

# WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS

## West Virginia State University

### **EMERGENCY BOG Policy #14**

#### **Title: Sexual Harassment**

#### Section 1. General

- 1.1 Scope: This policy defines sexual harassment, provides guidelines for filing sexual harassment complaints and indicates what action will be taken against those found to have engaged in sexual harassment.
  - 1.1.a Persons, Conduct, Locations, Programs, Activities and Relationships Covered: All University students, employees, campus visitors, and third-party vendors are covered by this policy, regardless of sexual orientation or gender identity. This policy applies on all property owned by the University, on all property at which the University holds educational programs or activities, and on all airplanes, buses or other vehicles used to transport the University's students, and this policy applies to all of the University's educational programs and other activities.
- 1.2 Authority: West Virginia Code §18B-1-6, a policy statement issued by the Office for Civil Rights of the U.S. Department of Education on the interpretation of the following: Title IX of the Education Amendments of 1972 and Equal Employment Opportunity Commission (EEOC) interpretative guidelines issued in March, 1980, and subsequent federal court decisions on the subject of sexual harassment. The United States Department of Education Final Rule set forth in 34 CFR Part 106.
- 1.3 Effective:
- 1.4 Approved by Chancellor:

#### Section 2. Overview

- 2.1 The University prohibits all forms of sexual discrimination, including sexual misconduct. The University is committed to addressing sexual misconduct in a manner consistent with applicable law. A notice of the University's policy of nondiscrimination shall be widely disseminated on the University's campus to students, employees, applicants for admission and applicants for employment. The notice shall specifically state that (a) the University does not discriminate on the basis of sex in its education programs and activities, (b) the University is required by Title IX not to discriminate in such a manner, and (c) questions concerning Title IX may be referred to the University's Title IX Coordinator or to the Office of Civil Rights at the United States Department of Education. The notice of non-discrimination shall state the name or title, office address, telephone number and email address of the University's Title IX Coordinator.
- 2.2 It is the policy of the University that designated staff members take immediate and appropriate steps to investigate or otherwise determine what happened when the University knows or reasonably should know of possible sexual misconduct. When sexual misconduct is determined to have occurred, the University shall take prompt and effective steps reasonably calculated to end the sexual misconduct, eliminate the hostile environment, prevent its recurrence, and, as

appropriate, remedy its effects. All complaints shall be processed in accordance with the procedures established in this policy.

- 2.3 It is the policy of the University to protect any student or employee filing a complaint alleging sexual misconduct and to ensure the student's safety as necessary, including taking interim steps to protect the student or employee prior to the final outcome of any investigation. It is the University's duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students and employees, free from sexual harassment and sexual misconduct. This duty also applies to complaints involving parties of the same sex, and it requires the University to use the same procedures and standards used in all complaints involving sexual misconduct.
- 2.4 Inappropriate conduct by University personnel toward students is prohibited, and University policies shall identify procedures for identifying and responding to inappropriate conduct by University personnel.

### Section 3. Options for Assistance Following an Incident of Sexual Misconduct

- 3.1 The University shall take prompt steps to protect the complainant once the University has notice of sexual misconduct. The University shall take interim measures, including accommodations, to protect the complainant and witnesses as necessary while any criminal or campus investigation is underway and before the final outcome of any investigation. University officials should be mindful that sexual misconduct can result in delayed decision-making by a person who has experienced sexual misconduct. In anticipation of the need for support services from other agencies in the community, the University shall enter memoranda of understanding with other agencies as may be necessary to meet the University's obligation under Title IX. All such memoranda shall comply with all FERPA requirements. In the event of an alleged off-campus sexual misconduct incident, the University shall protect the student and the University community in the same manner it would had the sexual misconduct occurred on campus. Further, the University shall handle off-campus sexual misconduct incidents as it would handle other off-campus incidents of misconduct or violence and consistent with any applicable law. The Title IX Coordinator must be consulted in identifying safety risk and interim measures that are necessary to protect the complainant.

3.1.a Immediate Assistance - In the event of a sexual assault, various resources are available to students:

- 3.1.a.i Trained on- and off- campus advocates and counselors who can provide an immediate confidential response in a crisis situation:

Contact Information: (304) 766-3262; 125 Sullivan Hall, East

Contact Information: (304) 766-3224; 129 Sullivan Hall, East

Contact Information: REACH Advocate, The Counseling Connection  
1021 Quarrier Street, Suite 414  
Charleston, WV 25301  
304-340-3676; [www.tccwv.org](http://www.tccwv.org)

3.1.a.ii Emergency phone numbers for on- and off- campus safety, law enforcement, and other first responders, including the Title IX Coordinator:

Campus Safety/Police: WVSU Campus Police  
(304) 766-3353

Agency & Contact Information: Kanawha Co. Sherriff's Office  
301 Virginia Street, East, Charleston, WV 25301  
(304) 357-0169

Ambulance: Kanawha Co. Emergency Ambulance Authority  
(304) 342-1107

Title IX Coordinator: Human Resources Director  
(304) 766-5224

3.1.a.iii Advocates who can meet a victim at the hospital or other health care provider:

Contact Information: REACH Advocate  
The Counseling Connection  
1021 Quarrier Street, Suite 414  
Charleston, WV, 25301  
304-340-3676; www.tccwv.org

3.1.a.iv The Sexual Assault Response Team (SART) can provide the following resources and support and can be accessed by: REACH SART, 1021 Quarrier Street, Suite 414, Charleston, WV 25301; (304) 340-3676; and 1-800-656-HOPE.

3.1.a.v Health care services are available as follows:

On-Campus: WVSU Health Center (304) 766-3323

Off-Campus: CAMC Women's and Children's Hospital  
800 Pennsylvania Avenue, Charleston, WV 25302  
(304) 388-2550

3.1.a.vi A Sexual Assault Nurse Examiner (SANE) can be found or a rape kit can be obtained at:

CAMC Women's and Children's Hospital  
800 Pennsylvania Avenue, Charleston, WV 25302  
(304) 388-2550

CAMC General Hospital  
501 Morris Street, Charleston, WV 25301  
(304) 388-5432

CAMC Memorial Hospital  
3200 MacCorkle Avenue SE, Charleston, WV 25304  
(304) 388-5432

- 3.2 Any victim of sexual misconduct should be aware of the options to seek treatment for injuries, preventative treatment for sexually transmitted diseases, and other services. Victims are encouraged to discuss with health care providers, campus officials, and/or first responders the option of seeking medical treatment in order to preserve evidence which may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protective order.
- 3.3 Alleged offenses may be reported to the law enforcement agencies or to University officials designated in Section 6, and victims may (a) notify law enforcement authorities, (b) be assisted by campus authorities in notifying law enforcement authorities if the victim chooses, or (c) decline to notify such authorities. Victims may also be able to obtain orders of protection, no contact orders, restraining orders, or similar lawful orders issued by an appropriate court.
- 3.4 University officials should be mindful of the University's obligation to provide interim measures to protect the complainant in the educational setting. The University must consider a number of factors in determining what interim measures to take, including, (a) the specific need expressed by the complainant, (b) the age of the students involved, (c) the severity or pervasiveness of the allegations, (d) any continuing effects on the complainant, (e) whether the complainant and the alleged perpetrator share the same residence hall, dining hall, class, transportation or job location, and (f) whether other judicial measures have been taken to protect the complainant. The University shall minimize the burden of any interim measures on the complainant. The University will provide counseling services without charge to the complainant if the University determines that counseling is necessary as a part of its Title IX obligation to protect the complainant while the investigation is ongoing. The University shall notify the complainant of complainant's options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or complainant's living, transportation, dining, and working situation as appropriate. The University shall ensure that the complainant is aware of (a) complainant's Title IX rights, (b) any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and (c) the right to report a crime to campus or local law enforcement. The University shall not dissuade a complainant from filing a criminal complaint either during or after the University's internal Title IX investigation.

#### 3.4.b Ongoing Assistance

##### 3.4.b.i Counseling, Advocacy and Support – On-and Off-Campus

- 3.4.b.i.1 Counseling and support services for victims of sexual misconduct, whether or not a victim chooses to make an official report or participate in the University's disciplinary process or criminal process, include:

Contact Information:

Director, Counseling and Academic Support Services (CASS)  
(304) 766-3262; 125 Sullivan Hall, East

Contact Information:

CASS Mental Health Specialist  
(304) 766-3224; 129 Sullivan Hall, East

3.4.b.i.2 Confidential counseling, advocacy, health, mental health, or sexual- misconduct-related sources, can be found both on and off campus as follows:

On-Campus:

CASS, 1<sup>st</sup> Floor Sullivan Hall, East; (304) 766-3168

On-Campus:

Health Center, 004 University Union; (304) 766-3323

Off-Campus:

REACH Advocate, The Counseling Connection

1021 Quarrier Street, Suite 414

Charleston, WV 25301

304-340-3676; www.tccwv.org

3.4.b.i.3 Ongoing support during the University's disciplinary process or the criminal process can be found as follows:

Contact Information: (304) 766-3262; 125 Sullivan Hall, East

Contact Information: (304) 766-3224; 129 Sullivan Hall, East

3.4.b.ii Academic Accommodation and Interim Measures

3.4.b.ii.1 The University can provide immediate steps and interim measures to ensure the safety and well-being of the victim, such as the ability to move dorms, change work schedules, alter academic schedules, withdraw from/retake a class, and access academic support (e.g. tutoring).

3.4.b.ii.2 The University may be able to provide additional interim measures for complainants while an investigation is pending, such as no contact orders and changing the alleged perpetrator's living arrangements or course schedule.

#### Section 4. Title IX Coordinator

4.1 The President shall designate at least one employee to coordinate the University's efforts to comply with and carry out responsibilities under Title IX. The University shall notify all students and employees of the name or title and contact information for the Title IX Coordinator. The President shall give the Title IX Coordinator the training, authority, and visibility to fulfill the required duties set forth in this section and elsewhere in this policy in sections, 1, 3, 4, 6, 7, 9, and 10. The Title IX Coordinator shall have knowledge of Title IX requirements, of the University's policies and procedures on sex discrimination and of all complaints raising Title IX issues throughout the University. The University shall appropriately train the Title IX Coordinator in all areas over which the Title IX Coordinator has responsibility. The Title IX Coordinator shall be informed of all reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation is to

be conducted by another individual or office. The Title IX Coordinator shall be available to meet with students as needed. The Title IX Coordinator shall have no other job responsibilities which create a conflict of interest with the responsibilities associated with being the Title IX Coordinator. If more than one Title IX Coordinator is designated by the President, the University's notice of nondiscrimination and the University's grievance procedure shall describe each coordinator's duties and shall designate one coordinator as having ultimate oversight responsibility. The Title IX Coordinator shall review all processes used to resolve complaints of sexual misconduct to ensure that they (a) comply with requirements for prompt and equitable resolution of these complaints, (b) allow for appropriate interim measures to be taken to protect the complainant during the process, and (c) provide for remedies to the complainant and University community where appropriate. The Title IX Coordinator shall also review the University's disciplinary policy to ensure it does not have a chilling effect on student's reporting of sexual misconduct offenses or participating as witnesses.

## Section 5. Definitions

5.1 As used in this policy, the phrases and words listed shall have the meanings set forth below:

**Complainant** - The person making an allegation or complaint of sexual misconduct or relationship violence.

**Consent** - Verbal statements or non-verbal actions which a reasonable person would understand to mean a voluntary agreement to engage in sexual activity. Someone who is incapacitated cannot consent. Past consent does not imply future consent. Silence or an absence of resistance does not imply consent. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Coercion, force, or threat of either invalidates consent.

**Counseling employees** - Counselors employed by the University and other employees working under the direct supervision and control of counselors are covered under statutory privilege.

**Dating violence** - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship. "Dating violence" includes, but is not limited to, sexual or physical abuse or the threat of such abuse, but it does not include acts covered under the definition of domestic violence.

**Domestic violence** - A felony or misdemeanor crime of violence committed by: (a) a current or former spouse or intimate partner of the victim, (b) a person with whom the victim shares a child in common, (c) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner, (d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

**Educational setting** - All of the University's academic programs and other activities of whatever nature on campus and at every other location where the University conducts authorized programs or activities.

Incapacitation - Any situation in which a person is incapable of giving consent due to the person's age, state of consciousness, use of drugs or alcohol, or an intellectual or other disability.

Intimidation - The intentional act of coercing or frightening someone to engage or not engage in conduct of a sexual nature against that person's will.

Hostile environment - "Hostile environment" means activity or conduct involving sexual harassment that is sufficiently serious that it interferes with or limits a person's ability to participate in or benefit from the University's program.

Non-consensual sexual contact - Any physical touching of a sexual nature which is not preceded by consent or which continues after a previous consent is withdrawn.

Non-consensual sexual intercourse - Any sexual intercourse which is not preceded by consent or which continues after a previous consent is withdrawn. "Sexual intercourse" includes vaginal or anal penetration by a penis, object, tongue or finger and oral copulation.

Respondent - The person against whom the allegation or complaint of sexual misconduct or relationship violence is made.

Responsible employees - The President, Vice Presidents, and Deans of the University, the Title IX Coordinator, Department Chairs, Program Coordinators, Faculty members, Directors, Supervisors, resident advisors (RAs), and University security officers are responsible employees.

Retaliation - The act of seeking revenge upon another person.

Sexual assault - An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program.

Sexual exploitation - The abuse of a position of vulnerability, differential power, or trust for sexual purposes.

Sexual harassment - Gender-based verbal or physical conduct that unreasonably interferes with or deprives someone of educational access, benefits or opportunities.

Hostile environment sexual harassment includes any situation in which there is harassing conduct that is sufficiently severe, pervasive/persistent and patently/objectively offensive that alters the conditions of education or employment, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint. The determination of whether an environment is hostile must be based on all of the circumstances. These circumstances could include: the frequency of the conduct; the nature and severity of the conduct; whether the conduct was physically threatening; whether the conduct was humiliating; the effect of the conduct on the alleged victim's mental or emotional state; whether the conduct was directed at more than one person; whether the conduct arose in the context of other discriminatory conduct; whether the conduct unreasonably interfered with the alleged victim's educational or work performance; or whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness; and whether the speech or conduct deserves the protections of academic freedom.

Quid pro quo sexual harassment exists when there are: unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and submission to or rejection of such conduct results in adverse educational or employment action.

Retaliatory harassment is any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of discrimination or sexual misconduct.

Sexual misconduct - Any act of sexual harassment, sexual violence, sexual assault, non-consensual sexual contact, non-consensual sexual intercourse, sexual exploitation, stalking, intimidation, dating violence, or domestic violence, or any act that creates a hostile environment or any act of retaliation against a complainant or anyone involved in a grievance procedure under this policy.

