

Chapter 172-108 WAC

ADJUDICATIVE PROCEEDINGS

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 172-108-080 Petitions for stay of effectiveness. [Statutory

Authority: RCW 28B.35.120(12). WSR 92-09-100, § 172-

108-080, filed 4/20/92, effective 5/21/92.] Repealed
by WSR 14-24-038, filed 11/24/14, effective
12/25/14. Statutory Authority: RCW 28B.35.120(12).

172-108-090 Adoption of model rules of procedure. [Statutory
Authority: RCW 28B.35.120(12). WSR 92-09-100, § 172-
108-090, filed 4/20/92, effective 5/21/92.] Repealed
by WSR 14-24-038, filed 11/24/14, effective
12/25/14. Statutory Authority: RCW 28B.35.120(12).

WAC 172-108-010 Introduction. Eastern Washington
University conducts adjudicative proceedings as required by the
Administrative Procedure Act, chapter 34.05 RCW.
[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-038, § 172-
108-010, filed 11/24/14, effective 12/25/14; WSR 92-09-100, §
172-108-010, filed 4/20/92, effective 5/21/92.]

WAC 172-108-020 Appointment of presiding officer. The
president of Eastern Washington University or an authorized
designee shall have the power to appoint a presiding officer for
formal and brief adjudicative proceedings. The term presiding
officer shall mean one or more presiding officers as appointed

by the president or authorized designee. Where more than one individual is designated to be the presiding officer, one person may be designated to make procedural decisions.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-038, § 172-108-020, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-020, filed 4/20/92, effective 5/21/92.]

WAC 172-108-030 Method of recording and recording devices.

The presiding officer is responsible for maintaining a record of the proceedings which shall include all documents prepared for and used in the adjudicative proceeding. The university may record proceedings using a method determined by the presiding officer, among those available pursuant to the model rules of procedure in WAC 10-08-170. No cameras or recording devices are allowed in those parts of proceedings which the presiding officer has determined closed pursuant to WAC 172-108-060, except for the method of official recording selected by the institution.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-038, § 172-108-030, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-030, filed 4/20/92, effective 5/21/92.]

WAC 172-108-035 Advising and representation of parties.

Parties to any brief adjudicative proceeding as designated in WAC 172-108-050, may be assisted by one advisor of their choice, subject to the following provisions:

(1) Any fees or expenses associated with the services of an advisor are the responsibility of the person who employed the advisor;

(2) The advisor may be an attorney;

(3) Advisors may not speak or participate directly in any proceeding; the person requesting an adjudicative proceeding is responsible for presenting their own case but may speak quietly with their advisor during such proceedings;

(4) If an attorney is used as an advisor, the person using the attorney shall inform the presiding officer of their intent to do so at least two business days prior to any adjudicative proceeding; and

(5) The presiding officer shall have the power to impose reasonable conditions upon participation of advisors and representatives.

[Statutory Authority: RCW 28B.35.120(12). WSR 17-11-051, § 172-108-035, filed 5/15/17, effective 6/15/17; WSR 14-24-038, § 172-108-035, filed 11/24/14, effective 12/25/14.]

WAC 172-108-040 Formal adjudicative proceedings. (1)

Eastern Washington University utilizes a formal adjudicative proceeding for certain student conduct proceedings as identified in chapter 172-121 WAC and chapter 172-125 WAC, and certain academic integrity code proceedings as identified in chapter 172-90 WAC. The procedural rules for these formal adjudicative proceedings are contained in the sStudent conduct code, chapter 172-121 WAC, discrimination and Title IX violations by students code, chapter 172-125, and the academic integrity code, chapter 172-90 WAC. In all other cases, Eastern Washington University only utilizes formal adjudicative proceedings when required by RCW 34.05.413 through 34.05.476. ~~or for the adjudication of formal Title IX complaints against employees as set forth in university policy.~~

(2) An application for a formal adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Eastern Washington University; Tawanka 211, Cheney, WA 99004-2496. Written application for a

formal adjudicative proceeding in response to the institution's action must be submitted to the above address within twenty-one calendar days of the action, unless otherwise provided by statute or rule.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-104, § 172-108-040, filed 12/11/20, effective 1/11/21; WSR 17-11-051, § 172-108-040, filed 5/15/17, effective 6/15/17; WSR 14-24-038, § 172-108-040, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-040, filed 4/20/92, effective 5/21/92.]

