

Chapter 172-135 WAC

MANDATORY MEDICAL LEAVE OF ABSENCE AND RETURN

WAC

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WAC 172-135-010 Purpose. Eastern Washington University is concerned about the health, welfare, and safety of all of its students. To promote an educational environment where all students can be successful, it is necessary for the university to engage with students whose ability to function successfully or safely as students is compromised. In such circumstances, the university may encourage a student to take voluntary leave. However, when a student's behavior renders the student unable to effectively function in the residential or educational community without harming him/herself, others, or unduly disrupting the university community, the dean of students may, after a careful and collaborative review, place a student on mandatory medical leave of absence in accordance with the procedures set forth in this chapter.

This process is only considered in rare situations when other options have been utilized and considered. A mandatory leave of absence is not the preferred option when addressing students' health, welfare, and safety. Any assessment or action taken under this policy will be based on legitimate safety concerns and not based on speculation, stereotypes, or generalizations about individuals with disabilities.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-033, § 172-135-010, filed 10/5/18, effective 11/5/18.]

WAC 172-135-020 Definitions. "Dean" refers to the dean of students or designee.

"Director of CAPS" refers to the director of counseling and psychological services or designee.

"Essential function requirements for a student" are those tasks and responsibilities an individual student is required to perform, with or without reasonable accommodation, in order to remain enrolled at the university. These functions are all related to and consistent with educational necessity. The primary foci of the essential function requirements is the ability to learn, retain information, exhibit self-mastery, and demonstrate knowledge pertaining to academic and personal success. The essential functions for general enrollment include:

- (a) Mental/psychological requirements:
 - (i) Communicating effectively, both verbally and non-verbally, and receiving communication effectively;
 - (ii) Managing and maintaining control over emotions;
 - (iii) Concentrating on tasks;
 - (iv) Remembering information and details;

- (v) Making appropriate decisions; and
- (vi) Adjusting to changing environments that include maintaining emotional health and a demeanor suitable for an academic environment.

(b) Performance requirements:

- (i) Meeting academic/administrative deadlines, completing tasks as assigned;
- (ii) Attending and participating in classes and required meetings with university faculty and staff;
- (iii) Managing stressors associated with studying and, if relevant, residing in a university community.

(c) Interpersonal and intrapersonal requirements:

- (i) Maintaining organization related to academics, health, and well-being, including appropriate hygiene and dress;

- (ii) Adhering to university policies, including the student conduct code and academic integrity policies;

- (iii) Demonstrating appropriate interactions with others including faculty, staff and fellow students;

- (iv) Self-evaluating, identifying, and articulating needs and being able to identify and utilize resources in order to meet those needs.

(d) Other requirements: Additional requirements may be required for some university programs, activities, housing options, majors, and courses.

"Service" means to send notice via email to the student's university email account and via certified letter to the student's last known address. Alternatively, it may be hand delivered to the student.

"Student conduct code" refers to the regulations contained in the student conduct code, chapter 172-121 WAC.

"University" means Eastern Washington University.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-033, § 172-135-020, filed 10/5/18, effective 11/5/18.]

WAC 172-135-030 Risk of health, danger, or disruption. (1) Upon notification of a serious health or safety concern involving a student, the dean will make an individualized assessment of whether a student should be placed on a mandatory medical leave of absence. The dean may require a student to take a medical leave of absence if all of the following elements are met:

- (a) A student has a physical, emotional, or psychological condition;

- (b) As a result of such condition:

- (i) Is not meeting the essential function requirements for a student as set forth in WAC 172-135-020 Definitions;

- (ii) Is engaging in, or is threatening to engage in, behavior that poses a significant risk of causing substantial harm to the health, safety, or welfare of others or actual risk to his or

her own health, safety or welfare, based on an individualized assessment of current medical knowledge or the best available objective evidence, to ascertain: The nature, duration and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk; or

(iii) Is so severely disruptive as to directly and substantially deny or limit another's ability to work, study, participate in, or benefit from the university's programs or activities.

(c) There are no reasonable accommodations that would permit the student to continue participating in the university community without taking a leave of absence or the student has rejected all reasonable accommodations offered by the university and cannot meet the essential function requirements for a student.

(2) In determining whether a student should be placed on a mandatory medical leave of absence, the dean should consult with the director of CAPS, and, where possible, other persons who can provide relevant information about a student's condition and recent behaviors. The dean should consider whether the student could be provided with any reasonable accommodations that would allow the student to perform the essential function requirements of a student and whether there are other conditions that could be imposed on the student to address the health and safety concerns.

