

WSR 24-17-113  
PROPOSED RULES

## EASTERN WASHINGTON UNIVERSITY

[Filed August 19, 2024, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-054.

Title of Rule and Other Identifying Information: Student conduct code, chapter 172-121 WAC.

Hearing Location(s): On September 27, 2024, at 12:00 p.m., at 215A Tawanka Commons, Cheney, WA 99004.

Date of Intended Adoption: October 25, 2024.

Submit Written Comments to: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), website <https://inside.ewu.edu/policies>, beginning August 20, 2024, by September 30th at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), by September 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with new Title IX regulations that are effective August 1, 2024, Eastern Washington University (EWU) has designed an updated process for receiving and responding to concerns about students engaging in discrimination, discriminatory harassment, sexual violence, or interpersonal violence (chapter 172-125 WAC). EWU's previous procedures were contained in chapter 172-121 WAC, Student conduct code. To make the regulation more accessible for students and to provide greater support to students throughout the process, the procedures for handling complaints involving discrimination, discriminatory harassment, sexual violence, and interpersonal violence have been moved from the student conduct code to this new code. Procedures and standards that were incorporated into the student conduct code that were specific to Title IX and discrimination are being removed. As identified in chapter 172-108 WAC, EWU declines to adopt the model rules of procedure issued by the office of administrative hearings. Instead, these rules are designed to emphasize the educational nature of the university community and to provide a prompt and equitable process for resolving concerns.

Reasons Supporting Proposal: These changes are being made to make the student conduct process more understandable for students, provide greater support to students who are experiencing discrimination, and comply with updated regulations issued by the United States Department of Education.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Rule is necessary because of federal law, Title VI of the Civil Rights Act of 1964, 42 U.S.C. section 2000d et seq.; Title IX of the Education Amendments of 1972, 20 U.S.C. section 1681 et seq.; Section 504 of the Rehabilitation Act of 1973; Americans with Disability Act of 1990, 42 U.S.C. section 12101 et seq.; chapter 28B.112 RCW, Campus sexual violence.

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, 509-359-6724; and Enforcement: Dr. Shari McMahan, 214 Showalter Hall, Cheney, WA 99004, 509-359-6200.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not subject to RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 19, 2024

Annika Scharosch

Associate Vice President for Civil Rights

Compliance and Business Services

## OTS-5549.1

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-010 Introduction.** Eastern Washington University (EWU) is an academic community dedicated to (~~providing~~) instruction (~~in higher education~~), advancing knowledge through scholarship and research, and (~~providing related services to~~) servicing the (~~community~~) region.

As a public institution of higher education, (~~the university~~) EWU has a special responsibility to create and maintain an academic environment that promotes freedom of inquiry and expression while protecting the rights, opportunities and welfare of students, faculty, staff and guests. To achieve this, (~~the university~~) EWU establishes rules, regulations, procedures, policies, and standards of conduct.

Through the student conduct code as well as other (~~university~~) EWU policies and directives, (~~the university~~) EWU sets forth specific behavioral and academic expectations for students and student organizations. It is the responsibility of each student to clearly understand and comply with (~~these~~) outlined expectations.

The board of trustees of Eastern Washington University, acting under the authority granted by RCW 28B.35.120, has established the following regulations for student conduct and discipline. The responsibility for enforcement of the student conduct code rests with (~~the university~~) EWU president and is further delegated to the vice president for student affairs or designee.

These provisions are not intended to protect any person or class of persons from injury or harm.

EWU's standards of conduct for students with respect to discrimination, discriminatory harassment, interpersonal violence, sexual assault, sexual misconduct, and retaliation are contained in chapter 172-125 WAC. If a report is received that a student has engaged in such conduct, EWU will follow the process set forth in chapter 172-125 WAC. If a report includes potential violations of this code and chapter 172-125 WAC arising out of the same facts and circumstances, the report will be investigated and adjudicated in accordance with chapter 172-125 WAC. In no case will this code be used to investigate and adjudicate violations of chapter 172-125 WAC.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-020 Definitions.** For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

~~("Brief hearing" refers to a brief conduct review hearing before a conduct review officer for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, do not involve a Title IX complaint, and that do not involve felony-level crimes.)~~

"Business days" refers to the days and hours ~~((the university))~~ EWU is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in ~~((the university))~~ EWU holiday schedule.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a student conduct case, ~~((the university))~~ EWU may initiate the student conduct process on its own behalf.

"Conduct review meeting" refers to a meeting before a conduct review officer for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion and that do not involve felony-level crimes.

"Conduct review officer" or "CRO" refers to the person designated to serve as the decision maker for a ~~((brief hearing))~~ conduct review meeting or the presiding officer for a full hearing.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"EWU" means Eastern Washington University.

"EWU official" includes any person employed or contracted by EWU, performing assigned administrative or professional responsibilities.

"EWU premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented, or operated by EWU.

"EWU president" refers to EWU president or designee.

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the student rights and responsibilities office, sending them via United States mail, properly addressed, postage prepaid, to 129 Showalter Hall, or emailing them to srr@ewu.edu.

"Full hearing" refers to a full conduct reviewing hearing before the council for allegations that, if substantiated by a preponderance of the evidence, could result in a sanction of a suspension or expulsion ~~((, involve a Title IX complaint,))~~ or that could constitute felony-level crimes.

"Hearing authority" refers to the decision-maker in a conduct review hearing.

~~("Interpersonal violence" encompasses domestic violence, dating violence, and stalking.)~~

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's ((~~university~~)) EWU email account, by leaving a message on their personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant, respondent, and/or ((~~the university~~)) EWU.

