

Chapter 172-108 WAC

ADJUDICATIVE PROCEEDINGS

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 172-108-080 | Petitions for stay of effectiveness. [Statutory Authority: RCW 28B.35.120(12). WSR 92-09-100, § 172-108-080, filed 4/20/92, effective 5/21/92.] Repealed by WSR 14-24-038, filed 11/24/14, effective 12/25/14. Statutory Authority: RCW 28B.35.120(12). |
| 172-108-090 | Adoption of model rules of procedure. [Statutory Authority: RCW 28B.35.120(12). WSR 92-09-100, § 172-108-090, filed 4/20/92, effective 5/21/92.] Repealed by WSR 14-24-038, filed 11/24/14, effective 12/25/14. Statutory Authority: RCW 28B.35.120(12). |

WAC 172-108-010 Introduction. Eastern Washington University conducts adjudicative proceedings as required by the Administrative Procedure Act, chapter 34.05 RCW.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-038, § 172-108-010, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-010, filed 4/20/92, effective 5/21/92.]

WAC 172-108-020 Appointment of presiding officer. The president of Eastern Washington University or an authorized designee shall have the power to appoint a presiding officer for formal and brief adjudicative proceedings. The term presiding officer shall mean one or more presiding officers as appointed by the president or authorized designee. Where more than one individual is designated to be the presiding officer, one person may be designated to make procedural decisions.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-038, § 172-108-020, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-020, filed 4/20/92, effective 5/21/92.]

WAC 172-108-030 Method of recording and recording devices. The presiding officer is responsible for maintaining a record of the proceedings which shall include all documents prepared for and used in the adjudicative proceeding. The university may record proceedings using a method determined by the presiding officer, among those available pursuant to the model rules of procedure in WAC 10-08-170. No cameras or recording devices are allowed in those parts of proceedings which the presiding officer has determined closed pursuant to WAC 172-108-060, except for the method of official recording selected by the institution.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-038, § 172-108-030, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-030, filed 4/20/92, effective 5/21/92.]

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WAC 172-108-035 Advising and representation of parties. Parties to any brief adjudicative proceeding as designated in WAC 172-108-050, may be assisted by one advisor of their choice, subject to the following provisions:

(1) Any fees or expenses associated with the services of an advisor are the responsibility of the person who employed the advisor;

(2) The advisor may be an attorney;

(3) Advisors may not speak or participate directly in any proceeding; the person requesting an adjudicative proceeding is responsible for presenting their own case but may speak quietly with their advisor during such proceedings;

(4) If an attorney is used as an advisor, the person using the attorney shall inform the presiding officer of their intent to do so at least two business days prior to any adjudicative proceeding; and

(5) The presiding officer shall have the power to impose reasonable conditions upon participation of advisors and representatives.

[Statutory Authority: RCW 28B.35.120(12). WSR 17-11-051, § 172-108-035, filed 5/15/17, effective 6/15/17; WSR 14-24-038, § 172-108-035, filed 11/24/14, effective 12/25/14.]

WAC 172-108-040 Formal adjudicative proceedings.

(1) Eastern Washington University utilizes a formal adjudicative proceeding for certain student conduct proceedings as identified in chapter 172-121 WAC and certain academic integrity code proceedings as identified in chapter 172-90 WAC. The procedural rules for these formal adjudicative proceedings are contained in the Student conduct code, chapter 172-121 WAC, and the academic integrity code, chapter 172-90 WAC. In all other cases, Eastern Washington University only utilizes formal adjudicative proceedings when required by RCW 34.05.413 through 34.05.476. For such proceedings, excluding the student conduct process, Eastern Washington University adopts the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, except for those rules which are in conflict with the provisions set forth in this chapter. The model rules are contained in chapter 10-08 WAC. In the case of a conflict between the model rules of procedure and these procedural rules, the procedural rules adopted by Eastern Washington University shall govern.

(2) An application for a formal adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Office of the President; Eastern Washington University; Showalter 214, Cheney, WA 99004-2496. Written application for a formal adjudicative proceeding in response to the institution's action must be submitted to the above address within twenty-one calendar days of the action, unless otherwise provided by statute or rule.

[Statutory Authority: RCW 28B.35.120(12). WSR 17-11-051, § 172-108-040, filed 5/15/17, effective 6/15/17; WSR 14-24-038, § 172-108-040, filed

11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-040, filed 4/20/92, effective 5/21/92.]