Sexual violence - Physical sexual acts perpetrated against a person's will or with a person who suffers from incapacitation. "Sexual violence" also means same-sex conduct that violates the University's prohibition on sexual violence, including, but not limited to, the following examples: sexual assault, non-consensual sexual intercourse, non-consensual sexual contact, dating violence or domestic violence.

Stalking - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for the person's safety or the safety of others, or (b) suffer substantial emotional distress. As used in this definition, "course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens or communicates to or about a person, or interferes with a person's property; "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling; and "reasonable person" means a person under similar circumstances and with similar identities to the victim.

Title IX Coordinator - The person designated as such by the University's President or the person temporarily designated by the Title IX Coordinator to serve in that capacity during the Title IX Coordinator's incapacity or absence from the University's campus.

## Section 6. Reporting Policies and Protocols

- 6.1 The University encourages victims of sexual misconduct to talk to somebody about what happened so victims can get the support they need and so that the University can respond appropriately. Different employees on campus have different abilities to maintain a victim's confidentiality:
  - 6.1.a Some are required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication."
  - 6.1.b Other employees may talk to a victim in confidence, and generally only report to the University that an incident occurred without revealing any personally identifying information. Disclosures to these employees will not trigger a University investigation into an incident against the victim's wishes.
  - 6.1.c Thirdly, some employees are required to report all of the details of an incident (including the identities of both the victim and the alleged perpetrator) to the Title IX Coordinator.



A report to these employees (called “responsible employees”) constitutes a report to the University - and generally obligates the University to investigate the incident and take appropriate steps to address the situation.

6.2 This policy is intended to make students and their parents, if appropriate, employees and others aware of the various reporting and confidential policies available to them - so they can make informed choices about where to seek assistance should they become a victim of sexual misconduct and so they will know how to report any problems relating to retaliation which may subsequently arise. The University encourages victims to talk to someone identified in one or more of these groups.

6.2.a Reporting Required - All employees must be aware of their own reporting responsibilities and the importance of informing complainants of (a) the reporting requirements of responsible employees, (b) complainants’ option to request confidentiality and available confidential advocacy, counseling, or other support service, and (c) complainants’ right to file a Title IX complaint with the University and to report a crime to campus or local law enforcement. All responsible employees shall report incidents of sexual misconduct to the Title IX Coordinator, subject to the exemption for the University’s counseling employees. All other employees shall respond to reports of sexual misconduct by notifying a responsible employee of the information pertaining to the incident of sexual misconduct. The University shall take the following steps to ensure that a student understands an employee’s reporting obligation before the student reveals any information to that employee:

6.2.a.1 New Student Seminars;

6.2.a.2 Brochures/webpage/posters; and

6.2.a.3 Training of all employees to provide information about their reporting obligations to students seeking assistance.

6.2.b Responsible Employees - Responsible employees shall report to the Title IX Coordinator all relevant details about the alleged sexual misconduct that the complainant or other reporter has shared and that the University will need to determine what occurred and to resolve the situation. Before a complainant or other reporter reveals information that the complainant or other reporter wishes to keep confidential, a responsible employee, including a resident advisor, should make effort to ensure that the complainant or other reporter understands: (a) the responsible employee's obligation to report the names of the alleged perpetrator and complainant involved in the alleged sexual misconduct, as well as relevant facts regarding the alleged incident to the Title IX Coordinator or other appropriate University officials, (b) the complainant’s option to request that the University maintain the complainant’s confidentiality which the University will consider, and (c) the complainant’s ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services. Resident advisors and all responsible employees shall report the names of the alleged perpetrator (if known), the person who experienced the alleged sexual misconduct, other persons involved in the alleged sexual misconduct, as well as relevant facts, including the date, time and location to the Title IX Coordinator. A responsible employee, including a resident advisor, prior to providing information about the incident to the Title IX Coordinator, shall consult with the complainant about how to protect his or her safety and the details of what will be shared with the Title IX Coordinator. Responsible employees do not need to determine

whether the alleged sexual harassment or sexual misconduct actually occurred or that a hostile environment has been created before reporting an incident to the Title IX Coordinator.

- 6.2.c Requests for Confidentiality - Upon receipt of a complaint of sexual misconduct, the University must act immediately to protect the complainant while keeping the identity of the complainant confidential. The Title IX Coordinator and other appropriate University personnel shall determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified. The Title IX Coordinator shall evaluate complainant requests for confidentiality and shall determine when such requests shall be honored. The Title IX Coordinator shall make every effort to respect requests for confidentiality. In considering a request for confidentiality that would preclude a meaningful investigation or potential discipline of the alleged perpetrator, the Title IX Coordinator shall consider an evaluation of circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual misconduct or other violence, such as: (a) whether there have been other sexual misconduct complaints about the same alleged perpetrator, (b) whether the alleged perpetrator has a history of arrests or records from a prior University indicated a history of misconduct, (c) whether the alleged perpetrator threatened further sexual misconduct or other violence against the student or others, (d) whether the sexual misconduct was committed by multiple perpetrators, (e) whether the complainant's report reveals a pattern of perpetration at a given location or by a particular group, (f) whether the misconduct was perpetrated with a weapon, (h) the age of the complainant subjected to sexual misconduct, and (i) whether the University possesses other means to obtain relevant evidence. The Title IX Coordinator shall evaluate confidentiality requests in the context of the University's responsibility to provide a safe and nondiscriminatory environment. The University shall inform the complainant that a request may limit the University's ability to fully respond to the incident, including pursuing disciplinary action against the alleged perpetrator. A responsible employee, including a resident advisor, shall explain to the student that reporting the student's information to the Title IX Coordinator does not necessarily mean that a formal complaint or investigation under the University's Title IX grievance procedure must be initiated if the student requests confidentiality. All information reported in connection with an alleged sexual misconduct incident shall be maintained in a secure manner. The University shall only disclose information regarding alleged incidents of sexual misconduct to individuals who are responsible for handling the University's response. The University shall notify students of the information that will be disclosed, to whom it will be disclosed and why the disclosure is being made. In the event the complainant requests that the University inform the perpetrator that the student asked the University not to investigate or seek discipline, the University shall honor this request and inform the alleged perpetrator that the University made the decision to go forward. In the event the University determines that it can respect the student's request for confidentiality, the University shall take all reasonable steps to respond to the complaint consistent with the request and to determine what interim measures are appropriate or necessary. In the event the University determines it must disclose the complainant's identity to an alleged perpetrator, the University shall inform the complainant prior to making the disclosure.
- 6.2.d Reporting Options – Complainants may use any combination of the following options to report sexual misconduct:

6.2.d.1 Criminal Complaint - Criminal complaints are filed with local law enforcement officials and the University is not involved in that process. Criminal complaints can be filed with the following agencies:

Agency & Contact Information: WVSU Department of Public Safety  
122 Wallace Hall, Institute, WV 25112  
(304)766-3353

Agency & Contact Information: Kanawha Co. Sherriff's Office  
301 Virginia Street, East, Charleston, WV 25301  
(304) 357-0169

Agency & Contact Information: West Virginia State Police  
725 Jefferson Road  
South Charleston, WV 25309; (304) 746-2100

6.2.d.2 Institutional Complaint - Institutional complaints are filed with the University, and upon receipt of the complaint, the University will initiate an investigation by the University in accordance with this policy. Institutional complaints may be filed with the Title IX Coordinator. The Title IX Coordinator's contact information is: Title IX Coordinator; Human Resources Director, 105 Cole Complex; (304) 766-5224

6.2.d.3 Report to Responsible Employee - Reports made to responsible employees, including resident advisors are required by federal law to be relayed to the University's Title IX Coordinator and will initiate an investigation by the University in accordance with this policy. Responsible employees are identified in Section 5. Responsible employees can be found at [www.wvstateu.edu/titleix](http://www.wvstateu.edu/titleix). The Title IX Coordinator is a responsible employee. You can report sexual misconduct to any responsible employee.

6.2.d.4 Privileged and Confidential Reporting - Either as an alternative to the reporting options listed above or in lieu of reporting sexual misconduct to the individuals or offices listed above, complainants may make privileged and confidential reports of sexual misconduct to certain health or mental health providers or to off-campus pastoral counselors. While criminal complaints, institutional complaints, and reports to responsible employees will result in the initiation of an investigation, reports to health or mental health providers or to certain pastoral counselors are privileged and will remain confidential so long as the student filing the report does not represent a threat to his or her self or to others. Privileged and confidential reports may be made to:

On-Campus Health Provider and Contact Information:  
Health Center  
004 Wilson University Union, (304) 766-3323

Off-Campus Health Provider and Contact Information:  
CAMC Women's and Children's Hospital  
800 Pennsylvania Avenue  
Charleston, WV 25302; (304) 388-2550

On-Campus Mental Health Care Provider and Contact Information:  
(304) 766-3262; 125 Sullivan Hall, East  
(304) 766-3224; 129 Sullivan Hall, East

Off-Campus Mental Health Care Provider and Contact Information:  
REACH, The Counseling Connection  
1021 Quarrier Street, Suite 414  
Charleston, WV 25301; (304) 340-3676

6.2.d.5 Reports of sexual misconduct may be made by third-parties (individuals who were not the victim or perpetrator) or anonymously to: Title IX Coordinator, Human Resources Director 105 Cole Complex; (304) 766-5224. Requests for amnesty from drug, alcohol, and other student conduct policies should be directed to the Title IX Coordinator who shall consider the request and make a recommendation to the Vice President for Enrollment Management and Student Affairs or the Vice President for Business and Finance if the Title IX Coordinator believes the request should be approved in order to further the objectives of Title IX. The President or his/her designee (Vice President for Enrollment Management and Student Affairs or the Vice President for Business and Finance) may approve or disapprove the request after considering all of the University's interests.

6.2.e Reporting under the Clery Act - The University has various reporting obligations under the Clery Act which promotes campus safety by ensuring that students, employees, parents and the broader community are well-informed about important public safety and crime prevention matters. Details about the University's reporting obligations under Clery may be obtained at: <https://www.notalone.gov/assets/ferpa-clerychart.pdf>. Depending on the circumstances, the Clery Act may also require the University to issue timely warnings to the campus community about crimes that have already occurred but may continue to pose a serious or ongoing threat to students and employees. Certain Campus Security Authorities (CSAs) are required to report information gathered during the investigation of criminal activity. These CSAs include campus law enforcement officers, non-law enforcement campus security officers, and local law enforcement officers. These CSAs will typically be required to document incidents in a fashion that contains personally identifiable information about the parties involved and witnesses. Other CSAs, such as University officials, are not typically required to report personally identifiable information.

## Section 7. Investigation Procedures and Protocols

7.1 The University shall process all complaints of sexual misconduct, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity. The University shall determine whether any alleged off-campus sexual misconduct occurred in the context of an education program or activity of the University. If the off-campus misconduct occurred in the context of an education program or activity of the University, the University shall treat the complaint in the same manner that treats complaints regarding on-campus conduct. Once the University is on notice of an allegation of off-campus sexual misconduct against a student, the University shall assess whether there are any continuing effects on-campus or in an off-campus education program or activity that are creating or

contributing to a hostile environment and, if so, the University shall address the hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct. Since there may be continuing effects of off-campus sexual misconduct while at University or in an off-campus education program or activity, if the off-campus sexual misconduct did not occur in the context of an education program or activity of the University, the University shall consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity. The Title IX Coordinator or an individual designated by the Title IX Coordinator shall conduct the investigation of any complaint of sexual misconduct under this policy. An investigation may entail interviews with witnesses, a review of any documentary or electronic evidence, a review of medical evidence, a review of campus security data, or a review of any other material which the investigator deems relevant to an assessment of the facts surrounding the complaint. As soon after the initiation of the investigation as possible, the Title IX Coordinator or the designated investigator shall notify all University employees or students who are believed to have documentary, electronic, or tangible evidence to preserve such evidence for the investigation. The investigation shall provide the respondent and the complainant with equitable rights during the investigation. The University will endeavor to complete investigations and resolve complaints within sixty (60) days of the date on which the complaint was received, but the University's primary objective is a thorough investigation. Thus, if the Title IX Coordinator believes additional time beyond sixty days is necessary to complete a thorough investigation, the Title IX Coordinator shall advise the President of such information in writing and request an extension of time for the investigation, and such extensions shall be approved whenever the President believes an extension is warranted.

- 7.2 The University shall coordinate its Title IX investigation with any other ongoing University or criminal investigation of the incident and establish appropriate fact-finding roles for each investigator. The University shall consider whether information can be shared among the investigators so that complainants are not unnecessarily required to give multiple statements about a traumatic event. The University should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation. If the fact-finding portion of the University's Title IX investigation is suspended due to the existence of a criminal investigation, the University's fact-finding portion of the Title IX investigation shall resume promptly once law enforcement officials have completed their evidence-gathering state of the criminal investigation. The University shall periodically update the parties on the status of the investigation and inform the parties when the University resumes its Title IX investigation following any delay associated with a criminal investigation.
- 7.3 The University shall immediately investigate any possible retaliation against the complainant, including threats, intimidation, coercion, or discrimination.

## Section 8. Grievance/Adjudication Procedures

- 8.1 The University has jurisdiction over Title IX complaints. The University shall adopt and publish grievance procedures for the prompt and equitable resolution of discrimination complaints, including harassment complaints, filed by students against University employees, other students and third parties, which shall:
- 8.1.a Provide notice to students and employees of the grievance procedures, including where complaints may be filed.
  - 8.1.b Explain generally the grievance/adjudication process.

- 8.1.c Ensure that hearings are conducted in a manner that does not inflict additional emotional trauma on the complainant.
- 8.1.d Explain the possible results of the adjudication process, including sanctions, remedies/accommodations for the victim, and additional remedies for the University community.
- 8.1.e Explain that mediation is never appropriate in sexual misconduct cases.
- 8.1.f Notify the complainant of the right to end the informal process at any time and to begin the formal stage of the complaint process, if voluntary informal mechanisms for resolving some types of sexual harassment complaints are provided.
- 8.1.g Provide for the application of the procedure to complaints filed by students or on their behalf alleging sexual misconduct carried out by employees, other students, or third parties.
- 8.1.h Provide for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and the alleged perpetrator to present witnesses and evidence.
- 8.1.i Designate reasonably prompt time frames for the major stages of the complaint process.
- 8.1.j Provide for simultaneous written notice to the complainant and the alleged perpetrator of the outcome of the complaint and any appeal.
- 8.1.k Provide assurance that the University will take steps to prevent the recurrence of any sexual misconduct and remedy discriminatory effects on the complainant and others, if appropriate.
- 8.1.l Provide adequate definitions of “sexual harassment” and an explanation as to when such conduct creates a hostile environment.
- 8.1.m Include reporting policies and protocols, including provisions for confidential reporting.
- 8.1.n Identify the employee or employees responsible for evaluating requests for confidentiality.
- 8.1.o Provide notice that Title IX prohibits retaliation.
- 8.1.p Provide notice of a student’s right to file a criminal complaint and a Title IX complaint simultaneously.
- 8.1.q Provide notice of available interim measures that may be taken to protect the student in the educational setting.
- 8.1.r State the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint.
- 8.1.s Provide notice of the potential remedies for students.