"Policies" or "((~~university~~)) EWU policy" refers to the written regulations of ((~~the university~~)) EWU, including the standards of conduct for students, residence life handbook, housing contract, ((~~university~~)) EWU policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by ((~~the university~~)) EWU or the associated students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies student rights and responsibilities of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to ~~((post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail))~~ send a document through electronic mail addressed to the party's EWU-issued email address or, if the party does not have an EWU-issued email address, to the email address on record with EWU. Service is complete when the email is sent to the email address. Service may also be accomplished by personal delivery or regular U.S. mail. Notifications via regular U.S. mail are sent to the party's last known address or the address on file with the EWU registrar, and service is complete on the date the notice is placed in the mail. The student is responsible for maintaining an updated mailing address on file with the registrar. Recognized or registered student organizations are responsible for updating their mailing address with their designated EWU office.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

~~("Sexual misconduct" encompasses sexual harassment or sexual assault, as defined in WAC 172-121-200.)~~

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person who is enrolled or has been enrolled at ((~~the university~~)) EWU for up to 12 months from the last date they were enrolled;

(c) Nonmatriculated, international students attending institutes or foreign study programs through ~~((the university))~~ EWU; and

(d) Any person who was previously enrolled at ~~((the university))~~ EWU for violations of the code committed while enrolled regardless of when they were enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

~~(("Title IX complaint" means a formal signed complaint from a current student, applicant, employee, or person participating in or seeking to participate in a university program or activity, or by the Title IX coordinator, alleging sexual harassment, sexual assault, domestic violence, dating violence, or stalking for the conduct that occurred on university premises, during a university program or activity within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university. A complaint of sexual misconduct or interpersonal violence will only be considered a Title IX complaint under this code if it meets this definition. Sexual misconduct or interpersonal violence may still be addressed under this code if it does not meet the definition of a Title IX complaint.))~~

"Title IX coordinator" refers to the Title IX coordinator or designee.

~~(("University" means Eastern Washington University.~~

~~"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.~~

~~"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.~~

~~"University president" refers to the university president or designee.)~~

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

#### NEW SECTION

**WAC 172-121-021 Calculation of time periods.** In calculating any of the time periods identified in this code, the day of any act or service of notice is not included in calculating the deadlines. For example, if a student is served with an order on a Monday and the student has 10 calendar days to appeal the order, the date of service (Monday) does not count towards the time period, the next day (Tuesday) does count toward the time period, and the appeal would be due by 5:00 p.m. on the following Thursday.

If the last day of a time period ends on a Saturday or Sunday, the deadline is extended to 5:00 p.m. on Monday. If the last day of a time period ends on an EWU holiday, the deadline is extended to 5:00 p.m. on the next weekday following the holiday.

AMENDATORY SECTION (Amending WSR 21-12-037, filed 5/25/21, effective 6/25/21)

**WAC 172-121-030 Rights of students.** Any student or student organization charged with any violation of the student conduct code ~~((and the complainant in the case of an allegation of sexual misconduct or interpersonal violence, have))~~ has the following rights where applicable:

- (1) ~~((The))~~ Right to a fair and impartial conduct review process;
- (2) ~~((The right to prior))~~ Right to receive written notice prior to ~~((attend))~~ a prehearing conference or hearing;
- (3) ~~((The))~~ Right to remain silent during any conduct review hearing;
- (4) ~~((The))~~ Right to know who filed the complaint against them as described in WAC 172-121-110;
- (5) ~~((The))~~ Right to speak on their own behalf in all proceedings;
- (6) ~~((The))~~ Right to hear all information and view all material presented against ~~((him or her))~~ them;
- (7) The right to call witnesses for a full hearing as described in WAC 172-121-122;
- (8) The right to ask or submit questions to be asked of witnesses for a full hearing, in a method determined by the conduct review officer, as described in WAC 172-121-122;
- (9) The right to consult an advisor as described in WAC 172-121-105(3);
- (10) The right to be presumed not responsible;
- (11) ~~((Complainants have the right to opt out of participating in the student conduct process;~~
- ~~(12))~~ The right to appeal as provided in WAC 172-121-130; and
- ~~((13))~~ (12) The right to be subjected to ~~((university))~~ EWU disciplinary action only one time for the same conduct.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-070 Conduct review officials.** (1) **The director of SRR** or designee shall:

- (a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;
  - (b) Manage the proceedings as described in this chapter;
  - (c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;
  - (d) Ensure complaints are promptly investigated and resolved as required by federal and state laws; and
  - (e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects ~~((the university))~~ EWU or ~~((university))~~ the EWU community and whether the conduct process should be initiated.
- (2) **Conduct review officer (CRO):** The ~~((university))~~ EWU president delegates to the vice president of student affairs the authority to designate one or more CRO(s). The director of SRR, dean of students, or any other qualified individual may be designated as a CRO. The CRO(s) shall preside over ~~((brief hearings))~~ conduct review meetings and full conduct hearings under this chapter. For ~~((brief hear-~~

ings)) conduct review meetings, the CRO shall serve as the decision maker. For full hearings, the CRO shall serve as the presiding officer.

As the presiding officer((~~r~~)) in full hearings, the CRO has authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas pursuant to RCW 34.05.446;
- (d) Rule on procedural matters, objections, and motions;
- (e) Rule on motions for summary judgment;
- (f) Rule on offers of proof and receive relevant evidence;
- (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;
- (j) Take official notice of facts pursuant to RCW 34.05.452(5);
- (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (m) Issue an order of default;
- (n) Hold prehearing conferences; and
- (o) Take any other action necessary and authorized by any applicable statute or rule.

(3) **Student disciplinary council:** The council serves as the decision maker for full hearings with respect to a finding of responsibility. The CRO in full hearings serves as the decision maker with respect to determining appropriate sanction(s) and remedies, upon a finding of responsibility.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the vice president for student affairs. (~~Appointment of council pool members is as follows:~~)

(i) (~~Faculty and staff members are appointed for three-year terms. Student members are appointed for one-year terms;~~) Councilmembers must meet the requirements of the role to serve on the hearing board. Councilmember appointments may be revoked;

(ii) Council chair (conduct review officer): Designated CRO who chairs council proceedings;

(iii) Vacancies: Council pool shall be filled as needed through appointment by the vice president for student affairs.

(b) Session council: When a student disciplinary council is needed for a full hearing, the director or designee, shall identify available members from the council pool to serve as the session council. Each session council must include three members. The council may consist of students, staff, or faculty members. Full hearings are determined by a majority vote of the council.

(4) **Investigator:** (~~For all Title IX, sexual misconduct, and interpersonal violence complaints, and certain other cases at the director's discretion, the director may assign a complaint to~~) An EWU investigator may be assigned to conduct an investigation. If an EWU investigator is assigned outside of student rights and responsibilities,

the investigator will provide a written investigative report to the director of student rights and responsibilities.

(5) **Presenter in cases of a full hearing:** In full hearings, a person will present a case against the respondent on behalf of ((the university)) EWU. The presenter will call witnesses, ask questions, and offer evidence during the hearing. The presenter may be the director of SRR, designee, or an assistant attorney general appearing on behalf of ((the university)) EWU.