(3) While the dean is gathering all of the relevant information, the dean may issue interim conditions on the student's attendance, campus participation, or ability to reside on campus. The dean may require a student to timely provide documentation from a treating medical provider that the student is able to perform the essential function requirements for a student before lifting the interim conditions. The dean will respect the student's confidentiality and will only require a release of medical information for access to the student's medical and mental health records as is reasonably necessary to complete the dean's individualized assessment. Before requesting such a release, absent exigent circumstances, the dean or designee will explain the individualized assessment process and appeal rights to the student in a mode of communication accessible to the student.

(4) Prior to the dean requiring a student to take a medical leave of absence, the student shall be provided, where reasonably possible, with an opportunity to present information about his or her circumstances and/or treatment, where reasonably possible, to the dean. The dean will discuss with the student the option of pursuing a voluntary withdrawal in lieu of proceeding with the process for a mandatory medical leave of absence. The student waives his or her opportunity to provide information to the dean if he or she is unwilling or unable to meet with the dean in a timely manner, or is unable or unwilling to provide written documentation or a release to the dean.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-033, § 172-135-030, filed 10/5/18, effective 11/5/18.]

WAC 172-135-040 Written notification and conditions of leave. (1) Notice: The dean shall issue a written notification of the mandatory medical leave of absence. The written notice shall include:

(a) Effective date of the leave;

- (b) Reasons for requiring the leave;
- (c) Conditions during the leave of absence, if any;
- (d) Conditions for reenrollment, if any;
- (e) A university point of contact during the absence; and
- (f) Information about the appeals process.

(2) Service: The notice shall be served on the student.

(3) Conditions: If the dean issues a mandatory medical leave of absence, the dean may also impose conditions on the student during the mandatory leave as well as conditions for returning to the university after the mandatory leave. The goal of such conditions is to prepare the student for a successful return to the university. Such conditions may include, but are not limited to:

- (a) Restrictions on access to university property;
- (b) Restrictions on participation in university programs or activities;
- (c) Release of treatment records;
- (d) Mandatory medical or psychological assessment of student to address the identified health or safety risks;
- (e) Compliance with treatment recommendations;
- (f) Documentation of ability to meet the essential functions of a student prior to returning; and
- (g) Consultation and assessment with the dean or designee prior to being able to register for classes and the end of the leave period.

(4) Length: The length of the mandatory medical leave of absence will be determined on a case-by-case basis and identified in the notice given to the student. A student placed on a mandatory leave of absence must normally remain out of school for the remainder of the academic year.

(5) Appeal: The notice of mandatory medical leave of absence is subject to the appeal procedures set forth in this chapter.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-033, § 172-135-040, filed 10/5/18, effective 11/5/18.]

WAC 172-135-050 Financial aid, tuition, and grades.

A student placed on a mandatory medical leave of absence will automatically be granted an exceptional circumstances withdrawal for medical purposes from the university for the quarter in which the student is removed in accordance with EWU Policy 303-30. The student will receive a "W" for any courses in which he or she is currently enrolled at the time of the notice of mandatory medical leave. Tuition and fee payments for that quarter will be reversed/refunded. Housing and dining charges will be prorated to the effective date of the student's leave.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-033, § 172-135-050, filed 10/5/18, effective 11/5/18.]

WAC 172-135-060 Returning from a mandatory medical leave of absence.

A student requesting to return to the university after a mandatory leave of absence must notify the dean of his/her intention to return or reenroll approximately two months in advance of the anticipated return. The student must then meet with the dean or dean's designee. The dean will determine the student's readiness to return to assure the health, safety, and well-being of the student and the entire campus community. The dean will conduct an individualized review of the student's records to determine his or her readiness to return. The dean may request documentation to sup-

port the student's return including, but not limited to, medical evaluations, treatment plans, release of medical records, personal statements, and evidence of the ability to meet academic and conduct requirements. A returning student must provide medical documentation that he/she is able to perform the essential functions of a student, with or without an accommodation. The dean will provide the student with a written determination of whether or not the student may return, and any conditions imposed on such return. If the dean determines a student is not ready to return, the dean may issue a new notice of mandatory leave of absence. The new notice is subject to the appeal process set forth in this chapter.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-033, § 172-135-060, filed 10/5/18, effective 11/5/18.]