- 8.1.t Provide notice of the potential sanctions or protective measures which may be imposed against the perpetrators, including, specifically, the sanctions regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking.
- 8.1.u Provide sources of counseling, advocacy, and support.
- 8.1.v Provide for the extension of all rights given to the alleged perpetrator to the complainant.
- 8.1.w Provide notice of hearing(s) to both parties.
- 8.1.x Identify a process by which either party may raise issues related to potential conflicts of interest of the adjudicators.
- 8.1.y Identify the trained individuals who will determine whether the alleged sexual misconduct occurred and the individuals who will determine the sanction.
- 8.1.z Provide for all proceedings to provide a prompt, fair, and impartial investigation and resolution.
- 8.1.aa Provide for all proceedings to be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.
- 8.1.ab Provide an equal opportunity for the parties to present relevant witnesses and other evidence.
- 8.1.ac Provide the parties with similar and timely access to any information that will be used at the hearing.
- 8.1.ad Provide a description of the types of evidence that may or may not be presented.
- 8.1.ae Provide an equal opportunity for the parties to be represented by counsel.
- 8.1.af Impose equal restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings.
- 8.1.ag Identify the persons who may attend and/or participate in the adjudication process and the extent of their participation.
- 8.1.ah Provide an equal opportunity for the parties to present expert testimony.
- 8.1.ai Provide an equal opportunity for the parties to appeal.
- 8.1.aj Require the same type of review be applied on appeal, regardless of which party files the appeal.
- 8.1.ak Describe the appellate procedures, grounds for appeal, the person/entity that will decide appeals, and the applicable reasonably prompt time frames for appeal.

- 8.1.al Include a statement that the University will not require a party to abide by a nondisclosure agreement, in writing or otherwise that would prevent the redisclosure of information relating to the outcome of the proceeding.
- 8.1.am Provide an equal opportunity for the parties to be present at the hearing.
- 8.1.an Permit the hearing to proceed if the complainant is not present.
- 8.1.ao Provide the parties with an equal opportunity to cross-examine witnesses.
- 8.1.ap Provide a description of alternative methods that preclude the respondent from personally cross-examining the complainant.
- 8.1.aq Require the University to notify both parties in writing about the outcome of the complaint.
- 8.1.ar Require the University to notify both parties in writing if there is any change to the results of the hearing that occurs prior to the time that such results become final.
- 8.1.as Require the University to notify both parties in writing when such results become final.
- 8.1.at Require the University to notify the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the University has taken to eliminate the hostile environment, if the University finds one to exist, and prevent recurrence.
- 8.1.au Prohibit questioning about the complainant's sexual history with anyone other than the alleged perpetrator.
- 8.1.av Acknowledge that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual misconduct.
- 8.1.aw Prohibit University officials from notifying the perpetrator of the individual remedies offered or provided to the complainant.
- 8.1.ax Require the University to offer the complainant all services needed to remedy the hostile environment on an interim basis.
- 8.1.ay Require the University to offer the complainant all services needed as a final remedy to the hostile environment, even if the complainant declined the service as part of an interim measure.
- 8.1.az Require the University to consider remedies for the broad student population whenever the University is unable to conduct a full investigation.
- 8.1.aaa Require the University to take steps to provide appropriate remedies for the complainant and the broader student population when the perpetrator is not affiliated with the University.



8.1.aab If the University uses its student disciplinary procedures to meet its Title IX obligations to resolve complaints of sexual misconduct promptly and equitably, require the University to assess whether imposing sanctions against the perpetrator, without additional remedies, will be sufficient to eliminate the hostile environment, prevent recurrence, and remedy effects as required by Title IX.

8.2 The University shall continue to protect the complainant after a determination that sexual misconduct has occurred.

8.3 The University's Grievance Procedure, consistent with these requirements, is attached as Exhibit "A".

## Section 9. Prevention and Education

9.1 This policy shall be accessible to students and employees with disabilities. This policy, reporting forms, information and training shall be accessible to students who are English language learners. This policy shall be distributed on campus in such a way that all students, regardless of their immigration status, including undocumented students and international students, are aware of their rights under Title IX. Title IX prohibits retaliation against the complainant, anyone who files a third-party report, any witness or anyone who otherwise participates in the investigative and/or disciplinary process, and the University will take steps to prevent retaliation and strong responsive action if it occurs, including any retaliatory actions by University officials. The University must routinely take steps to inform students that the University's primary concern is student safety and that the use of alcohol and drugs never makes the survivor at fault for sexual misconduct.

9.1.a Resident Advisors (RAs) - As noted above, RAs are responsible employees. As such, RAs shall explain to the student (before the student reveals confidential information) that although the RA must report the names of the perpetrator and the complainant and other relevant facts to the Title IX Coordinator or other designated University officials, the University will protect the student's confidentiality to the greatest extent possible. RAs shall provide students with information regarding on-campus resources, including victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, and the local rape crisis center or other off-campus resources.

9.1.b Sexual Violence and Prevention Program - The University's sexual violence and prevention program (SVPP) shall clearly identify the offices or individual with whom students can speak confidentially. The SVPP shall clearly identify the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling disability services, health and mental health services, and legal assistance. The SVPP shall identify the University's responsible employees. The SVPP shall explain that, if students report incidents to responsible employees, these employees are required to report the incident to the Title IX Coordinator or other appropriate official, including the names of the alleged perpetrator and student involved in the sexual misconduct, the date, time, and location. The University's approach to prevention, including the type and frequency of prevention programming and education/outreach activities, shall consist of:

Program/Activity	Description	Frequency
Training all new hires	Reporting obligations	Annual training for faculty and staff.
Bystander Intervention Programs	Ongoing awareness campaigns and residence hall programming	Incoming students
Presentations	A combination of in person presentation by Residence Hall, Athletic Presentations, Student Organizations and Freshman Experience Seminars	Alternate forms of delivery and frequency (including on-line modules).

- 9.1.c Bystander Intervention - The University shall utilize bystander intervention as a tool to prevent sexual misconduct. In implementing the bystander-focused prevention methods, the University shall implement the common components of bystander intervention and delivery methods found at: <https://www.notalone.gov/assets/bystander-summary.pdf>.
- 9.1.d Campus Assessments - Beginning in the spring of 2015, the University shall conduct an annual climate survey in accordance with the guidelines found at: <https://www.notalone.gov/assets/ovw-climate-survey.pdf>. In addition, the University shall aggregate data about sexual misconduct incidents in the University's on-campus health centers in order to identify patterns or systemic problems related to sexual misconduct.
- 9.1.e Educating Students - The University shall conduct programs to educate students about the University's sexual misconduct policy at least once during each calendar year. At sexual misconduct awareness events, the University shall provide information on (a) Title IX, (b) how to file a Title IX complaint with the University, (c) resources available to sexual misconduct victims such as counseling, mental health and health services, and (d) options for reporting an incident of sexual misconduct to campus or local law enforcement. The University shall provide education programs to promote the awareness of rape, acquaintance rape, domestic violence, sexual assault, and stalking, which shall include:
- 9.1.e.1 Primary prevention and awareness programs for all incoming students and new employees, which shall include:
- 9.1.e.1.a A statement that the University prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;
- 9.1.e.1.b The definition of domestic violence, dating violence, sexual assault, and stalking in the state of West Virginia;
- 9.1.e.1.c The definition of consent, in reference to sexual activity, in the state of West Virginia;
- 9.1.e.1.d Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;
- 9.1.e.1.e Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;

9.1.e.1.f Information described in 20 U.S.C. 1092(f)(8)(B)(ii) through (vii); and

9.1.e.2 Ongoing prevention and awareness campaigns for students and faculty, including the information described in clauses (a) through (f) of subparagraph 1 above.

## Section 10. Training

10.1 In all forms of training, the University shall establish methods for verifying that the training was effective.

10.1.a Student Training - The University shall provide the following training for students:

10.1.a.1 Encouragement to report incidents of sexual misconduct.

10.1.a.2 How to report sexual misconduct to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance.

10.1.a.3 General information on Title IX.

10.1.a.4 What constitutes sexual misconduct under the University's policies.

10.1.a.5 The University's definition of consent as applicable to sexual conduct, including examples.

10.1.a.6 How the University analyzes whether unwelcome sexual conduct creates a hostile environment.

10.1.a.7 Available reporting options, including formal reporting and confidential disclosure options and any timeframes set by the University for reporting.

10.1.a.8 Places where students can seek confidential support services.

10.1.a.9 Grievance procedures used to process sexual misconduct complaints.

10.1.a.10 Disciplinary code provisions relating to sexual misconduct and the consequences of violating those provisions.

10.1.a.11 Effects of trauma, including neurobiological changes.

10.1.a.12 The role alcohol and drugs often play in sexual misconduct incidents, including the deliberate use of alcohol and/or other drugs to perpetuate sexual misconduct.

10.1.a.13 Strategies and skills for bystanders to intervene to prevent possible sexual misconduct.

10.1.a.14 Title IX's protections against retaliation.

10.1.a.15 Persons on campus to whom students can confidentially report incidents of sexual misconduct.

- 10.1.a.16 An explanation that students do not need to determine whether incidents of sexual misconduct or other sexual harassment created a hostile environment before reporting the incident.
- 10.1.a.17 With regard to all training directed toward students, the University shall consider educational methods that are most likely to help students retain information when designing its training, including repeating the training at regular intervals.
- 10.1.b Resident Advisers Training - The University shall provide the following training for Resident Advisers:
  - 10.1.b.1 Places where students can seek confidential support services.
  - 10.1.b.2 Information about local rape crisis centers or other off-campus resources so that RAs can provide this information to students.
- 10.1.c Faculty and Staff Training - The University shall provide training on a regular basis, even if employees have prior relevant experience in sexual misconduct, to all employees likely to witness or receive reports of sexual harassment and misconduct, including faculty, University law enforcement unit employees, University administrators, University counselors, general counsels, athletic coaches, health personnel and RAs. The University shall determine how training should be conducted, who has the relevant expertise to conduct the training, and who should receive the training to ensure that the training adequately prepares employees, particularly responsible employees, to fulfill their duties under Title IX. Employees who work with international students shall be trained on the University's sexual misconduct policies. The University requires (a) training or experience in handling sexual misconduct complaints and (b) training in the operation of the University's grievance procedures for the Title IX Coordinator, others who receive complaints, investigators, and adjudicators. The University shall provide the following training for faculty and staff:
  - 10.1.c.1 Practical information about (a) how to prevent and identify sexual misconduct, including same-sex sexual misconduct. (b) the behaviors that may lead to and result in sexual misconduct; (c) the attitudes of bystanders that may allow conduct to continue; (d) the potential for revictimization by responders and its effect on students; (e) appropriate methods for responding to a student who may have experienced sexual misconduct, including the use of nonjudgmental language; (f) the impact of trauma on victims; and (g) the person(s) to whom such misconduct must be reported.
  - 10.1.c.2 Training to explain responsible employees' reporting obligation, including what should be included in a report and any consequences for the failure to report and the procedure for responding to student or employee requests for confidentiality, as well as provide the contact information for the University's Title IX Coordinator.
  - 10.1.c.3 Practical information on how and when to identify and report harassment to appropriate University officials.
- 10.1.d Special Training for Responsible Employees - Responsible employees are those employees defined in Section 5. Responsible employees shall be trained so that they will know how to

respond properly to sexual misconduct complaints. The University shall train responsible employees to inform students of: (a) the reporting obligations of responsible employees; (b) students' option to request confidentiality and available confidential advocacy, counseling, or other support services; and (c) their right to file a Title IX complaint with the University and to report a crime to campus or local law enforcement.

- 10.1.e Special Training for Title IX Coordinator and Others Involved in Grievance Procedure - The University shall require training for the Title IX Coordinator, others who receive complaints, investigators, and adjudicators to include information on: (a) working with and interviewing persons subjected to sexual misconduct, including same-sex sexual misconduct; (b) the proper standard of review for sexual misconduct complaints (preponderance of the evidence); (c) information on consent and the role drugs or alcohol can play in the ability to consent; (d) the importance of accountability for individuals found to have committed sexual misconduct; (e) the need for remedial actions for the perpetrator, complainant, and University community; (f) how to determine credibility; (g) how to evaluate evidence and weigh it in an impartial manner; (h) how to conduct investigations; (i) confidentiality; (j) the effects of trauma, including neurobiological change; and (k) cultural awareness training regarding how sexual misconduct may impact students differently depending on their cultural backgrounds. All staff involved in the grievance procedure must be trained so that they are capable of providing culturally competent counseling for all complainants. Counselors and other staff who are responsible for receiving and responding to complaints of sexual misconduct, including investigators and hearing board members, shall receive appropriate training about working with LGBT and gender-nonconforming students and same-sex sexual misconduct. Counselors and other staff who are responsible for receiving and responding to complaints of sexual misconduct, including investigators and hearing board members, and others counseling students who have experienced sexual misconduct shall be trained to be aware of the special issues that international students may encounter. Any University officials responsible for discussing safety and confidentiality with students shall be trained on the effects of trauma and the appropriate methods to communicate with students subjected to sexual misconduct. Any individual or body handling appeals shall be trained in the dynamics of and trauma associated with sexual misconduct.
- 10.1.f Special Training for Professional Counselors - The University shall instruct counselors to inform students:
- 10.1.f.1 Of their right to file a Title IX complaint with the University and a separate complaint with campus or local law enforcement.
  - 10.1.f.2 That they are available to assist the student in filing such complaints.
  - 10.1.f.3 That Title IX includes protections against retaliation.
  - 10.1.f.4 That University officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

**LIST OF EXHIBITS**

“A” -Sexual Harassment Grievance Procedure

**POLICY #14 EXHIBIT A**

**SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

**CALL 9-1-1 IN AN EMERGENCY OR CONTACT LOCAL LAW ENFORCEMENT IF YOU HAVE IMMEDIATE CONCERNS ABOUT YOUR PERSONAL SAFETY**