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

**WAC 172-121-080 Administration and records.** (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed at least every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) ~~((A summary of the proceedings during))~~ An audio recording of a prehearing conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings;

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council or conduct review officer (CRO);

(vi) Evidence submitted, whether or not accepted, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476;

(x) ~~((For Title IX complaints, and remedies provided to the complainant designed to restore or preserve equal access to the university's programs or activities; and~~

~~(xi))~~ Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student ~~((discipline))~~ disciplinary council or CRO communicates with a party about a nonprocedural matter regarding the hearing when the other party is not present.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of ~~((the university))~~ EWU and are confidential to the extent provided in applicable law.



(d) Prior to the final disposition of a case, the respondent may review the records relative to their case. The respondent shall request to review the case records by contacting the CRO. The CRO shall make every reasonable effort to support the respondent's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with ~~((the university's))~~ EWU's records retention schedule.

(b) Release of student disciplinary records. ~~((The university))~~ EWU shall not communicate a student's disciplinary record to any person or agency outside ~~((the university))~~ EWU without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) ~~((The university))~~ EWU shall release information related to disciplinary records to complainants or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and ~~((university))~~ EWU personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review ~~((his/her))~~ their own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) ~~((The university))~~ EWU may disclose to a student's parents a violation of any federal, state, or local law, or of any ~~((university))~~ EWU policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

~~((d) Supportive measures. The university will keep any supportive measures provided to the complainant or respondent in sexual misconduct or interpersonal violence cases confidential to the extent that maintaining such confidentiality will not impair the ability of the university to provide the supportive measures.))~~

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic or

EWU activities. (~~Hold~~ may also restrict access to transcripts, grades, or other academic records.)

(b) Discretionary holds: The CRO may place a hold on a (~~student's academic records~~) student in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the CRO.

(c) Required holds: The CRO shall place a hold on a student's (~~academic~~) EWU record if the student is the respondent to a violation of the conduct code and has withdrawn from (~~the university~~) EWU, or if the student withdraws from (~~the university~~) EWU after a complaint is filed against the student. A hold is also required if a student is subject to a pending student conduct complaint at the time of graduation. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 24-01-030, filed 12/8/23, effective 1/8/24)

**WAC 172-121-100 Complaints. (1) Filing of complaints.**

(a) Any person or (~~the university~~) EWU may file a complaint against a student or student organization for violation of the student conduct code. Complaints must be submitted in good faith.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities ([www.inside.ewu.edu/srr](http://www.inside.ewu.edu/srr)); or

(ii) Title IX coordinator ([www.inside.ewu.edu/titleix](http://www.inside.ewu.edu/titleix)).

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where (~~the university~~) EWU is pursuing a student conduct case on its own behalf, an EWU employee shall initiate the complaint. (~~For Title IX complaints, a complaint must either be filed by the person subject to the alleged misconduct or by the Title IX coordinator. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.~~)

(2) **Complaint review.** Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it (~~includes allegations of sexual misconduct or interpersonal violence,~~) may lead to suspension or expulsion and/or involves felony level criminal conduct to determine which student conduct process applies and if appropriate law enforcement or other authorities should be notified. If a complaint falls within such categories, it shall be referred to a hearing under WAC 172-121-122. If the director of SRR receives a complaint that involves potential violations of chapter 172-125 WAC, the director will refer the complaint to the Title IX coordinator within 24 hours to handle under the procedures contained in chapter 172-125

WAC. For all other complaints, the director may determine whether or not to dismiss the complaint, refer the matter to adaptable dispute resolution under WAC 172-121-102, or refer the matter for a ((brief)) conduct review meeting or full hearing.

~~((3) Sexual misconduct and interpersonal violence proceedings.~~

~~Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct or interpersonal violence regardless of the possible level of sanction or whether there is a formal Title IX complaint.~~

~~(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within 24 hours.~~

~~(b) Title IX complaints. The Title IX coordinator will determine whether or not the allegation of sexual misconduct or interpersonal violence constitutes a Title IX complaint under this code. Solely in cases of Title IX complaints, the university will not move forward with initiating a Title IX investigation or student conduct hearing unless a formal complaint from the person alleged to have been subjected to sexual misconduct or interpersonal violence or a complaint from the Title IX coordinator requesting initiation of the student conduct process has been received.~~

~~The Title IX coordinator is responsible for determining whether or not the allegations constitute a formal Title IX complaint. If allegations include sexual misconduct or interpersonal violence but do not meet the definition of a Title IX complaint, the Title IX coordinator will inform the complainant and the respondent that the complaint is not considered a Title IX complaint and the reasons it does not fit within the required elements of a formal Title IX complaint. If the complainant or respondent disagrees with the Title IX coordinator's decision, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision. The dean of students can affirm, reverse, or remand the Title IX coordinator's decision and such decision must be communicated in writing simultaneously to the parties.~~

~~SRR may proceed, however, with pursuing a student conduct case against the respondent for misconduct outside of Title IX including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.~~

~~(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so. The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within 90 days. If the university needs additional time, the investigator or director of SRR should provide written notice to the complainant and respondent of the delay and the reasons for the delay. Delays and extensions beyond the 90 days must be based on good cause.~~

~~(d) Investigations.~~

~~(i) Sexual misconduct and interpersonal violence. The university will investigate complaints of sexual misconduct and interpersonal violence, including Title IX complaints, and may, at its discretion, ask for an investigation of other alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. The investigator will contact the complainant, respondent, and other witnesses to ask questions and gather relevant evidence. Parties may be assisted by an advisor during the investigative process. During the investigation, parties will be provided with~~

an equal opportunity to identify witnesses and other evidence that supports their position. Prior to any investigatory interview regarding a Title IX complaint, the investigator will provide written notice of the meeting with the date, time, location, participants, and purpose with sufficient time for the person to prepare to participate in the interview.

Prior to the completion of the investigative report for a Title IX complaint, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least 10 calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least 10 days prior to any hearing or other determination of responsibility. In cases of sexual misconduct or interpersonal violence, a copy of the report must also be provided to the parties for their review and written response.

(ii) Other types of conduct. The director may request an investigation for other types of alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. An investigation may be completed by a single investigator or team of investigators. The investigator will contact the complainant, if applicable, respondent, and other witnesses to ask questions and gather relevant evidence. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence gathered during the investigation. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR.

