

Student Conduct Code

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Student Rights and Responsibilities

SHW 118
Cheney, WA 99004

email: torton1@ewu.edu
phone: 509.359.6960
fax: 509.359.6327

Student Conduct Code

[Student Conduct Code \(https://sites.ewu.edu/policies/files/2017/08/Chapter-172-121-WAC.pdf\)](https://sites.ewu.edu/policies/files/2017/08/Chapter-172-121-WAC.pdf)

(Revised September 10, 2017)

Chapter 172-121 WAC

(.)_STUDENT CONDUCT CODE

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

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As a public institution of higher education, the university 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 establishes rules, regulations, procedures, policies, and standards of conduct.

Through the student conduct code as well as other university policies and directives, the university 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 those expectations. The responsibility for enforcement of the student conduct code rests with the university president.

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.

These provisions are not intended to protect any person or class of persons from injury or harm. [Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-010, filed 5/20/09, effective 6/20/09.]

(.) **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.

"Business days" refers to the days and hours the university 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 holiday schedule.

"Complainant" means any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the university when the university files the complaint.

"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 a designee of the dean of students.

"Director of SRR" refers to the director of student rights and responsibilities, or designated representative.

"Filing" means to actually deliver the 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 dean of student's office, sending them via United States mail, properly addressed, postage prepaid, to 300 Showalter Hall, or emailing them to studentrights@ewu.edu.

"Hearing authority" refers to the university official or student disciplinary council who holds a conduct review hearing.

"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 e-mail account, by leaving a message on his or her 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 and the respondent.

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

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

"Respondent" refers to any student or student organization that is 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 e-mail account. Service by mail is complete upon deposit in the United States mail.

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

"Sexual misconduct" encompasses sexual harassment, domestic violence, relationship violence, stalking, and acts of sexual violence for the purposes of WAC 172-121-030 through 172-121-140. These terms are further defined in WAC 172-121-200.

"Student" includes all of the following:

- (1) 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;
- (2) Any person currently enrolled at the university;
- (3) Nonmatriculated, international students attending institutes or foreign study programs through the university; and,
- (4) Any person who was previously enrolled at the university for violations of the code committed while 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.

"Summary hearing" refers to a brief conduct review hearing before the conduct review officer.

"Sexual Misconduct Hearing" refers to a full conduct review hearing before a university official for allegations of sexual misconduct which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion, or that rise to the level of felony-level sexual misconduct.

"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 a designee of the university president.

"Vice-president for student affairs" refers to the vice-president for student affairs or their designated representative.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-020, filed 5/20/09, effective 6/20/09.]

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WAC 172-121-030 Rights of students. Any student or student organization charged with any violation of the student conduct code and the victim in the case of an allegation of harassment or sexual misconduct, have the following rights:

- (1) The right to a fair and impartial conduct review process;
- (2) The right to prior written notice to attend a preliminary 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;
- (7) The right to call witnesses as described in WAC 172-121-120;
- (8) The right to submit questions to be asked of witnesses as described in WAC 172-121-120;
- (9) The right to consult an advisor as described in WAC 172-121-090;
- (10) The right to appeal as provided in WAC 172-121-130; and
- (11) The right to be subjected to university disciplinary action only one time for the same conduct.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-030, filed 5/20/09, effective 6/20/09.]

(.) WAC 172-121-040 Jurisdiction. Eastern Washington University shall have jurisdiction over student behavior which occurs on university premises. The university may also exercise jurisdiction over student conduct which occurs at off-campus locations if the behavior adversely affects the university and/or the pursuit of its objectives and the university determines that a significant university interest is affected. The university has sole discretion in determining what conduct adversely impacts the university and/or the pursuit of its objectives.

The student conduct code shall apply to conduct without regard to a student's academic status at the time the conduct took place. This includes all periods from the time of application for admission through the actual awarding of a degree, including times between academic periods or outside of normal business hours.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-040, filed 5/20/09, effective 6/20/09.]

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(.) WAC 172-121-050 External authorities. Many offenses under this code are also violations of federal, state or local laws. A student or student organization may face criminal and civil prosecution as well as university disciplinary action for violation of these laws.

The university reserves the right to take action under this code for any offenses over which it has jurisdiction. Proceedings under this code may be carried out prior to, simultaneously with, or following civil or criminal proceedings in the courts. University proceedings under the student conduct code are not subject to challenge, delay, or dismissal based solely on criminal charges.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-050, filed 5/20/09, effective 6/20/09.]