**IMPORTANT MESSAGE**

*On May 6, 2020, the United States Department of Education (USDE) released its Final Rule addressing sexual harassment internal grievance procedures (34 CFR Part 106) under Title IX of the Education Amendments of 1972 which prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance. The USDE's Final Rule is available online at:*

<https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>

*The purpose of the Sexual Harassment Grievance Procedure is to comply with the USDE's Final Rule addressing sexual harassment. Because current procedures and/or definitions set forth in Board of Governors Policy 14, Sexual Harassment and/or in Student, Employee and Faculty Handbooks do not comply with the USDE's Final Rule, these procedures supersede and replace any other rule, regulation, or Handbook procedures addressing definitions, reports and/or formal complaints of Sexual Harassment. Additionally, the Ombudsman procedures set forth online are not a substitute for the procedure set forth herein. This Exhibit A Sexual Harassment Grievance Procedure and the definitions set forth herein are the only procedures and definitions that will be used by West Virginia State University to address reports and formal complaints of Sexual Harassment pending enactment of a Board of Governors Policy. If anything in Policy 14 contradicts anything in this Exhibit A Sexual Harassment Grievance Procedure, Exhibit A will take precedence.*

West Virginia State University (WVSU) encourages anyone who experiences or becomes aware of an incident of conduct prohibited by this Sexual Harassment Administrative Policy and Procedure (SHGP) to *immediately* report the incident. Any person may report conduct prohibited by this SHGP (whether or not the person reporting is the person alleged to be the victim of the Prohibited Conduct), in person, by mail, by telephone, facsimile or by electronic mail to:

**Dr. Carolyn L. Stuart**  
**Title IX Coordinator, EEO Compliance Officer**  
West Virginia State University  
P.O. Box 1000  
Institute, WV 25112-1000  
Telephone: 304-204-4018  
Fax: 304-204-4069  
24 Hour Number: 304-533-5392  
Email: carolyn.stuart@wvstateu.edu

*Campus Office Location*

105 Ferrell Hall, 1st Floor

Reports may also be made online at:

<https://www.wvstateu.edu/forms/title-ix-reporting-form.aspx>

Reports or complaints against the above-named person should be reported to and filed with:

**Dr. Nicole Pride, President**  
West Virginia State University  
P.O. Box 1000  
Institute, WV 25112-1000  
Telephone: 304-766-3111  
Fax:  
Email: [nicole.pride@wvstateu.edu](mailto:nicole.pride@wvstateu.edu)

*Campus Office Location*  
103 Ferrell Hall

Any individual may at any time pursue a complaint, as applicable with the United State Equal Employment Opportunity Commission, the West Virginia Equal Employment Opportunity Office, the West Virginia Human Rights Commission or the United States Department of Education Office for Civil Rights (responsible for enforcing Title IX). Please see section XXVI, External Complaints for contact information for each agency.

**I. Purpose.**

A. WVSU is committed to providing a safe and non-discriminatory environment for all members of WVSU community. WVSU prohibits sexual harassment and retaliation by or against any member of the WVSU community. Individuals found responsible for sexual harassment and/or retaliation are subject to disciplinary action.

B. In accordance with Title IX, this procedure is the procedure WVSU will follow when it receives a report or complaint alleging conduct prohibited under the jurisdiction of Title IX. This SHGP and procedure are also used to address all Prohibited Conduct as that term is defined herein. WVSU uses this procedure to investigate and adjudicate allegations of Prohibited Conduct and to impose disciplinary sanctions for individuals found responsible for Prohibited Conduct.

C. This procedure applies to students, faculty, staff, applicants for admission to or employment with WVSU, visitors or any third party who otherwise has some relationship with WVSU.

D. **Relationship to Student Conduct Code and Policy 23.** Harassment on the basis of sex is prohibited by Board of Governors Policy 23 and the Student Conduct Code. These procedures take precedence over and will be used instead any procedures set forth in the Policy 23 and/or the



Student Conduct Code to address reports or complaints accusing a student(s) or student organization(s) of harassment on the basis of sex.

E. WVSU may but is not required to use this procedure to address any other protected class discrimination including but not limited to sex discrimination that is not sexual harassment.

F. This procedure does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

## **II. General.**

A. The Title IX Coordinator is responsible for coordinating WVSU's efforts to comply with its responsibilities under Title IX. The Title IX Coordinator may not have a conflict of interest or bias for or against individuals who report alleged sexual harassment, accused individuals, Complainants or Respondents generally or specific individuals in any of the aforementioned capacities. The Title IX Coordinator's responsibilities include but are not limited to:

1. Communicating with all members of WVSU community regarding Title IX, and providing information about the Title IX grievance procedure;

2. Reviewing applicable WVSU policies to ensure institutional compliance with Title IX;

3. Responding to general inquiries regarding Title IX Sexual Harassment;

4. Monitoring WVSU's compliance with and administration of its own applicable policies, including record keeping, timeframes, and other procedural requirements.

5. Conducting compliance assessments of the effectiveness of Title IX programs, the campus safety and security environment, and compliance with Federal and State law. Assessments may include site visits, record reviews, surveys, reviews of the applicable law(s) and interviews with students and personnel;

6. Conducting and/or providing training regarding Title IX and Prohibited Conduct as defined in this SHGP;

7. Coordinating WVSU's response to sexual harassment reports and complaint grievance procedures;

8. The Title IX Coordinator may not serve as an Investigator or decision-maker as defined in this SHGP and may not make any appeal decisions but may serve as facilitator for any step/stage in this process including but not limited to the hearing stage;

9. Any responsibility outlined in this SHGP; and

10. Any other duties that may be assigned by the President or designee

- B. The President may appoint more than one Title IX Coordinator.
- C. All, applicants for admission and employment; students; off-campus program participants; dual credit students; parents or legal guardians of elementary and secondary school students participating in a WVSU education program or activity; and employees, will be provided with WSU's Notice of Nondiscrimination. WVSU will provide all of the aforementioned individuals with either a copy of this SHGP and procedure or will provide them with information on how to obtain a copy.
- D. WVSU will prominently display the name, title, office address, electronic mail address, and telephone number of the Title IX Coordinator(s), as well as the its Notice of Nondiscrimination, on its website, and in each applicable handbook, application materials (either on the application or as a separate document) and/or catalog that it makes available to the persons listed above.
- E. Waiver of the right to an investigation and adjudication of formal complaints of Title IX Sexual Harassment consistent with this SHGP and procedure will not be required as a condition of enrollment or continuing enrollment; or employment or continuing employment; or enjoyment of any other WVSU right.
- F. During the Title IX complaint grievance process, WVSU will treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for Title IX Sexual Harassment has been made against the Respondent, and by following this procedure before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent. Remedies will be designed to restore or preserve equal access to WVSU's education program or activity. Such remedies may include the same individualized services described in section III as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
- G. Individuals accused are presumed not responsible for any alleged Prohibited Conduct until a determination regarding responsibility is made at the conclusion of the formal grievance process.
- H. The burden of gathering evidence sufficient to reach a determination regarding responsibility and the burden of proof rests on WVSU and not on the Complainant or Respondent.
- I. WVSU may use this procedure to investigate violations of other WVSU policies, rules, regulations or procedures including but not limited to those that that are discovered during the investigation of and/or are related to the formal Title IX Sexual Harassment complaint.
- J. The administrative investigation of reports and complaints in accordance with this SHGP is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation will not take the place of an investigation or disposition of a complaint filed in accordance with this SHGP and the results of a law enforcement investigation or adjudication are not determinative of whether an individual is responsible for violating this SHGP. The grievance procedures set forth in this SHGP may be carried out prior to,

simultaneously with, or following civil or criminal proceedings off campus. WVSU will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus or that affects the campus community and such cooperation may require the institution to temporarily suspend the fact-finding aspect of the administrative investigation while the law enforcement agency is in the process of gathering information. Suspensions of investigations typically last from three to ten days but may be extended depending upon the circumstances of each case. WVSU will promptly resume its administrative investigation as soon as notified by the law enforcement agency that it has completed its evidence gathering process.

### **III. Definitions.**

A. ***Actual Knowledge*** means notice of sexual harassment or other Prohibited Conduct or allegations of sexual harassment or other Prohibited Conduct to WVSU's Title IX Coordinator or any official of WVSU who has authority to institute corrective measures on behalf of WVSU. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of WVSU with actual knowledge is the accused individual and/or Respondent. The mere ability or obligation to report Title IX Sexual Harassment or to inform an individual about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of WVSU.

B. ***Advisor*** means any person intended to assist the Complainant or Respondent during the disciplinary process, including but not limited to, a WVSU appointed advisor, faculty member, legal counsel (lawyer) or other person.

C. ***Complainant*** means an individual who files a formal complaint. For the purposes of Title IX Sexual Harassment, the Complainant must be the individual alleged to be the victim of Prohibited Conduct. A Complainant may be a student, employee or third-party and must be participating in, or attempting to participate in, a WVSU employment education program or activity at the time of filing a formal complaint.

D. ***Consent*** means the affirmative, unambiguous, and voluntary agreement to engage in each specific initiated sexual activity that may compose a sexual encounter. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. A clear verbal "yes" or other outward demonstration of free choice is necessary. Consent cannot be inferred from silence, passivity, lack of resistance, or a lack of active response. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Consent must be voluntarily given contemporaneous to the initiation of the sexual activity. Consent may not be valid if a person is being subjected to actions or behaviors that elicit emotional or psychological pressure, intimidation, or fear. It cannot be obtained by threat, coercion, or force.

E. ***Cross-Examination*** means the opportunity to question the opposing Party or any witness who has answered questions posed by the opposing Party or the Review Board. The opportunity to cross-examine usually occurs as soon as the other Party completes his or her initial testimony, called direct testimony. Cross-examiners attempt to get the witness to say something helpful to their side, or to cast doubt on the witness's testimony by eliciting something that reduces the

witness's credibility -- for example, that the witness's eyesight is so poor that the witness may not have seen an event clearly.

F. ***Deliberate Indifference/Deliberately Indifferent*** means WVSU's response to Title IX Sexual Harassment is clearly unreasonable in light of the known circumstances.

G. ***Directly Related Evidence*** shall be interpreted using the plain and ordinary meaning of the terms. Directly Related evidence is not the same as Relevant Evidence.

H. ***Education Program or Activity*** includes locations, events, or circumstances over which WVSU exercises substantial control over both the accused and the alleged victim of the Prohibited Conduct and the context in which the sexual harassment occurs including but not limited to employment, employment benefits, academic and athletic programs. Education program or activity also includes any building owned or controlled by a student organization that is officially recognized by WVSU.

I. ***Formal Complaint*** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that WVSU investigate the allegation of Title IX Sexual Harassment. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

J. ***Incapacitation*** means the physical and/or mental inability to make informed, rational judgments. A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. An individual may not engage in sexual activity with another person who the individual knows or should reasonably know to be mentally or physically incapacitated; a Respondent violates this SHGP if they engage in a sex act with someone who is incapable of giving consent.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacity may also result from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

K. ***Investigator*** means one or more individual designated by WVSU from the Investigator and Review Board Pool to investigate formal complaints. An Investigator cannot be the same person as the Title IX Coordinator and may not serve on the Review Board or make any appeal decisions for a complaint investigated by the Investigator. References in this SHGP to the "Investigator" include the plural.

L. **Investigator and Review Board Pool (Pool)** means a standing Pool of WVSU community or external individuals who are trained on the definition of sexual harassment, the scope of WVSU's education program or activity, these procedures, and how to be impartial, including how to avoid prejudgment of the facts at issue, conflicts of interest, and bias. The President or Title IX Coordinator or other President designee has the discretion to expand the Investigator and Review Board Pool to include individuals not included in the standing Pool depending upon the circumstances of the case.

M. **No Contact Directive** typically means a mutual administrative directive designed to prevent any direct contact between individuals. A no contact directive prohibits contact, including, but not limited to in-person, through electronic means, or through a third Party (other than through an advisor), but it does not prevent individuals from being in the same place or seeing one another on- or off-campus. WVSU may, however, restrict a Complainant's and Respondent's activities as a separate interim measure and/or a remedy if appropriate and reasonable. A no contact directive will not be used to impose prior restraints on an individual's ability to discuss any allegations under investigation, for example with a parent, friend, or other source of emotional support, or with an advocacy organization. A one-way No Contact Directive may be appropriate in limited circumstances. A fact-specific inquiry is required into whether a carefully crafted no-contact order restricting the actions of only one party would meet the definition of a supportive measure.

N. **Parent** means natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

O. **Party or Parties** are terms used to refer to the Complainant and Respondent individually or collectively.

P. **Preponderance of the Evidence** means evidence which is of greater weight of more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved is more probable than not. Responsibility decisions made by the Review Panel are made using the preponderance of the evidence standard of proof.

Q. **Prohibited Conduct.** Title IX Sexual Harassment; sexual exploitation; hazing and stalking on the basis of sex; and retaliation are all Prohibited Conduct.

R. **Respondent** means an individual or recognized student organization or team accused of Prohibited Conduct in an initial report or formal complaint. WVSU will keep confidential the identity of any individual who has been reported to be the alleged perpetrator of Prohibited Conduct except as may be permitted by the Federal Educational Rights and Privacy Act, the Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act, or otherwise as required by law, or to carry out the purposes of 34 CFR part 106, including the requirement to conduct an investigation, hold a live-hearing, or any other judicial proceeding arising under 34 CFR part 106 or other WVSU SHGP.

S. **Reporting Party** means any individual who reports Prohibited Conduct. A Reporting Party may also be a Complainant.

T. **Relevant Evidence** means evidence that has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action. Relevance is determined from a layperson's perspective and relevance determinations are made based on applying logic and common sense. Sexual predisposition or prior sexual behavior is not Relevant Evidence, unless such evidence about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the alleged Prohibited Conduct 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. Information protected by a legally recognized privilege; any Party's medical, psychological, and similar records unless the Party has given voluntary, written consent; and, as applicable to hearings, Party or witness statements that have not been subjected to cross examination at a live hearing.

U. **Review Board** means three individuals appointed by the Title IX Coordinator from the Investigator and Review Board Pool who conduct live hearings and make responsibility determinations in allegations of Prohibited Conduct pursuant to these procedures. Chair means the Chair of the Review Board. A Review Board member cannot be the same person as the Title IX Coordinator or the Investigator who investigated the complaint. A Review Board member may not make any decisions on any appeal from a responsibility determination.