(e)) (a) Investigations. The director may initiate an investigation for other forms of alleged misconduct. During the investigation, the investigator is responsible for collecting evidence related to the complaint. The investigation can be conducted by either a single investigator or a team of investigators. The investigator(s) will reach out to the complainant (if applicable), respondent, and other witnesses to ask questions and gather relevant evidence.

Throughout the investigation, all parties will have an equal opportunity to present witnesses and other evidence that supports their positions. At the conclusion of the investigation, the investigator will compile a final written report that fairly summarizes the relevant evidence gathered. This investigative report, along with any collected evidence, will be forwarded to the director of SRR if the investigation was conducted externally.

As part of the investigatory process, EWU may collaborate with outside organizations or entities, such as Sorority and Fraternity National Headquarters, when necessary to conduct the investigation into the alleged misconduct of student organizations.

(b) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be main-

tained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, ~~((the university))~~ EWU will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, ~~((the university))~~ EWU shall inform them that its ability to investigate and respond to the allegation will be limited. ~~((The university))~~ EWU cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files subject to public disclosure will be released to the extent required by law.

~~((f))~~ (c) Right to file a criminal report. Once the university is notified of an allegation ~~((of sexual))~~ misconduct ~~((or interpersonal violence))~~ that could constitute a crime, it will notify the potential complainant of their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, ~~((the university))~~ EWU will assist them in doing so. ~~((The university))~~ EWU will also notify the complainant that they are not required to file a report with local law enforcement. ~~((The university))~~ EWU will report allegations of ~~((sexual))~~ misconduct ~~((or interpersonal violence))~~ to law enforcement or other authorities when it is required to do so under federal, state, and local law.

~~((4))~~ (3) **Supportive measures and interim restrictions.** During the complaint review, the director or designee of SRR ~~((or Title IX coordinator))~~ will review whether any supportive measures or interim restrictions are needed. Supportive measures and interim restrictions are addressed in WAC 172-121-140.

~~((5))~~ (4) **SRR will follow up with the parties as described below.** ~~((a))~~ The director of SRR will contact the respondent ~~((, and the complainant in cases of sexual misconduct or interpersonal violence))~~ and complainant, where applicable, and provide them with the following information:

~~((i))~~ (a) The respondent's and complainant's rights under the student conduct code;

~~((ii))~~ (b) A summary of the allegations the complainant has against the respondent;

~~((iii))~~ (c) The potential conduct code violations related to the allegations; and

~~((iv))~~ (d) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

~~((b) In all cases alleging sexual misconduct or interpersonal violence))~~ Where applicable and based on the alleged misconduct, the director of SRR or designee will, in addition to the information specified under ~~((a)–(f))~~ this subsection, provide ~~((both))~~ parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

~~((+6))~~ **(5) Following the complaint review, the director of SRR will either dismiss the matter, refer it to adaptable dispute resolution, or arrange a prehearing conference.**

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, they may dismiss the matter. In such cases, the director of SRR or designee will prepare a written record of the dismissal. The director of SRR or designee will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. ~~((In cases of sexual misconduct or interpersonal violence or for a Title IX complaint, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within seven business days of receiving notice of the dismissal.))~~

(b) Adaptable dispute resolution. The director may refer the complaint to the adaptable dispute resolution process contained in WAC 172-121-102.

(c) Prehearing conference. If the director of SRR does not dismiss the matter they will arrange a prehearing conference as described in WAC 172-121-110 unless a respondent is opting to admit responsibility under WAC 172-121-118.

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

**WAC 172-121-105 Conduct review proceedings.** (1) General provisions:

(a) Conduct review proceedings in which the allegations do not involve ~~((a Title IX complaint,))~~ felony level crimes, or the potential sanction is less than suspension or expulsion, are brief ~~((hearings))~~ adjudicative proceedings in accordance with WAC 172-108-050(3) and the Administrative Procedure Act. Conduct review proceedings in which the allegations involve ~~((a Title IX complaint,))~~ felony level

crimes, or the potential sanction is suspension or expulsion, are considered full hearings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings. (~~All Title IX complaints shall follow the regulations prescribed under 34 C.F.R. Part 106.~~)

(2) Notification for student organizations: When a charge is directed towards a student organization, the CRO will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant and the respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant or the respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

(c) The advisor must provide the CRO with a FERPA release signed by the student they are assisting;

(d) If a complainant or the respondent is represented by an attorney, the attorney shall provide the CRO and other parties with the attorney's name, address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of representation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding;

~~(e) ((If a complainant or respondent wishes to have an advisor for a Title IX complaint and is not able to identify one, the student may contact SRR for assistance in finding an advisor;~~

~~(f))~~) In addition to an advisor, a complainant or respondent may bring a certified therapy animal with a handler for the hearing. The handler is not allowed to participate in the hearing process.

(4) Review of evidence:

(a) In (~~brief hearings~~) conduct review meetings, the respondent (~~, and, in cases of sexual misconduct or interpersonal violence, the complainant~~) may request to view material related to their case prior to a scheduled hearing by contacting the CRO. To facilitate this process, the party should contact the CRO as early as possible prior to the scheduled hearing. The CRO shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In full hearings, the respondent (~~, and, in cases of sexual misconduct or interpersonal violence, the complainant~~) may request to view material related to the case prior to the scheduled hearing by contacting the director of SRR. To facilitate this process, the party should contact the director as early as possible prior to the scheduled hearing. The director of SRR shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the CRO. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the CRO shall allow any other party to object to the request. The CRO will make a decision on the request and will communicate (~~his/her~~) their decision in writing to the parties along with the reasons for granting or denying the request.

AMENDATORY SECTION (Amending WSR 23-11-109, filed 5/19/23, effective 6/19/23)

**WAC 172-121-110 Notice of allegations and initial scheduling.**

(1) Notice of investigation. If the director of SRR refers a complaint to an investigation, the director shall provide the respondent with a notice of investigation that meets the following requirements:

(a) Is made in writing;

(b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;

(c) Indicates that the complaint has been assigned to a (~~university~~) EWU investigator and provide the contact information for the investigator;

(d) Provides notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(e) Provides a reminder that the person may have an advisor of their choice throughout the student conduct process;

(f) A statement that students are prohibited from knowingly furnishing false information during the student conduct process; and

(g) Where applicable, information about supportive measures and resources available to the respondent as well as information about (~~the university's~~) EWU's prohibition on retaliation.

