

Title IX Investigations & Hearings

Standards of Conduct

EWU Policy 402-05

Authority: EWU Board of Trustees

Effective: December 11, 2020

Proponent: Vice President for Business & Finance

Purpose: This policy describes the university's grievance procedures for responding to Title IX complaints against EWU employees.

History: This policy supersedes and repeals EWU Policy 402-04 (Investigations of Employees for Sexual Harassment & Sexual & Interpersonal Violence). It was approved on an interim, emergency basis by the President on August 10, 2020. It was approved as a permanent policy by the Board of Trustees on December 11, 2020.

Applicability: This policy applies to all Title IX complaints against EWU employees. Title IX complaints against EWU students are handled under the Student Conduct Code, WAC 172-121. Title IX complaints against people who are not employees or students are handled under EWU Policy 402-01 and EWU's investigative guidelines.

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CHAPTER 1 – INTRODUCTION

1-1. Title IX & VAWA

Title IX is a federal law that prohibits discrimination on the basis of sex in Eastern Washington University's programs or activities. EWU is committed to complying with Title IX and will not tolerate any form of discrimination on the basis of sex, including sexual misconduct and interpersonal violence. EWU will respond to complaints of sexual misconduct or interpersonal violence in a prompt and equitable manner.

This policy is solely for the purpose of outlining EWU's investigatory and hearing process for responding to formal Title IX complaints against an employee for sexual misconduct and interpersonal violence. This policy supplements EWU Policy 402-01 (Sexual Misconduct, Interpersonal Violence & Title IX Responsibilities). Title IX complaints against student employees are addressed under the Student Conduct Code, WAC 172-121. Title IX complaints against people who are not employees or students are handled under EWU Policy 402-01 and EWU's investigative guidelines.

Additionally, complaints of discrimination on the basis of sex that do not involve sexual misconduct or interpersonal violence are covered by EWU Policy 402-02 (Diversity & Nondiscrimination).

As the procedures outlined in this policy are required either by Title IX, 34 C.F.R. section 106.3, or the Clery Act/Violence Against Women Reauthorization Act (VAWA), 34 C.F.R. section 668.46, to the extent this policy conflicts with other EWU policies, employment contracts,

or collective bargaining agreements, this policy takes precedence.

1-2. Formal Title IX Complaints

This policy only applies to formal Title IX complaints against EWU employees. Other complaints involving sexual misconduct and interpersonal violence are covered by EWU Policy 402-01 (Sexual Misconduct, Interpersonal Violence & Title IX Responsibilities).

A 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 EWU Policy 402-01; 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.

If a complaint meets all of the criteria above, it is considered a formal Title IX complaint and subject to the grievance procedures outlined in this policy. If it does not meet all of these criteria, it will be evaluated as a potential violation of EWU Policy 402-01 or other policies or expectations and may be investigated under EWU's investigative guidelines.

1-3. Definitions

The terms “complainant,” “respondent,” “Title IX Coordinator,” “sexual harassment,” “sexual assault,” “domestic violence,” “dating violence,” and “stalking” are defined in EWU Policy 402-01 (Sexual Misconduct, Interpersonal Violence & Title IX Responsibilities).

For purposes of formal Title IX complaints and in accordance with 34 C.F.R. § 106.30(a), EWU identifies the following positions as those who have the authority to institute corrective actions on behalf of EWU: President, vice presidents, academic deans, Chief of Staff, Dean of Students, Associate Vice President for Human Resources, Associate Vice President for Civil Rights, Compliance & Enterprise Risk Management, Title IX Coordinator, Director of Student Rights & Responsibilities, and Director of Equal Opportunity.

1-4. Conflicts of Interest

Individuals who play a role in investigating, presiding over, and making decisions pertaining to complaints under this policy, including, but not limited to, the Title IX Coordinator, investigator, presiding officer, hearing board, and appeal authority, shall not have any conflict of interest in the process or a bias for or against complainants or respondents generally or an individual complainant or respondent. This includes, but is not limited to, being a witness to the alleged misconduct or being a close family member or friend of the complainant, respondent, or a witness.