V. **Sexual Exploitation** means an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Sexual exploitation may constitute Title IX or Title VII Sexual Harassment depending upon the severity and/or pervasiveness. Sexual Exploitation whether it violates Title IX or Title VII is prohibited by the SHGP. The SHGP is used to investigate Sexual Exploitation. Examples of sexual exploitation include but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy.
- Taking pictures, video, or audio recordings of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity

- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections
- Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Creation, possession, or dissemination of child pornography
- “Revenge posting” in which a person threatens to post -- or actually does post -- images, audio, or video of their partner participating in sexual activity.
- Knowingly transmitting a sexually transmitted disease, including HIV, to a student or other individual.

W. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to WVSU’s education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or WVSU’s educational environment, or deter sexual harassment. Whether a supportive measure is unreasonably burdensome will be determined on an individual basis. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, removal from a sports team or other extracurricular activity, change in class schedule, campus escort services, mutual restrictions on contact between the Parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, changes in course delivery methods, and other similar measures. Supportive measures may include a mutual no contact directive. WVSU must maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of WVSU to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

X. **Sexual Harassment** is a form of sex based discrimination and is harassment on the basis of sex. Sexual harassment is unwelcome verbal or physical conduct. WVSU prohibits sexual harassment.

1. **Title VII Sexual Harassment** is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1965 and becomes unlawful where:

i. enduring unwelcome offensive conduct becomes a condition of continued employment (*Quid Pro Quo*) or when it results in an adverse employment decision (such as the victim being fired or demoted).

ii. the unwelcome conduct is severe **or** pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis. Title VII Sexual Harassment includes all Title IX Sexual Harassment and Sexual Exploitation as defined by

this SHGP. Title VII Sexual Harassment includes unwelcome sexual advances, requests for sexual favors, conditioning the provision of an aid, benefit, or service of WVSU on an individual's participation in unwelcome sexual conduct, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. Title VII Sexual Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct. Unlawful harassment may occur without economic injury to, or discharge of, the victim. The law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of WVSU, such as a student. Title IX Sexual Harassment in the employment context constitutes Title VII Sexual Harassment.

2. ***Title IX Sexual Harassment*** is a form of sex discrimination that violates Title IX and Title VII. Title IX Sexual Harassment is conduct within an education program or activity on the basis of sex, that satisfies one or more of the following:

i. Conditioning the provision of an aid, benefit, or service of WVSU on an individual's participation in unwelcome sexual conduct (*Quid Pro Quo*).

ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to WVSU's education program or activity regardless of the intent to cause harm. Severity, pervasiveness, and objective offensiveness is evaluated in light of the known circumstances and depend on the facts of each situation, and is determined from the perspective of a reasonable person standing in the shoes of the Complainant. Unwelcome conduct so severe, pervasive, and objectively offensive that it denies a person equal educational opportunity is actionable sexual harassment regardless of the Respondent's intent to cause harm.

iii. "Sexual assault", as defined by 20 U.S.C. 1092(f)(6)(A). Sexual assault is any offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation and include all of the following:

- ***Sex Offenses-Forcible Sex Offense***. Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving Consent. Forcible sex offenses include the following:
  - ***Forcible Rape*** - The carnal knowledge of a person, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving Consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).
  - ***Forcible Sodomy*** - Oral or anal sexual intercourse with another person, forcibly and/or against that persons will; or not forcibly against that persons will where the victim is incapable of giving Consent because of his/her youth or



because of his/her temporary or permanent mental or physical incapacity.

- *Sexual Assault With An Object* - The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that persons will; or not forcibly against the persons will where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- *Forcible Fondling* - The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary mental incapacity.
- *Sex Offenses-Non forcible Unlawful, non-forcible sexual intercourse.*
  - *Incest* - Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - *Statutory Rape* - Non-forcible sexual intercourse with a person who is under the statutory age of Consent. **In the State of West Virginia, sixteen is the age of Consent.**

iv. “Dating violence” as defined in 34 U.S.C. 12291(a)(10). Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

v. “Domestic violence” as defined in 34 U.S.C. 12291(a)(8). Domestic violence is any conduct that would constitute a felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of West Virginia, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of West Virginia.

vi. “Stalking” as defined in 34 U.S.C. 12291(a)(30). Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- fear for an individual’s safety or the safety of others; or
- suffer substantial emotional distress.

3. Hazing and stalking as defined in Institution Name Board of Governors Policy 6 on the basis of sex may also constitute sexual harassment.

#### **IV. Jurisdiction and Dismissal of Formal Complaints**

A. **Title IX Jurisdiction.** Title IX applies to persons in the United States with respect to WVSU's education programs or activities. Jurisdiction extends to electronic discrimination and harassment if it occurs within a WVSU education program or activity. Electronic discrimination or harassment includes but is not limited to conduct occurring through e-mails, instant messaging, web pages, through any online class platform used by WVSU, blogs or chat rooms. Incidents occurring against persons outside the United States and/or outside a WVSU education program or activity may be considered misconduct under and addressed through other WVSU rules, regulations and/or procedures. Off-campus conduct occurring at private residences, businesses, events, or other locations outside of WVSU's substantial control do not fall under WVSU's jurisdiction for Title IX complaints.

1. **Mandatory Title IX Dismissal.** WVSU is required to dismiss a formal Title IX Sexual Harassment complaint with regard to conduct alleged in the complaint for the purposes of Title IX Sexual Harassment and this SHGP if the conduct:

- i. Alleged in the formal complaint would not constitute Title IX Sexual Harassment even if proven;
- ii. Did not occur in WVSU's education program or activity; or
- iii. Did not occur against a person in the United States; or
- iv. The Complainant was not participating in or attempting to participate in an education program or activity of WVSU.

2. **Discretionary Dismissal.** WVSU may dismiss a formal Prohibited Conduct complaint at any time during the investigation or hearing if:

- i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein.
- ii. The Respondent is no longer enrolled or employed by WVSU.
- iii. Specific circumstances prevent WVSU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

B. **Title VII Jurisdiction.** Title VII applies to virtually all employment situations and applies to United States Citizens working abroad. WVSU is required to address Title VII Sexual Harassment if WVSU knew or should have known about the harassment; no formal complaint is required.

C. This SHGP may be applied to conduct occurring outside the context of a WVSU education program or activity if at WVSU's discretion, the conduct affects a substantial school/university interest.

D. Dismissal for the purposes for the purposes of Title IX does not preclude investigation under other WVSU rules and policies including but not limited to investigation for the purposes of Title VII Sexual Harassment. This procedure may be used to investigate Title VII Sexual Harassment. A complaint may be dismissed for the purposes of Title IX but may still be investigated for the purposes of the Title VII using this procedure.

## **V. Special Considerations for Medical Records**

A. WVSU will not 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 the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless WVSU obtains that Party's voluntary, written Consent to do so for a grievance process under this section. If a Party has not reached 18 years of age or is not attending WVSU must obtain the voluntary, written Consent of a parent.

## **VI. Role and Appointment of Advisors**

A. Both Parties have the right to have an advisor of their choice, including legal counsel at the expense of the Party, present during any step of this grievance procedure including but not limited to the opportunity to be accompanied by an advisor to any related meeting, interview, informal resolution proceeding or emergency removal appeal. If either the Complainant or Respondent are consulting with more than one advisor, each must designate one person as the advisor for purposes of these proceedings. The Parties should select an advisor whose schedule allows attendance at scheduled meetings and hearings.

B. WVSU will not limit the choice or presence of an advisor for either the Complainant or the Respondent; however, WVSU may establish restrictions regarding the extent to which the advisors may participate in the proceedings. Any restrictions imposed will apply equally to the advisors of both Parties.

D. The Parties are required to provide the Title IX Coordinator with the name and contact information of any advisor and are encouraged to provide the information at least two business days prior to the advisor participating in any meeting, interview, hearing or informal resolution procedure.

E. Both Parties have the right to have an advisor of their choice, including legal counsel at the expense of the Party, to be present at any live hearing. If a Party does not have an advisor present at the live hearing required by this SHGP, WVSU will provide, without fee or charge to that Party, an advisor of WVSU's choice only for the purpose of conducting Cross-Examination of the opposing Party on behalf of the Party without an advisor. WVSU is not obligated to provide either

Party with an advisor to represent and/or advise either Party during the entire live hearing. The WVSU provided advisor may, but is not required to be, an attorney even if the opposing Party is represented by an attorney. Advisors not appointed by WVSU may serve in an advisory capacity or may represent either Party during the live hearing; each party may determine whether the advisor will serve as an advisor only or as a representative.

F. Advisors are not permitted to respond to questions during interviews or live hearings on behalf of any witness or Party. Each Party and/or witness is expected to personally respond to questions posed by an Investigator or by any individual authorized to ask questions during a live hearing.

G. Advisors are expected to act in a respectful and non-abusive manner during all steps of the grievance process, including but not limited to during informal resolution proceedings, are expected follow the rules set forth in this SHGP for each step of the grievance process as well as are required to follow any rules of decorum established by Investigators and/or the Chair of the Review Board during the live hearing. Advisors are expected to all follow WVSU rules, regulations policies and advisors. Investigators may remove advisors from any prehearing investigation interview/meeting/informal resolution proceeding and/or may end the at the Investigator's discretion for disruptive behavior, for failure to follow the rules set forth in this SHGP and/or any other rules established in accordance with this SHGP. If an Investigator is removed from an interview/meeting/informal resolution proceeding, the Party will be given the option to end the interview/meeting or to proceed without the advisor. Advisors may be removed from a live hearing by the Chair of the Review Board at the Chair's discretion for disruptive behavior and/or for violating any hearing rules established by or in accordance with this SHGP.

H. If a party requests that all communication be made through their Advisor who is also an attorney, WVSU will comply with that request at the discretion of the Title IX Coordinator.

I. WVSU will provide the Parties with a **consent form** that authorizes WVSU to share documentation and evidence related to the allegations of Prohibited Conduct with their Advisors. The Parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to release of information to the Advisor before WVSU is able to share records with an Advisor. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, and are to be used only for the purposes of these procedures. WVSU may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by WVSU's privacy expectations. Employees who are also advisors may be subject to disciplinary action up to and including employment termination for misuse of information disclosed to them as part of this process.

## **VII. Initial Reports, Mandatory Reporters, Confidential Reporting Clergy Act, Anonymous Reports and Requests for Confidentiality**

A. **Initial Reports.** Any person may report Prohibited Conduct (whether or not the person reporting is the person alleged to be the victim of the Prohibited Conduct), in person, by mail, by telephone, facsimile or by electronic mail, using the contact information listed for the Title IX

Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail or facsimile to the office address, listed for the Title IX Coordinator or by using any online portal created by WVSU. Any written report submitted by an individual who is the person alleged to have been victimized by the Prohibited Conduct requesting that WVSU investigate the allegation will be treated as a formal complaint.

**B. Mandatory Reporters.** Any WVSU employee who witnesses Title IX Sexual Harassment or who receives a verbal or written report of Title IX Sexual Harassment is required to notify the Title IX Coordinator unless covered by section VII(C). Failure to report will result in disciplinary action up to and including termination of employment. Employees may also be required to report the incident in accordance with WVSU's Clery Act reporting policy and/or in accordance with State and/or WVSU mandatory child sexual abuse reporting laws and policies.

**C. Confidential Reporting Resources.** Students or employees who have experienced sexual harassment or seeking complete confidential assistance without sharing information with or making a report to WVSU may do so by speaking with a confidential reporting resource. Professional, licensed counselors and pastoral counselors who provide mental health counseling to members of WVSU community (including those who act in that role under the supervision of a licensed counselor) are not required to report sexual harassment to WVSU, not even to the Title IX Coordinator, without the individual's permission, unless otherwise required or permitted to do so by law. On campus personal counseling and health is available by contacting:

Director, Counseling and Academic Support Services (CASS)  
(304) 766-3262; 125 Sullivan Hall, East

CASS Mental Health Specialist  
(304) 766-3224; 129 Sullivan Hall, East

Sexual Assault and Response Team (SART) (Confidential)  
(304) 340-3676

On-campus health care services are available at:

WVSU Health Center  
Insert Location  
(304) 766-3323

Off campus health services and Sexual Assault Nurse Examiner (SANE) and/or rape kit are available at:

CAMC Women's and Children's Hospital  
800 Pennsylvania Avenue

Charleston, WV 25302  
(304) 388-2550  
CAMC General Hospital  
501 Morris Street  
Charleston, WV 25301  
(304) 388-5432

3200 MacCorkle Avenue SE  
Charleston, WV 25304  
(304) 388-5432

WVSU does not endorse any of the following external organizations or any external organizations included in online information; the information is provided solely as external resources for the Parties.

Individuals may seek advocacy, support and/or other services by contacting:

*Complainants:*

REACH (Rape Education, Advocacy, Counseling and Healing)  
The Counseling Connection  
1021 Quarrier Street, Suite 414  
Charleston, WV, 25301  
Telephone: 304-340-3676  
Fax: 304-340-3688  
24-Hour Hotline: 1-800-656-HOPE (4673)  
Website: [www.tccwv.org](http://www.tccwv.org)

Victim Rights Law Center  
115 Broad Street, 3rd Floor  
Boston, MA 02110  
Telephone: 617-399-6720 (Legal assistance intake line: Ext. 19)  
Toll Free: 877-758-8132  
<http://www.victimrights.org/>

*Respondents:*

Families Advocating for Campus Equality (FACE)  
3 West George St  
PO Box 71  
Batesville, IN 47006-9998  
Telephone: (701) 491-8554  
<http://www.facecampusequality.org>

Stop Abusive and Violent Environments (SAVE)  
P.O. Box 1221  
Rockville, Maryland 20849

Telephone: 301-801-0608  
E-mail: [info-at-saveservices.org](mailto:info-at-saveservices.org)  
<http://www.saveservices.org>

*Both:*

West Virginia Bar Association Legal Referral Service  
2000 Deitrick Blvd  
Charleston, WV 25311  
Telephone: 304-553-7220  
<https://wvlawyerreferral.org/>

*Employees:*

Employee Assistance Program (EAP) (Confidential)  
(304) 722-9119  
<http://www.peopleworkwv.com/>

Additional information about advocacy, support and/or other services is available from the Title IX Coordinator and online at:

<https://www.wvstateu.edu/about/title-ix.aspx>

**D. Reports to Law Enforcement.**

1. Prohibited Conduct may also constitute violations of criminal law. An individual may choose to make a report to WVSU or file a formal complaint to pursue resolution under this SHGP and procedure and may also choose to make a report to law enforcement. Any individual may, but is not required, to report an incident alleging criminal conduct. Any individual who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should call 9-1-1 in an emergency or contact law enforcement directly:

WVSU Campus Police  
Insert campus location  
(304) 766-3353

West Virginia State Police  
Troop 4  
Headquarters  
711 Jefferson Road  
South Charleston, WV 25309  
(304)-746-4840  
(304)-746-4841 (Fax)

Kanawha County Sheriff's Office  
301 Virginia Street, East

Charleston, WV 25301  
(304) 357-0169

2. Employees of WVSU Campus Police Department are employees and therefore are obligated to promptly report incidents of Prohibited Conduct reported to them in the context of their law enforcement capacity or otherwise, in accordance with section VIIB. Employees of WVSU Campus Police Department Police will make reports to the Title IX Coordinator of Prohibited Conduct whether the individual reporting the Prohibited Conduct chooses to pursue criminal charges and will provide the reporting party with this SHGP.