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(.) WAC 172-121-060 Notification of criminal arrest. A student is responsible for informing the university of any off-campus arrest.

When student rights and responsibilities (SRR) is informed of the arrest of a student, the university may send a letter to the student requiring that he or she make an appointment for an interview with the SRR. During this interview, the director of SRR shall discuss with the student:

- (1) The facts involved in the student's arrest;
- (2) The student's obligation to keep the university informed of the progress of any criminal charge(s); and
- (3) The student's obligation to advise the university of the final disposition of any criminal charge(s).

The university will cooperate with law enforcement and other agencies administering a corrective or rehabilitative program for the student.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-060, filed 5/20/09, effective 6/20/09.]

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(.) WAC 172-121-070 Conduct review officials. (1) The director of SRR 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.
- (c) Maintain all records of conduct review proceedings as described in WAC 172-121-080.
- (e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives and whether the conduct process should be initiated.

(2) Conduct review officer (CRO): The university president shall designate one or more conduct review officers. The director of SRR may be designated as a conduct review officer. The conduct review officer(s) shall preside over conduct review proceedings under this chapter. For sexual misconduct cases where the possible sanction may be suspension, expulsion, or involve felony-level sexual misconduct, the CRO also acts as the decision-maker as set forth in WAC 172-121-123. As the presiding officer, the conduct review officer 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 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 full opportunity for cross-examination and rebuttal by all parties;
- (j) Take official notice of facts pursuant to RCW 34.05452(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 action necessary and authorized by any applicable statute or rule.

(3) Student disciplinary council: The student disciplinary council hears cases of student conduct code violations that do not involve sexual misconduct as described in WAC 172-121-120. The council also serves as an appeal authority under WAC 172-121-130.

(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 university president. Appointment of council pool members is as follows:

- (i) Faculty and members are appointed for three-year terms. Student members are appointed for one-year terms;
- (ii) Council chair. The director of SRR, or designee, shall serve as chair of council proceedings but will not have the right to vote, except in the case of a tie;
- (iii) Vacancies: Council pool vacancies shall be filled as needed through presidential appointment.

(b) Session council: When a student disciplinary council is needed for a hearing or an appeal, the director of SRR shall select available members from the council pool to serve as the session council. Each session council must include a quorum. A quorum is three voting members, which must include at least one student and one faculty/staff member.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-070, filed 5/20/09, effective 6/20/09.]

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WAC 172-121-075 Conflicts of interest. (1) Individuals who play a role in receiving, investigation, and otherwise processing complaints shall not have any conflict of interest in the process. In the event that such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official is involved in the process has a conflict of interest may report such concerns to the director of SRR or the dean of students. The director or dean shall determine whether a conflict of interest exists and take appropriate action.

(2) Anyone who serves as an investigator or advocate, or someone who is subject to the authority, direction, or discretion of such a person, may not serve as the conduct review officer for a full adjudicative hearing.

(3) Challenges to council membership. Members of the student disciplinary council and the conduct review officer shall not participate in any case in which they are the respondent, the complainant, a victim, or a witness; in which the respondent, the complainant, a victim, or a witness is a family member or friend, in which they have a personal interest or bias; or in which they have acted previously in an investigatory, advisory, or adjudicatory capacity.

(a) If a member has such a conflict, the person shall recuse him/herself from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A member's or the conduct review officer's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the conduct review officer. When such a challenge is made, the session council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies him/herself from a case, the director of SRR will appoint a replacement.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, WSR 13-24-123, § 172-121-075, filed 12/4/13, effective 1/4/14.]

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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 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 a preliminary 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;

(vi) Proffers of proof, 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; and,

(x) Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student discipline council or conduct review officer 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 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 conduct review officer. The conduct review officer 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 records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university 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 CFR 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 CFR Part 99).

- (iii) In response to a judicial order or a lawfully issued subpoena.
- (iv) The university shall release information related to disciplinary records to complainants, victims 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 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 CFR Part 99) by providing a written consent to student rights and responsibilities.
- (vii) Any student may review his/her 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 may disclose to a student's parents a violation of any federal, state, or local law, or of any university 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.(4) Holds:
- (a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.
- (b) Discretionary holds: The conduct review officer may place a hold on a student's academic records 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 conduct review officer.
- (c) Required holds: The conduct review officer shall place a hold on a student's academic record if the student is the respondent to a violation of the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. This hold shall remain in place until the allegation or complaint is resolved.
- [Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-080, filed 5/20/09, effective 6/20/09.]

