

**POLICY 14 APPENDIX A**

**UNLAWFUL DISCRIMINATION AND HARASSMENT  
AND TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

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

The University encourages anyone who experiences or becomes aware of an incident of conduct prohibited by Policy to *immediately* report the incident. Any person may report conduct prohibited by Policy 17 (whether or not the person reporting is the alleged victim of the Prohibited Conduct), in person, by mail, by telephone, facsimile or by electronic mail to:

**Dr. Carolyn L. Stuart**  
**Civil Rights and Title IX Coordinator**  
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](mailto:carolyn.stuart@wvstateu.edu)

*Campus Office Location*  
217 Ferrell Hall

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:

**Ericke Cage, President**  
West Virginia State University  
P.O. Box 1000  
Institute, WV 25112-1000  
Telephone: 304-766-3111  
Fax:  
Email: [ericke.cage@wvstateu.edu](mailto:ericke.cage@wvstateu.edu)

*Campus Office Location*  
103 Ferrell Hall

The President will assign the report/complaint to a trained individual who will take the place of the Title IX Coordinator in this procedure. The individual will be instructed not to discuss or disclose the report or complaint with the Title IX Coordinator except as permitted by this procedure in accordance with provisions of this procedure applicable to Respondents.

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). Information about external agencies and their complaint processes is available in Section 17 of Policy 14.

## **I. Purpose.**

A. On May 6, 2020, the United States Department of Education (USDE) released its Final Rule addressing Title IX Sexual Harassment internal grievance procedures (34 CFR Part 106) The procedures set forth in the Final Rule apply to individuals including, employees and students, who have been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment 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 Unlawful Discrimination and Harassment and Title IX Sexual Harassment Grievance Procedure (GRIEVANCE PROCEDURE) is to comply with the USDE's Final Rule addressing Title IX Sexual Harassment and to provide a procedure for addressing all unlawful Protected Class Discrimination and Harassment and Retaliation. Because current procedures and/or definitions set forth in Student, Employee, Student Athlete and Faculty Handbooks do not comply with the USDE's Final Rule, this GRIEVANCE PROCEDURE supersedes and replaces any other rule, regulation, or handbook procedures addressing the definitions of, reports and/or Formal Complaints of Title IX Sexual Harassment, and/or any other unlawful Protected Class discrimination or conduct prohibited by Policy 14. This GRIEVANCE PROCEDURE and the definitions set forth herein and in Policy 14 are the only procedures and definitions that will be used by the University to address reports and Formal Complaints of unlawful discrimination Protected Class Discrimination and Harassment and Title IX Sexual Harassment.

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

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

F. The University will provide, to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.

## **II. General.**

A. The Title IX Coordinator is responsible for coordinating THE UNIVERSITY's efforts to comply with its responsibilities under Title IX and for implementing the GRIEVANCE PROCEDURE. The Title IX Coordinator may not have a conflict of interest or bias for or against individuals who report alleged Prohibited Conduct, Respondents, 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 the University Community regarding Title IX, Policy 14, Title IX Sexual Harassment, Protected Class Discrimination and Harassment, and providing information about the GRIEVANCE PROCEDURE;
2. Reviewing applicable UNIVERSITY policies to ensure institutional compliance with Title IX;
3. Responding to general inquiries regarding Title IX Sexual Harassment and other Prohibited Conduct;
4. Monitoring THE UNIVERSITY'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 GRIEVANCE PROCEDURE and posting all Title IX training materials as described in section XXII;
7. Coordinating THE UNIVERSITY's response to Prohibited Conduct and 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 GRIEVANCE PROCEDURE 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 GRIEVANCE PROCEDURE; 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 and the Title IX Coordinator may appoint Deputy Title Coordinators.

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 THE UNIVERSITY Education Program or Activity; and employees, will be provided with the UNIVERSITY's Notice of Nondiscrimination and with information on how to report or file a Prohibited Conduct Formal Complaint including a Title IX Sexual Harassment Formal Complaint. THE UNIVERSITY will provide all of the aforementioned individuals with either a copy of Policy 14 and this GRIEVANCE PROCEDURE or will provide them with information on how to obtain copies. The UNIVERSITY will notify all of the aforementioned that any person may report or file a Formal Complaint alleging Prohibited Conduct including Title IX Sexual Harassment, (whether or not the person reporting is the person alleged to be the victim of Prohibited Conduct regardless of the specific type), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the 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- hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator above.

D. THE UNIVERSITY will prominently display the name, title, office address, electronic mail address, and telephone number of the Title IX Coordinator, 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 GRIEVANCE PROCEDURE and procedure will not be required as a condition of enrollment or continuing enrollment; or employment or continuing employment; or enjoyment of any other THE UNIVERSITY right.

F. During the implementation of the GRIEVANCE PROCEDURE, THE UNIVERSITY will treat Reporting Parties, Complainants and Respondents equitably. For Title IX Sexual Harassment the UNIVERSITY 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, by providing Supportive Measures as appropriate to the Complainant and the Respondent and by following this GRIEVANCE PROCEDURE before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent. Remedies for Title IX Sexual Harassment Formal Complaints will be designed to restore or preserve equal access to THE UNIVERSITY'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. Remedies for all other Prohibited Conduct may be designed to meet the same goals but also will be consistent with State or Federal Law. Disciplinary sanctions may also be imposed on Respondents found responsible for prohibited conduct consistent with this GRIEVANCE PROCEDURE.

G. Individuals reported to be the perpetrator of conduct that could constitute Prohibited Conduct including Title IX Sexual Harassment 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 THE UNIVERSITY and not on the Complainant or Respondent.

I. The administrative investigation of reports and complaints in accordance with this GRIEVANCE PROCEDURE 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 report or complaint filed in accordance with this GRIEVANCE PROCEDURE and the results of a law enforcement investigation or adjudication are not determinative of whether an individual is responsible for violating Policy 14. The procedures set forth in this GRIEVANCE PROCEDURE may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. THE UNIVERSITY 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. THE UNIVERSITY 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** for the purposes of Title IX Sexual Harassment means notice of Title IX sexual harassment to THE UNIVERSITY's Title IX Coordinator or any Official with Authority. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge for the purposes of Title IX Sexual Harassment. This standard is not met for Title IX Sexual Harassment when the only official of THE UNIVERSITY with actual knowledge is the 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 an Official with Authority.

B. **Advisor** means any person selected by the Complainant or Respondent to assist either during the informal or formal grievance process. Advisor also means any UNIVERSITY appointed individual appointed only for the purposes of conducting Cross-Examination. Advisors selected by the Complainant or Respondent may be the legal counsel of their choice paid for at their own expense.

C. **Complainant** means an individual alleged to be the victim of Title IX sexual harassment or other Prohibited Conduct as defined in Policy 14 who is participating in or attempting to participate in a College education program or activity. The term Complainant is used to refer to an individual alleged to be the victim of Title IX Sexual Harassment or other Prohibited Conduct

even if no formal complaint is filed. A Complainant may also be a Reporting Party. A Complainant may be a student, employee or third-party and must be participating in, or attempting to participate in, an Educational Program or Activity at the time of filing a Formal Complaint.