If a complainant or respondent believes one of these individuals has a conflict of interest or bias, they should immediately notify the Title IX Coordinator. If the Title IX Coordinator is the person alleged to have a conflict of interest or bias, they should immediately notify the Associate Vice President of Human Resources. The Title IX Coordinator or Associate Vice President shall determine whether a conflict of interest exists and take appropriate action.

CHAPTER 2 – REPORTING & COMPLAINT PROCEDURES

2-1. Reporting

Title IX complaints may be filed with the Title IX Coordinator in any of the following ways:

Online: www.ewu.edu/titleix

Email: titleix@ewu.edu

Phone: (509) 359-6724

By mail or in person:

Title IX Coordinator

Eastern Washington University

211 Tawanka Hall

Cheney, WA 99004

Any employee who receives a Title IX complaint, except for confidential counselors within Counseling and Psychological Services (CAPS), must forward any complaint received to the Title IX Coordinator within 24 hours. Although all employees are mandatory reporters, EWU has not designated all employees as officials who have authority to institute corrective measures on behalf of EWU.

2-2. 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).

2-3. 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 Title IX 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, contractors, vendors, volunteers, and visitors.

(2) Criminal: criminal complaints can be filed with the EWU Police Department or 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 2-4.

(c) Overview of EWU's Title IX Process: Information will also be provided about EWU's process for responding to Title IX complaints, 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 of Title IX complaints as outlined in section 2-5;

(3) How to request supportive measures as outlined in section 2-4;

(4) EWU's investigative and hearing process, including who will receive a copy of the investigative report; and,

(5) EWU's prohibition against retaliation and how to report retaliation.

2-4. 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. The purpose of a supportive measure is to provide an equitable process for both the complainant and respondent that minimizes the possibility of a hostile environment on campus. Supportive measures are designed to restore or preserve equal access to EWU's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and EWU's educational environment, or deterring sexual misconduct.

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. If supportive measures are not provided, EWU must document the reasons why such measures were not needed.

2-5. Confidentiality

Information gathered during the investigation and adjudication of a Title IX complaint 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.

2-6. 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.

Student employees can be restricted from participating in university programs or activities on an interim basis in accordance with the Student Conduct Code.

2-7. Review of Title IX Complaint

(a) Required Elements for a Title IX Complaint: In order for a complaint to move to an investigation under this policy all of the following elements must be met:

- (1) Must have a formal, signed complaint filed by a current student, employee, applicant, or person participating or seeking to participate in a university program or activity, or by the Title IX Coordinator;
- (2) Complaint must include allegations of sexual harassment, sexual assault, domestic violence, dating violence, or stalking as defined for Title IX purposes in EWU Policy 402-01;
- (3) Alleged misconduct must have 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.

(b) Mandatory Dismissal of Title IX Complaint: If a complaint does not meet all of the above elements, the complaint cannot be investigated and adjudicated under this policy. The complaint may be investigated and addressed under EWU Policy 402-01 (Sexual Misconduct, Interpersonal Violence & Title IX Responsibilities) or other university policies, but it will not be considered a formal Title IX complaint. If a complaint is reviewed and does not fall under the scope of this policy, the Title IX Coordinator will simultaneously inform the complainant and respondent that the complaint is not considered a Title IX complaint and the reasons it does not fit within the required elements of a formal Title IX complaint. This decision may be appealed under paragraph 2-7(d).

(c) Discretionary Dismissal: Even if a complaint meets all of the required elements, EWU may choose, at its sole discretion, not to move forward with an investigation or hearing if the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or if specific circumstances prevent EWU from gathering evidence sufficient to reach a determination regarding the allegations. If the complainant is a student, EWU will proceed with an investigation regardless of whether the respondent is currently employed at EWU unless the complainant wishes not to move forward. If EWU chooses to not move forward with an investigation or

hearing under this paragraph, the Title IX Coordinator or investigator will simultaneously inform the complainant and respondent of the dismissal and reasons for the dismissal. This decision may be appealed under paragraph 2-7(d).