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

- (a) Any person may file a complaint against a student or student organization for violation of the student conduct code.
- (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;
- (ii) The office of the dean of students; or
- (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 is acting as the complainant, an EWU employee shall initiate the complaint.

(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 and/or criminal conduct that will require special processing under subsection (3) of this section and whether appropriate law enforcement or other authorities should be notified. The director of SRR shall also review the complaint to determine whether the allegations may lead to a possible sanction of suspension, expulsion, or if the charges rise to the level of a felony under Washington criminal law; all such cases are referred to a council hearing under section WAC 172-121-122 or a sexual misconduct hearing under WAC 172-121-123.

(3) Sexual Misconduct Hearings. Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct. This section shall apply regardless of where the alleged acts occurred.

- (a) Report to Title IX Coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct to the university Title IX coordinator within twenty-four (24) hours.
- (b) Prompt Resolution. The university shall investigate any complaint alleging sexual misconduct when it is legally required to do so to determine if the university will pursue the incident under this student conduct code and/or refer the incident to other departments or agencies for further criminal, civil, or disciplinary action. All allegations of sexual misconduct shall be promptly investigated and resolved. For student conduct cases, the university uses the hearing processes set forth in this code as the means of investigating a complaint. In the absence of extenuating circumstances, the university will seek to have the allegations resolved within 60 days from the date it is notified of the allegation.
- (c) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained 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 or victim wishes to remain anonymous, the university 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 or victim wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university 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 or victims. Files subject to public disclosure will be released to the extent required by law.
- (d) Right to file a criminal report. Once the university is notified of an allegation of sexual misconduct, it will notify the potential victim of their right to file a criminal complaint with campus or local law enforcement. If the victim in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the victim that he or she is not required to file a report with local law enforcement. The university will report allegations of sexual misconduct to law enforcement or other authorities consistent with federal, state, and local law.

(4) Interim measures. During the complaint review, the director of SRR will evaluate the circumstances and recommend to the Dean of Students if any interim restriction action against the respondent is warranted or if any interim measures to assist or protect the complainant and/or victim during the conduct code process are needed. In cases of sexual misconduct, the director of SRR shall, in conjunction with the Dean of Students and other appropriate university officials, take immediate

steps. Appropriate steps may include separating the respondent and the complainant/victim, providing counseling for the complainant/victim and/or respondent, and/or taking disciplinary action against the respondent.

(5) Inform complainant. As part of the complaint review process, the director of SRR will follow up with the complainant as described below.

(a) For cases other than sexual misconduct, the director of SRR will contact the complainant and provide them with the following information:

- (i) The complainant's rights under the student conduct code;
 - (ii) The allegations which the complainant has against the respondent;
 - (iii) The potential conduct code violations related to the allegations; and
 - (iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.
- (b) In all cases alleging sexual misconduct, the director of SRR will, in addition to the information specified under subsection (a), provide the complainant with written information that will include, at a minimum:
- (i) The student's rights and options, including options to avoid contact with the respondent; 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 the 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 their 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) Following the complaint review, the director of SRR will either dismiss the matter or arrange a pre-liminary 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, he/she may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR 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, the complainant/victim may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within ten days.

(b) Preliminary conference. If the director of SRR does not dismiss the matter he/she will arrange a pre-liminary conference as described in WAC 172-121-110.

[Statutory Authority: RCW 28B.35.120(12). 09-12-001, § 172-121-100, filed 5/20/09, effective 6/20/09.]

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

(a) Conduct review proceedings in which the potential sanction is less than suspension, expulsion, or does not involve allegations of felony level sexual misconduct are summary hearings and considered brief adjudicative proceedings in accordance with WAC 172-108-010(3), and shall be conducted in an informal manner. Conduct review proceedings in which the potential sanction is suspension, expulsion, or that involve allegations of felony level sexual misconduct are council hearings or sexual misconduct hearings under this code and are considered full adjudicative proceedings 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.