D. **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 or witness completes the 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.

E. **Day** means a means working days exclusive of Saturday, Sunday, official holidays and any day in which WVSVU is legally closed under the authority of the President chief administrator due to weather or other cause provided for by statute, rule, policy or practice or Executive Order of the Governor of the State of West Virginia.

F. **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.

G. **Education Program or Activity** includes locations, events, or circumstances over which THE UNIVERSITY exercises substantial control over the Respondent and the context in which the Prohibited Conduct including title IX Sexual Harassment, occurs. Education Program or Activity also includes any building owned or controlled by a student organization that is officially recognized by THE UNIVERSITY.

H. **Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment or other Prohibited Conduct against a Respondent and requesting that THE UNIVERSITY investigate the allegation of Title IX Sexual Harassment. For Title IX Sexual Harassment, only the individual who is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment may file a Formal Complaint and at the time of filing a Title IX Sexual Harassment Formal Complaint, the individual must be participating in or attempting to participate in the Education Program or Activity of the College with which the Formal Complaint is filed.

I. **Formal Grievance Process** means sections XI-XIV of this GRIEVANCE PROCEDURE.

J. **Investigator** means one or more individuals designated by THE UNIVERSITY 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 GRIEVANCE PROCEDURE to the "Investigator" include the plural.

K. **Investigator, Review Board and Appeal Decision Maker Pool (Pool)** means a standing Pool of Members of the University community or external individuals who are trained on the definition of Title IX Sexual Harassment, the scope of THE UNIVERSITY's Education Programs

or Activities, these procedures and BOG Policy 14, 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 to include individuals not included in the standing Pool depending upon the circumstances of the case. The names of Pool members are available in the Title IX Coordinator's Office and will be listed online at:

L. **No Contact Order (NCO)** typically means a mutual administrative directive designed to prevent any direct contact between individuals. A NCO 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. THE UNIVERSITY may, however, restrict a Complainant's and Respondent's activities as a separate interim measure and/or a remedy if appropriate and reasonable. A NCO 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 NCO 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. A NCO ~~No Contact Directive Order~~ is not the same as a law enforcement protective or restraining order.

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

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

O. **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 show 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.

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

Q. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct as defined in Policy 14 including but not limited to Title IX Sexual Harassment. The term Respondent is used to refer to any individual reported to have been the perpetrator of conduct that could constitute Title IX Sexual Harassment, other Prohibited Conduct and/or retaliation even if no Formal Complaint is filed.

R. **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.

S. **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.

T. **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 THE UNIVERSITY's Education Program or Activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or THE UNIVERSITY'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. THE UNIVERSITY 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 THE UNIVERSITY to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

U. General. Terms defined in Policy 14 have the same meaning in this GRIEVANCE PROCEDURE unless otherwise stated.

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

A. **Title IX Jurisdiction.** Title IX applies to persons in the United States with respect to THE UNIVERSITY's Education Programs or Activities.

1. **Mandatory Title IX Dismissal.** THE UNIVERSITY is required by the Final Rule to dismiss a Formal Complaint of Title IX Sexual Harassment if the alleged conduct:

- i. Would not constitute Title IX Sexual Harassment even if proven;
- ii. Did not occur in an 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 THE UNIVERSITY.
- v. Dismissal for the purposes of Title IX does not preclude the University from addressing the alleged conduct under the University's General Jurisdiction and/or other UNIVERSITY rules, regulations or policies.

**B. General Jurisdiction.** General Jurisdiction applies to all other Prohibited Conduct occurring within an Education Program or Activity against an individual inside or outside the United States, regardless of citizenship, not included in Title IX Sexual Harassment Jurisdiction. Jurisdiction extends to electronic discrimination and harassment if it occurs within an Education Program or Activity.

1. **Title VII General Jurisdiction.** Prohibited Conduct occurring in the workplace against a citizen of the United States inside or outside the United States, including conduct that but for the location would constitute Title IX Sexual Harassment falls under Title VII General Jurisdiction. WVSU is required to address Title VII Discrimination and Harassment, including but not limited to Discrimination and Harassment based on sex, if WVSU knew or should have known about the harassment; no Formal Complaint is required for THE UNIVERSITY to address the alleged Prohibited Conduct, investigate reports or initiate the Formal Grievance Process or to facilitate an informal resolution for alleged Title VII Discrimination and Harassment.

2. Discrimination, Harassment, Sexual Assault, Domestic Misconduct, Stalking and Hazing based on Protected Class Status and Sexual Exploitation occurring within an Education Program or Activity against an individual regardless of citizenship inside or outside the United States fall under General Jurisdiction.

3. Prohibited Conduct occurring outside the context of an Education Program or Activity may be addressed at the University's discretion under General Jurisdiction if it (a) occurs off-campus and would unreasonably interfere with the Education or orderly operation of the University community, its mission, or its objectives as determined by a reasonable person; or (b) occurs off-campus and in light of all of the facts and circumstances, would endanger the health and safety of the University community; or (c) the conduct affects a substantial school/university interest. Prohibited Conduct occurring outside the context of an Education Program or Activity may also constitute misconduct under other University rules, regulations, policies or procedures and may at the University's discretion be addressed using those procedures or the procedures adopted pursuant to this Policy.

**C. Formal Grievance Process.**

1. THE UNIVERSITY is prohibited by federal law from initiating the Formal Grievance Process or facilitating an informal resolution in accordance with section XV without a Formal Complaint alleging Title IX Sexual Harassment. THE UNIVERSITY is also prohibited

from taking any punitive action against an individual who has been reported to be the perpetrator Title IX Sexual Harassment until after the conclusion of the Formal Grievance Process.

2. THE UNIVERSITY may investigate, initiate the Formal Grievance Process, pursue an informal resolution in accordance with Section XV as appropriate without initiating the Formal Grievance Process, or may take any other action as appropriate to address alleged conduct that could violate Title VII without a Formal Complaint.

3. THE UNIVERSITY will not initiate the Formal Grievance Process or facilitate an informal resolution for all other Prohibited Conduct not falling under Title IX or Title VII without a Formal Complaint.

**D. Discretionary Dismissal.** THE UNIVERSITY may dismiss a Formal Complaint alleging Title IX Harassment or any other Prohibited Conduct at any time if:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein.

2. The Respondent is no longer enrolled or employed by THE UNIVERSITY. If a complaint is dismissed based upon this reason and a Respondent seeks reemployment or readmission, the Formal Complaint may be reinstated and the investigation may be resumed in accordance with this GRIEVANCE PROCEDURE at the point in the process at time of the withdrawal or employment termination.

3. Specific circumstances prevent THE UNIVERSITY from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

E. Dismissals under this section may be appealed in accordance with section XVI.

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

A. THE UNIVERSITY 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 THE UNIVERSITY obtains that Party's voluntary, written permission. If a Party has not reached 18 years of age or the individual is not attending THE UNIVERSITY, THE UNIVERSITY must obtain the voluntary, written permission of a Parent.

