

**WESTERN WASHINGTON UNIVERSITY
ITEM SUBMITTED TO THE BOARD OF TRUSTEES**

TO: Members of the Board of Trustees

FROM: President Sabah Randhawa on behalf of:
Melynda Huskey, Vice President for Enrollment and Student Services

DATE: April 13, 2018

SUBJECT: **Approval to Amend WAC 516-24-130, Demonstrations**

PURPOSE: Action Item

Purpose of Submittal:

The manifestation of violence and intimidation observed in on-campus demonstrations in Washington State and across the United States over the past several months necessitate changes to WAC 516-24-130 in order to preserve the integrity of Western Washington University's educational mission, to protect the health, safety and welfare of students, faculty and staff, and to preserve University property and scarce state resources while at the same time preserving its strong commitment to freedom of expression.

Proposed Motion:

MOVED, that the Board of Trustees of Western Washington University, upon recommendation of the President, approve the permanent rule change to WAC 516-24-130, Demonstrations as submitted.

Background:

Permanent rule making for WAC 516-24-130, Demonstrations, began in fall 2017 in response to emergency rule adoption by the Board of Trustees in October, 2017. The purpose of emergency rule adoption was to immediately, on an interim basis, address time, place, and manner of freedom of expression and update subsections regarding prohibited conduct. Since the emergency rule's adoption, a revision committee was created to begin the permanent rule making process.

The development of the proposed permanent rule was conducted by Eric Alexander, Associate Dean for Student Engagement and included representatives from the Attorney General's Office, Risk Management, Public Safety Department, Government Relations, Office of Student Life, Associated Students, and UFWW. The proposed rule was reviewed by the Technical Review Committee and President's Cabinet and a public hearing was held to solicit community and campus feedback.

Proposed amendments include:

- Change in WAC title from "Demonstrations" to "Freedom of Expression and Prohibited Conduct"

- A recognition that the University is committed to a safe campus and insuring safety to campus community members as well as preventing loss or damage to facilities or property.
- Added language that a violation of WAC 516-52-020 is prohibited conduct.
- Added additional language regarding prohibited conduct to include obstruction or interference with recognized University activities, obstruction or interference with pedestrian or vehicular traffic, and obstruction or interference with preservation and protection of University property, as well as prohibiting behavior that is threatening.

Supporting Information:

Attachment 1 - WAC 516-24-130 WAC, Demonstrations, with amendments

Attachment 2 - Hearing Officer's Report

Attachment 3 - Audio recording of public hearing - <https://youtu.be/vAidFzAZVVw>

AMENDATORY SECTION (Amending WSR 01-09-052, filed 4/13/01, effective 5/14/01)

WAC 516-24-130 ((Demonstrations.)) Freedom of expression and prohibited conduct. The value of active participation in political and social issues is recognized by Western Washington University as enhancing the education of the individual and contributing to the betterment of American society. The rights of free speech, petition and assembly are fundamental to the democratic process guaranteed under the Constitution of the United States and will be promoted and respected at all times.

The university ((further)) also recognizes that it has an obligation to maintain on campus an atmosphere that allows the institution to perform the fundamental task of providing an opportunity for all members of the community to pursue knowledge through accepted academic processes.

The university further recognizes that it is committed to a safe campus, ensuring the safety of its community members and preventing loss or damage to its facilities or property.

To achieve these objectives it is essential that ((demonstrations)) freedom of expression and assembly be orderly and conducted in a time, place, and manner that allows the orderly function of the university. Any person or group of persons shall not, by their conduct ((, disrupt, disturb or interfere with:

~~(1) Classroom activities and other educational pursuits;~~

~~(2) Recognized university activities including, but not limited to, ceremonies, meetings, office functions or residence hall activities;~~

~~(3) Pedestrian and vehicular traffic;~~

~~(4) Preservation and protection of university property and personal property of individuals.)):~~

(1) Violate the prohibition of firearms, weapons, armor or armaments as set forth in WAC 516-52-020.

(2) Obstruct or interfere with classroom activities and/or other educational or employment pursuits.

(3) Obstruct or interfere with recognized university activities including, but not limited to, ceremonies, meetings, office functions or residence hall activities.

(4) Obstruct or interfere with pedestrian or vehicular traffic.

(5) Obstruct or interfere with the preservation and protection of university property and personal property of individuals.

(6) Threaten, by statement or implication, the health or safety of others.

(7) Contact or communicate in a threatening nature that harasses, would cause a reasonable person to fear for their safety, or which is so persistent, pervasive, or severe as to deny a person's ability to substantially participate in the university community.

Any person persisting in such conduct after being requested to cease by university authorities, shall be subject, as appropriate, to disciplinary proceedings, trespass, or arrest and prosecution.