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

(3) Advisors: The complainant, victim, 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, victim, or the respondent that employed the advisor;
- (b) The advisor may be an attorney or any other person of the student's choosing; and,
- (c) The advisor must provide the conduct review officer with a FERPA release signed by the student they are assisting;
- (d) If a complainant, victim, or the respondent is represented by an attorney, the attorney shall provide the conduct review officer 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.

(4) Review of Evidence:

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

(b) In council hearings, the parties may request to view material related to the case prior to the scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early

to the extent allowable by state and federal law.

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

[Statutory Authority: RCW 28B.35.120(12). WSR 13-24-123, § 172-121-105, filed 12/4/13, effective 1/4/14.]

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WAC 172-121-110 Preliminary conference. (1) Scheduling. If, after reviewing a complaint, the director of SRR decides to initiate conduct review proceedings, the director shall, within ten business days of receiving the initial complaint, appoint a conduct review officer (CRO) to the case and notify the respondent. In cases alleging sexual misconduct, the CRO assigned must have completed training on issues relating to sexual misconduct, the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the charges to the respondent must:

- (a) be made in writing;
- (b) include a written list of charges against the respondent; and
- (c) include the name of the conduct review officer assigned to the case and the deadline for the respondent to contact the CRO in order to schedule a preliminary conference. Whenever possible, the deadline for the respondent to contact the CRO will be within five business days of the date the director of SRR sent notification to the respondent.

(2) Failure to respond: If the respondent fails to respond to the notice of charges, the director of SRR shall schedule the preliminary conference and notify the respondent. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.

(3) Follow up with complainant/victim. In all cases alleging sexual misconduct or if there will be a council hearing, the CRO shall notify the complainant(s) of the date, time, and location of the preliminary conference and of their right to attend the conference. The CRO shall also follow up with the complainant(s)/respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the complainant/victim has experienced any type of retaliatory behavior, the university shall take immediate steps to protect the complainant/victim from further harassment or retaliation.

(4) Appearance.

- (a) For summary hearings only the respondent and the respondent's advisor may appear at the preliminary conference, unless the case involves alleged sexual misconduct. In cases alleging sexual misconduct, the respondent and the complainant/victim, along with their advisors, if they choose to have an advisor, may appear at the preliminary conference.
- (b) For council hearings and sexual misconduct hearings, both parties and their advisors may appear at the preliminary conference.

(5) Failure to appear. In cases where proper notice has been given but the respondent fails to attend the preliminary conference, the CRO may:

- (a) Proceed with a hearing and decide the case based on the information available; or
- (b) Place a hold on the respondent's academic records as described in WAC 172-121-080.

(6) Preliminary Conference. The purpose of the preliminary conference is to advise the parties regarding the student conduct process. If both of the parties are not present, the CRO will refrain from discussing any nonprocedural matters. During the preliminary conference, the conduct review officer will:

- (a) Review the written list of charges 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 policies;
- (d) Explain the respondent's rights under the student code;
- (e) Explain the conduct review procedures;
- (f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and
- (g) Explain possible penalties under the student conduct code.

(7) After the preliminary conference, the conduct review officer will take one of the following actions:

- (a) Conduct or schedule a summary hearing with the respondent as described in WAC 172-121-121 for cases where the possible sanction is less than a suspension or the allegations do not involve felony level sexual misconduct; or
- (b) Refer the case to either the student disciplinary council for a council hearing under WAC 172-121-122 or a sexual misconduct hearing under WAC 172-121-123 for any cases where the possible sanction is a suspension, expulsion, or involves an allegation of felony level sexual misconduct.

[Statutory Authority: RCW 28B.35.120(12). WSR 13-24-123, § 172-121-110, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-110, filed 5/20/09, effective 6/20/09.]

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WAC 172-121-120 Hearing procedures. The provisions of this section apply to both summary hearings and to council hearings.

(1) General provisions.

- (a) Hearing authority: The hearing authority, through the conduct review officers, exercises control over hearing proceedings. All procedural questions are subject to the final decision of the conduct review officer.
- (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 hearing authority.
- (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.

(2) 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) Complainant's appearance: The complainant will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the accused student during the hearing. The complainant may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits sets forth below in (e) of this subsection.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105.

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

(e) Telephonic appearance. In the interest of fairness and expedience, the conduct review officer may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by a telephonic appearance as determined by the conduct review officer..

