

Sexual Misconduct, Interpersonal Violence & Title IX Responsibilities

Standards of Conduct

EWU Policy 402-01

Authority: EWU Board of Trustees

Effective: December 11, 2020

Proponent: President's Office; Vice President for Business & Finance

Purpose: This policy describes university standards for sexual harassment, sexual assault, domestic violence, dating violence, stalking, and retaliation involving members of the university community. It also establishes procedures for handling complaints of sexual misconduct or interpersonal violence and responsibilities for Title IX compliance.

History: This policy revises EWU Policy 402-01, dated December 7, 2018, with interim changes from August 10, 2020. It was approved by the Board of Trustees on December 11, 2020.

Applicability: This policy applies to all members of the university community, including employees, students, visitors, program participants, volunteers, or contractors. Complaints against students for violations of this policy are handled in accordance with the procedures contained in the Student Conduct Code, WAC 172-121.

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CHAPTER 1 – INTRODUCTION

1-1. General

Eastern Washington University will not tolerate any form of sexual misconduct, sexual harassment, sexual assault, domestic or dating violence, stalking or retaliation, and will take appropriate action against a university employee, student, visitor, volunteer, or contractor who violates any part of this policy. Enforcement of this policy is subject to constitutional protections related to freedom of speech, association, and the press.

1-2. Goal

As a public institution of higher education, the university has a special responsibility to create and maintain an academic environment that promotes freedom of inquiry and expression while protecting the rights, opportunities, and welfare of employees, students, program participants, visitors, volunteers, and contractors.

The goal of this policy is to promote an environment that is free of sexual misconduct and interpersonal violence. In accordance with Title IX of the Education Amendments of 1972, EWU does not exclude individuals from participating in, deny benefits to, or discriminate against individuals on the basis of sex in any university program or activity. Sexual misconduct and interpersonal violence, as defined below, are forms of sex discrimination.

To facilitate this goal, the university retains authority to discipline or take other appropriate action for any conduct that is deemed unacceptable or inappropriate, regardless

of whether the conduct rises to the level of unlawful sexual misconduct or interpersonal violence.

1-3. Scope

All persons, including students, employees, program participants, visitors, volunteers, and contractors are required to comply with this policy while on campus or participating in university programs or activities. EWU students and employees are also required to comply with this policy while conducting university business, participating in university activities, or using university resources. Students and employees are also responsible for violations of this policy off-campus or outside of a university program or activity when the conduct in question has an impact on the person's duties or responsibilities as a university student or employee.

Complaints against students for violations of this policy are handled in accordance with the procedures contained in the Student Conduct Code, WAC 172-121. If the student also serves as an employee, following a determination of responsibility under the Student Conduct Code, the matter will be referred back to the student employee's supervisor to determine whether or not disciplinary action is appropriate from an employment perspective.

Complaints against other members of the university community, including employees, program participants, visitors, volunteers, and contractors are handled under this policy.

1-4. Definitions

Complainant. The person who has been subjected to sexual misconduct or interpersonal violence. The Title IX Coordinator may also file a complaint on behalf of the university.

Formal Title IX Complaint. The term “formal Title IX complaint” is defined as:

a. A formal signed complaint filed by a complainant who is a current student, employee, applicant, or person participating or seeking to participate in a university program or activity, or by the Title IX Coordinator;

b. Alleging sexual harassment, sexual assault, domestic violence, dating violence, or stalking as defined for Title IX purposes in chapter 5; and,

c. That occurred on EWU premises, during a university program or activity within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university.

A complaint of sexual misconduct or interpersonal violence will only be considered a formal Title IX complaint under this policy if it meets this definition. Sexual misconduct or interpersonal violence that does not meet this definition is still addressed and prohibited under this policy.

Interpersonal Violence. For purposes of this policy, the term “interpersonal violence” refers to domestic violence, dating violence, stalking, and retaliation arising from one of these forms of misconduct. These terms are defined below in chapter 5.

Investigator. Person designated by the university to review and, if appropriate, investigate allegations of violations of this policy.

Respondent. A person who is alleged to have violated this policy.