(d) Appeal of Dismissal of Title IX Complaint: If a complainant or respondent does not agree with the Title IX Coordinator's dismissal of the complaint as a formal Title IX complaint, the party can appeal the Title IX Coordinator's decision by filing an appeal within three (3) calendar days with the Associate Vice President (AVP) for Human Resources. If an appeal is filed, the AVP will provide the other party with a copy of the appeal and give the other party three (3) calendar days to respond to the appeal. The AVP or designee will then review the information presented by the parties along with the information reviewed by the Title IX Coordinator in determining the appeal. The AVP or designee can affirm, reverse, or remand the Title IX Coordinator's decision. The AVP's decision must be communicated in writing simultaneously to the parties.

2-8. Extensions & Timelines

EWU must respond to Title IX complaints in a prompt and equitable manner. To assist the university in achieving this goal, this policy identifies timelines for each part of the grievance 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.

CHAPTER 3 – INVESTIGATION

3-1. Designation of an Investigator

If a complaint meets all of the requirements for a formal Title IX complaint, the Title IX Coordinator will assign it to an investigator, which may be the Title IX Coordinator. The investigator must not have a conflict of interest or bias as set forth in section 1-4.

The complainant or respondent may request a different investigator by contacting the Title IX Coordinator within five (5) calendar days of receiving notice of the designation of the investigator. The request must identify the reason the person is seeking a different investigator. If the Title IX Coordinator is the investigator, the request should be addressed to the Associate Vice President of Human Resources. A written decision will be provided to the requestor.

3-2. Notice of Investigation

The investigator shall provide the respondent and complainant with a written notice of investigation that includes:

- a. A written 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 sections of university policies or expectations allegedly violated;
- b. Contact information for the investigator;
- c. Parties' rights during the process, including:
 - Right to a fair and equitable process.
 - Right to have decision-makers that do not have a conflict of interest or bias against the parties.
 - Right to remain silent during the investigation and hearing.
 - Right to have an advisor of their choice, at their cost, during the investigation and hearing process. The advisor may be, but is not required to be, an attorney or union representative. During the investigative process, the advisor may be present and advise the party, but may not answer questions on the party's behalf.
 - Right to an advisor provided by the university for the purposes of conducting cross-examination if they do not have an advisor.
 - Right to be presumed not responsible and that a conclusion of responsibility is not made until the conclusion of the hearing process.
 - Right to request an accommodation or interpreter for the process.
- d. Notify both parties that complainants, respondents, and witnesses are prohibited from knowingly furnishing false information during the investigative and hearing process;
- e. EWU's prohibition on retaliation and how to report acts of retaliation; and,
- f. Information about supportive measures and resources available to both parties.

3-3. Investigative Process

The investigator has discretion in determining the formality, scope, and process of the 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 all meetings 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 (e-mails, 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.
- b. Contacting the respondent to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (e-mails, social media posts, photos, etc.). The respondent may choose to respond verbally, in writing, or not at all.
- c. Conducting interviews with witnesses who have knowledge of the alleged behavior and gathering relevant evidence.
- d. Parties and witnesses may be contacted once or numerous times as necessary to gather the relevant information.
- e. Parties may present fact witnesses, expert witnesses, and other inculpatory and exculpatory evidence. If a party wishes to present an expert witness, the party is responsible for any costs associated with the expert witness.

If the investigator is not able to obtain sufficient evidence or if the complainant withdraws the complaint during the investigative process, the investigator may refer the complaint back to the Title IX Coordinator or designee to consider whether or not mandatory or discretionary dismissal is appropriate under section 2-7.

After gathering the relevant evidence, the investigator must provide both parties and their advisors an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence that the university may not intend to rely on. This includes inculpatory or exculpatory evidence regardless of whether it was gathered from a party or witness.