(3) 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.

(4) Sanctions. In determining what sanctions shall be imposed, the hearing authority 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 hearing 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.

[Statutory Authority: RCW 28B.35.120(12). WSR 15-24-050, § 172-121-120, filed 11/23/15, effective 12/24/15; WSR 13-24-124, § 172-121-120, filed 12/4/13, effective 1/4/14; WSR 09/12/001, § 172-121-120, filed 5/20/09, effective 6/20/09.]

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WAC 172-121-121 Summary hearings. Summary hearing procedures.

(1) The conduct review officer may hold a summary hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve felony level sexual misconduct.

(2) Scheduling. A summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct, a summary hearing cannot take place without first notifying the complainant/respondent of the hearing. If the summary hearing will be held at a later date or time, the conduct review officer shall schedule the hearing and notify the respondent and, in the case of sexual misconduct, the complainant of the date, time, and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(3) If the respondent fails to appear at the summary hearing, the conduct review officer may conduct the summary hearing without the respondent present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The conduct review officer may also place a hold on the respondent's academic records under WAC 172-121-080.

(4) Deliberation. After the hearing, the conduct review officer shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence. (a) If the conduct review officer determines that there is not sufficient information to establish a violation by a preponderance of evidence, the conduct review officer shall dismiss the complaint.

(b) If the conduct review officer determines that the respondent violated the student conduct code, the conduct review officer shall impose any number of sanctions as described in WAC 172-121-210. (5) Notification. The conduct review officer shall serve the respondent with a brief written statement setting forth the outcome of the summary hearing and notice of the right to appeal. In a sexual misconduct, the victim shall be provided with written notice of:

(a) The university's determination as to whether such sexual misconduct occurred;

(b) The victim's right to appeal;

(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)). 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 a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

[Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-121, filed 8/9/17, effective 9/9/17.]

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WAC 172-121-122 Council hearing procedures.

(1) Scheduling and notification. Council hearings are used for allegations other than sexual misconduct which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, the director of SRR shall schedule the hearing and notify the respondent with the date, time, and location of the hearing. The director of SRR shall also inform the council and notify the complainant/victim of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice will include information about how to request accommodations or interpreters for any parties or witnesses. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(2) Evidence.

- (a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the conduct review officer in accordance with RCW 34.05.452. Evidence, including hearsay evidence, is admissible if in the judgment of the conduct review officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The conduct review officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The conduct review officer may exclude incompetent, irrelevant, immaterial or unduly repetitious material. If not inconsistent with this section, the conduct review officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.
- (b) The respondent has the right to view all material presented during the course of the hearing.
- (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, 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.

(3) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five 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 will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(4) Subpoenas.

- (a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.
- (b) 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 command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.
- (i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.
- (ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.
- (c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her 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.
- (d) The conduct review officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) 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 entitled to judgment as a matter of law.

(6) Witnesses.

- (a) The complainant, victim, respondent and hearing authority may present witnesses at council review hearings.
- (b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. For purposes of a council 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 and oppressive.
- (c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.
- (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 days prior to the hearing. The CRO will comply with WAC 10-08-150.

(7) Questioning:

- (a) The complainant, the respondent, and their advisors may ask questions of each other or of any witnesses, except the CRO may preclude any questions which he/she considers inappropriate, irrelevant, immaterial or unduly repetitious. 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 CRO and any members of the council may ask their own questions of any witness called before them.

(8) The hearing authority 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 telephone, audio tape, written statement, or other means, as determined appropriate, subject to subsection (2) of this section.

(9) Deliberations and sanctions. Following the hearing, the council shall meet in closed session and, within seven days, determine by majority vote whether, by a preponderance of the evidence, the respondent violated the student conduct code.

If the council determines that the respondent violated the student conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session. The council shall issue 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 council's decision. The findings shall be based exclusively on the evidence provided at 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) Contain appropriate numbered findings of fact meeting the requirements in RCW **34.05.461**;
- (d) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;
- (e) Contain an initial or final order disposing of all contested issues; (f) Contain a statement describing the available posthearing remedies.

(10) Notification. The council chair shall forward the council decision to the director of SRR. The director of SRR shall serve the respondent with a brief written statement setting forth the council's decision and notice of the right to appeal. Information regarding the discipline of the respondent will not be released unless: (a) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or (b) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

[Statutory Authority: RCW **28B.35.120**(12). WSR 17-17-031, § 172-121-122, filed 8/9/17, effective 9/9/17.]