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

A. Both Parties have the right to have one Advisor of their choice, including legal counsel at the expense of the Party, present during any step of the process 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 procedures. The Parties should select an Advisor whose schedule allows attendance at scheduled meetings and hearings. Title IX Coordinator must be advised at least twenty-four (24) hours before the meeting, interview, informal resolution proceeding or hearing that that an Advisor will be present and the name and contact information of the Advisor.

B. THE UNIVERSITY will not limit the choice or presence of an Advisor for either the Complainant or the Respondent; however, an individual selected by a Party as and an Advisor who may also be a witness may have a conflict of interest. THE UNIVERSITY 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.

C. Both Parties have the right to have one 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, THE UNIVERSITY will provide, without fee or charge to that Party, an Advisor of THE UNIVERSITY's choice only for the purpose of conducting Cross-Examination. THE UNIVERSITY 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 THE UNIVERSITY may serve in an Advisory capacity or may represent either Party during the live hearing; each Party may determine whether a Party-selected Advisor will serve as an Advisor only or as a representative and each Party is required to notify the Title IX Coordinator if the Party Selected Advisor will serve as a representative or will serve in an advisory capacity and conduct cross-examination only at least four days prior to any hearing. THE UNIVERSITY is not obligated to provide either Party with an Advisor to represent and/or advise either Party during the entire Formal Grievance Process or during any informal resolution facilitated by THE UNIVERSITY.

D. Advisors are not permitted to respond to questions during interviews, the informal resolution process 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 or by any informal resolution process facilitator.

E. 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 GRIEVANCE PROCEDURE for each step of the 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 follow all UNIVERSITY rules, regulations and policies. Investigators or informal resolution process facilitators may remove Advisors from any prehearing investigation interview/meeting/informal resolution proceeding and/or may end any meeting, or informal resolution process at the Investigator's or informal resolution facilitator's discretion for disruptive and/or disrespectful behavior, for failure to follow the rules set forth in this GRIEVANCE PROCEDURE and/or any other rules established in accordance with this GRIEVANCE PROCEDURE. If an Investigator is removed from an interview/meeting/informal resolution proceeding, the Party will be given the option to either end the interview/meeting/informal resolution processing and reschedule, 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 of decorum established by the Chair or in accordance with these GRIEVANCE PROCEDURE.

F. If a party requests that all communication be made through their Advisor who is also an attorney, THE UNIVERSITY will comply with that request at the University's discretion.

G. THE UNIVERSITY will provide the Parties with a consent form that authorizes THE UNIVERSITY to share documentation and evidence related to the allegations of Prohibited Conduct with their selected and WVSU appointed 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 THE UNIVERSITY is able to share records, documents and/or other information related to the allegations under investigation with an Advisor. Advisor's may be asked to sign a Nondisclosure Agreement. The Nondisclosure Agreement will not restrict an Advisor's or Party's ability to discuss the allegations under investigation or to or to gather and present Relevant Evidence.

H. **External Resources.** THE UNIVERSITY 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:

1. *Complainants:*

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

The Victim Rights Law Center (<http://www.victimrights.org>)

2. *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>

SAVE (<http://www.saveservices.org>)

3. *Both:*

West Virginia Bar Association Legal Referral Service  
2000 Deitrick Blvd  
Charleston, WV 25311  
Telephone: 304-553-7220

## **VII. Initial Reports, Confidential Reporting Resources, Anonymous Reporting, Clery Act Reporting, Reports to Law Enforcement and Amnesty for Students**

A. **Initial Reports.** Any person may report Prohibited Conduct including Title IX Sexual Harassment (whether or not the person reporting is the person alleged to be the victim), 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-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 at the beginning of this GRIEVANCE PROCEDURE or by using any online portal created by THE UNIVERSITY. Any written report submitted by an individual who is the person alleged to have been victimized by Title IX Sexual Harassment requesting that THE UNIVERSITY investigate the allegation will be treated as a Formal Complaint.

B. **Confidential Reporting Resources.** Students or employees who have experienced Prohibited Conduct including Title IX Sexual Harassment or seeking complete confidential assistance without sharing information with, or making a report to, THE UNIVERSITY may do so by speaking with a Confidential Reporting Resource as designated in this section.

1. On campus personal counseling (Confidential Reporting Resource) is available by contacting:

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

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

2. On campus health services (Confidential Reporting Resource) are available at:

Wilson University Union, Room 004  
301 Washington Ave  
Dunbar, WV 25064-3420  
(304) 766-3323

3. Off campus health and personal counseling 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

4. *Employees may seek assistance at:*

<https://wvstateu.edu/about/administration/human-resources/employee-relations.aspx>

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

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

C. **Anonymous Reporting.** Any individual may make an anonymous report of Prohibited Conduct to the Title IX Coordinator, to law enforcement including the University Campus Police or to 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 individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct including Title IX Sexual Harassment is entitled to certain due process including but not limited to the right to confront the individual's accuser, the University's ability to address alleged misconduct reported by anonymous sources is significantly limited. The University'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 and the University's ability to investigate and gather evidence related to the report.

D. **Reports to Law Enforcement.**

1. Prohibited Conduct may also constitute violations of criminal law. Any individual may, but is not required, to report an incident alleging criminal conduct to law enforcement. Any individual who wishes to pursue criminal action in addition to, or instead of making a report under this GRIEVANCE PROCEDURE (if not required to report Prohibited Conduct under Policy 14), should call 9-1-1 in an emergency or contact law enforcement directly:

WVSU Campus Police  
305 Barron Drive  
Institute, WV 25112  
(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 Sherriff's Office  
301 Virginia Street, East  
Charleston, WV 25301  
(304) 357-0169

2. Employees of THE UNIVERSITY Campus Police Department, including but not limited to certified law enforcement officers, are employees and therefore are obligated to promptly report incidents of Title IX Sexual Harassment and other Prohibited Conduct reported to them in the context of their law enforcement capacity or otherwise, in accordance with Policy 14, Section 18. Employees of THE UNIVERSITY Campus Police Department will make reports to the Title IX Coordinator whether the individual reporting the allegations chooses to pursue criminal charges and will provide the reporting party with information on how to obtain this GRIEVANCE PROCEDURE.

**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 THE UNIVERSITY 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, Campus Security Authorities as defined by 34 CFR 668.46(c)(2) who have witnessed or been informed of an alleged incident that constitutes a crime for the purposes of the Clery Act including but not limited to a forcible or non-forcible sex offense as defined by the Clery Act, whether a criminal or Formal Complaint has been filed, must follow WVSU's procedures for making a report for the annual Clery Act Crime Statistics and Fire Safety Report. Employees may be obligated to report to law enforcement or other University employee 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. Clery Act reporting does not require the institution to initiate an investigation or disclose personally identifiable information about the victim.

