WAC 172-125-220 Level two process. (1) **Applicability.** The Level Two Process applies to all violations of this code that involve felony-level crimes or that may result in the suspension or expulsion of a student, but that do not fall within the definition of a formal Title IX complaint. If any of 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 this section. The Level Two Process is considered a full adjudicative proceeding pursuant to chapter 34.05 RCW. Alleged misconduct that fits within the definition of a formal Title IX complaint must be referred to the Level Three Process outlined in WAC 172-125-225.

If the alleged conduct could constitute a violation of this code and a violation of the student conduct code, chapter 172-121 WAC, and the alleged violations arise out of the same facts or circumstances, the Level Two 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 under the Level Two Process, 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 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 in writing 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. Any withdrawal must be in writing.

(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. Parties and witnesses may be contacted once or numerous times as necessary to gather the relevant information.

(d) Parties may present fact witnesses, expert witnesses, and other inculpatory and exculpatory evidence. If a party wishes to present 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 raise 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.

(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 complainant and respondent with the investigative report 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 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 complainant and respondent with the full investigative report and sanctioning decision, 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 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 have investigations completed within 90 days. If the university 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) **Initial appeal to student disciplinary council.** If either party disagrees with the decision of the investigator or director, they may request a full de novo hearing by filing a request for hearing with the office of student rights and responsibilities. The request for hearing must be sent in writing to srr@ewu.edu by 5:00 p.m. PST within 21 calendar days from the date the investigative report is sent to the parties. If a timely request for hearing is received, the director will refer the case to a full hearing before the student disciplinary council under WAC 172-125-230.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-220, 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 172-125-220, filed 10/28/24, effective 11/28/24.]