WAC 172-125-210 Level one process. (1) **Applicability.** The Level One Process applies to all violations of this code that do not involve felony-level crimes, would not result in the suspension or expulsion of a student, or fall within the definition of a formal Title IX complaint. If the alleged misconduct could constitute a felony-level crime or result in a student's suspension or expulsion, it must be referred to the Level Two Process outlined in WAC 172-125-220. If the alleged misconduct fits within the definition of a formal Title IX complaint, it must be referred to the Level Three Process outlined in WAC 172-125-225. The Level One Process is considered a brief adjudicative proceeding pursuant to RCW 34.05.482.

If the alleged conduct could constitute a violation of this code and the student conduct code, chapter 172-121 WAC, and the alleged violations arise out of the same facts or circumstances, the Level One Process outlined in this code may be used to determine violations of this code and the student conduct code in lieu of having two separate proceedings. The investigator will determine whether or not to include violations of either code as documented in the notice of investigation and allegations.

(2) **Notice of investigation and allegations.** If the Title IX coordinator refers a complaint to investigation, the Title IX coordinator will assign an investigator to conduct an investigation. The investigator will serve the respondent and complainant with a notice of investigation and allegations that meets the following requirements:

(a) Is made in writing;

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

(c) Contact information for the investigator;

(d) Parties' rights during the process, including:

(i) Right to a fair and equitable process.

(ii) Right to have investigators and decision-makers that do not have a conflict of interest or bias against the parties.

(iii) Right to remain silent during the investigation.

(iv) Right to have an advisor of their choice, at their cost, during the process. The advisor may be, but is not required to be, an attorney. During the investigative process, the advisor may be present and advise the party, but may not answer questions on the party's behalf.

(v) Right to provide evidence to the investigator.

(vi) Right to be presumed not responsible and that a conclusion of responsibility is not made until the conclusion of the investigative process.

(vii) Right to request an accommodation or interpreter for the process.

(e) Information about the investigative process and, if applicable, informal resolution;

(f) A statement that complainants, respondents, and witnesses are prohibited from knowingly making false statements or furnishing false information during the process. A person will not be disciplined for making a false statement based solely on whether or not EWU determines a complaint under this code is substantiated.

(g) EWU's prohibition on retaliation and how to report acts of retaliation;

(h) Information about how the parties will be provided an equal opportunity to access relevant information gathered during the investigation; and

(i) Information about supportive measures and resources available to both parties.

(3) **Investigative process.** During the investigation, the investigator is responsible for gathering sufficient evidence to determine whether or not this code has been violated. The investigator has discretion in determining the formality, scope, and process of the investigation. If additional allegations are discovered during the course of the investigation, the investigator shall issue an updated notice of investigation. Before scheduling an interview with a complainant or respondent, the investigator must provide the party with written notice of the date, time, location, participants, and purpose of the meeting with sufficient time for the party to prepare. The investigative process must include:

(a) Contacting the complainant to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.). If necessary, the investigator may contact the complainant on more than one occasion during the course of the investigation to obtain additional information and clarification. If the investigator is not able to obtain sufficient information or if the complainant withdraws the complaint during the investigative process, the investigator may refer the complaint back to the Title IX coordinator to determine whether or not dismissal is appropriate.

(b) Contacting the respondent to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.).

(c) Conducting interviews with witnesses who have knowledge of the alleged behavior and gathering relevant evidence. Witnesses may be contacted once or numerous times as necessary to gather the relevant information.

(d) Parties may identify fact witnesses, expert witnesses, and other inculpatory and exculpatory evidence. If a party wishes to provide information from an expert witness, the party is responsible for any costs associated with the expert witness.

(e) The investigator must have the ability to question parties and witnesses to assess their credibility to the extent credibility is both in dispute and relevant. The investigator may ask questions during individual meetings with a party or witness.

(f) The investigator may choose to place less or no weight upon statements by a party or witness who refuses to respond to the investigator's questions. The investigator, however, must not draw an inference about whether or not this code was violated based solely on a party's or witness's refusal to respond to the investigator's questions.

(g) After gathering the relevant evidence, the investigator must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is relevant to the allegations raised in the complaint and not otherwise impermissible.