(2) Notice of allegations: If the director of SRR decides to send the case to hearing, following a review of the investigative report if any, the director of SRR shall appoint a CRO to the case and notify the respondent of the CRO and the date of a prehearing conference.

(~~In cases alleging sexual misconduct or interpersonal violence, the CRO and session council assigned must have completed training on issues relating to sexual misconduct and interpersonal violence, the Violence Against Women Reauthorization Act, and Title IX requirements.~~) Notification of the allegations to the respondent must:

(a) Be made in writing;

(b) Include a written list of the allegations against the respondent with sufficient details of the allegations based on current information, including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;

(c) Provide notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(d) Provide a reminder that the person may have an advisor of their choice and, for Title IX complaints, that (~~the university~~) EWU will provide them with an advisor upon requests for the purposes of conducting cross-examination;

(e) Provide information about how to review the evidence gathered prior to the hearing;

(f) Provide a statement that students are prohibited from knowingly furnishing false information during the student conduct process;

(g) Inform them of the option to admit responsibility under WAC 172-121-118; and

(h) Include a date, time, and location of the prehearing conference.



(3) Follow up with complainant. (~~In all cases alleging sexual misconduct or interpersonal violence, the SRR office shall notify the complainant(s) of the date, time, and location of the prehearing conference and of their right to attend the conference. The director may, at their discretion, conduct a separate prehearing conference with each party.~~) The SRR office shall also follow up with the complainant(s) and respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the complainant or respondent engages in retaliatory behavior, (~~the university~~) EWU shall take immediate steps to protect the complainant or respondent from further harassment or retaliation. (~~The complainant will also be notified that they have a right to an advisor during the hearing process, and, for Title IX complaints, that the university will provide an advisor upon request for the purposes of conducting cross-examination.~~)

(4) If additional information is learned during the investigation that may rise to additional allegations, (~~the university~~) EWU must provide the respondent with an updated notice of allegations.

(5) The procedures for the prehearing conference for (~~brief hearings is~~) conduct review meetings are contained in WAC 172-121-121. The procedures for the prehearing conference for full hearings is contained in WAC 172-121-122.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-118 Admission of responsibility.** (~~The university~~) EWU encourages respondents to acknowledge harm and accept responsibility for repairing harm, to the extent possible, experienced as a result of a student's conduct. An investigator, CRO, or presiding officer may offer to the respondent at any time the opportunity to admit responsibility for the alleged misconduct. If the respondent decides to admit responsibility, the respondent will sign a document drafted by SRR taking responsibility. The CRO and/or presiding officer, depending on the type of conduct, will schedule a recorded meeting for the respondent to take responsibility on the record and for the CRO and/or presiding officer to determine the appropriate sanctions under WAC 172-121-400. (~~If the alleged misconduct includes sexual misconduct or interpersonal violence, both parties must consent to this alternative process in writing and the complainant will be notified of the meeting and will have an opportunity to provide a statement about the conduct and its impacts prior to any sanctioning determination.~~)

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-121 ((Brief hearing)) Conduct review meeting procedures.** (1) Applicability: The conduct review officer (CRO) may hold a (~~brief hearing~~) conduct review meeting with the respondent if the proposed sanction is less than a suspension and the allegations do not involve (~~a Title IX complaint, or~~) felony level criminal behavior.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO.

(b) Closing hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the respondent's input.

(b) Appearance: The respondent (~~(, and complainant in cases of sexual misconduct or interpersonal violence,)~~) will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. People may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (e) of this subsection. If a person does not appear at the hearing, the hearing authority will decide the case based on the information available.

(c) Advisors: The (~~(complainant and the)~~) respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. In (~~(brief hearings)~~) conduct review meetings, the advisor is limited to advising the student and cannot speak on behalf of the student.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Electronic appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by telephone, audio (~~(tape)~~) recording, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by an electronic appearance as determined by the CRO.

(4) Standard of proof. The hearing authority shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office will schedule a prehearing conference with the respondent. Only the respondent and the respondent's advisor may appear at the prehearing conference (~~(, unless the case involves alleged sexual misconduct or interpersonal violence. In cases alleging sexual misconduct or interpersonal violence, the respondent and the complainant, along with their advisors, if they choose to have an advisor, may appear at the same or separate prehearing conferences)~~). The purpose of the prehearing conference is to advise the parties regarding the student conduct process. During the prehearing conference, the CRO will:

(a) Review the written list of allegations with the respondent;

(b) Inform the respondent who is bringing the complaint against them;

- (c) Provide the respondent with a copy of the student conduct code and any other relevant ((~~university~~)) EWU policies;
- (d) Explain the respondent's rights under the student code;
- (e) Explain the conduct review procedures;
- (f) Where applicable, explain the respondent's and complainant's rights and responsibilities in the conduct review process;
- (g) Review the option for admitting responsibility under WAC 172-121-118; and
- (h) Explain possible penalties under the student conduct code.

At the end of the prehearing conference, the CRO will either conduct or schedule a ((~~brief hearing~~)) conduct review meeting with the respondent as set forth in this subsection or arrange for a meeting to take an admission of responsibility under WAC 172-121-118. If proper notice was given of the prehearing conference and the respondent fails to attend the conference, the CRO may either proceed with the ((~~brief hearing~~)) conduct review meeting and decide the case based on the information available, or place a hold on the respondent's academic records as described in WAC 172-121-080 until the respondent cooperates with the student conduct process.

(6) Scheduling. A ((~~brief hearing~~)) conduct review meeting may take place immediately following the prehearing conference or it may be scheduled for a later date or time ((~~, except that, in cases of sexual misconduct or interpersonal violence, a brief hearing cannot take place without first notifying the complainant/respondent of the hearing~~)). If the ((~~brief hearing~~)) conduct review meeting will be held at a later date or time, the CRO shall schedule the hearing and ((~~notify~~)) serve the respondent ((~~and, in the case of sexual misconduct or interpersonal violence, the complainant~~)) with a notice of the date, time, and place of the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so. The CRO has sole discretion as to whether to call witnesses.

(7) If the respondent fails to appear at the ((~~brief hearing~~)) conduct review meeting, the CRO may conduct the hearing without the respondent present. The CRO may also place a hold on the respondent's academic records under WAC 172-121-080 until the respondent cooperates with the student conduct process.

(8) Deliberation. After the hearing, the CRO shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence and issue a decision within seven business days.

(a) If the CRO determines that there is not sufficient information to establish a violation by a preponderance of evidence, the CRO shall dismiss the complaint.