The investigator will inform the parties that they have ten (10) calendar days to submit a written response to the evidence to the investigator. The investigator will consider the written responses before finalizing an investigative report.

The investigator must create an investigative report that fairly summarizes all relevant evidence. Information that is not relevant to the allegations does not need to be included in the report. The investigative report must not include any conclusions regarding whether or not the allegations are substantiated or unsubstantiated.

The investigator will provide a copy of the investigative report to both parties and their advisors for their review and written response. Any written response to the investigative report must be provided to the investigator within five (5) calendar days of receipt of the investigative report.

The investigator will provide a copy of the investigative report, evidence directly related to the complaint, and the parties' written responses to the investigative report to the Labor Relations Manager for purposes of convening a hearing board.

3-4. Advisors

Parties have the right to have an advisor of their choice, at their cost, during the investigative and hearing processes. The advisor may be, but is not required to be, an attorney or union representative. During the investigative process, the advisor may be present and advise the party, but may not answer questions on the party's behalf. During the hearing process, the advisor may make a closing statement on behalf of a party and ask questions of witnesses and parties.

If a complainant or respondent does not have an advisor, the party should contact the Title IX Coordinator to request an advisor. The university will provide an advisor for purposes of conducting cross-examination of witnesses and parties.

3-5. Limits on Evidence

During both the investigation and hearing process, the university cannot access, consider, disclose or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in their professional capacity that would be privileged under the law that were made and maintained in connection with the provision of treatment to a party, unless the university obtains the party's voluntary, written consent to gather and disclose such information.

The investigator, hearing board, and appellate authority 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.

CHAPTER 4 – HEARING PROCESS

4-1. Hearing Board

After the investigative process is complete, the Labor Relations Manager or designee shall convene a hearing board. The hearing board shall be comprised of three current EWU employees. One of the three members shall be the Associate Vice President for Human Resources or designee who will serve as the presiding officer.

Members of the hearing board must have completed training on issues relating to sexual misconduct and interpersonal violence, Title IX, and the Violence Against Women Reauthorization Act. Members must be free of conflict or bias as set forth in section 1-4. Members cannot include the investigator or Title IX Coordinator.

4-2. Notice of Hearing

The Labor Relations Manager is responsible for scheduling the hearing. The hearing must take place at least ten (10) calendar days after the investigative report is completed and no more than thirty (30) calendar days after completion of the report, absent extenuating circumstances. The Labor Relations Manager may coordinate scheduling with the parties, but is not required to do so. After the date and time is established, the Labor Relations Manager shall send out a notice of hearing to both parties. The notice of hearing must include:

- Time, date, and location of the hearing;
- Names of people who have been selected to serve on the board and the process for requesting alternative board members on the basis of a conflict of interest or bias;
- A written 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 sections of university policies or expectations allegedly violated;
- Information about how to request accommodations or an interpreter;
- Right to have an advisor or union representative present at the hearing and who they should contact if they need the university to provide them with an advisor;
- Overview of the purpose of the hearing, brief explanation of the hearing process, and limits on what types of evidence may be presented; and,
- Explanation that if the party fails to appear at the hearing, the board will make its decision without consideration of their testimony or statements previously provided.

The Labor Relations Manager or designee shall provide their contact information to the parties and answer questions they might have about the hearing process. Members of the hearing board should not communicate with the parties prior to the hearing about matters under this policy. Parties should not communicate with the hearing board.

4-3. Discovery & Subpoenas

a. Discovery: Discovery is not permitted in this process.

b. Subpoenas:

(1) 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 ten (10) days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three (3) 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.

(2) Any subpoena issued must conform to EWU's subpoena form and must identify the party issuing the subpoena, the title of the proceeding, and directions for the person to whom it is directed to attend and give testimony. Subpoenas may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her 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.