**E. Clery Act Reporting.**

1. The Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act, 20 USC § 1092(f), (commonly known as the Clery Act; formerly the Campus Security Act) is a federal law that requires WVSU to disclose campus security information including crime statistics for the campus and surrounding areas. It was first enacted by Congress in 1990 and most recently amended in 2013 by the Violence Against Women Reauthorization Act. Pursuant to the Clery Act, any campus security or law enforcement personnel or any Institution Name employee who has significant responsibility for student and campus activities (including but not limited to faculty advisers to student groups, coaches and any employee responsible for student activities) who has witnessed or been informed of an alleged incident that constitutes a crime for the purpose of the Clery Act including but not limited to a forcible or nonforcible sex offense as defined by the Clery Act, whether a criminal or formal complaint has been filed, must follow the procedures set forth in Institution Name Review Board of Governors Policy 50 for making a report for the annual Clery Act crime statistics report. Employees may be obligated to report to law enforcement the fact that an alleged Clery Act Crime has been reported, but the name or other personally identifiable information about the person making the report and/or alleged victim will be provided only with their permission except as may be required or otherwise permitted by law.

2. The Clery Act requires WVSU to timely notify/warn students and employees when a Clery Act crime, occurring within Clery geography, poses a serious or on-going threat to the campus community. The issuing of a timely warning notice is decided on a case-by-case basis in light of all of the facts surrounding a crime, including factors such as the nature of the crime, the continuing danger to the campus community and the possible risk of compromising law enforcement efforts. Generally, the warning will specify the type of reported crime, the time and location at which the reported crime occurred, and specific advice to the campus community regarding steps to take to avoid becoming a victim. Reports of violations of this SHGP may constitute Clery Act crimes requiring a timely warning.

**F. Child Abuse Reporting.**

1. *West Virginia Code* § 49-2-803 requires certain individuals to report child abuse and neglect. Pursuant to this code section, any individual named as a mandatory child abuse and neglect reporter, “who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely



to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Health and Human Resources. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report [under the code section] who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility, or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility, or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made: *Provided*, That notifying a person in charge, supervisor, or superior does not exempt a person from his or her mandate to report suspected abuse or neglect [to the Department of Health and Human Resources and/or law enforcement].”

2. Mandatory reporters of child abuse and neglect include but are not limited to any law enforcement officer; employee, coach or volunteer of WVSU that provides organized activities; and clergy. Reports to the Department of Health and Human Resources may be made by calling: 1-800-352-6513. Reports to law enforcement may be made to any agency listed in section VII(D):

3. *West Virginia Code* § 49-2-810 states the following in its entirety: “Any person, official, or institution participating in good faith in any act permitted or required by [Article 2 of Chapter 49] is immune from any civil or criminal liability that otherwise might result by reason of those actions, including individuals making good faith reports of suspected or known instances of child abuse or neglect, or who otherwise provide information or assistance, including medical evaluations or consultations, in connection with a report, investigation or legal intervention pursuant to a good faith report of child abuse or neglect.”

G. **Anonymous Reporting.** Any individual may make an anonymous report of conduct prohibited of this SHGP to the Title IX Coordinator, WVSU Police, or the United States Department of Education Office for Civil Rights without disclosing their name, without identifying the Respondent, and/or without requesting any action. Because the accused individual is entitled to certain due process including but not limited to the right to confront the individual’s accuser, WVSU’s ability to address alleged misconduct reported by anonymous sources is significantly limited. WVSU’s ability to respond to an anonymous report also may be limited depending on the level of information available regarding the incident or individuals involved. *Any employee who receives an anonymous report, must forward it to Title IX Coordinator for review in accordance with the procedures set forth in this SHGP within one business day of receipt of the report. Employees may also be responsible for making a report under section IV(E).*

E. **Requests for Confidentiality.** WVSU attempts to balance the needs of the Parties for privacy with the institutional responsibility of ensuring a safe educational environment and workplace and its obligations under State and Federal law. Keeping a reporting party’s or information private is an aspiration, but is not always possible or appropriate. An individual’s requests regarding the confidentiality of information will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the

institution's legal obligation to ensure a working and learning environment that is free from discrimination and/or harassment and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation and to ensure that the institution meets its obligations under Title IX and other state and federal laws. The institution may be limited in its response and investigation if confidentiality is requested. WSU cannot keep confidential the identity of a Complainant who has filed a formal complaint.

### **VIII. Initial Response to Reports.**

A. Within two business days of receipt of an initial report, the Title IX Coordinator will contact the person alleged to have been victimized by the Prohibited Conduct to discuss the availability of supportive measures, consider the person's wishes with respect to supportive measures, advise the individual about the procedures for filing a formal complaint, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint and explain the complaint resolution process. The contact may occur in any number of ways including but not limited to in person, virtually, email, letter or telephone. The Title IX Coordinator's determination of appropriate supportive measures in a given situation are determined on an individual basis depending upon the facts and circumstances of each situation.

B. If WVSU does not provide supportive measures to either the individual reported to be the victim of Prohibited Conduct or the accused individual if requested, the Complainant or Respondent, WVSU will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

C. If the individual reported to be the victim of Prohibited Conduct does not file and/or withdraws a formal complaint, the Title IX Coordinator at the Title IX Coordinator's discretion may file a formal complaint in accordance with section IX(B).

D. If an alleged victim of Prohibited Conduct does not want to proceed with an investigation, the Title IX Coordinator will evaluate whether WSU can honor the request while still providing a safe and non-discriminatory environment for all students.

### **IX. Filing and Withdrawing a Formal Complaint**

A. Formal complaints alleging Prohibited Conduct are filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator under section II, and by any additional method designated by WVSU. At the time of filing a formal Title IX complaint, a Complainant must be participating in or attempting to participate in the education program or activity of WVSU. Any writing, electronic submission (such as by electronic mail, facsimile or through an online portal provided for this purpose by WVSU) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint and requesting an investigation will be considered a formal complaint. For Title IX purposes, the Complainant cannot remain anonymous

or prevent the Complainant's identity from being disclosed to the Respondent. Complainants are encouraged, but are not required to use any formal complaint form that WVSU may develop.

B. WVSU is prohibited from investigating Title IX Sexual Harassment without a formal complaint. If the victim of the alleged Prohibited Conduct is an employee and no formal complaint is filed, the report will be investigated using this procedure for the purposes of determining whether the accused individual(s) is responsible for Title VII Sexual Harassment.

C. Title IX Coordinator Filed Formal Complaints.

1. If the individual reported to be the victim of Prohibited Conduct does not file and/or withdraws a formal complaint, the Title IX Coordinator at the Title IX Coordinator's discretion may file a formal complaint.

2. When making a decision to initiate a formal complaint, the Title IX Coordinator may consider a variety of factors, including, but not limited to a non-deliberately indifferent response to the allegations requires an investigation (for Title IX Sexual Harassment); a pattern of alleged misconduct by a particular Respondent; and the wishes of the person alleged to have been victimized by the Prohibited Conduct regarding how WVSU should respond. If an alleged victim of Prohibited Conduct does not want to proceed with an investigation, the Title IX Coordinator will also evaluate whether WSU can honor the request while still providing a safe and non-discriminatory environment for all students.

3. If the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a Party under this SHGP.

4. Where a grievance process is initiated because the Title IX Coordinator, and not the complainant, signed the formal complaint, the complainant who did not wish to initiate a grievance process remains under no obligation to then participate in the grievance process. The Complainant remains eligible to receive supportive measures protecting the Complainant's equal access to education.

D. WVSU may consolidate formal complaints as to allegations of Title IX Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this SHGP to the singular "Party," "Complainant," or "Respondent" include the plural, as applicable.

E. Within three business days of receipt of the formal complaint and/or filing a complaint if the Title IX Coordinator signs the complaint, the Title IX Coordinator will assign the formal complaint to an Investigator. The Title IX Coordinator will notify the Complainant and the Respondent simultaneously. Either party may challenge the investigator for bias or conflict of interest by submitting written reasons for the challenge and any supporting documentation to the Title IX Coordinator. The Title IX Coordinator must receive the written challenge on or before three business days of receiving notice of the assignment of the investigator. The Title IX

Coordinator will simultaneously notify the Parties of the decision and if applicable, of the new investigator. The Title IX Coordinator's decision is final.

**F. Withdrawing a Formal Complaint.** A Complainant may submit a written request to withdraw a formal complaint at any time to the Title IX Coordinator. The Title IX Coordinator will evaluate the request for discretionary withdrawal under section IV(C). The Title IX Coordinator will notify the Complainant and the Respondent and their advisors, if any, and, if applicable, the Investigator or Review Board members, of the dismissal decision simultaneously in writing four business days from receipt of the withdrawal request. The decision will include the reason(s) for the dismissal and the procedure for appealing the dismissal. If applicable, the Title IX Coordinator will also notify any witnesses who were expected to appear at a scheduled hearing that the hearing has been cancelled but will not include any reasons for the cancellation.

**X. Emergency Removal and Administrative Leave.**

A. An individual may be removed from a WVSU education program or activity on an emergency basis if the individual poses an immediate threat to the physical health or safety of any student or anyone and the threat arises from the allegations of sexual harassment or other Prohibited Conduct.

B. The Title IX Coordinator may refer an individual accused of Prohibited Conduct to the Behavior Intervention Team (BIT). The BIT Team is comprised of the WVSU Chief of Public Safety, Director of Public Safety and the Director of Counseling Services. BIT in consultation with the Title IX Coordinator will promptly conduct an individualized risk assessment in accordance with BIT's standard objective violence risk assessment procedures to determine whether the individual poses an immediate threat to the physical health or safety of any student or anyone and that the threat arises from the allegations of sexual harassment or other Prohibited Conduct. BIT and the Title IX Coordinator may meet in person, by telephone, electronically (email correspondence) or virtually.

C. If BIT determines the individual should be removed from an education program or activity on an emergency basis, the individual may be removed without written notice. Emergency removal may include a no-trespass or other no-contact order. BIT will notify the individual in writing of its emergency removal decision within two business days following the decision. Written notice may be made by email.

D. Within four business days of receipt of BIT's written notice, the individual may appeal the emergency removal by contacting (insert title and contact information) to schedule a meeting. The purpose of the meeting is to provide the individual with the opportunity to rebut the reasons for the emergency removal. The individual is encouraged to submit any documentation the individual wants (insert title) to consider when making a decision on the appeal prior to the meeting. The meeting may occur in person, virtually or remotely. Failure to contact the (insert title) to schedule a meeting within four business days constitutes a waiver of any right to challenge the emergency removal.

E. The (insert title) will notify the individual of the appeal decision in writing within two

business days of the meeting. The (insert title)'s decision is final.

F. If a student-employee Respondent is removed under this section, WVSU may also remove the student-employee Respondent from any employment opportunity that is part of WVSU's education program or activity.

E. Nothing in this SHGP precludes WVSU from placing a non-student employee Respondent on administrative leave, with or without pay, pending the outcome of the grievance procedures.

## **XI. Prehearing Investigation of Formal Complaints, Review of Evidence, Investigative Report.**

A. The Investigator is responsible for conducting the prehearing investigation. The purpose of the prehearing investigation is to gather Directly Related Evidence, to determine the name(s) of Respondent(s) if not known at the time of the filing of the complaint and to determine jurisdiction. The Investigator will conduct a prehearing investigation of a formal complaint even if the Complainant does not know the identity of the Respondent(s) and/or if upon initial review WVSU does not have jurisdiction to address the complaint under section IV because a pre-hearing investigation might reveal either the Respondent's identity and/or other facts that show that WVSU has jurisdiction to address the complaint.

B. As part of the prehearing investigation, the Investigator may conduct in-person, telephone or virtual interviews of the Parties and/or witnesses; obtain law enforcement records and/or medical records subject to section V; request the Parties to submit evidence at any time, visit the site(s) of the alleged misconduct; and/or take any other action that could lead to evidence Directly Related to the complaint. The Investigator may not seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The Investigator may record meetings and/or interviews.

C. Within five business days of receipt of the formal complaint from the Title IX Coordinator, or from the date the Title IX Coordinator or Investigator discovers the identity of the Respondent if unknown at the time the complaint was filed, the Investigator, will provide a written notice of the complaint to the Complainant and known Respondent(s) that includes the following:

1. Notice of WVSU's Title IX formal and informal complaint resolution processes (a copy of this SHGP and/or any other procedures will satisfy this provision).

2. Notice of the allegations/charges potentially constituting Prohibited Conduct, as defined herein, including sufficient details about the alleged Prohibited Conduct known at the time. Sufficient details include but are not limited to, the identities of the Parties involved in the incident and/or any witnesses, if known. A copy of the complaint will also be included.

3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process and the standard of proof that will be used to determine responsibility.

4. A statement that the Parties may have an advisor of their choice, who may be, but is not required to be, an attorney (at the expense of the Party), present during any step of the grievance process, including but not limited to during the prehearing investigation and the live hearing and that the Parties are required to provide their selected advisor with the grievance procedures and/or advise them how to find the procedure online.

5. A statement that each Party and/or the advisor of their choice if either Party has named an advisor, will be provided an equal opportunity to inspect and review any evidence obtained as part of the prehearing investigation that is Directly Related to the allegations raised in a formal complaint, including the evidence upon which WVSU does not intend to rely in reaching a determination regarding responsibility and inculpatory (evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish responsibility) or exculpatory evidence (opposite of inculpatory evidence, evidence favorable to the accused that exonerates or tends to exonerate the accused of responsibility). whether obtained from a Party or other source, so that each Party can meaningfully respond to the evidence prior to conclusion of the investigation

6. A statement that both Parties may present Directly Related Evidence to the Investigator including fact and expert witnesses, and/or any other inculpatory and/or exculpatory evidence and that evidence may include, but is not limited to, witness lists, documents, medical records, photographs and/or recordings. The request will include the date the Investigator must receive the evidence.