WWU RULE-MAKING REVIEW
Hearing Officer's Report
WAC 516-24-130, Demonstrations
WAC 516-52-020, Firearms and Dangerous Weapons

On March 13, 2018, at 12:09 p.m., in Old Main 340, a public hearing was held on a proposal to amend WAC 516-24-130, Demonstrations and WAC 516-52-020, Firearms and Dangerous Weapons. The hearing was conducted by Jennifer Sloan, Rules Coordinator. The hearing was held pursuant to the authority provided in the Revised Code of Washington, Open Public Meetings Act and Administrative Procedures Act.

The testimony and Hearing Officer's Report are provided to President Sabah Randhawa for consideration of the permanent rule change. Upon approval, the proposed code is presented to the Board of Trustees for adoption and is effective 31 days after filing with the Code Reviser's Office.

Notice of Hearing

Notice of public hearing was published in the February 21, 2018 issue of the *Washington State Register* (18-04-104) and (18-04-105). Notice of hearing was also published February 21, 2018 on the University's online newsletter, *Western Today*, and in the campus newspaper, *Western Front*.

Hearing Attendance

The hearing was attended by: Darin Rasmussen, Director of Public Safety / Chief of Police; Eric Alexander, Associate Dean of Student Engagement / Director of the Viking Union; Paul Mueller, Director, Risk, Compliance & Policy Services; Michael Sledge, Assistant Dean of Students; Sara Wilson, Special Assistant to the Vice President for Enrollment and Student Services; Aaron Gillis, *Western Front*; and Rob Olson, Assistant Attorney General. A copy of the sign-in roster is attached.

Summary

Eric Alexander, Associate Dean of Student Engagement / Director of the Viking Union, began the hearing by providing an overview of the proposed amendments to WAC 516-24-130. Proposed amendments included:

- Change in WAC title from Demonstrations to Freedom of Expression and Prohibited Conduct
- A recognition that the University is committed to a safe campus and insuring safety to campus community members as well as preventing loss or damage to facilities or property.

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- Added language that a violation of WAC 516-52-020 is prohibited conduct.
- Added additional language regarding prohibited conduct to include obstruction or interference with recognized University activities, obstruction or interference with pedestrian or vehicular traffic, and obstruction or interference with preservation and protection of University property, as well as prohibiting behavior that is threatening.

Darin Rasmussen, Director of Public Safety / Chief of Police, provided an overview and background of the proposed amendments to WAC 516-52-020. Chief Rasmussen began by stating that it is helpful to know that we looked at addressing and changing this WAC to maximize the opportunity for freedom of expression on campus while providing reasonable restrictions and greater clarification as to what weapons, arms and armaments, ammunitions, and explosives are and what is permitted on campus. Chief Rasmussen explained that an emergency rule was adopted by the Board of Trustees in October, 2017 and permanent rule making occurred shortly thereafter. Input was sought from students, faculty, and staff. The rule development committee also took into consideration campus culture and activities; for example, humans vs. zombies. The proposed amendments are consistent with the student conduct code and the goal was to better organize the current rule that was last revised in 1993. Proposed changes include:

- A change in WAC title from Firearms and Dangerous Weapons to Weapons and Armaments Prohibited.
- Addition of definitions to better define weapons, arms and armaments, and firearm.
- Clarify who can possess weapons on campus and where weapons can be checked and stored when a person comes to campus.

Testimony

The Rules Coordinator reported on written testimony received by a student and read the comments into the record.

1. For student assembly and expression on campus, I urge the rule-makers to remember that freedom of speech and assembly, no matter how distasteful they might be, should be protected as long as they do not pose a direct, physical threat to students or property. It is saddening to see in national news that voices that do not conform to a leftist political mindset being shut down by student protests without allowing controversial speakers to have a chance to speak their opinions.

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Let me be clear that I do not support the ideologies of headline controversial speakers like Richard Spencer, but I do believe that Western should lean on the side of free speech, unless opponents of the controversial speaker can prove that what he is saying is a threat. It is not the speaker's fault that people who oppose them react violently.

Colleges should be a place where ideas can be shared freely without fear on all sides of the political spectrum and I hope that the university keeps this in mind.

2. I am not sure what the proposed changes to the school's weapon policy are, but I assume that they are being revised to become more restrictive. As the news is filled with story after story of violence on college campuses and mass shootings, it might seem like a good idea to restrict weapons on campus further. I do not believe that is the right course of action. I believe that restricting "weapons" and self-defense means to students only increases the risk of violence. I do not believe that a "bad guy" will obey campus policies and this only puts the rule-abiding students at a further disadvantage in a potential violent situation.