(3) The presiding officer, upon request of a party witness, or at his/her own discretion, may quash or modify a subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

4-4. Evidence & Witnesses

a. Evidence: The hearing board will be provided a copy of the investigative report prior to the hearing. At the hearing, the hearing board shall consider evidence presented by the complainant, respondent, and the university. 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 upon in the conduct of their affairs; however, statements obtained from a person who does not testify at the hearing and subject themselves to cross-examination shall not be considered by the board. The presiding officer shall exclude evidence

that is excludable on constitutional or statutory grounds or that is excluded under section 3-5 of this policy. The presiding officer may exclude irrelevant material. If not inconsistent with this section or Title IX, the presiding officer shall refer to the Washington State rules of evidence as guidelines for evidentiary rulings.

All witnesses and parties must testify under oath or affirmation. An interpreter must be prescribed the oath set forth in WAC 10-08-160.

b. Questioning: Any member of the hearing board may ask questions of any of the witnesses or parties. Advisors may also ask questions of any of the witnesses. For cross-examination of parties, a complainant's advisor may ask questions of the respondent and a respondent's advisor may ask questions of the complainant. If a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests an advisor in writing from the Title IX Coordinator at least five (5) calendar days in advance of the hearing.

The presiding officer may preclude any questions the officer considers irrelevant and must make such determination before an answer is given. The decision to exclude any questions must be made before the question is answered and must be explained on the record. The presiding officer must also exclude and the board 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.

c. Physical Evidence: If a party has physical evidence that they want the board to consider, such as videos, text messages, or social media posts, the party should provide the evidence at least two (2) calendar days prior to the hearing to the Labor Relations Manager. The Labor Relations Manager will make sure either paper or electronic copies of the physical evidence are available to both parties and the hearing board.

The parties have the right to view all material presented during the course of the hearing, except a respondent's previous corrective/constructive or disciplinary history which shall be used solely for the purpose of determining the appropriate level of corrective/constructive or disciplinary action.

d. Order of Hearing: The hearing shall proceed in the following manner:

(1) The investigator shall provide a summary of the process followed, people interviewed, and evidence collected. The investigator shall answer questions asked by the board and the advisors. The investigative report will be admitted into evidence, except that statements obtained from witnesses or parties who do not testify at the hearing and make themselves available for cross-examination shall not be considered by the board.

(2) If there is a law enforcement investigation or report, a representative from the applicable law enforcement agency may provide a summary of the process followed, people interviewed, and evidence collected. The officer shall answer questions asked by the board and the advisors. The police report will be admitted into evidence, except that statements obtained from witnesses or parties who do not testify at the hearing and make themselves available for cross-examination shall not be considered by the board.

(3) Witnesses may then be presented by the university, complainant, and respondent. Parties are responsible for making sure their witnesses are available and present at the hearing. Hearings will not be rescheduled because a party's witness fails to attend.

(4) The complainant will then be provided with an opportunity to testify.

(5) The respondent will then be provided with an opportunity to testify.

(6) The hearing board can also call any witnesses to testify. In particular, the Labor Relations Manager or designee should arrange for the testimony of any key witnesses identified during the investigative process.

(7) Following the testimony of all witnesses, the complainant or complainant's advisor will be given ten (10) minutes to make a closing statement. The respondent or respondent's advisor will then be given ten (10) minutes to make a closing statement. The hearing will then be closed.

e. Decorum & Presence of Witnesses: The presiding officer may exclude witnesses from the hearing room when they are not testifying. The presiding officer may decline to allow a witness to testify if the information provided by the witness will be irrelevant and must explain a decision to exclude a witness on the record. The complainant and respondent have a right to hear all testimony provided during the hearing.

All participants in the hearing are required to act in a professional manner. The presiding officer may set standards for decorum and professional behavior during the hearing. Anyone who fails to abide by these standards may be excluded from the hearing room. For example, if a complainant's advisor repeatedly disrupts the hearing process, the presiding officer may remove the advisor from the hearing.

f. Official Notice: The board may take official notice of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status, class or work schedules, or information contained within an employee's personnel record, and (iii) codes or standards adopted by a government agency 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 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.