WAC 172-135-070 Appeal. (1) Filing: A student may appeal the dean's decision to impose a mandatory medical leave of absence. The appeal must be submitted in writing to the vice president for student affairs within twenty-one calendar days from service of the dean's decision. The appeal shall be in writing and shall include:

(a) Student's name;

(b) Basis for disagreeing with the dean's determination, including any supporting documentation; and

(c) What remedy the student is seeking.

(2) Appeal authority: The vice president will forward the appeal to the students of concern board. The students of concern board shall consist of the director of CAPS (or other designated mental health professional), a faculty member, and the director of disability support services or designee.

(3) Appeal period: During the appeal period, the dean's imposition of mandatory medical leave of absence remains in effect until terminated, in writing, by the students of concern board or the vice president.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-033, § 172-135-070, filed 10/5/18, effective 11/5/18.]

WAC 172-135-080 Appeal hearing. (1) Upon receipt of a timely appeal by the student, the vice president shall convene the students of concern board and notify the student of the date, time, and location of the appeal hearing in writing. The notice will include information about how to request accommodations or interpreters. The notice must be served on the student at least seven calendar days prior to the hearing. The vice president may coordinate with the student to facilitate scheduling, but is not required to do so. The vice president shall serve as the presiding officer for the students of concern board. The appeal hearing shall be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

(2) Evidence.

(a) Types of evidence: The students of concern board shall be provided with the documentation reviewed by the dean that formed the basis of the mandatory medical leave of absence notice. The student may provide the board with additional documentation for the board to consider, may testify before the board, and may present witnesses to the board. Evidence, including hearsay evidence, is admissible if in the judgment of the board it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(b) Review of evidence: The student has the right to view all material presented to the board.

(c) Oath: Any testimony of persons before the board shall be made under oath or affirmation.

(d) Witnesses: The student may present witnesses at the board meeting. The presiding officer and board may also ask other witnesses and professionals to attend the hearing and provide the board with additional information beyond what was contained in the written documentation provided to the board. If the student wishes to call a witness, the student is responsible for ensuring the witness is available and present at the time of the hearing.

(e) Exclusion: As the hearing will cover sensitive material, the presiding officer may exclude anyone from the hearing room other than the student, the student's advisor, the presiding officer, and the board.

(f) Accommodations: The student should inform the vice president of any possible need for an interpreter or any accommodation requests at least three days prior to the hearing.

(g) Questioning: The student and the board may ask questions of the witnesses, except the presiding officer may preclude any questions that are inappropriate, irrelevant, immaterial, or unduly repetitious. The presiding officer should explain to the student the reasons for rejecting any questions and will maintain a record of the questions submitted and the determinations made.

(3) Advisor: A student may be assisted by one advisor of his or her choice.

(4) Hearing on the record: A student may waive the opportunity for an in-person hearing and request the board conduct the hearing based solely on written documentation. In such a case, the student may submit written documentation of any additional evidence the student wishes the board to consider in addition to the materials provided by the dean.

(5) Records: The presiding officer shall keep a record of all materials submitted to and reviewed by the board. The presiding officer shall make and keep a recording of the hearing and subsequent transcript, if any. Records shall be kept for seven years and shall be kept confidential to the extent provided by law.

(6) Deliberations and decision: Following the appeal hearing, the board shall meet in private and, within seven business days, determine by majority vote whether to:

(a) Affirm the dean's decision;

(b) Affirm the dean's decision but alter the conditions imposed; or

(c) Reverse the dean's decision and allow the student to remain enrolled with or without conditions.

(7) Service: The board's decision shall be in writing and shall set forth the reasons for the board's decision. A copy of the decision shall be served on the student and a copy provided to the vice president.

(8) Final decision: The board's decision is final and no further appeals may be made under these regulations. Judicial review of the university's decision may be available under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-033, § 172-135-080, filed 10/5/18, effective 11/5/18.]

WAC 172-135-090 Relationship to the student conduct code and other policies. (1) A mandatory medical leave of absence is an administrative decision and is not a disciplinary action. A student may still be held responsible for his or her conduct if the conduct constituted a violation of the student conduct code.

(2) A student who is placed on mandatory leave remains responsible for adhering to and complying with all university regulations, policies, and procedures. Students on probation for disciplinary or academic reasons will resume their probationary status upon their return for the duration of the assigned probationary period.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-033, § 172-135-090, filed 10/5/18, effective 11/5/18.]