Sexual Misconduct. For purposes of this policy, the term “sexual misconduct” includes sexual harassment, sexual assault, and other forms of sexual misconduct as defined in chapter 5.

CHAPTER 2 – REPORTING

Individuals who believe they have been subjected to sexual misconduct or interpersonal violence are encouraged to report such incidents to the university and seek advice and assistance as soon as possible. There is not a mandatory timeline for filing a complaint.

Incidents may be reported to one of the reporting options listed below. These entities also serve as resources for advice and assistance. Individuals may pursue a complaint through the university investigatory and disciplinary

process by notifying the Title IX Coordinator. Individuals also have the option of pursuing a criminal complaint by contacting the university police or local law enforcement. Complainants may pursue both a criminal complaint and an administrative complaint consecutively or concurrently.

Except for licensed professionals at Counseling and Psychological Services (CAPS) and complainants, all university employees who become aware of an incident or complaint that may be a violation of this policy involving a student, employee, program participant, visitor, volunteer, or contractor must report it to the Title IX Coordinator within 24 hours of becoming aware of the matter.

Employees must report complaints regardless of the person reporting the incident’s desire for the matter to remain confidential and regardless of whether a report is made with campus or local law enforcement. Mandatory reporting is not required when a person discloses sexual misconduct during a public awareness event, such as “Take Back the Night.” Employees who are uncertain as to whether or not a disclosure is subject to mandatory reporting should contact the Title IX Coordinator.

Mandatory reporting helps the university to respond effectively and prevent a hostile educational and work environment. However, EWU has not designated all employees as officials who have authority to institute corrective measures on behalf of the university.

2-1. Reporting Options

a. Report Online

(1) Via e-mail to: titleix@ewu.edu

(2) Online at: www.ewu.edu/titleix

b. Report via telephone or in-person

Title IX Coordinator
211 Tawanka Hall
(509) 359-6724

c. Report to Law Enforcement

University Police
Red Barn
Emergency: Dial 911
Office: (509) 359-6300

Cheney Police
215 “G” Street
Cheney, WA
Emergency: Dial 911
Crime Check: (509) 535-9233

d. Anonymous Reporting

Individuals who have been subjected to sexual misconduct or interpersonal violence have the option to report anonymously. However, anonymous reports may affect or prevent EWU from conducting an investigation. Confidentiality may be requested but

may not always be possible based on the circumstances of a particular case. Confidentiality is addressed below in section 3-5.

The following are anonymous reporting options:

Anonymous report to the Title IX Coordinator:
www.ewu.edu/titleix University Police Anonymous TIP
LINE at 509-359-4286

University Police Confidential Reporting Form:
<https://inside.ewu.edu/police/report-a-crime/>

2-2. Confidential Resources

Students may also seek advice and assistance on a confidential basis from Counseling and Psychological Services (CAPS) – (509) 359-2366

For a list of additional confidential resources for students and employees, please see chapter 7 below.

2-3. Reporting Deadlines

Mandatory reporters are required to report within 24 hours of becoming aware of an incident.

All individuals are encouraged to report as soon as possible.

2-4. Good Faith

Complaints must be made in good faith. Knowingly making a false or frivolous allegation may be considered an act of misconduct. Knowingly furnishing false information during the investigative and disciplinary process is also prohibited.

2-5. Amnesty for Certain Student Conduct Charges

The university encourages students to report incidents of sexual misconduct without fear of consequences for having possessed or consumed alcohol and/or drugs at the time of the incident. The university's primary concern is to address student safety, discrimination, and sexual misconduct. The university does not condone drinking, use of illegal drugs, or other violations of law or university policy; however, the university generally will not pursue Student Conduct Code allegations against a complainant for alcohol or drug use and/or possession at the time of the reported sexual misconduct. This amnesty does not extend to other potential violations of the Student Conduct Code. This limited amnesty is applicable only to university Student Conduct Code proceedings and is at the university's discretion.

CHAPTER 3 – COMPLAINT & INVESTIGATIVE PROCEDURES

Upon receipt of a complaint under this policy, the Title IX Coordinator or designee shall determine the appropriate process for handling the complaint. Formal Title IX complaints are handled in accordance with the Title IX grievance process set forth in EWU Policy 402-05 (Title IX Investigations & Hearings) and are not subject to this chapter.

