

WSR 23-15-055

EMERGENCY RULES

EASTERN WASHINGTON UNIVERSITY

[Filed July 13, 2023, 4:53 p.m., effective July 13, 2023, 4:53 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency revision updates the definition of a threat in Eastern Washington University's student conduct code.

Citation of Rules Affected by this Order: Amending 1 [WAC 172-121-302].

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

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The United States Supreme Court altered the definition of a threat in *Counterman v. Colorado*. The revisions to this section of the student conduct code are necessary to comply with the court's decision.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 13, 2023.

Annika Scharosch
Associate Vice President for Civil Rights
Compliance and Enterprise Risk Management

OTS-4767.1

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

WAC 172-121-302 Abuse, threats, bullying, and harassment. (1) Abuse. Assault and other forms of physical abuse.

(2) Threats. A threat is any conduct ((or statement)) 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 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.

[Statutory Authority: RCW 28B.35.120(12). WSR 23-01-027, § 172-121-302, filed 12/9/22, effective 1/9/23.]