**WAC 172-125-230 Full hearings before the student disciplinary council.** (1) **Appointment of council.** When a student disciplinary council is needed for a full hearing following a request for a full hearing under the Level Two Process or in all cases involving a Level Three Process, the Title IX coordinator or dean of students shall appoint a presiding officer and members to serve on the council consistent with the procedures for appointing a council under the student conduct code, chapter 172-121 WAC. Full hearings are determined by a majority vote of the council and are conducted de novo.

(2) **Prehearing.** Following receipt of a timely request for a full hearing, the director or designee will notify both parties of the date, time, and location of the prehearing. The purpose of the prehearing is to explain the hearing procedures to the parties, schedule a date for the full hearing, and to address any preliminary matters or motions. A full hearing must be scheduled within 30 calendar days of the date of the request for a hearing from a party, absent good cause for an extension.

(3) **Notice of hearing.** Following the prehearing conference, the director shall schedule the hearing and serve the respondent and complainant with notice of the date, time, location, participants, and purpose of the hearing. At the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing may be conducted by electronic means. Each party in the hearing must have an opportunity to participate effectively in the hearing. This may include remote participation via audiovisual means. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to student accommodation and support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven calendar days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(4) **General hearing procedures.**

(a) **Hearing authority.** The presiding officer exercises control over hearing proceedings. All procedural questions are subject to the final decision of the presiding officer. The presiding officer chairs the disciplinary council.

(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 presiding officer.

(c) **Appearance.**

(i) Failure to appear. In cases where proper notice has been given but the respondent fails to attend the hearing, the council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(ii) Options for appearing. The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe

them while testifying, subject to the limits set forth in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. The council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(d) **Advisors.** The complainant and the respondent may be assisted by one advisor during conduct review hearings. The advisor is there to provide guidance and advice to the party, but is not allowed to speak on behalf of the party, answer questions on the parties behalf, or question the other party or witnesses except for Level Three hearings in which case the advisor may question the parties and witnesses.

(e) **Disruption of proceedings.** Any person, including a party or advisor, who disrupts a hearing or does not follow the standards of decorum set by the presiding officer, may be excluded from the proceedings.

(f) **Remote appearance.** In the interest of fairness and expedience, the presiding officer may permit any person to appear by a method that allows the person to be seen and heard by the council.

(g) **Standard of evidence.** The council shall determine whether the respondent violated this code and the student conduct code, as charged in the notice of allegations sent by the investigator, 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 this code or the student conduct code.

(h) **Evidence.** The council will be provided with a copy of the investigative report and all associated exhibits. The investigative report and exhibits will be admitted into evidence. If the parties wish the council to consider additional documentary evidence, such evidence should be provided to the director in advance of the hearing. The council may review proposed exhibits prior to the hearing.

(i) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The presiding officer may exclude irrelevant material. If not inconsistent with this section, the presiding officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, identity, a pattern of conduct, credibility, or absence of mistake or lack of knowledge. Prior to allowing a question to be answered during a hearing, the presiding officer must determine whether the question is relevant and, if excluded, the presiding officer must explain the basis for their decision on the record.

(ii) The respondent and complainant have the right to view all material presented during the course of the hearing. If a respondent's disciplinary history is considered solely for sanctioning purposes, the complainant does not have a right to review the history.

(iii) 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.

(iv) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(v) Official notice may be taken of (A) any easily verifiable facts such as dates or weather conditions, (B) technical or scientific

facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (C) 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.

(vi) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(i) **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 in the university's possession as long as such request is submitted at least seven calendar days prior to the hearing, absent extenuating circumstances. If the presiding officer determines the request is not relevant to the present allegation, the presiding officer may deny the request. The university will provide the requested information prior to the hearing to the extent feasible and permitted by state and federal law.

(j) **Subpoenas.** Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least 10 calendar days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. 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 direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under their control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing. A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving them a copy thereof, or by leaving such copy at the place of their 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. The presiding officer, upon motion by a party or at their own discretion, may quash or modify the subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(k) **Motions.** Motions for summary judgment and motions to dismiss are not permitted under this process.