2. The Clery Act requires THE UNIVERSITY 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 GRIEVANCE PROCEDURE may constitute Clery Act crimes and require a timely warning depending upon the circumstances.

3. Information about THE UNIVERSITY's Clery Act Reporting and timely warning procedures is available by contacting:

Director of Public Safety  
[\(304\) 766-3353](tel:(304)766-3353)  
[saundejs@wvstateu.edu](mailto:saundejs@wvstateu.edu)

F. **Amnesty for Students.** WVSU encourages individuals to report Prohibited Conduct including but not limited to Title IX Sexual Harassment and acknowledges that some individuals may be reluctant to make reports or to fully cooperate in a Formal Complaint or grievance process. So long as a student's conduct did not result in a threat to the safety or health of others, a student involved in this GRIEVANCE PROCEDURE as a Reporting Party, Complainant, Respondent, or witness typically will not be subject to discipline as a result of his or her personal consumption or use of drugs or alcohol at the time the incident occurred. WVSU may determine that a Complainant, Respondent, or witness who has been involved in other *Student Code of Conduct* violations at the time the incident occurred should not be subject to discipline, at WVSU's sole discretion, if the other violations are non-discriminatory and non-violent. This amnesty does not extend, however, to other potential violations of the *Student Code of Conduct* that may have been committed, even if the individual was under the influence of drugs or alcohol when the alleged violations were committed. Regardless of the aforementioned amnesty, WVSU may impose educational remedies related to a student's use or consumption of drugs or alcohol or involvement in non-discriminatory and non-violent *Student Code of Conduct* violations.

G. **Requests for Confidentiality.** THE UNIVERSITY 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 information private is an aspiration, but is not always possible or appropriate. An individual's request 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 individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct including Title IX Sexual Harassment 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. THE UNIVERSITY cannot keep confidential the identity of a Complainant who has filed a Title IX Sexual Harassment Formal Complaint. The UNIVERSITY must keep confidential the identity of any individual who has



made a report or Formal Complaint of Title IX Discrimination on the basis of sex, including any individual who has made a report or filed a Formal Complaint of Title IX Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the Federal Educational Rights and Privacy Act (FERPA), statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising under this GRIEVANCE PROCEDURE.

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

- A. **Title IX Sexual Harassment Report.** Within two 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 person of the availability of supportive measures with or without the filing of a Formal Complaint and explain the Formal Grievance Process and this GRIEVANCE PROCEDURE in general. 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. If the individual reported to be the victim of Title IX Sexual Harassment does not file Formal Complaint, the Title IX Coordinator at the Title IX Coordinator's discretion may file a Formal Complaint in accordance with section IX (B). The individual reported to be the victim of Prohibited Conduct may decide to pursue a Formal Complaint at a later date.
- B. **All Other Prohibited Conduct.** Upon receipt of report all other Prohibited Conduct that is not Title IX Sexual Harassment within five days of receipt of an initial report, the Title IX Coordinator will contact the person alleged to have been victimized by the Prohibited Conduct and/or the Reporting Party to discuss the availability of supportive measures with or without filing a Formal Complaint, consider the person's wishes with respect to supportive measures, advise the individual about the procedures for filing a Formal Complaint, explain the Formal Grievance Process and this GRIEVANCE PROCEDURE and inform the person about and discuss informal resolution options if appropriate. The contact may occur in any number of ways including but not limited to in person, virtually, email, letter or telephone. If the individual reported to be the victim of Title IX Sexual Harassment does not file a Formal Complaint, the Title IX Coordinator may at the Title IX Coordinator's discretion file a Formal Complaint in accordance with Section IX(B) THE UNIVERSITY and or may take any other action necessary to comply with the University's obligations under Title VII and/or other State and Federal anti-discrimination laws.
- C. **Supportive Measures.** THE UNIVERSITY may offer Supportive Measures to any person reported to be the alleged victim of Prohibited Conduct, including but not limited to Title IX Sexual Harassment, even if no Formal Complaint is filed. 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. If THE UNIVERSITY does not provide Supportive Measures to either the individual reported to be the victim of Prohibited Conduct, the Complainant or the Respondent if requested after a Formal Complaint is filed, THE UNIVERSITY will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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

A. Formal Complaints 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 at the beginning of this GRIEVANCE PROCEDURE, and by any additional method designated by THE UNIVERSITY. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in an Education Program or Activity of THE UNIVERSITY. Any writing, electronic submission (such as by electronic mail, facsimile or through an online portal provided for this purpose by THE UNIVERSITY) 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 otherwise 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 THE UNIVERSITY may develop.

B. Within ~~five~~ two days of receipt of a Formal Complaint, 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, inform the person of the availability of supportive measures with or without the filing of a Formal Complaint, explain the GRIEVANCE PROCEDURE including the formal and informal resolution processes, and identify the person's wishes related to the pursuit of an informal resolution if appropriate. 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. The contact may occur in any number of ways including but not limited to in person, virtually, email, letter or telephone.

### **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 whether a non-deliberately indifferent response to the allegations requires an investigation; a pattern of alleged misconduct by a particular Respondent; whether violence or use of a weapon is alleged, and the wishes of the person alleged to have been victimized regarding how THE UNIVERSITY should respond. If an alleged victim does not want to proceed with an investigation, the Title IX Coordinator will also

evaluate whether THE UNIVERSITY 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 GRIEVANCE PROCEDURE.

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. THE UNIVERSITY may consolidate Formal Complaints as to allegations of Prohibited Conduct including but not limited to Title IX Sexual Harassment Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party (counterclaim), where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances and are so intertwined that the allegations directly relate to all of the parties for investigation and hearing. Where a grievance process involves more than one Complainant or more than one Respondent, references in this GRIEVANCE PROCEDURE to the singular "Party," "Complainant," or "Respondent" include the plural, as applicable.

E. **Withdrawing a Formal Complaint.** A Complainant may submit a written request to withdraw a Formal Complaint at any time to the Investigator. The Investigator will evaluate the request for discretionary withdrawal under section IV(C). The Investigator will notify the Title IX Coordinator of the decision within four days of receipt of the request. The decision will include the reason(s) for the dismissal and the procedure for appealing the dismissal. The Title IX Coordinator will notify the Complainant, the Respondent, their Advisors and any Review Board members, if applicable, of the dismissal decision simultaneously within two days of receipt of the Investigator's decision. 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. The dismissal of a Formal Complaint under this section may be appealed by either Party in accordance with section XIV.

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

A. An individual may be removed from an 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 Title IX Sexual Harassment.

B. The Title IX Coordinator may refer an individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct including Title IX Sexual Harassment to the Behavior Intervention Team (BIT). The BIT is comprised of the Vice President of Student Affairs, the Vice President of Academic Affairs, the Director of Residence Life, 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 days following the decision. Written notice may be made by email.

D. Within three days of receipt of BIT's written notice, the individual may appeal the emergency removal by contacting the Assistant Vice President for Student Affairs and Enrollment Management at: (304) 766-3107 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 the Vice President of Student Affairs 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 Vice President of Student Affairs to schedule a meeting within four days without good cause constitutes a waiver of any right to challenge the emergency removal.

