

## WSR 21-07-048

## PROPOSED RULES

## EASTERN WASHINGTON UNIVERSITY

[Filed March 12, 2021, 7:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-032.

Title of Rule and Other Identifying Information: WAC 172-108-050 and 172-108-100, adjudicative proceedings.

Hearing Location(s): On May 12, 2021, at 9:00 a.m., at Eastern Washington University (EWU), Main Campus, 526 5th Street, Cheney, WA 99004. This will be a virtual meeting via Zoom. The link to participate in the Zoom meeting is <https://ewu.zoom.us/j/94220953157>.

Date of Intended Adoption: May 21, 2021.

Submit Written Comments to: Annika Scharosch, EWU, 526 5th Street, 211 Tawanka Hall, Cheney, WA 99004, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), fax 509-359-6724, by May 12, 2021.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), by May 12, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A new regulation is being added, WAC 172-108-100, to identify the process for requesting a hearing to appeal the athletic department's decision to reduce, revoke, or not renew athletic aid.

Reasons Supporting Proposal: Process is being updated in light of the court of appeals' decision in *Webb v. Washington State University*.

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

Rule is necessary because of state court decision, *Webb v. Washington State University*, Slip Op. 37051-8-III (Div. 3; November 17, 2020).

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Hall, 509-359-6724; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

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. Pursuant to RCW 34.05.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this [these] rules pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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).

March 12, 2021  
Annika Scharosch  
Associate Vice President

OTS-2949.1

AMENDATORY SECTION (Amending WSR 21-01-104, filed 12/11/20, effective 1/11/21)

**WAC 172-108-050 Brief adjudicative proceedings.** In accordance with RCW 34.05.410 (1)(a), the procedures identified in RCW 34.05.482 through 34.05.494 apply to all brief adjudicative proceedings at Eastern Washington University. All applications for a brief adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Tawanka 211; Eastern Washington University; Cheney, WA 99004-2496. Written application for a brief adjudicative proceeding in response to the institution's action must be submitted to the university within twenty-one calendar days of the action, unless a different time frame is specified in the regulations identified below that apply to the type of decision being challenged. When required by law or constitutional right, brief adjudicative proceedings shall be used in all matters of appeal related to:

- (1) Residency determinations made pursuant to RCW 28B.15.013 and chapter 250-18 WAC;
- (2) Challenges to contents of education records, review of the denial to inspect such records, or challenges to the disclosure of such records. In addition to the rules identified below, these challenges are governed by chapter 172-191 WAC;
- (3) Student conduct proceedings, if the potential sanction for the alleged misconduct does not include suspension, expulsion, formal Title IX complaints, or an allegation of felony-level sexual misconduct. In addition to the rules identified below, these proceedings are governed by chapter 172-121 WAC;
- (4) Outstanding debts owed by students or employees, pursuant to chapters 172-124 and 172-144 WAC;
- (5) Traffic and parking violations and revocations of any parking permit pursuant to chapter 172-100 WAC;
- (6) Student academic integrity proceedings, if the potential sanction for the alleged misconduct does not include suspension or expulsion. In addition to the rules identified in this section, these proceedings are governed by chapter 172-90 WAC;
- (7) Library fines and charges;
- (8) Reduction, cancellation, or nonrenewal of institutional financial aid when based in any degree on athletics ability per National Collegiate Athletic Association rules as detailed in WAC 172-108-100;
- (9) Administrative decisions regarding statutorily mandated tuition and/or fee waivers;
- (10) Research integrity violations in accordance with EWU Policy 302-05 when required by federal law;
- (11) Citations issued by university police regarding the use of golf carts and utility vehicles, in accordance with EWU Policy 603-06;
- (12) Fines imposed for impermissible use of tobacco, electronic cigarettes, and related products in accordance with WAC 172-122-310;
- (13) Financial aid appeals as provided for by federal law and in accordance with EWU policies for satisfactory academic progress for undergraduate, post-baccalaureate, and graduate students;
- (14) Denial of work study or termination from a work study position when required by federal law;
- (15) Notice against trespass issued per WAC 172-122-200;
- (16) Denial of request to waive undergraduate housing requirement under chapter 172-130 WAC;
- (17) Fines assessed under a university housing agreement; and

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

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-104, § 172-108-050, filed 12/11/20, effective 1/11/21; WSR 17-11-051, § 172-108-050, filed 5/15/17, effective 6/15/17; WSR 14-24-038, § 172-108-050, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-050, filed 4/20/92, effective 5/21/92.]

#### NEW SECTION

**WAC 172-108-100 Procedures for reduction, revocation, or of athletic scholarships.** In accordance with NCAA requirements, a student athlete who is receiving athletic aid based in any degree on athletic ability has the right to request an appeal hearing when the athletic aid is reduced, revoked, or not renewed and the student has remaining athletic eligibility. The following process governs the student athlete's appeal of the athletic department's decision to reduce, revoke, or not renew athletic aid.

(1) The athletic department makes the initial decision to reduce, revoke, or not renew the student's athletic aid. Before making such decision, the athletic department should provide the student athlete with notice that such a decision may be made and give the student an opportunity to respond. If the decision is made to reduce, revoke, or not renew the aid, the athletic department should convey such information to the financial aid and scholarship office with a brief statement of the reason for the decision.

(2) EWU's financial aid and scholarship office will then formally notify the student athlete of the athletic department's decision to reduce, revoke, or not renew the student's athletic aid. This notification will be sent via email to the student's official university email account and will include information about how to appeal the decision.

(3) The student will have twenty-one calendar days from the date the email is sent to request an appeal. Any request for appeal must be directed to the director of financial aid and sent via email to [fi-  
naid@ewu.edu](mailto:fi-<br/>naid@ewu.edu). Requests for appeal must be received within twenty-one days or they will be dismissed as untimely.

(4) Upon timely receipt of an appeal, the director of financial aid will convene the athletic aid appeals committee. The committee shall consist of four people who represent various areas of the university. The director serves as the presiding officer and a voting member of the committee. The director will schedule a hearing with the student, head coach or other athletics department representative, and the committee.

(5) Prior to the hearing, the student and head coach, or designee, should provide the committee with a written statement outlining the reasons they agree or disagree with the decision to reduce, revoke, or not renew athletic aid, along with any supporting documentation. The documentation may include statements from witnesses. These statements and documentation are reviewed by the committee in advance of the hearing.

(6) At the hearing, the director will ask the head coach or other athletics representative to explain the basis for their decision regarding athletic aid. The committee and athlete may ask questions of

this head coach/athletics representative. The athlete will then have the opportunity to explain why they disagree with the decision. The committee and head coach may ask questions of the athlete. The head coach/athletics representative will then have the opportunity to provide a rebuttal statement.

(7) Either party in the hearing may be represented by an advisor as set forth in WAC 172-108-035. The hearing will be recorded and retained in accordance with EWU's records retention schedule.

(8) The student has the burden of proving by a preponderance of the evidence that the athletic department's decision to reduce, revoke, or not renew athletic aid was not supported by substantial evidence or is arbitrary or capricious. The committee may affirm, reverse, or modify the athletic department's decision regarding athletic aid eligibility. The committee's decision must be supported by a majority of committee members.

(9) Within twenty days of the hearing, the presiding officer will issue a written order containing a brief statement of the reasons for the committee's decision. The decision should be communicated in writing to both parties and should indicate that it is the final decision of the university and judicial review may be available under chapter 34.05 RCW.

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