7. A statement that if any Party has not selected an advisor of choice, an advisor will be assigned to any Party who does not have one during the live hearing stage only for the purpose of conducting Cross-Examination of the opposing Party on behalf of the Party without an advisor and that WVSU is not obligated to provide either Party with an advisor to represent and/or advise either Party during the entire live hearing.

8. Notice that if, in the course of an investigation, WVSU decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice WVSU will provide notice of the additional allegations to the Parties whose identities are known.

9. Notice that during the prehearing investigation the Parties do not have the right to depose opposing Parties or witnesses, or to compel Parties or witnesses to appear at meetings or any subsequent live hearing.

10. Notice that the ability of either Party to discuss the allegations under investigation or to gather and present Relevant Evidence will not be restricted but that as a supportive measure the Parties may be subject to a mutual directive not to have any direct contact with each other, in person, electronically or through third Parties other than the other Party's advisor.

11. A statement about the availability of supportive measures and how to request them.

12. A statement about whether the informal resolution process as set forth in section XVI of this SHGP is available for resolving the complaint and if so, the procedure for requesting informal resolution.

13. Notice that attempting to alter statement of a witness or prevent a witness from participating in the investigation or adjudication of a formal complaint or the informal complaint process is prohibited and if proven will result in separate disciplinary action and the procedure for filing as complaint.

14. Notice that retaliation is prohibited and the procedure for filing a retaliation complaint.

15. Advisor consent and/or consent to record forms if not already provided.

16. Any other information at the discretion of the Investigator.

D. Within twenty calendar days of receipt of the formal complaint and after conducting a thorough and impartial investigation, the Investigator will send the Complainant and the Respondent and their advisors, if any, in electronic format or a hard copy, any evidence that is Directly Related to the allegations raised in the formal complaint, including, but not limited to any inculpatory or exculpatory evidence, whether obtained from a Party or other source. The Complainant and the Respondent each may submit a written response to the Directly Related evidence. Any written response must be received by the Investigator on or before eleven calendar days after each Parties' receipt of the evidence. *If the complaint proceeds to a hearing, the Parties are expected to bring the Directly Related evidence provided in this section to the hearing.*

E. Within twelve business days of the expiration of the ten business day time frame set forth in section XI(D), the Investigator will provide the Title IX Coordinator with a prehearing investigation report that fairly summarizes the Relevant Evidence and the section XI(D) responses of the Parties, if any. If a complaint involves multiple Complainants, multiple Respondents, or both, the Investigator may issue a single investigative report. The prehearing investigation report will include a description of the procedural steps taken from the receipt of the formal complaint through the prehearing investigation report including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence. The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any Party's general reputation for any character trait.

F. One calendar day after receipt of the prehearing investigation report, the Title IX Coordinator will send the Complainant and the Respondent and their advisors, if any, an electronic or hard copy of the prehearing investigation report. The Complainant and the Respondent each may submit to the Title IX Coordinator a written response to the prehearing investigation report. The response may include arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant and similarly, evidence identified as directly related but not relevant by the investigator(s) may be argued to be relevant. Any response must be received by the Title IX Coordinator on or before 5 calendar days after receipt of the prehearing investigation report.

## **XII. Hearings**

A. **Review Board Members.** Within four calendar days of receipt of the prehearing investigation report, the Title IX Coordinator will select three members from the Pool to serve on the Review Board. The Title IX Coordinator will notify the members in writing of their selection. The Review Board members will elect one member as Chair and will notify the Title IX Coordinator in writing of their selection. The Title IX Coordinator will provide the members with an electronic or hard copy of the formal complaint, the prehearing investigation report, the responses of the Parties to the Directly Related Evidence and the responses of the Parties to the prehearing investigation report.

B. **Notice and Timing of Hearing.** Typically, a hearing will be held within fifty (50) calendar days from the date of the prehearing investigation report. The Title IX Coordinator will provide the Review Board members, witnesses, Parties and their advisors, with a notice of hearing and if applicable, a notice of appointment of advisor, within fifteen working days of receipt of the section XI(G) material. The notice of hearing will include the date of the hearing; the names of the Review Board members; the procedure for challenging a Review Board member for bias or conflict of interest; a list of witnesses that will be asked by the Review Board to appear and testify at the live hearing; information on how to request reasonable hearing accommodations; a request for the Parties to submit a list of witnesses including the due date for the witness list; and any another necessary information.

C. The Chair may convene a pre-hearing meeting(s) with the Parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

D. The hearing will be closed to all members of the campus and outside community except those directly involved with the complaint. The hearing may be conducted with all participants physically present in the same geographic location, or at WVSU's discretion, any or all Parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants/witnesses simultaneously to see and hear each other and to see and hear, if applicable, any evidence referred to during the hearing. At the request of either Party, WVSU will provide for the hearing to occur with the Parties located in separate rooms with technology enabling the Review Board and Parties to simultaneously see and hear the Party or the witness answering questions. All witnesses, except the Complainant and Respondent will remain outside the hearing room until each one is called to testify.

D. The day of the hearing, the Title IX Coordinator will provide the Review Board with evidence collected during the prehearing investigation, including but not limited, to the prehearing report, the responses of the Parties to the evidence, if any, provided in accordance with section



XI(D) and the responses of the Parties to the prehearing report, if any, provided in accordance with section XI(F). Each Party will have equal opportunity to refer to the same evidence during the hearing, including but not limited to during Cross-Examination of any witness.

E. If a Party appears at a hearing without an advisor or if an advisor is removed from the hearing by the Chair, the hearing temporarily will be delayed until the Party without an advisor selects an advisor or one is appointed. On or before three business after the day of the delayed hearing, the Party without an advisor must provide the Title IX Coordinator with written notice of how the Party without an advisor wishes to proceed. The Party without an advisor may:

- i. Provide the name and contact information of the Party's new advisor; or
- ii. Request that the Title IX Coordinator appoint an advisor for the sole purpose of conducting Cross-Examination of the opposing Party if Cross-Examination has not occurred; or
- iii. Advise the Title IX Coordinator that the Party wishes to proceed without an advisor if Cross-Examination of the opposing Party has occurred.

The Title IX Coordinator will notify the Chair of the Party without an Advisor's response and will reschedule the hearing within a reasonable time after the advisor issue is resolved.

F. The Chair of the Review Panel has the discretion to determine the specific hearing format.

G. Formal rules of evidence and court procedures are not used and do not apply. Review Board hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures and requirements for pleadings, do not apply. The Parties do not have the right to depose opposing Parties or witnesses.

H. The Parties and WVSU do not have subpoena powers and neither can compel Parties or witnesses to appear at any live-hearing.

I. The Chair has the discretion to consider the participation of witnesses whose names were not submitted by the deadline set forth in the Notice of Hearing.

J. Both Parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

K. Advisors are permitted to ask the other Party all relevant questions (Direct Examination) and Cross-Examination questions, including questions challenging credibility. All questioning of a Party will be conducted by the other Party's advisor and will never be conducted by a Party personally.

I. An advisors who has been designated as a representative and/or the Parties may ask any non-party witness all relevant questions and follow-up questions, including questions challenging

credibility and Cross-Examination questions. Only one person is permitted to question each non-party witness.

J. Questioning of any Party or witness will be conducted directly, orally, and in real time.

K. Questioning of any witness, including but not limited to, Cross-Examination of the opposing Party, must at all times occur in a respectful and non-abusive manner.

L. Hearing participants, are expected to treat everyone, including the opposing Party and all witnesses, with respect. Abusive and/or disrespectful behavior and yelling are prohibited. The Review Board Chair may remove any hearing participant at the Review Board's discretion.

M. Only relevant questions may be asked of a Party or witness. A Complainant or Respondent may object to a question as irrelevant. The Review Board Chair also may exclude any question as not relevant without any objection by either Party. Any decisions on relevancy will be made by the Chair prior to any Party or witness answering the question. The Chair will explain any decision to exclude a question as not relevant

N. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, 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.

O. WVSU will create an audio-visual or audio recording of the hearing at its expense. An employee from the IT department may attend the hearing for the purposes of assisting with or making the audio-visual or audio recording. Upon written request to the Title IX Coordinator, WVSU will make any audiovisual recording, audio recording or transcript available to either Party for review and inspection. WVSU may create a transcript of the live hearing at its expense. Copies of any audio-visual recording, audio recording or transcript will be made available to either Party upon written request to the Title IX Coordinator and at the expense of the Party making the request. No recordings of the hearing shall be made by any person other than WVSU. All formal hearing recordings and any evidence provided to the Review Board by the Investigator or by the Parties during the hearing will be maintained by the Title IX Coordinator and will be referred to as the hearing record.

P. If a Party fails to appear at any live hearing after receiving proper notice and without notifying the Review Board Chair, the hearing will proceed and the Review Board will make a decision based on the evidence in accordance with section XIII.

Q. During the course of the hearing, the Chair may consult with legal counsel by telephone or in person.

R. The parties may each submit a written impact statement to Chair the day of the hearing to be considered by the Review Board at the sanction stage of the process when a determination of

responsibility is reached. Impact statements must be submitted in sealed envelopes and will be returned to each party if the Respondent is found not responsible for the alleged conduct.

### **XIII. Deliberations and Responsibility Determination**

A. After the presentation of all witnesses and evidence, the Chair will end the hearing and the Review Board will begin deliberations. During deliberations, the Review Board will review all the presented information, will apply the preponderance of the evidence standard of proof to that information, and make a determination about the relationship of the behavior of the Respondent to the SHGP; the Review Board will determine by a preponderance of the evidence if the Respondent is responsible for the conduct alleged in the complaint and if that the conduct is Prohibited Conduct that violates this SHGP and procedure. If the Review Board determines the Respondent is responsible for Prohibited Conduct, the Review Board will also determine the recommended sanctions and/or remedies. Responsibility is determined by a majority vote of the Review Board. Deliberations are not recorded.

B. When making a responsibility determination, the Review Board:

1. Will objectively evaluate all Relevant Evidence – including both inculpatory and exculpatory evidence.

2. Will not base credibility decisions on a person's status as a Complainant, Respondent, or witness.

3. If a Party or witness does not submit to Cross-Examination at the live hearing, the Review Board is prohibited from relying on any statement of that Party or witness in reaching a determination regarding responsibility; provided, however, that the Review Board may not draw an inference about the determination regarding responsibility based solely on a Party's or witness' absence from the live hearing or refusal to answer Cross-Examination or other questions.

4. If sexual harassment is the Prohibited Conduct, determine if the Respondent is responsible for Title IX and/or Title VII sexual harassment as applicable.

C. Within ten business days of the close the hearing, the Chair will provide an electronic or printed copy of the written responsibility determination to the Title IX Coordinator. The Chair may Within one business day of receipt, the Title IX Coordinator will provide an electronic or hard copy of the written responsibility determination to the Parties simultaneously. The written responsibility determination will include:

1. The identification of the allegations potentially constituting Title IX Sexual Harassment as noticed.

2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the Parties, meeting dates, interviews

with Parties and witnesses, site visits, methods used to gather other evidence, date(s) of the hearing and dates of deliberations.

3. Conclusions regarding the application of the conduct prohibited by this SHGP and procedure to the facts

4. Findings of fact supporting the determination and conclusions regarding the application of this SHGP to the facts.

5. Any disciplinary sanctions the imposed on the Respondent made in accordance with section XVI if disclosure of sanctions to the Complainant is permitted by law, and whether remedies designed to restore or preserve equal access to WVSU's education program or activity will be provided to the Complainant.

6. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.

7. Notice that supportive measures will continue to be offered and/or maintained if previously provided, throughout the appeal period (unless failing to do so would not be clearly unreasonable).

8. The procedure for appealing the responsibility determination and grounds for the Complainant and Respondent to appeal the responsibility determination.

C. The Federal Educational Privacy Act (FERPA) generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.

D. A responsibility determination becomes final either on the date for filing an appeal passes and no appeal is filed, or if a timely appeal is filed, the date of the written appeal determination required by section XIV(E) whichever comes first. Imposition of sanctions is suspended pending the outcome of the appeal or the expiration of the appeal period if no appeal is filed. Supportive measures that do not burden either party will continue pending the outcome of the appeal.

E. Unless WVSU community is threatened, any sanctions imposed will not go into effect until the deadline for filing an appeal passes and no appeal is filed or the date of any appeal decision affirming the responsibility determinations and sanctions.

F. The Title IX Coordinator is responsible for effective implementation of any remedies and the imposition of sanctions.

#### **XIV. Appeals.**

A. The Complainant and the Respondent may appeal the dismissal of a formal complaint or a responsibility determination to the Provost:

Dr. Scott E. Woodard  
Interim Provost and Vice President for Academic Affairs  
131 Ferrell Hall

[swoodar1@wvstateu.edu](mailto:swoodar1@wvstateu.edu)  
304-766- 3190

If the above-named person is the Respondent, the appeal should be filed with the President and all time lines set forth in this section apply to any appeal filed with the President.

B. Appeals must be based on one or more of the following grounds:

1. A procedural irregularity that affected the outcome of the matter.
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter. The new information must be included with the appealing Party's request for appeal. In addition, the appealing Party must show that the new information was not known or otherwise available to the person appealing at the time of the live hearing. The appealing Party also must provide an explanation as to why the evidence was unknown or unavailable and how the evidence could have affected the outcome of the matter.
3. The Investigator, or Review Board member had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter and such bias and/or conflict of interest was not known prior to the dismissal or live-hearing.
4. Jurisdiction was properly asserted under Title IX.
5. The severity of the sanction(s) imposed was not appropriate based on the nature of the violation or the circumstances (sanction(s) is too harsh or too lenient)
6. Dissatisfaction with the dismissal notice or responsibility determination alone is not grounds for appeal.

C. The Vice President or President must receive any appeal on or before three business days after the appealing Party's receipt of the dismissal notice or responsibility determination

D. Within two business days of receipt of any Party's appeal, the Provost will provide the other Party with a copy of the appeal and any supporting documentation. The other Party may submit a response to the appeal that may include a statement in support of the determination on responsibility or dismissal of the complaint. Any response to an appeal must be received by the

Vice President on or before three business days of the responding Party's receipt of the appeal and supporting documentation.

E. In any appeal, the burden of proof lies with the Party requesting the appeal, as the original determination and sanction(s) are presumed to have been decided reasonably and appropriately. The appeal is not a new review of the underlying matter and is not intended to be a full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal. Appeals decisions are to be deferential to the original hearing body; changes to the finding should be made only where there is clear error based on the stated appeal grounds.

G. Within five business days of the expiration of three business day appeal timeframe, the Provost will simultaneously provide the Parties with a written or electronic copy of the appeal decision describing the result of the appeal and the rationale for the result. The Provost may:

1. Affirm the dismissal or responsibility decision
2. Modify the original decision and/or sanctions
3. Void the original decision and order a new hearing.