E. The Vice President of Student Affairs will notify the individual of the appeal decision in writing within two days of the meeting. The Vice President Enrollment Management & Student Affairs decision is final.

F. If a student-employee Respondent is removed under this section, THE UNIVERSITY may also remove the student-employee Respondent from any employment opportunity that is part of THE UNIVERSITY's Education Program or Activity.

G. Nothing in this GRIEVANCE PROCEDURE precludes THE UNIVERSITY from placing a non-student employee Respondent on administrative leave, with or without pay, pending the outcome of the grievance procedures; administrative leave is not considered an emergency removal.

H. This section may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 (ADA) or the ADA Amendments Act of 2008.

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

A. Within three days of meeting with the person alleged to be the victim of the Prohibited Conduct, and/or filing a complaint if the Title IX Coordinator signs the complaint, the Title IX Coordinator will assign the Formal Complaint to Investigator(s). The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases that would materially affect the outcome of the investigation. The Title IX Coordinator will notify the Complainant and the Respondent simultaneously of

the assignment to an Investigator(s). Investigators who cannot serve impartially, or have a known conflict of interest or disqualifying bias that would materially affect the outcome should notify the Title IX Investigator in writing. Either party may challenge any Investigator for bias or conflict of interest that would affect the outcome of the investigation by submitting written reasons for the challenge and any supporting documentation to the Title IX Coordinator. The Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Director of Human Resources. The Title IX Coordinator may reassess the impartiality of the Investigator if the Party's select and/or change Advisors during the Investigation.

B. The Investigator is responsible for conducting the investigation of reports of General Jurisdiction Prohibited Conduct and Title IX Sexual Harassment Formal Complaints.

C. Investigations typically will be completed within 60 days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

D. The purpose of the investigation is to gather Directly Related Evidence, to determine the name of Respondent if not known at the time of the filing of the Formal 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 and/or if upon initial review THE UNIVERSITY 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 THE UNIVERSITY has jurisdiction to address the complaint using this GRIEVANCE PROCEDURE.

E. 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 that the Parties 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 allegations. 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. The Investigator may also provide each interviewed Party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from any of their respective interviews and meetings.

F. Within three 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 Formal Complaint was filed, the Title IX Coordinator, will provide a written notice of the complaint and allegations to the Complainant and known Respondent(s) that includes the following:

1. Notice of THE UNIVERSITY's Formal Grievance Process (providing the Parties with a copy of this GRIEVANCE PROCEDURE and/or any other procedures will satisfy this provision).

2. Notice of the allegations/charges potentially constituting Prohibited Conduct including sufficient details about the alleged misconduct known at the time. Sufficient details include but are not limited to, the identities of the Parties involved in the incident, any witnesses, if known, dates and the specific alleged conduct. 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 Formal Grievance Process and during any informal resolution procedures, including but not limited to during any meetings, , and/or the live hearing and that the Parties are required to provide their selected Advisor with this GRIEVANCE PROCEDURE and Policy 14 grievance procedures and/or advise them how to find both 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 THE UNIVERSITY 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 individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct including Title IX Sexual Harassment that exonerates or tends to exonerate the individual 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 subject to section V of this procedure, 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

8. Notice that if, in the course of an investigation, THE UNIVERSITY decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice THE UNIVERSITY 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 Directly Related and/or 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 GRIEVANCE PROCEDURE is available for resolving the complaint and if so, the procedure for requesting informal resolution.

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

14. Notice that providing false statements during any part of the process is a violation of this policy that any individual found responsible for providing false statements may be subject to separate disciplinary action up to and including employment termination or expulsion and that a responsibility determination alone is not sufficient to support a finding that an individual made a statement in bad faith.

15. Notice that Retaliation is prohibited and the procedure for filing a Retaliation complaint.

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

18. Instructions to the Parties to preserve any Directly Related Evidence.

19. Provide each Party the opportunity to suggest questions they wish the Investigator to ask the other Party and witnesses.

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

G. Within 15 days of receipt of the Formal Complaint and after conducting a thorough and impartial investigation, the Investigator will simultaneously provide 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 10 days after each Party's receipt of the evidence

The Parties and their Advisors are not prohibited from discussing the allegations set forth in the complaint but are prohibited from disseminating and/or or disclosing any documents provided to either by the Investigator in accordance with this section. *If the complaint proceeds to a hearing, the Parties are expected to bring the Directly Related evidence provided pursuant to this section to the hearing.*

**XII.** The Investigator may at the Investigator’s discretion continue the prehearing investigation based upon the information received in the Parties’ responses. The Investigator will notify the Parties in writing either electronically or by hard copy if the Investigator chooses to continue to investigate the complaint based upon the responses of the Parties.

**XIII.** If the Investigator does not continue the prehearing investigation, within seven days of the expiration of the five day time frame set forth in section XI(D), the Investigator will provide the Title IX Coordinator with all evidence, a final prehearing investigation report that fairly summarizes the Relevant Evidence and the section XI(D) responses of the Parties, if any, and will include a list of witnesses who will be asked to appear and provide testimony that includes Relevant Evidence at the hearing. The Investigator will incorporate relevant elements of the Parties’ written responses into the final prehearing investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator should document all rationales for any changes made to the initial report. 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 and documents/evidence collected/received by the Investigator. The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence.

**XIV.** One day after receipt of the prehearing investigation report, the Title IX Coordinator will provide the Complainant and the Respondent and their Advisors, if any, with 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 or witnesses identified in the final investigation report as relevant are, in fact, not relevant and similarly, evidence identified and witnesses 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 10 days after receipt of the prehearing investigation report.

## **XV. Hearings**

**A. Review Board Members.** Within five 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 Review Board Members will not be the Title IX Coordinator or the Investigator. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.



1. The Title IX Coordinator will vet the assigned Review Board members and any alternate to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases that would affect the outcome of the hearing.

2. The Title IX Coordinator will notify the members and alternate in writing of their selection and will provide each with the names of the Parties, their Advisors, if known, and witnesses who will appear at the hearing as named by the Investigator in the final prehearing investigation report. Any Review Board Member or alternate who cannot serve impartially, or has a known conflict of interest or disqualifying bias that would materially affect the outcome of the hearing should notify the Title IX Investigator in writing.

3. The Review Board members will elect one member as Chair and will notify the Title IX Coordinator in writing of their selection. At least ten days prior to the hearing, the Title IX Coordinator will provide the Review Board 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, the responses of the Parties to the prehearing investigation report and the Directly Related Evidence collected by the Investigator. The Review Board Members are prohibited from disseminating or otherwise disclosing any of the information provided by the Title IX Coordinator. Disclosure and/or dissemination of any of the information provided by the Title IX Coordinator is considered gross misconduct. Employees found responsible for gross misconduct and may be dismissed immediately without progressive discipline in accordance with Board of Governors Policy 19. Disclosure or dissemination of information provided by the Title IX Coordinator by a Faculty is considered insubordination and conduct which directly and substantially impairs the individual's fulfillment of institutional responsibilities. Faculty found responsible for disseminating or disclosing information may be dismissed in accordance with West Virginia Higher Education Policy Commission Procedural Rule Title 133, Series 9, Academic Freedom, Professional Responsibility, Promotion and Tenure, section 12.

