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**MEMORANDUM OF UNDERSTANDING
BETWEEN
EASTERN WASHINGTON UNIVERSITY
AND
UNITED FACULTY OF EASTERN**

14 The purpose of this Memorandum of Understanding between the United Faculty of Eastern (The “Union”
15 or “UFE”), and Eastern Washington University (The “University” or “EWU”) is to memorialize an
16 agreement to modify their collective bargaining agreement (The “Agreement” or “CBA”) regarding updates
17 to Federal Title IX Regulations.

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Recitals

23 As an institution of higher education that benefits from federal funding, the University is obligated to
24 comply with Title IX of the Education Amendments Act of 1972. Effective August 14, 2020, and following
25 the unsuccessful lawsuits filed by various state Attorneys General to enjoin the new regulations, the U.S.
26 Department of Education (DOE) adopted new final regulations that materially changed how claims of
27 sexual misconduct and interpersonal violence under Title IX are processed. See 34 C.F.R. § 106. As
28 required by Title IX, the University has changed its policies and procedures to comply with the new
29 regulations relating to processing, investigating, and adjudicating sexual misconduct and interpersonal
30 violence allegations.

31 The new DOE regulations include detailed provisions applicable to the filing of complaints alleging sexual
32 misconduct and/or interpersonal violence actionable under Title IX, the investigation of those complaints,
33 the procedure for making disciplinary decisions based on a Title IX complaint, and the process for the
34 appeal of any such discipline. In a situation where a faculty member is accused of sexual misconduct and/or
35 interpersonal violence in a manner actionable under Title IX, the new regulations require the University to
36 follow processes that conflict with certain provisions of the Agreement. Because the University is obligated
37 to adhere to the regulatory requirements in such circumstances, the parties have adopted this Memorandum
38 to address the preemptive effect of the regulations where they conflict with the Agreement.

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Agreement

Now, therefore, the parties agree as follows:

1. Article 14 of the Agreement, Discipline, is amended to include the following provisions:

14.5 Disciplinary Procedures – Title IX of the Education Amendments Act of 1972 (“Title IX”)

- 14.5.1 Pursuant to Title IX, institutions of higher education are required to develop policies and procedures to prevent and respond to sexual misconduct and interpersonal violence, to train employees and students in their rights and responsibilities under Title IX, and to properly access, investigate, and adjudicate sexual misconduct and interpersonal violence allegations. The Employer’s policies and procedures incorporate specific requirements of the federal law and regulations governing processing of complaints, conducting investigations and adjudications, imposing disciplinary sanctions, and resolving appeals. Where

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provisions of this Agreement relating to discipline and appeals of discipline decisions, such as Article 14.4 Pre-Disciplinary Procedure and Article 12 Grievance Procedure, conflict with policies and procedures adopted by the University to comply with federal laws and regulations, the University policies and procedures preempt the conflicting provisions of this Agreement.

14.5.2 Articles 14.1 Just Cause and 14.2 Progressive Discipline shall apply to disciplinary determinations made in the Title IX proceeding contemplated by the policies and procedures referenced in Article 14.5.1 above. Specifically, the Decision Maker(s) at a Title IX hearing will consider the employee's disciplinary record as well as the principles of just cause before determining the appropriate discipline, if any. Likewise, the failure to appropriately apply Articles 14.1 and 14.2 in making a disciplinary determination shall be permissible bases for an appeal of the determination by the Decision Maker(s).

14.5.3 Claims of sexual misconduct where the conduct does not meet the definition of sexual misconduct and/or interpersonal violence under Title IX can still be investigated by the University under other applicable state or federal law or the University's internal policies/procedures.

14.5.4 Disciplinary decisions reached through the University's Title IX policies described in Article 14.5.1 above must be appealed pursuant to those policies, and may not be challenged through the grievance or complaint procedures set forth in Article 12 Grievance Procedure of the Agreement.

This Memorandum will take effect as of the date it is fully executed by the parties. In the event that any changes are made to the regulations regarding the Title IX of the Education Amendments Act of 1972 that repeal, revise, diminish, or invalidate any provision herein, the parties agree to renegotiate these provisions, pursuant to Article 20.6 of the Agreement.

UNITED FACULTY OF EASTERN

EASTERN WASHINGTON UNIVERSITY

BY: Michael F. Conlin
Michael Conlin, President

BY: Spenser Ross
Spenser Ross, Labor Relations Manager

DATE: March 9, 2021

DATE: 3/9/2021