H. The decision of the Provost is final.

## **XV. Informal Resolution Procedures**

A. If appropriate and if both Parties agree, at any time prior to the issuance of the prehearing investigation report WVSU may facilitate an informal resolution process of a formal Title IX complaint, that does not involve a full investigation and adjudication. Informal resolution is only available for resolving formal Title IX complaints but may be available for resolving reports of Title VII sexual harassment. In cases where no formal complaint has been filed, supportive measures may be offered to individuals reported to be the victim of Prohibited Conduct.

B. Informal resolution may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation or administrative disposition of a formal complaint wherein the Respondent(s) accept responsibility. Informal resolution may result in disciplinary measures designed to punish the Respondent and may be facilitated or conducted by trained individuals from the University community or external to the University.

C. The Complainant or Respondent may withdraw from the informal resolution process and resume the formal grievance process with respect to the formal complaint at any time prior to the Party signing a final written resolution.

D. WVSU may not offer to facilitate or accept requests from either Party to engage in an informal resolution process to resolve allegations that an employee engaged in Title IX Sexual Harassment with a student.

E. If informal resolution is appropriate and both Parties agree to pursue informal resolution, the Title IX Coordinator will:

1. Provide to the Parties a written notice disclosing the allegations; the requirements of the informal resolution process including the circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations; and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

2. Obtain the Parties' voluntary, written Consent to the informal resolution process.

F. Informal resolution agreements are considered contracts and are binding. An informal resolution agreement entered into by both Parties ends the grievance process.

G. Any individual engaged to facilitate or participate in the informal resolution process including but not limited to a mediator may not be called as a witness during any hearing.

H. Informal resolution agreements will be kept confidential insofar as is permissible by law.

## **XVI. Sanctions**

A. If the Review Board finds the Respondent responsible, the Review Board is responsible for determining the appropriate sanction(s) designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting WVSU's educational mission and Title IX obligations. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior. The Review Board may consult with the Title IX Coordinator, the supervisor of an employee Respondent, the Vice-President of Student Affairs for a student Respondent or legal counsel when making a decision on sanctions and remedies as well as to obtain any prior student conduct disciplinary record or work disciplinary record of the Respondent. Prior disciplinary actions and conducts record may be considered when making a sanctioning decision. Repeated violations, including of differing conduct prohibited by this or any other WVSU rule regulation policy or procedure, may result in progressively severe sanctions. The Review Board will also review any impact statement submitted by either party.

B. For students, the sanctions may include disciplinary action up to and including expulsion. Any sanction or combination of sanctions set forth in the WSU Student Code of Conduct may be used as sanctions for students found responsible for violations of this SHGP. A No Contact Directive also may be issued which is a directive to refrain from any intentional contact, whether direct or indirect, with one or more designated persons or group(s) through any means, including, but not limited to, personal contact, e-mail, telephone, social media or third parties.

C. Employee Sanctions. Title IX Sexual Harassment is considered gross misconduct. Employees found responsible for gross misconduct may be dismissed immediately without progressive discipline. Sanctions imposed on employees include but are not limited to:

1. Written warning. Formal documentation regarding the infraction/violation and expected corrected or improved behavior will be provided in the form of a written warning.
2. Demotion;
3. Suspension without pay

4. Dismissal;
5. Improvement plan;
6. Educational Sanctions: An employee may be required to attend a class, program, or lecture or be involved with the community in a way that brings about a new understanding of the community and how their behavior may have impacted others. This is not an exhaustive list but should serve as a reference for the types of educational sanctions that may be imposed. Educational sanctions may be imposed in combination with other disciplinary actions.
7. No Contact Directive: A no contact directive may be issued, to the extent practical within the employment context, which is a directive to refrain from any intentional contact, whether direct or indirect, with one or more designated persons or group(s) through any means, including, but not limited to, personal contact, e-mail, telephone, social media or third parties
8. Any other sanction permitted by any WVSU employee Board of Governors policy, employee/faculty/adjunct faculty handbook or any other College/University administrative policy or procedure.

E. Sanctions may be issued individually, or a combination of sanctions may be imposed. All disciplinary sanctions will be determined on a case-by-case basis. The determination of sanctions is made on a case by case basis and may be based upon a number of factors, including the harm suffered by the Complainant; any ongoing risk to either the Complainant or the community posed by Respondent; the impact of the violation on the community, its members, or its property; any previous conduct violations; a student's prior student conduct disciplinary record, an employee's prior disciplinary record, and any mitigating or aggravating circumstances including but not limited to use of or display of a weapon, the involvement of multiple perpetrators and/or intentional incapacitation caused by Respondent(s) through the alcohol, drugs, or by other means. Mitigating circumstances may be taken into account to reduce a sanction for Prohibited Conduct. Mitigating factors do not constitute a justification or excuse for the Prohibited Conduct.

## **XVII Recognized Student Organizations**

A. When members of a student group, organization, team or individuals acting collusively act in concert in violation of this SHGP, their conduct may be reviewed as a group or as individuals, and an investigation may proceed against the group as joint Respondents or against one or more involved individuals, or both, as appropriate given available information and the circumstances.

B. A student group, organization, or team's officers and membership may be held collectively and individually responsible when violations of this code by the organization or its members take place at organization sponsored events, have received the Consent or encouragement of the organization or of the organization's leaders or officers, or was known or reasonably should have been known to the membership or its officers. In any such action, individual determinations as to responsibility will be made and sanctions may be assigned collectively and/or individually. The range of sanctions in this SHGP will be considered, as will be the proportionality of the involvement of each individual.



C. Recognized Student Organization Sanctions. In addition to the sanctions listed in section XV, recognized student organizations and/or teams may:

1. be placed on probation,
2. have their recognized status revoked and be removed from WVSU's public directory;
3. be prohibited from reserving campus space;
4. be prohibited from hosting or sponsoring events;
5. be prohibited from receiving campus funding and conducting fundraising opportunities; and/or accessing the organization's operational account with WVSU

### **XVIII. Time Frames**

A. WVSU will make every effort to complete the grievance process within a reasonable time frame and in a timely manner while balancing the principles of thoroughness and fundamental fairness with promptness.

B. Circumstances may arise that require the expedition or extension of SHGP time frames. Such circumstances may include, but are not limited to, the severity or complexity of the allegations; the number of witnesses involved; the absence of a Party, a Party's advisor, or a witness; the effect of a concurrent criminal investigation; the replacement of Review Board member who has been challenged for bias or conflict of interest; the need for language assistance or accommodation of disabilities; intervening WVSU breaks; or other circumstances. WVSU may delay or expedite the grievance process at any level or may allow the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the expedited time frame, delay or extension and the reasons for the action.

C. If a deadline in this SHGP falls on a day WVSU's offices are closed, the deadline is moved to 8:00 a.m. on the next WVSU business day.

### **XIX. Providing False Information**

A. Knowingly making a false report, filing a false formal complaint, providing false information, or testimony during the prehearing investigation, live hearing or at any stage of the grievance process is prohibited.

B. Individuals found responsible for violating this section may be subject to disciplinary action up to and including employment suspension and/or termination and/or academic suspension and/or expulsion.

C. Reports of employee violations of this section are reported to and investigated by the Human Resources Director in accordance with WVSU's employee disciplinary and/or dishonesty rules, regulations, policies, procedures and/or practices.

### **XX. Retaliation**

A. Retaliation is prohibited. No WVSU, employee, or student, may intimidate, threaten, coerce, or discriminate against any individual either in person, virtually, electronically or through a third-party for the purpose of interfering with any right or privilege secured by Title IX, Title VII, or this SHGP, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this SHGP.

B. Intimidation, threats, coercion, or discrimination, including charges against an individual for violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

C. The exercise of rights protected under the First Amendment does not constitute prohibited retaliation.

D. Charging an individual with a violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith.

E. Complaints alleging retaliation are filed with the Title IX Coordinator and are investigated and adjudicated in accordance with the grievance procedures set forth in this procedure.

F. Individuals found responsible for retaliation are subject to disciplinary sanctions consistent with this procedure.

## **XXI. Intersection of the SHGP with Other Laws and Rights**

A. Nothing in this SHGP shall be read to: (1) restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution; or (2) deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution; or (3) restrict any other rights guaranteed against government action by the U.S. Constitution.

B. Nothing in this SHGP may be read in derogation of any individual's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* or any regulations promulgated thereunder.

A. WVSU's obligation to comply with Title IX and this SHGP is not obviated or alleviated by the Federal Educational Rights and Privacy Act.

B. Nothing in this SHGP may be read in derogation of any legal right of a parent or guardian to act on behalf of a "Complainant," "Respondent," "Party," or other individual, under this SHGP, including but not limited to filing a formal complaint.

## **XXII. Training Requirements**

A. Title IX Coordinators, Investigators, responsibility decision-makers, appeal decision-maker(s) and any person who facilitates an informal resolution process, as applicable, will receive training on the definition of Title IX Sexual Harassment, the scope of WVSU's education program or activity, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

B. Any decision-maker(s) responsible for making determinations on responsibility will receive training on:

1. Any technology to be used at a live hearing;
2. Issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth herein;
3. Issues of relevance to create an investigative report that fairly summarizes Relevant Evidence, as set forth in section IX.

C. Any materials used to train Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

## **XXIII. Record Keeping**

A. The Title IX Coordinator will maintain for a period of at least 7 years, or longer under applicable Federal and State law:

1. All materials used to train Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an informal resolution process. WVSU must make these training materials publicly available on its website, or if WVSU does not maintain a website WVSU must make these materials available upon request for inspection by members of the public;
2. Each sexual harassment investigation including any determination regarding responsibility;
3. Any live-hearing audio or audiovisual recording or transcript;
4. Any disciplinary sanctions imposed on the Respondent;
5. Any remedies provided to the Complainant designed to restore or preserve equal access to the recipient's education program or activity;
6. Any appeal and the result;
7. Any informal resolution and the result therefrom;

B. For each report of Title IX Sexual Harassment that is not resolved through the completion of the Title IX complaint resolution process, WVSU must create, and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, WVSU must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to WVSU's education program or activity. If WVSU does not provide a Complainant with supportive measures, then WVSU must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain basis or measures does not limit WVSU in the future from providing additional explanations or detailing additional measures taken. The person responsible for creating the record(s) required by this section is dependent upon the stage of the grievance procedure where the creation of the record is required. For example, if a Complainant withdraws

C. The date of the creation of a record described in this section begins the record's retention period.

D. Maintenance any record set forth in this section does not automatically create a right of access to the record by any Party.

D. The Title IX Coordinator is responsible for maintaining all records.

#### **XXIV Non-Disclosure Agreements**

A. The Title IX Coordinator may require the Parties and their Advisors to enter into Non-Disclosure Agreements not to disseminate any of the information provided to them in accordance with this procedure.

B. The Non-Disclosure Agreement will not impose prior restraints on an individual's ability to discuss any allegations under investigation, with an Advisor, parent, friend, or other source of emotional support, or with an advocacy organization

#### **XXV. Clery Act Permissible Disclosure of Final Results of Student Disciplinary Proceedings**

A. WVSU may disclose to the public the final results of any student disciplinary proceedings if the student is found responsible for a forcible or non-forcible sex offense or intimidation. Final determination means a decision or determination made by the Board if not appealed and the decision of any appeal if the responsibility decision is affirmed. WVSU is permitted to disclose only the name of the student(s), the violation(s) committed and the sanction(s) imposed.

#### **XXVI. External Complaints**

A. The U.S. Department of Education's Office for Civil Rights (OCR) enforces, among other federal statutes, Title IX of the Education Amendments of 1972. Information about the OCR and the OCR external complaint process is available online or by contacting:

Office of Civil Rights  
U.S. Department of Education  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Telephone: 215-656-8541  
FAX: 215-656-8605;  
TDD: 877-521-2172  
Email: [OCR\\_Philadelphia@ed.gov](mailto:OCR_Philadelphia@ed.gov)  
Website: <http://www2.ed.gov/about/offices/list/ocr/index.html>

B. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate or harass employees or applicants for employment on the basis of, among other things, sex. Information about the EEOC and its external complaint process is available online or by contacting:

United States Equal Employment Opportunity Commission  
801 Market Street, Suite 1300  
Philadelphia, PA 19107-3127  
Telephone: 866-408-8075.  
Fax: 215-440-2606  
TTY: 800-669-6820  
Website: <http://www.eeoc.gov/>

C. The West Virginia Human Rights Act (WVHRA) prohibits discrimination in employment, in places of public accommodations and housing on the basis of, among other things, sex. The West Virginia Human Rights Commission (WVHRC) enforces the WVHRA. Information about the WVHRC and its external complaint process is available online or by contacting:

The West Virginia Human Rights Commission  
1321 Plaza East – Room 108A  
Charleston, WV 25301  
Telephone: 304-558-2616  
Toll Free: 888-676-5546  
FAX: 304-558-0085  
Website: <http://www.wvf.state.wv.us/wvhrc/>

D. The West Virginia Equal Employment Opportunity Office (WVEEOO) is a state agency which among other things, ensures that state employees are not being discriminated against in the workplace on the basis of among other things, sex. Information about the WVEEOO and its external complaint process is available online and by contacting:

Tia Welch, Director  
West Virginia Equal Employment Opportunity Office  
1900 Kanawha Blvd., East  
Building 5, Room A-125  
Charleston, WV 25305

Telephone: 304-558-0400  
Fax: 304-558-1023  
[tia.l.welch@wv.gov](mailto:tia.l.welch@wv.gov)  
[www.eeo.wv.gov](http://www.eeo.wv.gov)

E. Employees may use the statutory grievance procedure to challenge adverse employment actions. Information about the statutory grievance procedure is available in the Human Resources Office or by contacting:

WV Public Employees  
Grievance Board  
1701 5th Avenue  
Suite 2  
Charleston, WV 25387  
Phone: 304-558-3361  
Toll Free: 866-747-6743  
Fax: 304-558-1106  
[wvgb@wv.gov](mailto:wvgb@wv.gov)

## **XXVII. Delegation and Revision**

A. and State laws, rules and regulations change. Any portion of this policy may be modified in practice to ensure the due process rights of the Parties and to conform with any current Federal and State law, rules and regulations. Subject to the College's rulemaking rule, the College will change this policy to conform to the most current laws and regulations within a reasonable time of discovering the change.

B. This President or designee may amend this SHPP to change names, links to information and contact information without resorting to the rulemaking process.

C. The President or designee may enact administrative procedures to implement this policy.