If you read *The Western Front*, a recent edition brought to light some aspects that make Western unprepared for a mass shooting scenario as well as safety risks in the neighborhoods by burglars and voyeurs. I believe that these events point to a need for students to be better equipped to defend themselves.

I believe that Western's weapon policy, particularly its firearm policy, should be considered by experts to see if it is time that the school loosens this policy to allow students to carry on campus.

This should, of course, be heavily regulated. Students should register their firearms with campus police, show proper knowledge of their use and safety, and pass rigorous background checks and mental health screenings.

If this is not feasible, and I understand completely how unlikely it is, I believe that Western's weapon policy should not be further restricted. I believe that students should have more opportunities to defend themselves. This applies not only to the unlikely event of a mass shooting, but also to the more common incidents of burglary, assault, indecent exposure and theft that have plagued campus.

People may accuse me of being alarmist and that having more weapons on campus will contribute to a climate of fear and distrust. I advocate the opposite. I believe that having properly educated, properly equipped and properly trained students will decrease fear because people will know that they are ready. I advocate for a culture of preparedness and empowerment.



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Mr. Alexander responded to the first comment by thanking the contributor for the comment and stating that we are committed to freedom of speech and assembly and throughout the rule development process worked closely with University legal counsel to ensure that we are engaging in content neutral determinations about free speech, expression and conduct. A freedom of expression and assembly website is available and outlines all the commitments, perspectives, and policies of the University.

Chief Rasmussen responded to the second comment by thanking the contributor for the comment and stating we recognize people's rights under the Constitution of the United States and the Washington State Constitution the right to keep and bear arms; however, as we look at weapons, we want to be sure to provide a safe and secure place for the educational mission of the University to continue and he believes the amendment to the WAC does do that.

Audience Comments and Questions

There were no audience comments and no further testimony was given.

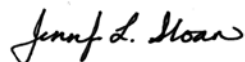
The hearing adjourned at 12:21 p.m.

Conclusion

Considering the thorough review process WAC 516-24-130 and WAC 516-52-020 received during the past several months, and considering the testimony received in writing, I recommend the following:

- That President Randhawa approve the revisions to WAC 516-24-130, Demonstrations, and WAC 516-52-020, Firearms and Dangerous Weapons; and further, that the proposed rule changes be brought before the Board of Trustees for consideration.

Respectfully submitted,



Jennifer Sloan
Rules Coordinator

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Attachments:

- Public Hearing Sign-In Sheet
- Audio Recording of Public Hearing



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WAC 516-24-130 – Current rule

WAC 516-24-130 – Final Draft of Proposed Rule

WAC 516-52-020 – Current rule

WAC 516-52-020 – Final Draft of Proposed Rule

WAC 516-24-130 Demonstrations. The value of active participation in political and social issues is recognized by Western Washington University as enhancing the education of the individual and contributing to the betterment of American society. The rights of free speech, petition and assembly are fundamental to the democratic process guaranteed under the Constitution of the United States and will be promoted and respected at all times.

The university further recognizes that it has an obligation to maintain on campus an atmosphere that allows the institution to perform the fundamental task of providing an opportunity for all members of the community to pursue knowledge through accepted academic processes.

To achieve these objectives it is essential that demonstrations be orderly and conducted in a manner that allows the orderly function of the university. Any person or group of persons shall not, by their conduct, disrupt, disturb or interfere with:

(1) Classroom activities and other educational pursuits;

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(4) Preservation and protection of university property and personal property of individuals.

Any person persisting in such conduct after being requested to cease by university authorities, shall be subject, as appropriate, to disciplinary proceedings or arrest and prosecution.

[Statutory Authority: RCW 28B.35.120(12). WSR 01-09-052, § 516-24-130, filed 4/13/01, effective 5/14/01. Statutory Authority: RCW 28B.35.120(12), 34.05.220 (1)(b), 34.05.250, 28B.15.600, 42.17.310, 42.30.070 - 42.30.075, chapters 69.41 and 43.21C RCW. WSR 90-10-042, § 516-24-130, filed 4/27/90, effective 5/1/90; Order 72-10, § 516-24-130, filed 11/17/72.]

AMENDATORY SECTION (Amending WSR 01-09-052, filed 4/13/01, effective 5/14/01)

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(7) Contact or communicate in a threatening nature that harasses, would cause a reasonable person to fear for their safety, or which is so persistent, pervasive, or severe as to deny a person's ability to substantially participate in the university community.

Any person persisting in such conduct after being requested to cease by university authorities, shall be subject, as appropriate, to disciplinary proceedings, trespass, or arrest and prosecution.