4-5. Remote Appearance

Upon request, a witness or party may request the opportunity to appear remotely by contacting the Labor Relations Manager or designee at least three (3) calendar days in advance of the hearing. The presiding officer may permit any person to appear by a method that allows the person to be seen and heard by the hearing board.

4-6. Recording

Hearings must be recorded by the university. Parties and witnesses are not permitted to record the hearing. Upon request, a recording of the hearing must be provided to the parties for inspection and review.

CHAPTER 5 – HEARING BOARD DECISION

5-1. Standard of Proof & Presumptions

The hearing board must make findings of facts and conclusions as to whether or not the respondent violated a university policy or engaged in misconduct 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.

Neither the complainant nor the respondent has the burden of proof. This means the respondent is presumed to be not responsible and does not have to prove they are not responsible. Rather, the university has the burden of collecting evidence to establish whether or not the respondent is responsible based on a preponderance of the evidence.

5-2. Deliberations

Following the testimony of all witnesses and the parties' closing statements, the hearing board shall meet to objectively review all relevant evidence presented during the hearing in a closed session. This meeting may take place on a subsequent date. After reviewing all of the evidence admitted, the hearing board must determine, based on a majority vote, whether or not the respondent violated a university policy or expectation based on a preponderance of the evidence.

If a party fails to appear, the hearing board shall make the decision based on the information available. The hearing board cannot draw an inference regarding responsibility based solely on a party or witness's absence from the hearing or refusal to answer cross-examination or other questions.

The hearing board may need to make a credibility determination. Such credibility determinations must be explained in the hearing decision and may not be based on a person's status as a complainant, respondent, or witness.

If the hearing board determines the respondent violated a university policy, failed to meet university expectations, or engaged in misconduct, the hearing board shall decide what discipline or corrective/constructive action to impose and remedies to award. Disciplinary decisions must be made in conformance with the applicable collective bargaining agreement, if any. The hearing board may review the respondent's previous disciplinary and corrective/constructive history solely for purposes of determining the appropriate level of discipline.

5-3. Written Decision

Within ten (10) calendar days of the hearing, the hearing board must issue a written decision. The written decision must include findings of fact and conclusions as to whether or not university policy has been violated, the respondent failed to meet university expectations, or engaged in misconduct. More specifically, the written decision must include:

- a. Identification of the allegations;
- b. A description of the procedural steps taken from receipt of the formal complaint through the hearing board decision, including any notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather evidence, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding whether or not the substantiated facts constitute a violation of EWU policy or misconduct;

e. Level of discipline or corrective/constructive actions imposed;

f. A statement of, and rationale for, the result as to each allegation, including determinations regarding responsibility and corrective/constructive or disciplinary actions;

g. Whether the university will provide the complainant with any remedies designed to restore or preserve equal access to EWU's programs or activities; and,

h. The basis on which the decision may be appealed and how to follow and appeal.

The presiding officer or designee shall ensure that a copy of the written decision is provided simultaneously to the complainant, respondent, respondent's supervisor, and Title IX Coordinator. If neither party timely appeals as specified in chapter 6, the hearing board's decision becomes final either on the date the time for appeal has expired or, if an appeal is timely filed, when the appellate authority's decision is issued.

5-4. Discipline or Corrective/Constructive Action

The hearing board may issue appropriate disciplinary or corrective/constructive action in accordance with the applicable collective bargaining agreement or university policy. This may include, but is not limited 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.

5-5. Remedies

In addition to imposing corrective/constructive action or discipline upon a respondent who is found responsible for sexual misconduct or interpersonal violence, the hearing board must also consider whether any remedies are needed. A remedy is designed to restore or preserve the complainant's equal access to the university's educational programs and activities. This may include long-term supportive measures, except a remedy may be disciplinary and burden a respondent. For example, one possible remedy is to permanently prohibit the respondent from contacting the complainant or restricting the respondent's ability to participate in a particular activity.