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WAC 172-121-123 Sexual misconduct hearing procedures.

(1) Scheduling and notification. Sexual misconduct hearings are used for sexual misconduct allegations which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion or would be considered felony-level sexual misconduct. Sexual misconduct hearings are conducted by a conduct review officer (CRO). The CRO shall schedule the hearing and notify the complainant/victim and respondent of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice will include information about how to request accommodations or interpreters for any parties or witnesses. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so.

(2) Evidence.

(a) Evidence: Pertinent records exhibits and written statements may be accepted as information for consideration by the CRO in accordance with RCW 34.05.452. Evidence, including hearsay evidence, is admissible if in the judgment of the conduct review officer 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 incompetent, irrelevant, immaterial or unduly repetitious material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

(b) The respondent and the complainant/victim have the right to view all material presented during the course of the hearing.

(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, 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.

(3) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five 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 will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(4) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) 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 command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

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

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her 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.

(d) The CRO, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable and oppressive, or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) 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 entitled to judgment as a matter of law.

(6) Witnesses.

(a) The complainant, victim, respondent, and CRO may present witnesses at council review hearings.

(b) The party 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 and oppressive.

(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 inappropriate, irrelevant, immaterial, or unduly repetitious.

(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 days prior to the hearing. The CRO will comply with WAC 10-08-150.

(7) Questioning:

(a) The complainant, the respondent, and their advisors may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the CRO. The CRO may ask such questions, but is not required to do so. The CRO may reject any question deemed inappropriate, irrelevant, immaterial or unduly repetitious. 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) During a conduct review hearing, only the CRO may pose questions to persons appearing at the hearing. The CRO may question any parties and witnesses.

(8) 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 telephone, audio tape, written statement, or other means, as determined appropriate, subject to subsection (2) of this section.

(9) Deliberations and sanctions. Following the hearing, the CRO will determine whether the respondent violated the student conduct code. If the CRO determines the respondent violated the student conduct code, the CRO shall then decide what sanctions shall be imposed. The CRO shall issue a decision including his/her findings, conclusions, and rationale. Such decision should be issued within seven business days from the sexual misconduct hearing. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. The findings shall be based exclusively on the evidence provided at 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) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(d) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(e) Contain an initial or final order disposing of all contested issues;

(f) Contain a statement describing the available posthearing remedies.

(10) Notification. The CRO shall forward his/her decision to the director of SRR. The director of SRR shall serve the respondent with a brief written statement setting forth the CRO's decision and notice of the right to appeal. The victim shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct occurred;

(b) The victim's right to appeal;

(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)).

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 a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a). [Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-123, filed 8/9/17, effective 9/9/17.]

WAC 172-121-130 Appeals. (1) Basis: Appeals may be filed by the respondent or the complainant. In cases of sexual misconduct, the victim may also file an appeal. Appeals may be filed for one or more of the following reasons:

- (a) To determine whether the hearing was conducted according to established procedures. A hearing may have deviated from established procedures if:
 - (i) The hearing was not conducted fairly in light of the charges and information presented;
 - (ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;
 - (iii) The respondent was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code.
- (b) The hearing authority misinterpreted the student conduct code.
- (c) To determine whether the decision reached by the hearing authority 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 which was not known to the appellant and could not reasonably have been discovered and presented by the appellant at the original hearing. It is the party's obligation to present all evidence at the time of the original hearing. The university 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.

(2) Filing: Appeals may be filed following a summary hearing, conduct review hearing or a sexual misconduct hearing, subject to the following provisions:

- (a) The appeal must be submitted to the director of student rights and responsibilities within ten calendar days from service of the council's decision following a council hearing or the CRO's decision following a sexual misconduct hearing, and within twenty-one calendar days from service of a decision for a summary hearing, from service of the decision;
- (b) The appeal shall be in writing and shall include:
 - (i) The appellant'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 is seeking.
- (c) In cases of sexual misconduct, 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) Appeal authorities:

- (a) For summary hearings heard by the conduct review officer, appeals are determined by the student disciplinary council.
- (b) For student disciplinary council hearings, appeals are determined by the vice president for student affairs.
- (c) For sexual misconduct hearings, appeals are determined by the vice president for student affairs.