(b) If the CRO determines that the respondent violated the student conduct code, the CRO shall impose any number of sanctions as described in WAC 172-121-210, except suspension or expulsion.

(9) Sanctions. In determining what sanctions shall be imposed, the CRO may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the CRO authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed. In addition to sanctions under this code, if the student is also an employee of ((~~the university~~)) EWU, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with ((~~university~~)) EWU policy.

(10) Notification. The CRO shall serve the respondent with a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. ~~((a))~~ The findings shall be based exclusively on the evidence provided at the hearing. The decision must also include:

- ~~((i))~~ (a) Identification of the section of the code alleged to have been violated;
- ~~((ii))~~ (b) A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews, methods to gather evidence, and hearings;
- ~~((iii))~~ (c) Findings of fact supporting the determination;
- ~~((iv))~~ (d) Conclusions regarding the application of the code to the facts along with the rationale for each determination;
- ~~((v))~~ (e) Sanctions ~~((and remedies))~~;
- ~~((vi))~~ (f) Respondent's right to appeal.

~~((b) In cases of sexual misconduct or interpersonal violence))~~  
Where applicable and to the extent permitted by law, the complainant shall be provided with written notice of ~~((~~

~~(i) The university's determination as to whether such sexual misconduct or interpersonal violence occurred;~~

~~((ii))~~ substantiated violations:

(i) The complainant's right to appeal, if any;

~~((iii))~~ (ii) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

~~((e))~~ (g) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or other crime as defined in 42 U.S.C. Sec. 13925(a).

(11) Finality. The CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be timely.

AMENDATORY SECTION (Amending WSR 23-11-109, filed 5/19/23, effective 6/19/23)

**WAC 172-121-122 Full hearing procedures.** (1) Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could be a felony-level crime ~~((, involve a Title IX complaint,))~~ or could result in a sanction of suspension or expulsion. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a prehearing conference unless the respondent has admitted responsibility under WAC 172-121-118.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO. The CRO chairs the disciplinary council.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the council may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. The council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. ~~((For Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.))~~

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by a method that allows the person to be seen and heard by the council.

(4) Standard of evidence. The council shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office or designee will arrange for a prehearing conference with the parties to advise them about the student conduct process. During the prehearing conference, the SRR office or designee will:

(a) Review the written list of allegations;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent and, where applicable, complainant with a copy of the student conduct code and any other relevant ~~((uni-~~versity)) EWU policies;

- (d) Explain the respondent's and, where applicable, complainant's rights and responsibilities under the student code;
- (e) Explain the conduct review procedures;
- (f) Explain possible penalties under the student conduct code;
- (g) Review the option for admitting responsibility under WAC 172-121-118;
- (h) Schedule a date for the full hearing; and
- (i) Address any preliminary matters or motions.

(6) Notice of hearing. Following the prehearing conference, the SRR director or designee shall schedule the hearing and (~~notify~~) serve the respondent and, where applicable, complainant with notice of the date, time, location, participants, and purpose of the hearing. At the discretion of the hearing officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing may be conducted by telephone or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the council in accordance with RCW 34.05.452. Council may review proposed exhibits prior to the hearing. Any investigation conducted by (~~the university~~) EWU will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude irrelevant material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, identity, a pattern of conduct, credibility, or absence of mistake or lack of knowledge. (~~For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.~~)

(b) The respondent (~~and complainant have~~) has the right to view all material presented during the course of the hearing. (~~If a respondent's disciplinary history is considered solely for sanctioning purposes, the complainant does not have a right to review the history.~~)

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452 (~~except for the additional restrictions on the admission of evidence required by Title IX~~).

(8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from (~~the university~~) EWU. Either party may request (~~the university~~) EWU to produce relevant documents in (~~the university's~~) EWU's possession as long as such request is submitted at least five business days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. (~~The university~~) EWU will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(9) Subpoenas.

(a) Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least 10 days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under their control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving them a copy thereof, or by leaving such copy at the place of their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(c) The CRO, upon motion by a party or at their own discretion, may quash or modify the subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is en-

titled to judgment as a matter of law. (~~(A motion for summary judgment is not permitted for Title IX complaints.)~~)

(11) Witnesses.

(a) The complainant, respondent, and (~~(the university's)~~) EWU's presenter may call witnesses at full hearings.

(b) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. (~~(For Title IX complaints, any decision to exclude a witness shall be explained on the record.)~~)

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five business days prior to the hearing. The CRO will comply with WAC 10-08-150.

(12) Questioning:

(a) (~~(The complainant's advisor)~~) Through the CRO, the respondent's advisor, and (~~(the university's)~~) EWU's presenter may ask questions of any witness, or party, including cross-examination questions. (~~(For cases that do not involve Title IX complaints, if the student does)~~) If the parties do not have an advisor, (~~(the complainant and respondent)~~) they may submit questions in writing to the CRO and the CRO may ask the questions. (~~(For Title IX complaints, if a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests such an advisor at least five business days in advance of the hearing.)~~) The CRO may also ask questions, but is not required to do so. The CRO may preclude any questions which they consider irrelevant (~~(, and for Title IX cases such decision must be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made)~~).

(b) The council may ask their own questions of any witness or party called before them.

(13) Remote appearance. The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate, subject to subsection (3)(b) of this section.



(14) Deliberations and sanctions. Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. The council shall make its decisions based on a majority vote. If the council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of ~~((the university))~~ EWU, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with ~~((university))~~ EWU policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within 10 business days from the date of the hearing. The written decision shall also:

- (a) Be correctly captioned identifying EWU and the name of the proceeding;
- (b) Designate all parties and representatives participating in the proceeding;
- (c) Identify the allegations at issue;
- (d) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (e) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;
- (f) Contain appropriately numbered conclusions regarding the application of ~~((university))~~ EWU policies and this code to the facts;
- (g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility ~~((,))~~ and any disciplinary sanctions imposed ~~((, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities))~~;
- (h) Contain a statement describing rights to appeal and the procedures for appealing.

(15) Finality. The council's and CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be timely.

(16) Notification to the respondent. The CRO shall serve the respondent with a copy of the decision and notice of the right to appeal.