For complaints under this policy that do not fall within the definition of a formal Title IX complaint, the following process applies.

3-1. Timely Warning

If the report involves conduct that may constitute a serious or continuing threat to the health and safety of the EWU community, the Title IX Coordinator will notify the Director of Public Safety for the purposes of evaluating whether a timely warning should be issued to campus in accordance with EWU Policy 603-01 (Campus Safety, Security, and Crime Prevention).

3-2. Complainant Outreach

After receiving a complaint, the Title IX Coordinator or designee will promptly reach out to the complainant to provide information about EWU's process, their rights, reporting options, and available resources and supportive measures regardless of whether a complaint is filed.

This will include information about:

a. Reporting Options: EWU encourages people to report incidents of sexual misconduct or interpersonal violence. However, complainants are not required to file a complaint with EWU or law enforcement. People can file a complaint, with the help of the Title IX Coordinator upon request, with EWU or with local law enforcement, or both, using one of the following options:

- (1) EWU process: complaints may be filed with the Title IX Coordinator as outlined in section 2-1. This includes complaints against EWU students, employees, program participants, visitors, volunteers, and contractors.
- (2) Criminal: criminal complaints can be filed with the EWU Police Department or an outside law enforcement agency.
- (3) Both: a complainant may report an incident to both EWU and law enforcement.

b. Resources:

- (1) A list of resources for obtaining protective, no contact, restraining, or similar orders, if relevant;

- (2) How to seek medical treatment, the importance of preserving evidence relevant to the alleged conduct or that may be helpful in obtaining a protective order and procedures to follow to preserve such evidence;
- (3) A list of existing on and off campus counseling, health care services, mental health services, victim advocacy, financial aid, legal assistance, visa and immigration assistance, and other services for complainants and respondents; and,
- (4) Information about available supportive measures as outlined in section 3-3.

c. Overview of EWU's Process: Information will also be provided about EWU's process for responding to complaints of sexual misconduct and interpersonal violence, including:

- (1) Importance of preserving evidence that may assist in investigation of the incident or that may be helpful in obtaining a protection order;
- (2) EWU's policies regarding the confidentiality as set forth in this policy;
- (3) How to request supportive measures as outlined in section 3-3;
- (4) EWU's investigative and hearing process (if applicable), including who will receive a copy of the investigative report; and,
- (5) EWU's prohibition against retaliation and how to report retaliation.

3-3. Supportive Measures

After receiving a complaint, the Title IX Coordinator or designee will review the complaint and determine whether or not supportive measures or interim restrictions are needed. Supportive measures are available regardless of whether someone wants to file a formal complaint. Requests for supportive measures may be directed to the Student Care Team or Title IX Coordinator. Supportive measures may be in place before a complaint is filed, during the investigation and decision-making process, and/or after the final determination of responsibility. Supportive measures are also available for both complainants and respondents.

Supportive measures are provided by EWU free of charge and may include, but are not limited to, safety planning with EWU, mutual restrictions on contact between the parties, academic or workplace modifications, leaves of absence, increased security, counseling options on campus or through the Employee Assistance Program, or campus housing modifications.

Supportive measures are confidential and will only be shared with those people who need to know such information to enable EWU to provide the supportive measures. The Title IX Coordinator or designee is responsible for coordinating the effective implementation of supportive measures.

All supportive measures should be documented and retained for seven years.

3-4. Interim Restrictions & Administrative Leave

The Title IX Coordinator or designee, in conjunction with the relevant appointing authority, will review the information provided in the complaint and any supplementary information provided by the complainant, witnesses, EWU police department, or other entities, to determine whether the employee should be placed on administrative leave and any conditions of such leave.

Additionally, the Title IX Coordinator and appointing authority should determine whether or not, in addition to administrative leave, any interim restrictions on the respondent's ability to utilize campus resources or be on campus are needed.

