WAC 172-125-010 Commitment to nondiscrimination and standards of conduct for students. Eastern Washington University (EWU) is committed to equity and justice, and respect for the rights and dignity of all people. EWU is committed to providing a learning, living, and working environment free from discrimination and harassment. To fulfill these commitments, this code prohibits students and student organizations from engaging in discrimination, discriminatory harassment, interpersonal violence, sexual assault, sexual misconduct, or retaliation. This code sets forth the expectations for EWU student and student organization behavior and the process for addressing potential violations of the following standards of conduct. More specifically, students and student organizations are prohibited from engaging in:

(1) **Discriminatory conduct.** Discriminatory conduct includes discriminatory treatment and discriminatory harassment. For purposes of both of these violations, the term "protected status" includes race, color, creed, religion, national origin, shared ancestry, citizenship or immigration status, sex, pregnancy, sexual orientation, gender identity/expression, genetic information, age, marital status, families with children, protected veteran or military status, HIV or hepatitis C, status as a mother breastfeeding her child, or the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service animal by a person with a disability.

(a) **Discriminatory treatment.** Adverse action taken against another individual because of the person's protected status or perception of a person's protected status, excluding protected free speech. Discriminatory treatment includes, but is not limited to, causing physical damage to another person's property because of their protected status or perception of a person's protected status or excluding a person from joining or participating in a student organization because of their protected status or the perception thereof. Individuals and student organizations may be treated differently on the basis of sex only to the extent permitted by Title IX and the Washington Law Against Discrimination.

(b) **Discriminatory harassment.** Physical or verbal conduct that:

(i) Denigrates or shows hostility toward an individual because of their protected status (as defined above) or perceived protected status;

(ii) Is subjectively and objectively offensive; and

(iii) Is sufficiently severe or pervasive as to unreasonably interfere with an individual's academic or work performance, or ability to participate in or benefit from the university's programs and activities.

(2) **Interpersonal violence.** Interpersonal violence encompasses domestic violence, dating violence, and stalking. These terms are defined as:

(a) **Domestic violence:** Any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual relationship, are current or former family members, or adult persons who presently reside together. This includes, but is not limited to, physical abuse, threats of bodily harm or safety, or coercive control. Coercive control is: (i) A pattern of behavior used to cause another to suffer physical, emotional, or psychological harm; (ii) and is intended to or has the effect of unreasonably interfering with a person's free will and personal liberty. Examples of coercive control are identified in RCW 7.105.010(4).

(b) **Dating violence:** Is domestic violence as defined above except the acts are committed by a person who is or has been in a social re-

lationship of a romantic or intimate nature with the complainant. In determining whether such a relationship exists, the following factors are considered:

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

(ii) The type of relationship; and

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

(c) **Stalking:** 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.

(3) **Sexual harassment.** Harassment on the basis of a person's sex, sexual orientation, or gender identity/expression that meets one of the following standards:

(a) **Hostile environment:** Unwelcome sex-based conduct that, based on the totality of the circumstances, is:

(i) Subjectively and objectively offensive; and

(ii) So severe and pervasive that it created a hostile environment by effectively denying a person equal access to the university's programs or activities.

In determining whether conduct is severe and pervasive, the university shall consider all relevant circumstances from both an objective and subjective perspective including, but not limited to: (A) The type of harassment (verbal or physical); (B) the frequency and severity of the conduct; (C) the age, sex, and relationship of the individuals involved; (D) the degree to which the conduct affected the complainant; (E) the setting and context in which the harassment occurred; (F) whether other incidents have occurred at the university; and (G) other relevant factors. These are factors for consideration; each factor does not need to be met for a hostile environment to exist.

(b) **Quid pro quo harassment:** If a student is working as a university employee or otherwise has the authority to offer benefits or service to students, sexual harassment exists if the respondent explicitly or impliedly conditioned the provision of such benefit or service on the complainant's participation in unwelcome sexual conduct.

(4) **Sexual assault.** Any sexual act directed against another person, without a person's consent, including instances where a person is not capable 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, any form of coercion, or physical or psychological intimidation. Sexual activity is nonconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, age, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

Sexual assault includes:

(a) **Rape:** The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without a person's consent.

(b) **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the person's

consent. Private body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks.

(c) **Sodomy:** Oral or anal sexual intercourse with another person, without the complainant's consent.

(d) **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

(e) **Statutory rape:** Sexual intercourse with a person who is under the age of consent as defined by state law.

(5) **Sexual misconduct.** Other forms of inappropriate sexual misconduct include indecent liberties; indecent exposure; sexual exhibitionism; prostitution or the solicitation of a prostitute; peeping or other voyeurism; sexual misconduct with a minor; sharing nude images of another without their permission; sextortion; or going beyond the boundaries of consent, such as allowing others to view consensual sex or the nonconsensual recording of sexual activity.

(6) **Retaliation.** Any intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights or privileges under this code, or because a person has reported information, made a complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding, informal resolution, or hearing under this code is prohibited. Any actual or threatened retaliation is prohibited and is a separate violation of this code. If the complainant or respondent engages in retaliatory behavior, the university shall take immediate steps to protect the complainant or respondent from further harassment or retaliation.

Additional standards for student conduct are contained in the student conduct code, chapter 172-121 WAC, and the academic integrity code, chapter 172-90 WAC. Standards for employees are contained in university policy.

[Statutory Authority: RCW 28B.35.120(12). WSR 26-11-046, s 172-125-010, filed 5/18/26, effective 6/18/26; WSR 25-14-092, s 172-125-010, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-010, filed 10/28/24, effective 11/28/24.]