(17) Notification to the complainant. ~~((In cases of sexual misconduct or interpersonal violence))~~ Where applicable and to the extent permitted by law, simultaneous with notification of the decision to the respondent, the complainant shall be provided with written notice of:

(a) The university's determination as to whether ~~((sexual))~~ misconduct ~~((or interpersonal violence))~~ occurred;

(b) The complainant's right to appeal, if any;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as ~~((an order requiring the student harasser to not contact))~~ a no contact order with the complainant; or

(ii) ~~((The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a)).~~

~~((e))~~ Any remedies provided to the complainant. ~~((For Title IX complaints, the complainant shall receive a copy of the decision provided to the respondent under subsection (14) of this section.~~

~~(18) **Notification to Title IX coordinator.** For Title IX complaints, the Title IX coordinator must be provided with notice of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.)~~

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-130 Appeals.** (1) Basis: Appeals following a ~~((brief hearing))~~ conduct review meeting or full hearing may be filed by the respondent under this section. ~~((In cases of sexual misconduct, interpersonal violence, or a Title IX complaint, the complainant may also file an appeal following dismissal of a complaint or a full hearing.))~~ Appeals of interim restrictions are governed by WAC 172-121-140. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures that affected the outcome of the matter.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority, or the director of SRR's decision to not proceed with a hearing, was based on the information presented and that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information that was not reasonably available at the time the determination finding responsibility or dismissal was made that could affect the outcome of the matter. It is the party's obligation to present all evidence at the time of the original hearing. ~~((The university))~~ EWU is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(f) The ~~((Title IX coordinator,))~~ investigator~~((,))~~ or hearing authorities had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(2) Filing: Appeals may be filed following a ~~((brief hearing))~~ conduct review meeting, full hearing, or dismissal of a complaint, subject to the following provisions:

(a) The appeal must be submitted by 5:00 p.m. PST to the director of student rights and responsibilities or designee within 10 ~~((business))~~ calendar days from service of the council's decision following a full hearing or dismissal of a complaint, or within 21 calendar days from service of a decision from a ~~((brief hearing))~~ conduct review meeting conducted by the CRO;

(b) The appeal shall be in writing and shall include:

(i) The ~~((appellant's))~~ student's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the ~~((appellant))~~ student is seeking.

~~((c) In cases of sexual misconduct or interpersonal violence, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days.))~~

(3) Stay of sanctions: Sanctions go into effect immediately after the hearing decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed with SRR within five calendar days of the decision. The request for the stay will be reviewed by the CRO or presiding officer who presided over the hearing. The stay may be granted in part or in its entirety, at the discretion of the CRO/presiding officer. The decision will be communicated to the respondent ~~((and, for sexual misconduct and interpersonal cases, the complainant))~~. This decision is not subject to appeal.

(4) Appeal authorities:

(a) For dismissal of a complaint, appeals are determined by the dean of students or designee.

(b) For ~~((brief hearings))~~ conduct review meetings, appeals are determined by the dean of students or designee.

(c) For full hearings, appeals are determined by the vice president for student affairs or designee.

(5) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(6) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it in relation to the basis for appeal, the appellant's notice of appeal, where applicable, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(7) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the hearing authority. The appeal decision shall include an explanation of the ap-

peal authority's decision and rationale. The appeal decision must be issued within 30 calendar days of the appeal authority receiving all necessary documentation.

(8) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(9) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(10) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR or designee shall serve the respondent, and, ~~((in cases of sexual misconduct or interpersonal violence, notify))~~ where applicable, the complainant, with a brief written statement setting forth the outcome of the appeal. The notification shall also inform the recipient that judicial review of the decision may be available under chapter 34.05 RCW.

(11) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of ~~((the university's))~~ EWU's decision may be available under chapter 34.05 RCW.

(12) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 24-01-030, filed 12/8/23, effective 1/8/24)

**WAC 172-121-140 Supportive measures and interim restrictions.**

(1) Supportive measures. During the complaint review, the director of SRR or designee, ~~((Title IX coordinator, or designee))~~ will evaluate the circumstances and determine if any supportive measures to assist or protect the parties during the conduct code process are needed. ~~((For sexual misconduct and interpersonal violence cases,))~~ Supportive measures ((are)) may be available before or after the filing of a complaint or where no formal complaint is filed. Supportive measures are provided to students free of charge and may include, but are not limited to, safety planning with the university, mutual restrictions on contact between the parties, academic or workplace modifications, providing counseling for the complainant and/or respondent, or campus

housing modifications. The purpose of a supportive measure is to provide an equitable process for both students that minimizes the possibility of a hostile environment on campus. ~~((For Title IX complaints,))~~ Supportive measures are designed to restore or preserve equal access to the university's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and the university's educational environment, or deterring ~~((sexual))~~ harassment. ~~((Supportive measures in cases of sexual misconduct and interpersonal violence are coordinated by the Title IX coordinator or designee.))~~

(2) Interim restrictions. ~~((For Title IX complaints, in situations where there is cause to believe that a student or a student organization poses an immediate threat to the physical health or safety of any student or other individual, including themselves, the Title IX coordinator in conjunction with the director of SRR may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing.~~

~~Simultaneous with such action(s), the director of SRR will refer the allegations to the conduct review officer, who will process such allegations in accordance with the provisions of this student conduct code.~~

~~For all non-Title IX cases,))~~ The SRR director or designee may take immediate action(s) against ~~((the))~~ a student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing. Simultaneously, the director shall refer the allegations to the conduct review officer. ~~((For non-Title IX cases,))~~ Interim restrictions ~~((is))~~ are subject to the following:

(a) Interim restriction actions may only be imposed in the following situations:

(i) When a student or student organization poses an immediate threat to:

(A) The physical health or safety of any student or any other individual;

(B) The student's own physical safety and well-being; or

(C) Any property of the ~~((university))~~ EWU community; or

(ii) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the ~~((university))~~ EWU community.

(b) During the interim restriction period, a student may be restricted by any or all of the following means:

(i) Denial of access including, but not limited to: Assignment to alternate ~~((university))~~ EWU housing or removal from ~~((university))~~ EWU housing, limitation of access to ~~((university))~~ EWU facilities, or restriction of communication with specific individuals or groups;

(ii) Interim suspension, including temporary total removal from ~~((the university))~~ EWU or restriction of access to campus ~~((For Title IX complaints, a student may only be placed on interim suspension if, after conducting an individualized safety and risk analysis, the director determines the person poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct or interpersonal violence));~~

(iii) Mandatory medical/psychological assessment of the student's capability to remain ~~((in the university))~~ enrolled at EWU.