WAC 516-52-020 Firearms and dangerous weapons. (1) Only such persons who are authorized to carry firearms or other weapons as duly appointed and commissioned law enforcement officers in the state of Washington, commissioned by agencies of the United States government, or authorized by contract with the university, shall possess firearms or other weapons issued for their possession by their respective law enforcement agencies or employers while on the campus or other university-controlled property, including, but not limited to, residence halls. No one may possess explosives unless licensed to do so for purposes of conducting university-authorized activities relating to building construction or demolition.

(2) Other than the law enforcement officers or other individuals referenced in subsection (1) of this section, members of the campus community and visitors who bring firearms or other weapons to campus must immediately place the firearms or weapons in the university-provided storage facility. The storage facility is located at the university public safety department and is accessible twenty-four hours per day.

(3) If any member of the campus community or visitor wishes to bring a weapon to the campus for display or demonstration purposes directly related to a class, seminar, or other educational activity,

permission for such possession may be applied for at the university public safety department, which shall review any such proposal and may establish the conditions of the possession on campus.

[Statutory Authority: RCW 28B.35.120(12). WSR 93-01-080, § 516-52-020, filed 12/14/92, effective 1/14/93; WSR 90-17-031, § 516-52-020, filed 8/9/90, effective 9/1/90.]

AMENDATORY SECTION (Amending WSR 93-01-080, filed 12/14/92, effective 1/14/93)

WAC 516-52-020 ((Firearms and dangerous)) Weapons and armaments prohibited. (1) Definitions. As used in this section, the following words and phrases mean:

(a) Armor or armaments. Includes, but are not limited to, shields, body armor, tactical gear, face masks, and helmets.

(b) Firearm. A weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder, whether loaded or unloaded.

(c) Weapon. Includes, but is not limited to, air guns, pellet guns, paint ball guns, or other pneumatic propellant devices, bows, crossbows, slingshots or other muscle powered projectile devices, daggers, swords, knives or other cutting or stabbing instruments with blades longer than three inches, clubs, bats, sand clubs, truncheons, metal knuckles, incendiary devices or materials, or any other objects or instruments apparently capable of producing bodily harm.

(2) Only such persons who are authorized to carry firearms, ammunition, or other weapons or armaments as duly appointed and commissioned law enforcement officers in the state of Washington, commissioned by agencies of the United States government, or authorized by contract with the university, shall possess firearms or other weapons or armaments issued for their possession by their respective law enforcement agencies or employers while on the campus or other university-controlled property, including, but not limited to, residence halls. ((No one may possess explosives unless licensed to do so for purposes of conducting university authorized activities relating to building construction or demolition.

(2) Other than the law enforcement officers or other individuals referenced in subsection (1) of this section, members of the campus community and visitors who bring firearms or other weapons to campus must immediately place the firearms or weapons in the university provided storage facility. The storage facility is located at the university public safety department and is accessible twenty four hours per day.

(3) If any member of the campus community or visitor wishes to bring a weapon to the campus for display or demonstration purposes directly related to a class, seminar, or other educational activity, permission for such possession may be applied for at the university public safety department, which shall review any such proposal and may establish the conditions of the possession on campus.))

(3) Other than the law enforcement officers or other individuals referenced in subsection (2) of this section, individuals seeking to bring a firearm or other weapon onto campus, university-owned property, or a university sponsored event must obtain prior written authorization at the university public safety department, which shall have sole authority to review and approve any such request and, if approval is granted, establish conditions to the firearm or weapon authorization.

(4) Members of the campus community and visitors who bring firearms or other weapons or armaments to campus without prior authorization must immediately remove them from university property or place the firearm(s), weapon(s), or armament(s) in the university provided storage facility. The storage facility is located at the university public safety department and is accessible twenty-four hours per day.

(5) Possession of a valid concealed pistol license authorized by the state of Washington is not an exemption under this section. However, nothing in this section shall prevent an individual holding a valid concealed pistol license from securing their pistol in a vehicle as authorized under RCW 9.41.050.

(6) Except for those persons identified in subsection (2) of this section or under the circumstances described in subsection (3) or (4) of this section, possession of firearms, ammunition, fireworks, and explosives is prohibited on the university campus, university-owned property, and at university sponsored events. No one may possess fireworks or explosives unless certified or licensed to do so for purposes of conducting university-authorized activities, building construction or demolition.

(7) Some weapons including, but not limited to, sports equipment, kitchen utensils, laboratory materials and equipment, safety training equipment, and props in campus theatre productions are permitted when used for the purpose for which they are intended. Use of weapons, armor, or armaments in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons or property, or in any way to avoid apprehension for a criminal act or acts is prohibited.

(8) Violations of this section are subject to appropriate disciplinary or legal action.