(l) **Opening statements.** The parties and the investigator may provide a brief opening statement to the council at the beginning of the proceeding. The statement may be made verbally or in writing and will be limited to the length identified by the presiding officer. Advisors are not permitted to make opening statements. The presiding officer may place the parties or investigator under oath before receiving the

opening statement. The investigator's statement shall include a summary of the steps taken during the investigation, evidence gathered, and the portions of the relevant codes the respondent is alleged to have violated. Closing arguments are not permitted as the focus of the hearing is on gathering and evaluating evidence.

(m) **Witnesses.**

(i) The complainant, respondent, and the university's investigator may call witnesses at full hearings.

(ii) The person 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 presiding officer to subpoena witnesses. The presiding officer 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, oppressive, or does not conform to EWU's subpoena form.

(iii) The presiding officer may exclude witnesses from the hearing room when they are not testifying. The presiding officer is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. Any decision to exclude a witness shall be explained on the record.

(iv) All parties have the right to hear all testimony provided by witnesses during the hearing.

(v) The parties should inform the presiding officer of any possible need for an interpreter or any accommodation requests at least 10 calendar days prior to the hearing. The presiding officer will comply with WAC 10-08-150.

(n) **Questioning.** The university investigator, presiding officer, or the council may ask questions of any witnesses or the parties.

(i) Level Two Process: The complainant and respondent will both be given the opportunity to submit questions in writing to the presiding officer for each party/witness. The presiding officer will ask the questions of the party/witness proposed by the complainant or respondent as long as the questions are relevant and not otherwise impermissible. The presiding officer will not ask proposed questions that are unclear or that harass the party or witness being questioned. In no case will the complainant, respondent, or their advisors question witnesses or parties directly.

(ii) Level Three Process: All questions of witnesses must be asked by an advisor, the investigator, the presiding officer, or the student disciplinary council. Questions may be asked directly by the advisor or investigator and do not need to be submitted in writing to the presiding officer. The presiding officer may limit or exclude questions that are irrelevant, harassing, or that have already been asked. Prior to allowing a question to be answered during cross-examination, the presiding officer must determine that the question is relevant, and, if excluded, the presiding officer must explain on the record the reason for the exclusion. The council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(iii) Level Two and Level Three Processes: The presiding officer must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the

complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The presiding officer will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(o) **Remote appearance.** The presiding officer 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 video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate.

(p) **Role of the presiding officer.** The presiding officer has authority to take actions related to the hearing process including, but not limited to:

(i) Determine the order of presentation of evidence;

(ii) Administer oaths and affirmations;

(iii) Issue subpoenas pursuant to RCW 34.05.446;

(iv) Rule on procedural matters, objections, and motions;

(v) Rule on offers of proof and receive relevant evidence;

(vi) Pursuant to 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;

(vii) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(viii) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;

(ix) Take official notice of facts pursuant to RCW 34.05.452(5);

(x) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(xi) Take any other action necessary and authorized by any applicable statute or rule.

(q) **Role of the investigator.** The investigator will provide an opening statement outlining the notice of investigation and allegations, the steps taken during the investigative process, a brief summary of the evidence gathered, and the investigator's recommendation. The investigator may also call witnesses, ask questions, and offer evidence during the hearing.

(r) **Deliberations and sanctions.** Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated this code or the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. The council shall make its decisions based on a majority vote. If the council determines the respondent violated this code or the student conduct code, the presiding officer shall then decide what sanctions and remedies shall be imposed. The presiding officer may review the respondent's previous disciplinary history for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the presiding officer'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.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings

shall be based exclusively on the evidence provided at the hearing or contained in the investigative report. If the council finds the respondent violated the code, the presiding officer shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be served on the complainant and respondent within 14 calendar days from the date of the hearing. The written decision shall also:

(i) Designate all parties and representatives participating in the proceeding;

(ii) Identify the allegations at issue;

(iii) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, methods used to gather other evidence, and hearings held;

(iv) Contain findings of fact;

(v) Contain conclusions regarding the application of university policies and this code to the facts;

(vi) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant or any other impacted student to restore or preserve equal access to the EWU's educational programs or activities;

(vii) Contain a statement describing rights to appeal and the procedures for appealing.

(s) **Finality.** The council's and presiding officer's decision becomes final at the conclusion of this process if an appeal is not timely filed.

(t) **Notice of decision.** The presiding officer shall serve the complainant and respondent with a copy of the decision and notice of the right to appeal. The Title IX coordinator must also be provided with a copy of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-230, 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 172-125-230, filed 10/28/24, effective 11/28/24.]