WAC 172-108-050 Brief adjudicative proceedings. In accordance with RCW 34.05.410 (1)(a), the procedures identified in RCW 34.05.482 through 34.05.494 apply to all brief adjudicative proceedings at Eastern Washington University. All applications for a brief adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Tawanka 211; Eastern Washington University; Cheney, WA 99004-2496. Written application for a brief adjudicative proceeding in response to the institution's action must be submitted to the university within twenty-one calendar days of the action, unless a different time frame is specified in the regulations identified below that apply to the type of

decision being challenged. When required by law or constitutional right, brief adjudicative proceedings shall be used in all matters of appeal related to:

(1) Residency determinations made pursuant to RCW 28B.15.013 and chapter 250-18 WAC;

(2) Challenges to contents of education records, review of the denial to inspect such records, or challenges to the disclosure of such records. In addition to the rules identified below, these challenges are governed by chapter 172-191 WAC;

(3) Student conduct proceedings, if the potential sanction for the alleged misconduct does not include suspension, expulsion, ~~formal Title IX complaints,~~ or an allegation of felony-level ~~sexual~~ misconduct. In addition to the rules identified below, these proceedings are governed by chapter 172-121 WAC and chapter 172-125 WAC;

(4) Outstanding debts owed by students or employees, pursuant to chapters 172-124 and 172-144 WAC;

(5) Traffic and parking violations and revocations of any parking permit pursuant to chapter 172-100 WAC;

(6) Student academic integrity proceedings, if the potential sanction for the alleged misconduct does not include suspension or expulsion. In addition to the rules identified in this section, these proceedings are governed by chapter 172-90 WAC;

(7) Library fines and charges;

(8) Reduction, cancellation, or nonrenewal of institutional financial aid when based in any degree on athletics ability per National Collegiate Athletic Association rules as detailed in WAC 172-108-100;

(9) Administrative decisions regarding statutorily mandated tuition and/or fee waivers;

(10) Research integrity violations in accordance with EWU Policy 302-05 when required by federal law;

(11) Citations issued by university police regarding the use of golf carts and utility vehicles, in accordance with EWU Policy 603-06;

(12) Fines imposed for impermissible use of tobacco, electronic cigarettes, and related products in accordance with WAC 172-122-310;

(13) Financial aid appeals as provided for by federal law and in accordance with EWU policies for satisfactory academic progress for undergraduate, post-baccalaureate, and graduate students;

(14) Denial of work study or termination from a work study position when required by federal law;

(15) Notice against trespass issued per WAC 172-122-200;

(16) Denial of request to waive undergraduate housing requirement under chapter 172-130 WAC;

(17) Fines assessed under a university housing agreement;
and

(18) Penalties imposed for violations of pet control regulations in accordance with chapter 172-115 WAC.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-12-034, § 172-108-050, filed 5/25/21, effective 6/25/21; WSR 21-01-104, § 172-108-050, filed 12/11/20, effective 1/11/21; WSR 17-11-051, § 172-108-050, filed 5/15/17, effective 6/15/17; WSR 14-24-038, § 172-108-050, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-050, filed 4/20/92, effective 5/21/92.]

WAC 172-108-060 Brief adjudicative proceedings closed.