3-5. Confidentiality

Information gathered during an investigation into a complaint under this policy will be maintained in a confidential manner to the extent permitted by law. During an investigation, complaint information will be disseminated only on a need-to-know basis. However, EWU cannot ensure confidentiality, as its legal and contractual obligations may require disclosure of complainant, witness, or respondent names. In the case of a public records request, the names and personally identifiable information of the complainant and witnesses, along with identifying information, will be redacted consistent with the Public Records Act, RCW 42.56, unless the complainant or witness request to have their names disclosed.

If a complainant wishes to remain anonymous, EWU will take reasonable steps to gather information about the complaint but may not be able to investigate the complaint due to a lack of information or witnesses. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited and that any type of retaliation is prohibited. The university will inform the complainant of EWU's commitment to respond to complaints of retaliation. If a complainant wishes to remain anonymous, the Title IX Coordinator must determine whether and to what extent the university can investigate the complaint. Reports of crimes to the campus community, timely warnings, and EWU's annual security report shall not include the names of the complainants or victims.

EWU will not require a complainant or respondent to abide by a nondisclosure agreement that would prevent the redisclosure of information related to an investigation or disciplinary action under this policy.

3-6. Extensions & Timelines

EWU must respond to complaints of sexual misconduct and interpersonal violence in a prompt and equitable manner. To assist the university in achieving this goal, this policy identifies timelines for each part of the investigative and disciplinary process. If the university, complainant, or respondent, wishes to temporarily delay the grievance process or extend a timeline, the person seeking the extension must file a written request with the Title IX Coordinator. The request must identify the reason for the delay. The Title IX Coordinator or designee may extend the timeframes for good cause. Good cause includes situations such as the absence of a party, party's advisor, or witness at a hearing; concurrent law enforcement activity; or the need for language assistance or accommodations. If the respondent requests a delay because of a related criminal proceeding, the Title IX Coordinator or designee will engage in a balancing process based on the particular circumstances of the case consistent with state law. The Title IX Coordinator or designee will issue a written response to the request and state the reasons for why the request has been granted, modified, or denied. A copy of this decision will be provided to the complainant and respondent.

An investigation will be conducted regardless of whether law enforcement is also conducting an investigation, as the university has an independent obligation to conduct such an investigation. Any pending or ongoing investigation by the university will not be suspended or terminated if a person also files a complaint with a federal or state agency unless it would interfere with a criminal investigation.

3-7. Designation of an Investigator & Investigative Process

If after reviewing the report the Title IX Coordinator determines an investigation is appropriate, the Title IX Coordinator will assign the complaint to an investigator, which may be the Title IX Coordinator.

The investigator will proceed with an investigation under EWU Guideline 401-01 (Investigations) with the following additions and exceptions:

a. Notice of Investigation to Respondent: In addition to the information identified in the guidelines, the notice must: (i) contain a list of the allegations 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 policies or expectations allegedly violated; (ii) information about how to seek supportive measures and available resources; (iii)

right to have an advisor of their choice, at their cost, during the investigation and disciplinary process; (iv) right to request an accommodation or interpreter for the process; and (v) information about EWU's prohibition on retaliation and how to report acts of retaliation.

b. Notice of Investigation to Complainant: The complainant must also receive a notice of investigation that contains the same information identified above for the notice of investigation to respondent.

c. Restriction in Questioning and Information Gathered: The investigator and decision-maker may not gather or consider evidence 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.

d. Right to an Advisor: Both the respondent and complainant may have a union representative or advisor of their choice present during any meeting or interview under this policy. The representative/advisor may not interfere with the interview or answer questions on the complainant or respondent's behalf.

e. Standard of Proof: The investigator will determine whether or not the allegations are substantiated based on a preponderance of the evidence. A preponderance means that it is more likely than not (50+%) that something did or did not occur. The university has the burden of collecting evidence to establish whether or not the respondent is responsible based on a preponderance of the evidence.

f. Review of Draft Report. After gathering statements and evidence from the complainant, respondent, and witnesses, the investigator should provide both the complainant and respondent with a copy of the initial draft of the investigative report and give them five (5) days to respond in writing to the information contained therein. After five days and considering any additional statements received, the investigator may finalize the report.