(4) 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.

(5) 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, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority.

(7) 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.

(8) 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.

(9) 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 shall serve the respondent, and, in cases of sexual misconduct, notify the complainant and victim, with a brief written statement setting forth the outcome of the appeal.

(10) 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 decision may be available under RCW 34.05.

(11) 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.

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WAC 172-121-140 Interim restriction. In situations where there is cause to believe that a student or a student organization poses an immediate danger to the health, safety, or welfare of themselves, the university community, or property of the university community, the dean of students may take immediate action(s) against the student or student organization without prior notice or hearing.

Simultaneous with such action(s), the dean of students will refer the charges to the conduct review officer, who will process such charges in accordance with the provisions of this student conduct code.

Interim restriction is subject to the following:

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

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

- (i) The health, safety or welfare of any part of the university community or public at large;
- (ii) The student's own physical safety and well-being; or
- (iii) Any property of the university community; or

(b) 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 community.

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

- (a) Denial of access, including but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;
- (b) Interim suspension, including temporary total removal from the university or restriction of access to campus;
- (c) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The dean of students will determine what restriction(s) will be placed on a student.

(4) The dean of students will prepare a brief memorandum for record containing the reasons for the interim restriction. The dean of students 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) constitute a violation of the student conduct code;
- (c) How the circumstances of the case necessitated the interim restriction action(s); and
- (d) The date, time, and location for an emergency hearing with the vice-president for student affairs.

(5) In cases alleging sexual misconduct, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant.

(6) Emergency Appeal Hearings.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal hearing with the vice president for student affairs, or designee, within ten business days after the interim suspension is served. 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 within ten business days after service of the interim restriction.

(b) The vice-president for student affairs, or designee, will conduct an emergency appeals hearing with the student or student organization subject to the interim restriction. The student may appear at the hearing telephonically and may be represented by counsel.

(c) In cases alleging sexual misconduct, if an interim restriction is imposed, the student, the student organization, and the complainant may appeal the interim restriction using the process out lined in this subsection. Also, in such cases, if an appeal is filed, all parties shall be given notice of the appeal and shall be provided the opportunity to participate in the appeal proceeding.

(d) The vice-president for student affairs may have the dean of students or any other person deemed relevant attend the meeting. The respondent and the complainant, if he/she has the right to be present under (b) of this subsection, may have an advisor present at the meeting.

(e) During the emergency appeal hearing, the vice president for student affairs will review available materials and statements. After the meeting, the vice president for student affairs may uphold, modify, or terminate the interim restriction action.

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

(g) 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.

[Statutory Authority: RCW 28B.35.120(12). WSR 15-24-050, § 172-121-140, filed 11/23/15, effective 12/24/15; WSR 09-12-001, § 172-121-140, filed 5/20/09, effective 6/20/09.]

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WAC 172-121-200 Violations. The following are defined as offenses which are subject to disciplinary action by the university.

(1) Acts of academic dishonesty. University policy regarding academic dishonesty is governed by the university academic integrity policy. However, repeated violations, as described in the academic integrity policy, are subject to action under the student conduct code. Academic dishonesty includes, but is not limited to, any of the following activities:

- (a) Plagiarism: Representing the work of another as one's own work;
- (b) Preparing work for another that is to be used as that person's own work;
- (c) Cheating by any method or means;
- (d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research;
- (e) Knowingly furnishing false information to a university official relative to academic matters.

(2) Acts of social misconduct.

(a) Abuse. Physical abuse, verbal abuse, and/or other conduct which threatens or endangers the health or safety of any person.

(b) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) Objectively hostile or offensive; and

(v) Creates an intimidating and/or threatening environment which produces a risk of psychological and/or physical harm.

(c) Domestic violence and relationship violence.

(i) Domestic violence means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(B) Sexual assault of one family or household member by another; or

(C) Stalking of one family or household member by another family or household member.

(ii) Relationship violence is a type of domestic violence, except the acts specified above are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. In determining whether such a relationship exists, the following factors are considered:

(A) The length of time the relationship has existed;

(B) The nature of the relationship; and

(C) The frequency of interaction between the parties involved in the relationship.

(d) Harassment, gender-based harassment, and sexual harassment.