(3) The director of SRR or designee will determine what restriction(s) will be placed on a student.

(4) The director of SRR or designee will prepare a brief memorandum for record containing the reasons for the interim restriction. The director will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) could constitute a violation of the student conduct code;

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) An explanation of the process for emergency appeal reviews.

~~(5) ((Notice to complainant. In cases alleging sexual misconduct or interpersonal violence, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a statement within five business days of the notice as to why the interim restriction should or should not be modified.~~

~~(6))~~ Emergency appeal review.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs or designee within five business days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider submitted within 10 business days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the specific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to the criteria identified in WAC 172-121-140(1) upon which the interim restriction was imposed (threat to health or safety of the ((~~university~~)) EWU community, potential for creating campus disorder, impeding the lawful activity of others, etc.). Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator or provided to the CRO under the regular hearing process.

(b) The vice president for student affairs, or designee, will conduct an emergency appeal review after receiving the respondent's review and complainant's response, if any. Emergency appeal reviews will address only the interim restriction decision of the director and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular hearing process. In the emergency appeal review, the vice president will only review materials available to and information considered by the director and/or dean of students at the time the interim restriction was imposed, written statements by the ~~((two parties))~~ appellant, and information that becomes available as a part of ~~((the university's))~~ EWU's investigation that the vice president deems relevant.

~~(c) ((In cases alleging sexual misconduct or interpersonal violence, if a complainant believes the interim restriction does not adequately protect their health and safety, the complainant may appeal~~

~~the interim restriction using the process outlined in this subsection. If the complainant files an appeal, all parties shall be given notice of the appeal and shall be provided the opportunity to submit a written statement to the vice president within five business days of receiving notice of the complainant's appeal.~~

~~(d))~~ During the emergency appeal review, the vice president for student affairs or designee will review available materials and statements. The vice president for student affairs will issue a written decision upholding, modifying, or terminating the interim restriction action. The written decision shall include a rationale for the basis of the decision and be issued within 15 business days of the date of service of an interim restriction.

~~((e))~~ (d) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

~~((f))~~ (e) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-300 Violations.** ~~((The university))~~ EWU prohibits students from engaging in the conduct described in this section, WAC 172-121-301 through 172-121-324, chapters 172-125 and 172-90 WAC, and relevant ~~((university))~~ EWU policies. Clubs, organizations, societies, or similarly organized groups in or recognized by ~~((the university))~~ EWU and/or the associated students of Eastern Washington University are also subject to all of these standards. Violations of these rules and policy may subject a student or student group to disciplinary action by ~~((the university))~~ EWU. Groups may also be subject to disciplinary action for knowingly failing to exercise preventive measures relative to violations of this code by their members.

AMENDATORY SECTION (Amending WSR 24-01-030, filed 12/8/23, effective 1/8/24)

**WAC 172-121-302 Abuse, threats, bullying, and harassment.** (1) Abuse. Assault and other forms of physical abuse. Assault is intentionally touching or striking another person in a harmful or offensive way.

(2) Threats. A threat is any conduct and/or speech that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person. If the threat primarily involves speech, the speaker also must have consciously disregarded a substantial, unjustifiable risk that the communications could be viewed as threatening violence.

(3) Bullying. Bullying is behavior that is:

(a) Intentional;

(b) Targeted at an individual or group; and

(c) Creates an intimidating and/or threatening environment that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate

in, or benefit from ((the university's)) EWU's programs and activities.

~~((4) Discriminatory harassment. Physical, verbal, electronic, or other conduct based on an individual's race, color, religion, national origin, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, citizenship or immigration status, disability, or veteran status when one of the conditions outlined in subsection (3) (a) or (b) of this section are present:~~

~~(a) Submission to, or rejection of such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or~~

~~(b) Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive, and objectively offensive, that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.))~~

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-306 Unauthorized use of electronic or other devices.**

Making an audio or video recording of any person while on ((university)) EWU premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. The act of storing, sharing, publishing, or in any way disseminating such recordings or images through any medium is strictly prohibited. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-400 Sanctions ((and remedies)).**

If any student or student organization is found to have committed any of the offenses described in WAC 172-121-300 through 172-121-324, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions. In addition to the sanction imposed by this code, if a student is also an employee of ((the university, the university)) EWU, EWU may impose additional discipline in accordance with its policies and procedures pertaining to employees.



**(1) Individual student sanctions:**

(a) Admonition: An oral statement to a student that they have violated ((~~university~~)) EWU rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time.

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's ((~~university~~)) EWU-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to ((~~the university~~)) EWU or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The ((~~university~~)) EWU conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of \$400 against individual students for violation of ((~~university~~)) EWU rules or regulations or for failure to comply with ((~~university~~)) EWU standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to ((~~the university~~)) EWU community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.10.902, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time determined by ((~~the university~~)) EWU.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restric-

tions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspensions may be noted on the student's transcript during the period of time the suspension is in effect.

(k) **Expulsion:** Permanent separation of the student from (~~the university~~) EWU with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from (~~university~~) EWU premises. Expulsions may be noted on the student's transcript.

(l) **Loss of institutional, financial aid funds:** Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) **Revocation of degree:** A degree awarded by (~~the university~~) EWU may be revoked for fraud, misrepresentation, or other violation of law or (~~university~~) EWU standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the (~~university~~) EWU president.

(n) Education: Requirement to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(o) EWU housing restrictions: Separation of the respondent from a residence hall or halls for a definite period of time, after which the respondent may be eligible to return, or permanent restriction. Conditions for readmission may be specified.

(2) **Student organizations and/or group sanctions:** Any of the above sanctions may be imposed in addition to those listed below:

(a) **Probation:** Formal action placing conditions on the group's continued recognition by or permission to function at (~~the university~~) EWU. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) **Social probation:** Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) **Restriction:** The temporary withdrawal of (~~university~~) EWU or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) **Revocation:** The permanent withdrawal of (~~university~~) EWU or ASEWU recognition for a group, club, society or other organization. Per RCW 28B.10.902, any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of recognition by (~~the university~~) EWU;

(e) **Additional sanctions:** In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of (~~university~~) EWU facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

~~((3) **Remedies.** For Title IX complaints, if the respondent is found responsible for violating the code, the university may provide remedies to the complainant designed to restore or preserve equal access to the university's educational programs or activities.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 172-121-303      Domestic violence, dating violence, and stalking.
- WAC 172-121-304      Sexual misconduct.