Brief adjudicative proceedings shall be closed to the public

unless the Open Public Meetings Act, chapter 42.30 RCW, requires otherwise. If the act requires an open proceeding, then a party may apply to the presiding officer for a protective order to close part of the proceeding. The party making the request should state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed, and state the reasons therefor in writing within twenty days of receiving the request. No cameras or recording devices, other than the official recording method, shall be allowed in proceedings or parts of proceedings which have been closed.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-038, § 172-108-060, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-060, filed 4/20/92, effective 5/21/92.]

WAC 172-108-070 Procedures for brief adjudicative proceedings. For those proceedings identified as brief adjudicative proceedings in WAC 172-108-010, the model rules of procedure, chapter 10-08 WAC shall not apply. Brief adjudicative

proceedings shall be governed by the procedures below and RCW 34.05.482 through 34.05.494:

(1) The presiding officer for a brief adjudicative proceeding shall be selected in accordance with WAC 172-108-020.

(2) For any matters subject to review under WAC 172-108-010, the presiding officer shall provide an individual with the opportunity to explain his or her position. If, after considering the information provided, the presiding officer makes a decision that is unfavorable to the individual, such decision shall be conveyed to the individual in writing. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available. The brief written statement shall be considered the university's initial order.

(3) An individual may appeal the initial order by filing a written appeal with the appropriate authority. The appropriate authority is identified in the rules, policies and procedures adopted by the university regarding such determinations. If the rule, policy, or procedure does not specify who an appeal should

be filed with, an appeal may be filed in writing in accordance with WAC 172-108-040.

(4) All appeals from initial orders must be received by the university within twenty-one calendar days from the date the initial order was delivered to the affected individual. If a timely appeal is not received, the initial order becomes the university's final order unless the university, on its own motion, chooses to review an order resulting from a brief adjudicative proceeding in accordance with RCW 34.05.491(1).

(5) Upon receipt of an appeal, a reviewing officer will be appointed. The reviewing officer may be the presiding officer who issued the initial order or any other person or group who would qualify as a presiding officer under WAC 172-108-020.

(6) The reviewing officer shall give each party an opportunity to explain the party's position and shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative proceeding. The reviewing officer is not required to conduct a hearing, but may do so if he or she feels it would be helpful or necessary.

(7) Within twenty days of the filing of the appeal, the reviewing officer must issue a written order containing a brief statement of the reasons for his or her decision. The order shall also include a description of any further available administrative review or, if none is available, a notice that judicial review may be available under chapter 34.05 RCW.

(8) The university shall maintain as its official record any documents regarding its decision that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-038, § 172-108-070, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-070, filed 4/20/92, effective 5/21/92.]

WAC 172-108-100 Procedures for reduction, revocation, or of athletic scholarships. In accordance with NCAA requirements, a student athlete who is receiving athletic aid based in any degree on athletic ability has the right to request an appeal hearing when the athletic aid is reduced, revoked, or not renewed and the student has remaining athletic eligibility. The following process governs the student athlete's appeal of the

athletic department's decision to reduce, revoke, or not renew athletic aid.

(1) The athletic department makes the initial decision to reduce, revoke, or not renew the student's athletic aid. Before making such decision, the athletic department should provide the student athlete with notice that such a decision may be made and give the student an opportunity to respond. If the decision is made to reduce, revoke, or not renew the aid, the athletic department should convey such information to the financial aid and scholarship office with a brief statement of the reason for the decision.

(2) EWU's financial aid and scholarship office will then formally notify the student athlete of the athletic department's decision to reduce, revoke, or not renew the student's athletic aid. This notification will be sent via email to the student's official university email account and will include information about how to appeal the decision.

(3) The student will have twenty-one calendar days from the date the email is sent to request an appeal. Any request for appeal must be directed to the director of financial aid and

sent via email to finaid@ewu.edu. Requests for appeal must be received within twenty-one days or they will be dismissed as untimely.

(4) Upon timely receipt of an appeal, the director of financial aid will convene the athletic aid appeals committee. The committee shall consist of four people who represent various areas of the university. The director serves as the presiding officer and a voting member of the committee. The director will schedule a hearing with the student, head coach or other athletics department representative, and the committee.