g. Copies of Investigative Report: After the investigator has finished the investigative report, a copy of the report must be simultaneously provided to the complainant, respondent, respondent's supervisor, and the Title IX Coordinator.

h. Notice of Intent to Discipline: if a respondent is entitled to notice of the university's intent to impose discipline under any applicable collective bargaining agreement, a copy of such notice must also be provided simultaneously to the complainant.

i. Pre-Disciplinary Meeting: if a respondent is entitled to a pre-disciplinary meeting under an applicable collective bargaining agreement, the complainant must be notified in advance of the time and place of such meeting. The complainant shall have an equal opportunity to provide additional information for the supervisor's consideration at the pre-disciplinary meeting. If the respondent is allowed to provide additional information in writing, the same opportunity must be provided to the complainant.

j. Disciplinary Decision. A copy of the university's written disciplinary decision shall be provided simultaneously to the complainant and the respondent. The decision shall include the rationale for the result and the discipline imposed. The complainant and respondent shall be simultaneously informed in writing of any changes made to the disciplinary action and when the results become final. A copy of all disciplinary decisions must also be provided to the Title IX Coordinator.

k. Right to be Present. During any disciplinary meeting where the respondent has the opportunity to be present, the complainant also has the right to be present as required by federal law. If the respondent has the right to have an advisor accompany them to a disciplinary meeting the complainant has the same right.

l. Access to Information: The complainant and respondent will, upon request, be provided with access to any information reviewed by the supervisor in determining whether to impose discipline.

m. Limitations of Appeals/Grievances: Neither the complainant nor the respondent has the right to appeal or challenge a faculty finding in an investigation. If the respondent has the right to challenge any discipline imposed under the applicable collective bargaining agreement by filing a grievance, the complainant has an analogous right to timely challenge the level of discipline imposed by filing a request for reconsideration with the respondent's supervisor. If a grievance is filed challenging discipline imposed under this policy, the complainant has the right to be present and participate to the same extent as the respondent in any subsequent disciplinary or grievance procedures as required by the Violence Against Women Reauthorization Act.

CHAPTER 4 – RESPONSIBILITIES

4-1. University President

The university president is responsible for overall compliance with Title IX, Title VII, the Violence Against Women Act, Washington Law Against Discrimination, and other nondiscrimination laws. The president will ensure development and implementation of university policies and

programs to comply with these laws. The president will promote those programs and policies and monitor university compliance. The president delegates to the associate vice president for civil rights, compliance and enterprise risk management the responsibility for promoting and monitoring the university's compliance with federal and state nondiscrimination laws.. The associate vice president is responsible for responding to any external investigations by the Human Rights Commission, Equal Employment Opportunity Commission, and/or Office of Civil Rights.

4-2. Title IX Coordinator

a. Contact Information

Title IX Coordinator
211 Tawanka Hall
(509) 359-6724

b. Response

The Title IX Coordinator will ensure all complaints of sexual misconduct or interpersonal violence are investigated in a prompt, thorough, and impartial manner. In the absence of extenuating circumstances, an investigation should be completed and disciplinary decision made within 90 days from the date the complaint is received by the university.

Investigations involving employees that fall within the definition of a Title IX complaint will be handled in accordance with EWU Policy 402-05, Title IX Investigations & Hearings. Investigations involving students will be handled in accordance with the Student Conduct Code, Chapter 172-121 WAC. Investigations involving employees, visitors, contractors, and volunteers that do not fall within the definition of a Title IX complaint are handled in accordance with this policy and EWU Guideline 401-01 (Investigations).

c. Monitoring & Training

The Title IX Coordinator shall maintain a register of the number and types of sexual misconduct and interpersonal violence complaints received, the results of any investigations, supportive measures provided, and the resolutions of student and employee conduct.

The Title IX Coordinator will periodically review incident details and university responses for consistency and sufficiency - and to assess whether the university is meeting its goal to promote a safe learning and working environment free from discrimination and harassment, including preventing future recurrence of such conduct and addressing the effects of such conduct on the university learning and work environments. The Title IX Coordinator or designee will provide training on Title IX and all types of conduct prohibited by this policy.