**B. Notice and Timing of Hearing.** Typically, a hearing will be scheduled at least five and not more than 10 days after the Parties receive the prehearing investigation report. No less than five business days prior to the hearing, the Decision-Maker Chair will send notice of the hearing to the Parties, witnesses and the Review Board Members. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Hearing to the Parties and the Review Board Members will include:

1. Date of the hearing;
2. Names of the Review Board members and any other attendees including but not limited to any individual responsible for the audio-visual or audio recording of the hearing and/or any hearing facilitator;
3. Procedure for challenging a Review Board member for bias or conflict of interest that would materially affect the outcome of the hearing;

4. Notification that the Parties may have the assistance of an Advisor of their choosing, including legal counsel of their choice at their expense at the hearing and will be required to have one present for the purposes of Cross-Examination.

5. An invitation to contact the Title IX Coordinator to request any reasonable disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five business days prior to the hearing. The Title IX Coordinator will consult with the Disability Services Office when addressing requests for reasonable disability accommodations.

6. Procedure for requesting 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 answering questions;

7. Notice that each Party's Advisor will have the opportunity to ask the other Party and any witnesses relevant questions and follow-up questions, including relevant questions challenging a Party's or witness' credibility and that Cross-Examination at the live hearing must be conducted orally, directly, and in real time by the Party's Advisor, and never by a Party personally.

8. Notice that both Parties may present Relevant Evidence including witnesses subject to section C (19) on their behalf

9. A statement that if any Party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the Party's or witness's or Party's statements given prior to the hearing will not be considered by the Review Board and that for compelling reasons, the Chair may reschedule the hearing.

10. List of witnesses that will be asked by the Review Board to appear and testify at the live hearing;

11. Whether the Party's, Advisors or witnesses are permitted to bring mobile phones or other electronic devices to the hearing

12. Notice that the Parties each are required to provide the Title IX Coordinator with the name and contact information of any Party selected Advisor if they have not already done so and that if the Title IX Coordinator does not receive notice of the name and contact information of a Party selected Advisor on or before five days before the hearing, the Title IX Coordinator will assign a University Advisor to the Party without one at no charge to the Party for the purposes of conducting Cross-Examination only.

13. Any another necessary information.

### **C. General Hearing Guidelines.**

1. 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 THE UNIVERSITY'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 written request of either Party submitted to the Title IX Coordinator, THE UNIVERSITY 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. Written requests must be submitted to the Title IX Coordinator on or before ten days prior to the hearing. The Title IX Coordinator will notify the Chair of the request. The Title IX Coordinator or a hearing facilitator may be responsible for coordinating the technology with the Office of Technology. Complainant Respondent and each Party's respective Advisor may be present during the testimony of all witnesses.

2. The Title IX Coordinator will provide the Review Board with the Directly Related 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 and their Advisors will have equal opportunity to refer to the same evidence during the hearing, including but not limited to during Cross-Examination.

3. Each Party or Party's Advisor will have the opportunity to ask the other Party and any witnesses relevant questions and follow-up questions, including relevant questions challenging a Party's or witness' credibility. Cross-Examination at the live hearing must be conducted orally, directly, and in real time by the Party's Advisor, and never by a Party personally. Advisors and Party's will remain seated during questioning.

4. 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 by THE UNIVERSITY. On or before three days after the day of the continued hearing, the Party without an Advisor must provide the Title IX Coordinator with written notice of how the Party 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.
- iii. The Title IX Coordinator will notify the Chair and the opposing Party of the response and will reschedule the hearing within a reasonable time after the Advisor issue is resolved.

5. The Chair of the Review Panel has the discretion to determine the specific hearing format and may allow for breaks for Advisors to confer with the Party the Advisor is advising or representing. Advisors may not consult with the Party they are advising or representing during their Party's testimony.

6. 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.

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

8. The Chair has the discretion to exclude irrelevant questions and/or to limit questions that are unduly repetitious or abusive.

9. A Party-selected Advisor who has been designated as a representative and/or each Party may ask any non-Party witness presented by the Party all relevant questions and follow-up questions, including questions challenging credibility.

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

11. The Investigator may appear at the hearing for the sole purpose of summarizing the prehearing investigation report.

12. 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.

13. 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 Chair's discretion.

14. Only relevant cross-examination and other questions are permitted. Before a Party or witness answers a question, the decision maker will determine whether the question is relevant and explain any decision to exclude a question as not relevant.

15. 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.

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

17. Review Board members may ask questions of any witness including the Parties.

18. Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all Parties and the Chair assent to the witness's participation in the hearing. The same applies to any evidence that is first offered at the hearing. If the Parties and Chair do not assent to the admission of evidence including witness testimony newly offered at the hearing, the Chair may delay the hearing and refer the complaint back to the Investigator to be reopen the investigation to consider the new evidence and/or witness and to allow the opposing party to respond to the witness or evidence.

19. The Review Board Members will question the Parties/witnesses who will then be questioned by the Parties through their Advisors ("Cross-Examination"). With the exception of the Parties, a witness may be present only for the witness' own testimony.

D. **Recording.** THE UNIVERSITY will create an audio-visual or audio recording of the hearing at its expense. An employee from the IT or other department may attend the hearing for the purposes of assisting with or making the audio-visual or audio recording. WVSU may at its discretion employ a court reporter to create the audio-visual or audio recording or transcript of the hearing. 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 own 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. Transcripts prepared by a court reporter must be obtained from the court reporter. No recordings of the hearing shall be made by any person other than WVSU. All original 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. The parties are not permitted to record the hearing.

E. **Facilitator.** At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process may be managed by a hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

F. During the course of the hearing, the Chair may consult with legal counsel by telephone or in person regarding procedural matters.

G. The parties may each submit a written impact statement to the Chair the day of the hearing to be considered by the Review Board at the sanction stage of the process if the Review Board finds the Respondent responsible for Prohibited Conduct. 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.

## **XVI. 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. The Review Board will deliberate in closed session to determine whether by a preponderance of the evidence the Respondent is responsible for Prohibited Conduct. If the Review Board determines the Respondent is responsible for Prohibited Conduct, the Review Board will also determine the recommended sanctions and/or remedies consistent with section XVI. 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.

C. Within five days of the close of the hearing, the Chair will provide an electronic or printed copy of the written responsibility determination to the Title IX Coordinator. The Chair may consult with legal counsel when writing the determination. Within one 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.

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.

4. Findings of fact supporting the determination and conclusions regarding the application of this GRIEVANCE PROCEDURE and Policy 14 to the facts.