WAC 172-108-050 Brief adjudicative proceedings. In accordance with RCW 34.05.410 (1)(a), the procedures identified in RCW 34.05.482 through 34.05.494 apply to all brief adjudicative proceedings at Eastern Washington University. All applications for a brief adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Office of the President; Showalter 214; Eastern Washington University; Cheney, WA 99004-2496. Written application for a brief adjudicative proceeding in response to the institution's action must be submitted to the university within twenty-one calendar days of the action, unless a different time frame is specified in the regulations identified below that apply to the type of decision being challenged. When required by law or constitutional right, brief adjudicative proceedings shall be used in all matters of appeal related to:

- (1) Residency determinations made pursuant to RCW 28B.15.013 and chapter 250-18 WAC;
- (2) Challenges to contents of education records, review of the denial to inspect such records, or challenges to the disclosure of such records. In addition to the rules identified below, these challenges are governed by chapter 172-191 WAC;
- (3) Student conduct proceedings, if the potential sanction for the alleged misconduct does not include suspension, expulsion, or an allegation of felony-level sexual misconduct. In addition to the rules identified below, these proceedings are governed by chapter 172-121 WAC;
- (4) Outstanding debts owed by students or employees, pursuant to chapters 172-124 and 172-144 WAC;
- (5) Traffic and parking violations and revocations of any parking permit pursuant to chapter 172-100 WAC;
- (6) Student academic integrity proceedings, if the potential sanction for the alleged misconduct does not include suspension or expulsion. In addition to the rules identified in this section, these proceedings are governed by chapter 172-90 WAC;
- (7) Library fines and charges;
- (8) Reduction, cancellation, or nonrenewal of institutional financial aid when based in any degree on athletics ability per National Collegiate Athletic Association rules;
- (9) Administrative decisions regarding mandatory tuition and/or fee waivers;
- (10) Intellectual property ownership determinations in accordance with EWU Policy 302-04;
- (11) Ethics in research violations in accordance with EWU Policy 302-05;
- (12) Matters subject to review by the academic appeals board in accordance with EWU Policy 303-21;
- (13) Matters subject to review regarding graduate students in accordance with EWU Policy 303-22;
- (14) Citations issued by university police regarding the use of golf carts and utility vehicles, in accordance with EWU Policy 603-06;
- (15) Fines imposed for impermissible use of tobacco, electronic cigarettes, and related products in accordance with WAC 172-122-310;

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(16) Financial aid appeals as provided for by federal law and in accordance with EWU policies for satisfactory academic progress for undergraduate, post-baccalaureate, and graduate students;

(17) Denial of work study or termination from a work study position when required by federal law;

(18) Notice against trespass issued per WAC 172-122-200;

(19) Denial of request to waive undergraduate housing requirement under chapter 172-130 WAC;

(20) Fines assessed under a university housing agreement; and

(21) Penalties imposed for violations of pet control regulations in accordance with chapter 172-115 WAC.

[Statutory Authority: RCW 28B.35.120(12). WSR 17-11-051, § 172-108-050, filed 5/15/17, effective 6/15/17; WSR 14-24-038, § 172-108-050, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-050, filed 4/20/92, effective 5/21/92.]

WAC 172-108-060 Brief adjudicative proceedings closed. Brief adjudicative proceedings shall be closed to the public unless the Open Public Meetings Act, chapter 42.30 RCW, requires otherwise. If the act requires an open proceeding, then a party may apply to the presiding officer for a protective order to close part of the proceeding. The party making the request should state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed, and state the reasons therefor in writing within twenty days of receiving the request. No cameras or recording devices, other than the official recording method, shall be allowed in proceedings or parts of proceedings which have been closed.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-038, § 172-108-060, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-060, filed 4/20/92, effective 5/21/92.]

WAC 172-108-070 Procedures for brief adjudicative proceedings. For those proceedings identified as brief adjudicative proceedings in WAC 172-108-010, the model rules of procedure, chapter 10-08 WAC shall not apply. Brief adjudicative proceedings shall be governed by the procedures below and RCW 34.05.482 through 34.05.494:

(1) The presiding officer for a brief adjudicative proceeding shall be selected in accordance with WAC 172-108-020.

(2) For any matters subject to review under WAC 172-108-010, the presiding officer shall provide an individual with the opportunity to explain his or her position. If, after considering the information provided, the presiding officer makes a decision that is unfavorable to the individual, such decision shall be conveyed to the individual in writing. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available. The brief written statement shall be considered the university's initial order.

(3) An individual may appeal the initial order by filing a written appeal with the appropriate authority. The appropri-

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ate authority is identified in the rules, policies and procedures adopted by the university regarding such determinations. If the rule, policy, or procedure does not specify who an appeal should be filed with, an appeal may be filed in writing in accordance with WAC 172-108-040.

(4) All appeals from initial orders must be received by the university within twenty-one calendar days from the date the initial order was delivered to the affected individual. If a timely appeal is not received, the initial order becomes the university's final order unless the university, on its own motion, chooses to review an order resulting from a brief adjudicative proceeding in accordance with RCW 34.05.491(1).

(5) Upon receipt of an appeal, a reviewing officer will be appointed. The reviewing officer may be the presiding officer who issued the initial order or any other person or group who would qualify as a presiding officer under WAC 172-108-020.

(6) The reviewing officer shall give each party an opportunity to explain the party's position and shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative proceeding. The reviewing officer is not required to conduct a hearing, but may do so if he or she feels it would be helpful or necessary.

(7) Within twenty days of the filing of the appeal, the reviewing officer must issue a written order containing a brief statement of the reasons for his or her decision. The order shall also include a description of any further available administrative review or, if none is available, a notice that judicial review may be available under chapter 34.05 RCW.

(8) The university shall maintain as its official record any documents regarding its decision that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-038, § 172-108-070, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-070, filed 4/20/92, effective 5/21/92.]