(5) Prior to the hearing, the student and head coach, or designee, should provide the committee with a written statement outlining the reasons they agree or disagree with the decision to reduce, revoke, or not renew athletic aid, along with any supporting documentation. The documentation may include statements from witnesses. These statements and documentation are reviewed by the committee in advance of the hearing.

(6) At the hearing, the director will ask the head coach or other athletics representative to explain the basis for their decision regarding athletic aid. The committee and athlete may

ask questions of this head coach/athletics representative. The athlete will then have the opportunity to explain why they disagree with the decision. The committee and head coach may ask questions of the athlete. The head coach/athletics representative will then have the opportunity to provide a rebuttal statement.

(7) Either party in the hearing may be represented by an advisor as set forth in WAC 172-108-035. The hearing will be recorded and retained in accordance with EWU's records retention schedule.

(8) The student has the burden of proving by a preponderance of the evidence that the athletic department's decision to reduce, revoke, or not renew athletic aid was not supported by substantial evidence or is arbitrary or capricious. The committee may affirm, reverse, or modify the athletic department's decision regarding athletic aid eligibility. The committee's decision must be supported by a majority of committee members.

(9) Within twenty days of the hearing, the presiding officer will issue a written order containing a brief statement

of the reasons for the committee's decision. The decision should be communicated in writing to both parties and should indicate that it is the final decision of the university and judicial review may be available under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-12-034, § 172-108-100, filed 5/25/21, effective 6/25/21.]

WAC 172-108-110 Enforcement of immunization requirements.

(1) The university may impose a fine on students who fail to provide documentation of an immunization required by the university or obtain a waiver for medical or religious reasons as set forth in EWU Policy 602-02 (Immunizations). The fine may be up to two hundred fifty dollars per term for each academic term a student is enrolled and fails to comply with university requirements. The fine may be waived if the student complies with the immunization requirements within fourteen calendar days from the date notice of the fine is sent to the student as specified below.

(2) The university will provide written notice of the fine to students who fail to comply with the immunization requirements no later than thirty days after the initial date of

the academic term. Notice will be sent via email to students' official university emails. Students will be given an opportunity to contest the notice by filing a request for a brief adjudicative hearing within fourteen calendar days of the date when the initial notice is sent to the student's official university email account. To request review of the fine, the student must submit a written request to: Student Rights and Responsibilities, 129 Showalter Hall, Cheney, WA 99004-2496 or via email to srr@ewu.edu. The request must set forth the reasons why the student disagrees with the fine. If a student fails to timely request a brief adjudicative hearing, the fine will become final.

(3) If a student timely files a request for a brief adjudicative hearing, a presiding officer will be appointed and will consider any materials submitted by the student in writing contesting the initial fine. Within ten calendar days of receipt of the request for a hearing, the presiding officer or designee will send an initial order setting forth the officer's decision and the reasons for such decision. The order should also communicate any appeal options available.

(4) The student may appeal the initial order by filing a written appeal with the dean of students within twenty-one calendar days from the date the initial order was sent to their official university email account. To request an appeal, the student must submit a written request to: Dean of Students, 301 Pence Union Building, Cheney, WA 99004-2496 or via email to dos@ewu.edu. The appeal must set forth the reasons why the student believes the initial order was incorrect. If a student fails to timely appeal, the initial order will be final.

(5) If a student timely files a request for an appeal, a presiding officer will be appointed and will consider any materials reviewed by the presiding officer at the initial hearing along with any materials submitted by the student with the appeal. Within twenty calendar days of the receipt of the appeal, the presiding officer or designee will send a final order setting forth the officer's decision and the reasons for such decision. This order will be the university's final decision. The order should communicate that judicial review of the university's decision may be available under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.35.120(12). WSR 22-01-089, § 172-108-110, filed 12/12/21, effective 1/12/22.]