5-6. Personnel File

In accordance with RCW 28B.112, any substantiated findings of sexual misconduct must be included in the respondent's personnel file. Personally identifiable information that reveals the identity of the complainant and any witnesses is exempt from public disclosure. In accordance with RCW 28B.112, the university will disclose substantiated findings of sexual misconduct to any employer conducting reference or background checks on

a current or former employee for the purposes of potential employment, even if the employer conducting the reference or background check does not specifically ask for such information.

CHAPTER 6 – APPEAL PROCESS

6-1. Filing an Appeal

The complainant or respondent may appeal the hearing board's decision by filing a written appeal within ten (10) calendar days of service of the hearing board's decision. The decision is served when it is emailed to the parties at their official university email address. To file an appeal, the complainant or respondent must either email the Labor Relations Manager or physically deliver a written appeal to the Labor Relations Manager. The appeal must set forth why the person believes the hearing board's decision was incorrect, how it fits within the basis for appeal set forth in the next section, and the relief requested.

6-2. Basis for Appeal

A complainant or respondent may file an appeal from the decision to dismiss a Title IX complaint and/or from the hearing board's decision on the following bases:

- a. Procedural irregularity or failure to comply with a collective bargaining agreement that affected the outcome of the case;
- b. New evidence that was not reasonably available at the time of the decision that could affect the outcome of the case; or,
- c. The Title IX Coordinator, investigator, or hearing board had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent and such bias/conflict affected the outcome of the case.

6-3. Response to Appeal

Upon receipt of an appeal from a complainant or respondent, the Labor Relations Manager shall notify the other party of the appeal, provide them with a copy of the appeal, and then give them an opportunity to respond. The responding party may submit a response to the appeal or a counter-appeal within ten (10) calendar days of receiving the appeal.

6-4. Appellate Authority

The university shall appoint a senior administrator to serve as the appellate authority. Typically, this will be the appointing authority for the division under which the respondent is employed. The appellate authority cannot be someone who served on the hearing board, the investigator, or the Title IX Coordinator. The appellate authority must have completed training on issues relating

to sexual misconduct and interpersonal violence, Title IX, and the Violence Against Women Reauthorization Act and must be free of conflict or bias as set forth in section 1-4.

6-5. Decision on Appeal

The appellate authority shall review all of the evidence presented and admitted during the hearing, including a review of either the audio recording or transcript of the testimony and the documentary evidence. The appellate authority shall also review the appeal and the response from the responding party, if any. If issues are raised during the appeal regarding the procedures followed and such information was not contained in the hearing record, the appellate authority may ask the parties, the investigator, the presiding officer, or the Title IX Coordinator for additional information, but is not required to do so. If additional evidence is requested and obtained, a copy should be provided to both parties. With respect to findings of fact, the appellate authority must give due regard to the hearing board's opportunity to observe the witnesses.

The appellate authority may affirm, reverse or modify the hearing board's decision based on the grounds for appeal. The appellate authority may also remand the case back to the hearing board to take additional evidence or for a new hearing before a new board. The appellate authority must issue a written decision describing the result of the appeal and the rationale of the result. A copy of the decision must be simultaneously provided to the respondent, complainant, respondent's supervisor, and Title IX Coordinator. The appeal decision must be issued within thirty (30) calendar days of receipt of the responding party's response to the notice of appeal.

The appellate authority's decision is the final decision of the university. Judicial review of such decision may be available under RCW 34.05. The decision is not subject to grievance or arbitration under a collective bargaining agreement.

CHAPTER 7 – RESOURCES & REFERENCES

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

7-1. Non-Confidential Campus Resources

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

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

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

7-3. Federal Agencies

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>

7-4. References

- a. EWU Policy 402-01, Sexual Misconduct, Interpersonal Violence & Title IX Responsibilities
- 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. Titles VI and VII of the Civil Rights Act of 1964
- e. Title IX of the Education Amendments of 1972
- f. Campus Sexual Violence, RCW 28B.112
- g. Student Conduct Code, WAC 172-121
- h. Washington State Laws on Discrimination, RCW 49.60
- i. Collective Bargaining Agreements
- j. Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act