(i) Harassment is conduct by any means that is sufficiently severe, pervasive, or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, participate in, or benefit from the university's programs or activities.

(ii) Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

(iii) Sexual harassment is unwelcome conduct of a sexual nature and may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

In determining whether any of the above-listed types of harassment are severe, pervasive, or persistent, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the victim; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(e) Retaliation. Any actual or threatened retaliation or any act of intimidation intended to prevent or otherwise obstruct the reporting of a violation of this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation or act of intimidation directed towards a person who participates in an investigation or disciplinary process under this code is prohibited and is a separate violation of this code.

(f) Sexual misconduct. Sexual misconduct includes, but is not limited to, sexual violence; indecent liberties; indecent exposure; sexual exhibitionism; sex-based cyber harassment; prostitution or the solicitation of a prostitute; peeping or other voyeurism; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity. Sexual violence is sexual intercourse or sexual contact with a person without his or her consent or when the person is incapable of giving consent. Consent means actual words or conduct indicating freely

given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when the victim is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, or physical condition.

(g) Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (i) Fear for their health and/or safety or the health/safety of others; or
- (ii) Suffer substantial emotional distress.

(h) Unauthorized use of electronic or other devices: Making an audio or video recording of any person while on university 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. 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.

(3) Property violations. Theft of, damage to, or misuse of another person's or entity's property.

(4) Weapons. Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in (a) through (d) of this subsection. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(a) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must notify the university police of their presence on campus upon arrival.

(b) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(c) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(d) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

(5) Failure to comply.

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

(6) Trespassing/unauthorized use of keys.

(a) Trespass. Entering or remaining on university property without authorization.

(b) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

(7) Deception, forgery, fraud, unauthorized representation.

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

(8) Safety.

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

(9) Alcohol, drugs, and controlled substances.

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is prohibited.

(b) Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of illegal drugs, paraphernalia, narcotics or controlled substances, is prohibited.

(ii) Use, possession, distribution, manufacture, or sale of marijuana is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention).

(iii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

(10) Hazing. Any act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

(a) Endangers the mental or physical health or safety of any student or other person;

(b) Destroys or removes public or private property; or

(c) Compels an individual to participate in any activity which is illegal or contrary to university rules, regulations or policies.

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

(11) Disruptive conduct/obstruction.

(a) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

(12) Violations of other laws, regulations and policies.

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies, regulations, or handbook provisions.

(13) Assisting/attempts. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

(14) Acts against the administration of this code.

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code, including but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

(15) Other responsibilities:

(a) Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(iii) Any other agreements related to the student's study program in the foreign country; and

(iv) The student conduct code.

(16) Student organization and/or group offenses. Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university

community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

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(L) WAC 172-121-210 Sanctions. If any student or student organization is found to have committed any of the offenses described in **WAC 172-121-200** (<http://apps.leg.wa.gov/WAC/default.aspx?cite=172-121-200>), 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 sanctions may result in additional sanctions.

(1) Individual student sanctions:

(a) Admonition: An oral statement to a student that he/she has violated university 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-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 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 conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of four hundred dollars against individual students for violation of university rules or regulations or for failure to comply with university 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 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.30.125** (<http://apps.leg.wa.gov/RCW/default.aspx?cite=28B.30.125>), a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(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 restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspension is subject to the processes outlined in this chapter except any suspension must also be approved by the dean of students and the vice-president for student affairs before such sanction is imposed.

(k) Expulsion: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Expulsion actions will be accomplished by issuing both an order of expulsion and a notice against trespass. The notice against trespass may be given by any manner specified in **chapter 9A.52 RCW** (<http://apps.leg.wa.gov/RCW/default.aspx?cite=9A.52>). Expulsion is subject to the processes outlined in this chapter except any expulsion must also be approved by the dean of students and the vice-president of student affairs before such sanction is imposed.

(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 also 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 may be revoked for fraud, misrepresentation, or other violation of law or university 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 president.

(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. 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 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 or ASEWU recognition for a group, club, society or other organization. Revocation is subject to the processes outlined in this chapter except any revocation must also be approved by the dean of students and the vice-president of student affairs before such sanction is imposed;

(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 facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

[Statutory Authority: RCW 28B.35.120(12). WSR 15-24-050, § 172-121-210, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-210, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-210, filed 5/20/09, effective 6/20/09.]

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