Anyone who is involved in investigating or making a decision as to whether or not someone has violated this policy must have completed training on issues relating to sexual misconduct and interpersonal violence, Title IX, and the Violence Against Women Reauthorization Act. Investigators must be adequately trained on an annual basis on issues of sexual misconduct and how to conduct an investigation that protects the safety of complainants and promotes accountability.

The Title IX Coordinator shall report the data and findings to the university president at least once per year. Each year the Title IX Coordinator will meet with the University President regarding Title IX compliance.

4-3. Deputy Title IX Coordinators

In consultation with the Title IX Coordinator, the Deputy Title IX Coordinators shall ensure appropriate actions are taken to comply with Title IX matters involving their areas of assignment. The university president may appoint Deputy Title IX Coordinators as needed.

4-4. Supervisors and Faculty

Supervisors and faculty members play a key role in both preventing and responding to discriminatory acts or behaviors.

a. Prevention: Prevention is the best method for eliminating discrimination and harassment in the workplace. Supervisors and faculty members can help prevent discrimination and harassment by modeling appropriate behaviors and by arranging discrimination prevention training when necessary.

b. Response: When supervisors and faculty members become aware of incidents of discrimination and/or harassment, they will take appropriate action based on the situation. In all cases, the supervisor or faculty member will report the incident or behavior to appropriate authorities.

c. Faculty members have the additional responsibility to monitor student activities in the classroom and to take appropriate action when discriminatory or harassing behaviors or incidents occur.

d. Supervisors and faculty who are, or should be, aware of discriminatory practices or harassment within their department, area, or classroom will be held responsible for their actions in response to such circumstances. In determining such responsibility, the supervisor's or faculty member's extent of control over the circumstances and any corrective actions they have taken will be considered.

4-5. Dean of Students; Title IX Coordinator; Human Resources; University Police

Complainants of sexual misconduct or interpersonal violence must be provided with certain notifications and

procedural protections in accordance with the requirements of the Clery Act. The Dean of Student's Office, Title IX Coordinator, Human Resources, and University Police will coordinate to ensure notifications and protections are provided to students and employees.

Additional information about the procedural protections, training, and resources for complainants is contained in EWU Policy 402-05, Title IX Investigations & Hearings, EWU Policy 603-01, Campus Safety, Security & Crime Prevention, and the EWU Student Conduct Code, Chapter 172-121 WAC.

The University Police are responsible for providing training to the campus community and resources for complainants for the aspects of this policy that also constitute criminal conduct, including acts of sexual and interpersonal violence, as detailed in EWU Policy 603-01, Campus Safety, Security and Crime Prevention.

CHAPTER 5 – VIOLATIONS & SANCTIONS

All university students, employees, program participants, visitors, volunteers and contractors are prohibited from engaging in any form of discrimination on the basis of sex, including sexual misconduct and interpersonal violence. Discrimination on the basis of sex, sexual orientation, or gender identity/expression that does not fit within the definitions below is prohibited by and addressed in EWU Policy 402-02 (Diversity & Nondiscrimination).

5-1. Sexual Harassment

Sexual harassment is a form of discrimination and violates this policy.

Sexual harassment, including sexual assault, can involve persons of the same or opposite sex, sexual orientation, or gender identity/expression. Comments do not have to be sexual in nature to constitute sexual harassment.

Consistent with state and federal law, sexual harassment is conduct on the basis of sex that meets the criteria of one of the following categories:

a. Quid Pro Quo

Quid pro quo sexual harassment is when a person with authority over a student or employee explicitly or implicitly conditions a term or condition of the student or employee's education or employment on the complainant's participation in unwelcome sexual conduct. This includes instances where submission to or rejection of such sexual conduct by a complainant is used as the basis for educational or employment decisions affecting the complainant. In determining whether such harassment exists, it is immaterial whether the complainant resists and suffers the threatened harm or submits and thus avoids the threatened harm.

b. Hostile Environment

Unwelcome conduct on the basis of sex that creates a hostile environment. Unwelcome conduct may create a hostile environment when it is so severe or pervasive, and objectively offense as determined by a reasonable person that:

- (1) It substantially interferes with another's ability to work, study, participate in, or benefit from the university's programs or activities; or,
- (2) The conduct has the purpose or effect of unreasonably interfering with another individual's work performance or creating an intimidating, hostile, or offensive working environment. This alternative only applies in the context of employment.