5. Any disciplinary sanctions 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 THE UNIVERSITY'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 and grounds for the Complainant and Respondent to appeal the responsibility determination.

9. Remedies that only impact the Complainant will be provided to the Complainant separately.

10. If more than one Formal Complaint has been consolidated into one complaint, all Complainants and Respondents will receive the same 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 day after the date for filing an appeal passes and no appeal is received, or if a timely appeal is filed, the date of the written appeal determination required by section XIV(E) whichever comes first. Unless THE UNIVERSITY community is threatened, imposition of sanctions or remedies provided is suspended pending the determination of the appeal or the expiration of the appeal period if no appeal is received. Supportive Measures that do not burden either party will continue pending the outcome of the appeal.

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

## **XVII. Appeals.**

**Right to Appeal.** A. Any party may appeal a responsibility determination or dismissal of a Formal Complaint in writing to the Title IX Coordinator. Appeals must be received by the Title IX Coordinator on or before five days of a Party's receipt of the responsibility determination or

notice of dismissal. Appeals must include the grounds for appeal, a copy of the written responsibility determination. The Title IX Coordinator will designate an Appeal Decision Maker from the Pool. The Appeal Decision maker will not be the Title IX Coordinator, the Investigator or any Review Board Member or alternate and may not have served as the Appeal Decision maker in any dismissal appeal that may have been heard earlier in the process.

1. The Title IX Coordinator will vet the Appeal Decision Maker to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases that would materially affect the outcome of the investigation. Any Appeal Decision Maker who cannot serve impartially, or has a known conflict of interest or disqualifying bias that would materially affect the outcome of the appeal should notify the Title IX Investigator in writing.

2. Either Party may challenge any Appeal Decision Maker for bias or conflict of interest that would affect the outcome of the investigation by submitting written reasons for the challenge and any supporting documentation to the Title IX Coordinator. The Title IX Coordinator will determine whether the concern is reasonable and supportable and simultaneously notify the Parties of the decision. The decision of the Title IX Coordinator is final.

**Grounds for Appeal.** Dissatisfaction with the dismissal notice decision or responsibility determination alone is not grounds for appeal. 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 a 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 that affected the outcome of the investigation or hearing was not known prior to the dismissal or live-hearing. The appeal must include an explanation of how the conflict or interest or bias affected the outcome of the investigation or hearing and why the bias or conflict of interest was not known at the time of the prehearing investigation or hearing.

C. **Notice to Opposing Party.** Within two days of receipt of any Party's appeal, the Appeal-Decision-Maker will provide the Party who did not file the appeal with a copy of the appeal and any supporting documentation. The Party who did not appeal may submit a response to the appeal that may include a statement in support of the Review Board's determination on responsibility or dismissal of the complaint. Any response to an appeal must be received by the Appeal-Decision- Maker on or before three days of the responding Party's receipt of the appeal and supporting documentation.



D. **Burden of Proof.** 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 on the merits (referred to as a *de novo* review). In most cases, appeals are confined to a review of the written documentation or underlying record of the original hearing and pertinent documentation regarding the grounds for appeal.

E. **Decision.** In reaching its decision, the Appeal Decision Maker may consider the underlying record, including the Investigator's report, the assigned Review Board's written responsibility decision, and the evidence and testimony collected during the prehearing investigation and presented at the live hearing (the underlying record) and the Parties' written statements on appeal. Within five days of the expiration of the appeal response timeframe, the Appeal Decision-Maker will simultaneously provide the Parties with a written or electronic copy of the appeal decision describing the result of the appeal for each ground raised and the rationale for the result. The decision of the Appeal-Decision-maker is final. The Appeal-Decision-maker 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.

## **XVIII. Informal Resolution Procedures**

A. **Title IX Sexual Harassment.** Informal resolution is only available for resolving Title IX Sexual Harassment Formal Complaints. If appropriate and both Parties agree THE UNIVERSITY may facilitate an informal resolution process for resolving a Formal Complaint of Title IX Sexual Harassment. THE UNIVERSITY 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.

B. **Other Prohibited Conduct.** If appropriate and both Parties agree THE UNIVERSITY may facilitate an informal resolution process for any report or Formal Complaint of Prohibited Conduct other than Title IX Sexual Harassment that does not involve a full investigation and adjudication.

C. **Options.** Informal resolution may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, negotiated resolution or administrative disposition of a Formal Complaint wherein the Respondent accepts responsibility. Informal resolution may result in disciplinary measures designed to punish the Respondent if a Formal Complaint has been filed and will be facilitated or conducted by trained individuals from the University community or external to the University.

#### **D. Withdrawal from Informal Resolution**

1. **Title IX Sexual Harassment.** The Complainant or Respondent may withdraw from the informal resolution process and resume the Formal Grievance Process set forth in sections XI-XIV with respect to the Formal Complaint at any time prior to the Party signing a final written resolution.

2. **Other Prohibited Conduct.** The reporting Party if applicable, the Complainant or Respondent may withdraw from the informal resolution process at any time and resume or initiate the Formal Grievance process as applicable. Depending upon the alleged Prohibited Conduct THE UNIVERSITY may have an obligation to investigate, or at its discretion may conduct a full investigation and adjudication of the alleged Prohibited Conduct.

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; any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared and notice that either Party may withdraw from the informal resolution process at any time and resume the formal resolution process set forth in sections XI-XIV.

2. Obtain the Parties' voluntary, written consent to engage in 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.

#### **XIX. Sanctions and Remedies**

A. If the Review Board finds the Respondent responsible for Prohibited Conduct, the Review Board is responsible for determining the appropriate sanctions and remedies designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting THE UNIVERSITY's educational mission and Title IX obligations. Sanctions or interventions may also serve to promote safety and education or deter individuals from similar future behavior. The Review Board may consult with 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 conduct records may be considered when

making a sanctioning decision. Repeated violations, including of differing conduct prohibited by Policy 14 or any other University rule regulation policy or procedure, may result in progressively severe sanctions.

B. For students, the sanctions may include disciplinary action up to and including expulsion. Any sanction or combination of sanctions set forth in the UNIVERSITY Student Code of Conduct, pages 38-41, may be used as sanctions for students found responsible for Title IX Sexual Harassment. Educational sanctions may also be imposed. A student 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. A mutual NCO 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. Prohibited Conduct is considered gross misconduct. Staff Employees found responsible for gross misconduct may be dismissed immediately without progressive discipline in accordance with Board of Governors Policy 19. Faculty found responsible for Prohibited Conduct may be dismissed in accordance with West Virginia Higher Education Policy Commission Procedural Rule Title 133, Series 9, Academic Freedom, Professional Responsibility, Promotion and Tenure, section 12. Sanctions imposed on Staff Employees and Faculty found responsible for Title IX Sexual Harassment 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 Order (NCO): A NCO 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 UNIVERSITY employee Board of Governors policy, employee/faculty/adjunct faculty handbook or any other College/University administrative employee disciplinary 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. 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 through 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.

