WAC 172-125-225 Level three process. (1) **Applicability.** The Level Three Process applies to any complaint that meets the definition of a formal Title IX complaint. The Level Three Process is considered a full adjudicative proceeding pursuant to chapter 34.05 RCW.

If the alleged conduct could also constitute another violation of this code or the student conduct code, chapter 172-121 WAC, and the alleged violations arise out of the same facts or circumstances, the Level Three Process outlined in this code may be used to determine Title IX violations, other violations of this code and the student conduct code in lieu of having 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 Three 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 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. The university will provide an advisor to a party that does not have one for the purpose of conducting cross-examination during a hearing.

(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) 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 confidentiality 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.**

(a) After gathering the relevant evidence, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least 10 calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report.

(b) At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence and evaluates 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 provides a recommendation to the student disciplinary council as to whether or not this code or the student conduct code has been violated based on a preponderance of the evidence.

(c) The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least 10 days prior to any hearing. The investigator will also provide a copy of the report to the parties for their review and written response. The director of SRR will then convene the student disciplinary council for a hearing in accordance with WAC 172-125-230 and assign the parties university provided advisors for purposes of the hearing if they do not already have an advisor.

(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.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-225, filed 7/1/25, effective 8/1/25.]