Solely for complaints that fall within the definition of a Title IX complaint, sexual harassment is defined as unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the complainant equal access to the university's programs or activities.

5-2. Sexual Assault

Sexual assault of any kind is prohibited by this policy and is the most egregious form of sexual harassment. Sexual assault is any sexual act directed against another person, without a person's consent, including instances where a person is not capable of giving consent. Sexual assault includes:

a. Rape

Penetration, no matter how slight, of the vagina or anus, with any body part or object, without consent; or, oral penetration by a sex organ of another person without consent.

b. Fondling

Intentional contact with a person's intimate body parts without the person's consent. Intimate body parts are defined as but not limited to breasts, genitalia, thighs, and buttocks. Solely for complaints that fall within the definition of a Title IX complaint, fondling is defined as the touching of the intimate body parts of another person for the purpose of sexual gratification without the person's consent.

c. Incest

Sexual intercourse between persons who are related to each other within the degree wherein marriage is prohibited by state law.

d. Statutory Rape

Sexual intercourse with a person who is under the age of consent as defined by state law.

For purposes of these definitions, consent means actual words or conduct indicating freely given agreement to the sexual activity. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force of violence or any other form of coercion or intimidation, physical or psychological.

Sexual activity is nonconsensual when one person is incapable of consent by reason of mental capacity, drug or alcohol use, illness, unconsciousness, or physical condition.

If an individual is "incapacitated" due to drugs or alcohol, they are unable to consent to sexual activity. 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.

5-3. Other Forms of Sexual Misconduct

Other forms of sexual misconduct include, but are not limited to, indecent liberties, indecent exposure, sexual exhibitionism, sex-based cyber-harassment, prostitution or the solicitation of a prostitute, communications with a minor for immoral purposes, peeping or other voyeurism, possession, creation, or distribution of child pornography, disclosure of intimate images as defined in RCW 9A.86.010 without consent, or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the non-consensual recording of sexual activity. These types of sexual misconduct violate this policy.

5-4. Interpersonal Violence

Interpersonal violence violates this policy. Interpersonal violence includes:

a. Domestic violence: a felony or misdemeanor crime of violence committed by: a current or former spouse or intimate partner of the complainant; a person with whom the complainant shares a child in common; a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner; adult persons related by blood or marriage; adult persons who are presently residing together or who have resided together in the past; and, persons who have a biological or legal parent-child relationship. "Domestic violence" is further defined by 34 U.S.C. 12291(a)(8).

b. Dating violence: a felony or misdemeanor crime of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. In determining whether such a relationship

exists, the following factors are considered: (a) the length of time the relationship has existed; (b) the type of relationship; and (c) the frequency of interaction between the parties involved in the relationship.

5-5. Stalking

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for their health and/or safety or the health/safety of others; or (b) suffer substantial emotional distress.

5-6. Retaliation

Any intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights under this policy or because a person has made a report, complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this policy. Such retaliatory acts will be treated as a separate violation of this chapter.

5-7. Sanctions

Sanctions for a violation of the Student Conduct Code may include an admonition, warning, censure, disciplinary probation, restitution, fines, discretionary sanctions, loss of institutional, financial aid funds, assessment, suspension, expulsion, or revocation of degree. The results of such investigations and proceedings shall be reported to the Title IX Coordinator within 30 days of the final action.

An employee who is found responsible for violating this policy may be subject to corrective/constructive action or discipline, including letters of expectation, letters of coaching and counseling, performance improvement plans, verbal or written reprimand/warning, temporary suspension, demotion, reassignment, mandatory training, and/or termination. Student employees may be subject to sanctions under both the Student Conduct Code and this policy with respect to their employment. The results of such investigations and processes shall be reported to the Title IX Coordinator within 30 days of the final action.