F. In addition to any sanctions, the Title IX Coordinator may also implement long-term remedies that are intended to stop discrimination and harassment including but not limited to Title IX Sexual Harassment, and/or retaliation, remedy the effects and prevent recurrence of all. Even if a finding of no responsibility is issued, the Title IX Coordinator may at the Title IX Coordinator's discretion, and if requested by either Party, provide long-term Support Measures. Long-term remedies or Support Measures will not result in denial of Respondent or Complainant access to an Education Program or Activity. WVSU will maintain the privacy of any long-term remedies/actions/Supportive Measures as long as privacy does not impair WVSU's ability to provide these services.

## **XX. Time Frames**

A. THE UNIVERSITY 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. Typically, the Formal Grievance Process is completed within sixty days.

B. Circumstances may arise that require the expedition or extension of GRIEVANCE PROCEDURE 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 UNIVERSITY breaks; the need for a witness to secure transportation or other good cause. THE UNIVERSITY 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 GRIEVANCE PROCEDURE falls on a day the University is closed, the deadline is moved to 8:30 a.m. on the next UNIVERSITY day.

## **XXI. Providing Materially False Information in Bad Faith Reporting and Investigation Procedures**

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 formal or informal resolution 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. The investigation procedure for investigating claims of providing materially false information in bad faith reporting and investigation procedures will be investigated using the procedures above in *XI. Investigation of Reports and Formal Complaints, Review of Evidence, Investigative Report*.

## **XXII. Retaliation Reporting Procedure**

A. Reports and Formal Complaints alleging Retaliation are filed with the Title IX Coordinator and are investigated and adjudicated in accordance with the procedures set forth in this GRIEVANCE PROCEDURE.

B. Individuals found responsible for Retaliation are subject to disciplinary sanctions consistent with this procedure.

## **XXIII. Intersection of the Grievance Procedure with Other Laws and Rights**

A. Nothing in this GRIEVANCE PROCEDURE 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 GRIEVANCE PROCEDURE 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.

C. Nothing in this GRIEVANCE PROCEDURE 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 GRIEVANCE PROCEDURE, including but not limited to filing a Formal Complaint.

D. THE UNIVERSITY's obligation to comply with Title IX and this GRIEVANCE PROCEDURE is not obviated or alleviated by the Federal Educational Rights and Privacy Act.

#### **XXIV. 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, Policy 14, the scope of THE UNIVERSITY's Education Program or Activity, how to conduct an investigation and this Grievance Procedure, 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. How to conduct questioning
2. How to assess credibility
3. Impartiality and objectivity
4. How to render findings and generate clear, concise, evidence-based rationales
5. The definitions of all Prohibited Conduct
6. How to apply definitions used by WVSU with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy)
7. How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
8. How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
9. Any technology to be used at a live hearing
10. Issues of relevance of questions and evidence including but not limited to including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
11. Issues of relevance to create an investigation report that fairly summarizes relevant evidence

12. How to determine appropriate sanctions in reference to all forms of Prohibited conduct

13. Recordkeeping

C. Any materials used to train Title IX Coordinators, Investigators, Review Board Members appeal decision-makers, and any person who facilitates an informal resolution process, must not rely on sex or other Protected Class stereotypes and must promote impartial investigations and adjudications of reports and Formal Complaints of Prohibited Conduct and Formal Complaints of Title IX Sexual Harassment.

D. Up to date training materials that reflect the latest Title IX training required by the Final Rule are available online at: <https://wvstateu.edu/about/title-ix.aspx>

## **XXV. 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. THE UNIVERSITY must make these training materials publicly available on its website, or if THE UNIVERSITY does not maintain a website THE UNIVERSITY 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 and/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, THE UNIVERSITY 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, THE UNIVERSITY 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 THE UNIVERSITY's Education Program or Activity. If THE UNIVERSITY does not provide

a Complainant with Supportive Measures, then THE UNIVERSITY 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 THE UNIVERSITY 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. The University will maintain all other records related to Federal anti-discrimination laws records for at least the minimum time required for each record under the applicable Federal law.

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

F. The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Clothing, forensic, and other physical evidence should be stored with the campus law enforcement entity. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalogue of all physical evidence will be retained with the case file. The Title IX Coordinator is responsible for maintaining all records related to Title IX Sexual Harassment reports and Formal Complaints.

G. **Records Relating to an EEOC Charge of Discrimination.** Where a charge of discrimination has been filed under Title VII, the ADA, or GINA with the EEOC or where a civil action has been brought by the EEOC or the Attorney General, THE UNIVERISTY will retain all records related to the charge or action until final disposition of the charge or action. The date of final disposition means the date of expiration of the statutory period within which the aggrieved person may bring an action in a U.S. District Court or, where such an action has been brought, the date on which such litigation is terminated.

### **XXIII 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



## **XXIV. Impartiality, Conflicts of Interest and Bias<sup>1</sup>**

A. The Title IX Coordinator, Investigators, Review Board Members, informal resolution Facilitators and Appeal Decision makers (referred to collectively as “Title IX Role”) must impartially fulfil their roles. Impartially means serving without prejudgment of the facts at issue, conflicts of interest and bias that would materially affect the outcome of an investigation or hearing. Prejudgment means to pass judgment prematurely or without sufficient reflection or investigation. Individuals serving in a Title IX Role should keep an open mind throughout the process, wait to hear all of the facts, view all relevant evidence objectively and avoid Protected Class stereotypes

B. Whether bias exists requires an examination of the particular facts of a situation and the application of an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased.

C. A conflict of interest occurs when personal or private interests may compromise an individual’s judgment, decisions, or actions. Conflict of interests may arise from family, friendships, faculty member and/or employee relationships, financial investments, or other social factors. A conflict of interest exists that disqualifies an individual from the Grievance Procedure is one that prevents the individual from being able to impartially participate. Conflicts of interest can be "actual," "perceived," or "potential"

1. An actual conflict of interest is a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation

2. A perceived conflict of interest is a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities

3. A potential conflict of interest arises where a personal interest or obligation could conflict with one's official duties and responsibilities in the future

3. The individual serves as an advisor to any recognized student organization to which any of the Parties, witnesses, or Advisors belong.

D. A bias is a tendency, inclination, or prejudice toward/against someone. Biases are often based on stereotypes, rather than actual knowledge of an individual or a particular circumstance. They are frequently based on a person's gender, race, sexual orientation or other Protected Class.

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

A. THE UNIVERSITY may disclose to the public the final determination of any student disciplinary proceedings including final outcome of the Formal Grievance Process described

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<sup>1</sup> Text for this section is from *Title IX Sexual Harassment Training: Serving Impartially & Avoiding Conflicts of Interest and Bias Understanding How to Remain Impartial and Preserve Integrity of the Formal Grievance Process*, Maricopa Community Colleges, Quarles and Bailey, LLP (2020).

herein 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 Review Board if not appealed and the decision of any appeal if the responsibility decision is affirmed. THE UNIVERSITY is permitted to disclose only the name of the student(s), the violation(s) committed and the sanction(s) imposed.