment will be provided to all those involved, especially the student parties. This means, in part, not being interrupted or insulted, and having argument directed at the Hearing Officer instead of to other participants.

The process on the day(s) of full hearing will be described in detail at the prehearing conference. Two aspects of the full hearing will be addressed here.

Setting – The University is able to hold (full) hearings in person and/or remotely using video conferencing technology. Even if a hearing is being held in person, student parties can choose whether to participate remotely or in person. When participating remotely, individuals will be able to see the witness who is testifying.

The University’s in-person setting typically includes a hearing room as well as two smaller side rooms.

The hearing room is a conference room and is where the Hearing Officer will be during the hearing. The exact set-up may vary based on the University campus (Bothell, Seattle, Tacoma) where the hearing is being held. In most situations there will be small tables set up that fit two to three people. These tables are for the Complainant (and advisor(s)), the Respondent (and advisor(s)), and Investigator (and advisor). Separate tables will be provided for the testifying witness, the stenographer, and the Hearing Officer. The Hearing Officer’s table will be next to the witness table, with the other tables facing them in some fashion.
Here is a diagram that provides a sense of how the tables might be arranged:

**Hearing Room Layout**

Participants remain seated during the (full) hearing. Student parties will have the option of testifying at their assigned table or at the witness table.

The two side rooms are separated from each other and can be used by student parties for a variety of purposes. For example, a student party can go to one of these rooms during breaks in order to prepare. These rooms also have the technology to see and hear the proceeding, so it is possible for a student party to participate in the hearing in their assigned room. Student parties do not have to be visually visible during the hearing except when they are testifying. If the student party is in the building for the hearing but participating in their assigned room, they may be required to testify in the hearing room. In this scenario, they may ask that the other student party leave the hearing room and observe through video in their own assigned room. The advisor of that other student party may remain in the hearing room during testimony or may join their client in the assigned room.

If a party or their counsel has concerns or questions about the setting, they are encouraged to direct these questions to the hearing office.

**Note:** The University has held hearings in a fully remote manner during the COVID-19 pandemic.

**Parts** – There are three parts of the (full) hearing process: opening remarks, asking questions of witnesses, and closing remarks. See *Day of Full Hearing Process Chart (attached).* Parties are given approximately ten minutes total for both their opening and closing. The Hearing Officer has the discretion to decide whether to strictly enforce the time limits. Parties often do not give opening remarks.

The witness schedule is set by the Hearing Coordinator, and the parties will be updated regarding what to expect in advance of the hearing. The schedule is flexible and witness order
may change the day of hearing depending on witness availability and the length of testimony. The primary consistency is that Respondents who wish to testify will be the last to testify. If a hearing is scheduled for multiple days, the length of the hearing may change depending on whether testimony is moving along more quickly than expected. It is also possible for testimony to take longer than expected and require additional time.

Questions are asked of witnesses first by the Hearing Officer. Parties will then get an opportunity to ask questions (i.e., cross examine). If allegations of EDFR prohibited conduct are not part of the hearing, each party will submit their questions, one at a time, via computer. (It is also helpful to number the questions as they’re being typed. When a question is being discussed, such as objections to the question or attempts to clarify the question, having the question labeled with a number helps clarify in the record which question the discussion pertained to.)

The Hearing Officer will review the question, consider any objections raised, and then ask the question (if it is an appropriate question). Sometimes, the Hearing Officer may modify a question to avoid confusion or reframe the question to be more appropriate for a student conduct setting. The rules about asking questions will be explained in the prehearing conference. Parties will get a chance to practice using the technology used to submit questions for witnesses during the prehearing conference.

If allegations of EDFR prohibited conduct are part of the hearing, the Department of Education requires that questions are asked orally by advisors. In these cases, a party is required to have an advisor (who may or may not be an attorney) who will ask the question verbally. The Hearing Officer will then determine whether the question is relevant and, if the question is deemed relevant, then the witness may answer it. If the question is not deemed relevant, the Hearing Officer will state why, and the witness will not be allowed to answer it. The party may then try to modify their question to address the problem identified by the Hearing Officer.

Parties are welcome to make an appointment to tour the hearing room and set-up in advance of the hearing. Parties can also ask to practice using the technology to get a sense of what it is like to type questions of witnesses. Counsel should reach out to the hearing office if they have interest in either.

There is typically a break for lunch as well as other breaks during the day. Parties are encouraged to ask the Hearing Officer for a break if they need one. Parties can also ask the Hearing Officer to pause testimony to address questions or issues that arise.

i. Initial order

The Hearing Officer will write and send the initial order to the parties within 90 days of the full hearing. The initial order will include the Hearing Officer’s findings of fact and conclusions of law. If the hearing considered allegations of EDFR prohibited conduct, the initial order will also
meet the requirements specified in WAC 478-121-660. If the Hearing Officer determines that the Respondent was responsible for violating the Student Conduct Code, the initial order will include an order specifying any sanction(s) for a Respondent and any remedy(ies) for a complaint in cases involving allegations of EDFR prohibited conduct. The initial order will include information about how student parties can seek to change the Hearing Officer’s decisions.

IX. Administrative Review

Students who want to appeal an initial order can do so by requesting administrative review. A panel of reviewing officers made up of faculty will review the initial order to determine if there grounds for changing it. The provisions of WAC 478-121-430 through -443 cover this process when a hearing did not involve allegations of EDFR prohibited conduct. If the hearing included the consideration of allegations of EDFR prohibited conduct, also consult WAC 478-121-665. Parties can request a copy of the hearing transcript from the hearing office when considering whether to request administrative review.

Once an appeal or request for administrative review has been submitted, the other student party (if any) will have an opportunity to submit their perspective on the request. If the case did not involve allegations of EDFR prohibited conduct, the Hearing Officer will submit the University’s response to the request for administrative review. The requesting party most likely will not be allowed to submit a reply to these responses.

For more information on administrative review, including recommendations and guidelines for requests, what to include, and things to consider, see https://www.washington.edu/studentconduct/administrative-reviews/

X. Request for Reconsideration

Parties can also submit a request for reconsideration to the Hearing Officer once the initial order becomes a final order. This happens 21 days after the issuance of the initial order if no one requests administrative review. Parties can also request reconsideration of the review panel’s decision by submitting a request to the panel. The provisions of WAC 478-121-447 + 450 cover this process.
**Day of Full Hearing Process**

**Hearing Starts**

- Introductions
- Orientation about the full hearing process
- Questions?

**Opening Remarks**

- Conduct Officer
- Complainant
- Respondent

**Witness Testimony**

1. Hearing Officer asks witness questions

2. Parties each have a turn to propose questions

3. Any follow-up questions

- Proposed questions are submitted electronically to the Hearing Officer through the Zoom chat feature.
- The order of who proposes questions first may change depending on the witness. For example, if Complainant is testifying, after the Hearing Officer has finished asking Complainant questions, the Complainant will first get to testify about anything else they want to cover before the Conduct Officer or Respondent may ask them questions.
- Follow-up questions are allowed if the questions are about the witness's answers to earlier questions from other parties.
- Process is repeated for each witness. Parties may testify as witnesses.
- Parties can ask for breaks as needed. Breaks are often taken between testimony.

**Closing Remarks**

- Conduct Officer
- Complainant
- Respondent

- Rebuttal
- Closing Remarks

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