

## **Memorandum of Understanding Regarding Revised Title IX Policies**

The purpose of this Memorandum of Understanding between the United Faculty of Evergreen (“UFE”), and The Evergreen State College (“Evergreen”) is to memorialize an agreement to modify their current collective bargaining agreement (the “Agreement”).

### **Recitals**

As an institution of higher education that benefits from federal funding, the College is obligated to comply with Title IX of the Education Amendments Act of 1972. Regulations enforcing that statute obligate the College to adopt policies and procedures to prevent and respond to sexual harassment/violence, to train employees and students in their rights and responsibilities under Title IX, and to properly process, investigate, and adjudicate sexual misconduct allegations. Effective August 14, 2020, the regulations articulating these obligations were materially changed. *See* 34 C.F.R. § 106. As required, the College has changed its policies and procedures to comply with the new regulations.

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

### **Agreement**

Now, therefore, the parties agree as follows:

1. Article 22 of the Agreement, Discipline and Discharge, is amended as follows:
  - 22.5 Right to Grieve Disciplinary Actions. UFE has the right to grieve any disciplinary action taken against a faculty member, except disciplinary decisions reached through the College’s Title IX policies described in 22.6.
  - 22.6 Discipline under Title IX Policies and Procedures. Pursuant to Title IX of the Education Amendments Act of 1972, institutions of higher education are required to develop policies and procedures to prevent and respond to sexual violence, to train employees and students in

their rights and responsibilities under Title IX, and to properly process, investigate, and adjudicate sexual misconduct 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 provisions of this Agreement relating to discipline and appeals of discipline decisions conflict with policies and procedures adopted by the College to comply with federal laws and regulations, the College policies and procedures preempt the conflicting provisions of this Agreement.

2. Article 24 of the CBA, Agreement, Grievance and Complaint Procedures, is amended to add the following:

24.5 As outlined in Articles 22.5 and 22.6 6, where provisions of this Agreement relating to discipline and appeals of discipline decisions conflict with policies and procedures adopted by the College to comply with federal laws and regulations, the College policies and procedures preempt the conflicting provisions of this Agreement. Accordingly, disciplinary decisions reached through the College's Title IX policies are not grievable.

3. This Memorandum will take effect as of the date it is fully executed by the parties and will expire on the effective date of a successor to the Agreement.

Signed and Dated this 8th day of February, 2021.

The Evergreen State College



By\_ David McAvity \_\_\_\_\_  
Title\_ Interim Provost and VP for Student  
& Academic Life

United Faculty of Evergreen



By\_ Shawn Hazboun \_\_\_\_\_  
Title\_ Chair \_\_\_\_\_