5-8. Internal Complaints of Failure to Comply with Title IX

Any person who believes the university has failed to comply with Title IX requirements may file a complaint with the Title IX Coordinator or the Associate Vice President for Civil Rights, Compliance & Enterprise Risk Management (211 Tawanka; (509) 359-6724). The Title IX Coordinator or, in the case of a possible conflict of interest, the associate vice president or designee, shall inquire into how the university handled the situation and whether or not the university complied with Title IX. A person may also file an external complaint under chapter 6.

5-9. Notification- Grants & Research

If the respondent in an investigation conducted under this policy is the principal investigator or co-principal investigator for research conducted as part of a federal grant or contract, such as an award by the National Science Foundation, the University is obligated to follow federal regulations and terms and conditions of the award regarding notification of the federal agency. The Executive Director of Grants and Research is responsible for notifying the awarding agency if a principal investigator or co-principal investigator is found responsible for sexual harassment, harassment, or sexual assault, if such person is placed on administrative leave or restricted duties for such reasons, or if the person is convicted of a sexual offense in court. The notice provided to the federal awarding agency will not include any personally identifiable information of the complainant or other individuals involved in the matter other than the respondent.

CHAPTER 6 – EXTERNAL COMPLAINTS

Individuals have a right to file complaints alleging discrimination, harassment, or retaliation with state or federal agencies within the agencies' prescribed time periods. State and federal agencies have their own processes for responding to and processing such complaints. Filing a complaint with a state or federal agency listed below may be done in lieu of or in addition to the university's complaint process.

Equal Employment Opportunity Commission
909 First Avenue, Suite 400
Seattle, WA 98104
Phone: (800) 669-4000
TTY: (800) 669-6820
www.eeoc.gov

Office of Federal Contract Compliance
90 7th Street, Suite #18-300
San Francisco, CA 94103
(415) 625-7800
www.dol.gov/ofccp/index.htm

U.S. Department of Labor
Wage and Hour Division
300 Fifth Avenue, Suite 1130
Seattle, WA
(206) 398-8039
www.dol.gov/WHD/index.htm

Department of Education, Office for Civil Rights
915 Second Avenue, Room 3310
Seattle, WA 98174
(206) 442-1636
OCRSeattle@ed.gov
<http://www.ed.gov/ocr/complaintprocess.html>

Washington State Human Rights Commission
1330 N, Washington St., Suite 2460
Spokane, WA 99201
(800) 233-3247
www.hum.wa.gov

CHAPTER 7 – RESOURCES AND REFERENCES

The following resources may be helpful if you have concerns involving sexual misconduct or interpersonal violence.

7-1. Non-Confidential Campus Resources

Student Rights and Responsibilities
301 Pence Union Building
(509) 359-6889

Student Care Team
301 Pence Union Building
(509) 359-7924

Title IX Coordinator
211 Tawanka Hall
(509) 359-6724

University Police
101 Red Barn
Emergency: Dial 911
Office: (509) 359-6300

7-2. Confidential Resources

Counseling and Psychological Services (CAPS)
225 Martin Hall
(509) 359-2366

Washington State Employee Assistance Program
(877) 313-4455

YWCA Alternatives to Domestic Violence- 24 hour crisis line
(509) 326-2255

Lutheran Community Services, Sexual Assault & Family Trauma Response Center;
(509) 747-8224

24/7 Regional Crisis Line
(877) 266-1818

REFERENCES

- a. EWU Policy 402-05, Title IX Complaints and Hearings
- b. EWU Policy 403-05, Employee Leave Related to Domestic Violence, Sexual Assault & Stalking
- c. EWU Policy 603-01, Campus Safety, Security & Crime Prevention
- d. EWU Policy 402-02, Diversity & Nondiscrimination
- e. Titles VI and VII of the Civil Rights Act of 1964
- f. Title IX of the Education Amendments of 1972
- g. The Civil Rights Act of 1991
- h. Student Conduct Code, WAC 172-121
- i. Washington State Laws on Discrimination, RCW 49.60
- j. Collective Bargaining Agreements
- k. Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act & Violence Against Women Reauthorization Act