(h) The investigation shall not include evidence nor shall any information provided be disclosed to another person if such information:

(i) Is evidence protected under a legal privilege recognized by federal or state law, unless the person to whom the privilege or con-

fidentiality is owed has voluntarily waived the privilege or confidentiality;

(ii) Records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless EWU obtains that party's or witness's voluntary, written consent for use of the information in the investigation;

(iii) Information about the complainant's sexual predisposition or prior sexual behavior, unless the evidence is relevant to demonstrate that someone other than the respondent committed the conduct alleged by the complainant, or the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is relevant to the question of consent. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent in the incident under investigation.

(4) **Investigative report and determinations of responsibility.**

(a) After gathering the relevant evidence, the investigator must objectively evaluate the information gathered and determine the credibility of the parties. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness. The investigator will prepare an investigative report that accurately summarizes the information gathered and makes determinations on whether or not this code or the student conduct code has been violated based on a preponderance of the evidence, meaning it is more probable than not that an act occurred.

(b) If the investigator determines the respondent has not violated this code or any provision of the student conduct code, the investigator will simultaneously serve the investigative report on the complainant and respondent along with information about how to appeal the investigator's decision.

(c) If the investigator determines the respondent has violated this code or any provision of the student conduct code, the investigator will send the investigative report to the director of student rights and responsibilities. The director or director's designee will then determine the appropriate sanction for the misconduct substantiated by the investigator within seven calendar days of receiving the investigative report. The director will also determine whether or not remedies for the complainant or other impacted students are appropriate. Remedies must be provided to the complainant or other impacted students if needed to restore or preserve equal access to the university's educational programs or activities. The director or designee will add an additional section to the investigative report setting forth their decision as to the appropriate sanction and the reasons for their decision. The director or designee will then simultaneously serve the full investigative report and sanctioning decision on the complainant and respondent along with information about how to appeal the investigator and director's decisions. In addition to sanctions under this code, if the student is also an employee of the university, the director's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with the university policy.

(5) **Timelines and extensions.** EWU must respond to complaints under this code in a prompt and equitable manner. To assist EWU in reaching this goal, this code includes various timelines. EWU's goal is to complete investigations within 90 days. If EWU needs additional time, the investigator must provide written notice to the complainant

and respondent of the delay and reasons for the delay. Delays and extensions beyond 90 days must be based on good cause.

(6) **Appeals.**

(a) Timeline. Either party may file an appeal from the investigator's decision regarding responsibility or the director's decision regarding the sanction. Appeals must be submitted in writing by 5:00 p.m. PST within 21 calendar days from the date the investigative report is sent to the parties. Appeals must be submitted via email to srr@ewu.edu. The appeal must include the party's name and why they believe the investigator or director's decision was incorrect based on the bases for appeal outlined below. If no appeal is timely filed, the investigator/director's decisions are final.

(b) Basis for appeal. Appeals may be filed for one or more of the following reasons:

(i) Procedural irregularity that would change the outcome of the investigator or director's decisions;

(ii) New evidence that would change the investigator's decision that was not reasonably available when the investigative report was finalized; or

(iii) The investigator or director had a conflict of interest or bias for or against complainants or respondents generally or the individual parties that would change the outcome of the investigation.

(c) Once an appeal is filed, the office of student rights and responsibilities will serve the other party with a copy of the appeal. The other party will be given five calendar days to provide a written response to the appeal.

(d) Stay of sanctions. Sanctions go into effect immediately after the director's decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed along with the notice of appeal. The request for the stay will be reviewed by the director or designee. The stay may be granted in part or in its entirety, at the discretion of the director. The decision will be served on the respondent and the complainant. This decision is not subject to appeal.

(e) Appeals will be determined by the dean of students or designee. The director will provide the appeal authority with the notice of appeal, any responses to the appeal, and the investigative report. Before rendering a decision, the appeal authority may request additional information or explanation from the parties. However, except as required to explain the basis of new information, an appeal shall be limited to a review of the investigative report.

(f) After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the investigator and/or director. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be served on the complainant and respondent within 30 calendar days of the appeal authority receiving all necessary documentation. In cases where the appeal authority remands the decision or sanction, the case will be returned to either the investigator or director for reconsideration or other action as specified by the appeal authority. With respect to 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.

(g) 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 draft a brief written statement setting forth the outcome of the appeal and the basis for their decision. This is then forwarded to the director. The director shall serve the written statement on the complainant and respondent. The notice will also inform the parties that the appeal authority's decision is final and no further appeals may be made within the university. Judicial review of the university's decision may be available under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-210, 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 172-125-210, filed 10/28/24, effective 11/28/24.]