

WEST VIRGINIA UNIVERSITY AT PARKERSBURG BOARD OF GOVERNORS

APRIL 9, 2014
AGENDA

Members

Joe Campbell
Jamie Six
Violet Mosser
Curtis Miller
Jeff Matheny
Sam Winans

Rock Wilson
Cheryl Donohoe
Gerard El Chaar, Board Chair
Matthew Santer
Karen Facemyer
Tyler Ohrn

Marie Foster Gnage, Ph.D.
President



West Virginia University at Parkersburg Board of Governors

Wednesday, April 9, 2014

Board of Governors Retreat

9:00 a.m.	Executive Committee Meeting	Community Room 1300B
10:00 a.m.	Continental Breakfast	Community Room 1300A
10:15 a.m.	Greetings Gerard El Chaar, Board of Governors Chair	Community Room 1300B
10:20 a.m.	Town Hall Meeting	Theatre
11:30 a.m.	What the Board Needs to Know About the HLC Visit: The Bare Essentials	Community Room 1300B
Lunch (12:00-1:00)	(Discussions Continue)	Community Room 1300B
1:00 p.m.	Looking Forward: Preparing for the College's 2014-15 Agenda <ul style="list-style-type: none">• Budget: Impact of Enrollment and Decrease in State Allocation• Student Enrollment: Recruitment/Retention• Transition to Interim Leadership• Relationship with West Virginia University• Decoupling Activities• College Master Plan• Foundation: Capital Campaign	Community Room 1300B
4:30 p.m.	Dinner	Caperton Center C100
5:15 p.m.	Board Meeting	Caperton Center C102

WEST VIRGINIA UNIVERSITY AT PARKERSBURG BOARD OF GOVERNORS
Meeting of April 9, 2014
Caperton Center
Room
5:15 p.m.

1.	Call to Order	Board Chair, Gerard El Chaar
2.	Roll Call	Brady Whipkey Executive Assistant to the President
3.	Board Chair Report	Chairman El Chaar
4.	President’s Report	Dr. Marie Foster Gnage, President
5.	Approval of Minutes	
	• Regular Meeting – February 19, 2014	5
	• Executive Session Meeting March 5, 2014.....	9
6.	Committee Reports	
	• Executive Committee	Chairman El Chaar
	• Audit Review Committee	Jamie Six
	• Administrative Services Committee	Curtis Miller
	• Academic and Student Services Committee	Jeff Matheny
	• Campus Development/Readiness Center Committee	Joe Campbell/Curtis Miller
7.	Possible Executive Session under the authority of WV Code §6-9A-4-2A (Room C105) Personnel Issues Property Acquisition	
8.	Action Items	
	• Approval of Interim President	Gerard El Chaar, Chair.....11
	• Tuition and Fees	President Gnage.....14
9.	Consent Agenda	
	• Policy B-62, Mandatory Reporters	Debbie Richards.....15
	• Revision of Policy A-44, Sexual Harassment	Debbie Richards.....22
10.	Information Items	
	• Faculty and Staff Salary Compensation	President Gnage

- Cooperative and Career Education Update
- Data Update (CTC, IPEDS, VFA & Clearinghouse)
- Fiscal Update

Dr. Rhonda Tracy
Dr. Rhonda Tracy
President Gnage

11. Board Comments/Announcements

12. Next Meeting
May 14, 2014 at the Jackson County Center

13. Adjournment

MINUTES
WEST VIRGINIA UNIVERSITY AT PARKERSBURG
BOARD OF GOVERNORS
February 19, 2014

A regular meeting of the West Virginia University at Parkersburg Board of Governors was held on Wednesday February 19, 2014 in the College Theatre at the WVU Parkersburg campus beginning at 5:45 p.m. Board members present were: Joe Campbell, Jamie Six, Violet Mosser, Curtis Miller, Jeff Matheny, Sam Winans, Rock Wilson, Cheryl Donohoe, Gerard El Chaar, Matthew Santer, and Tyler Ohrn. Others present included Dr. Marie Foster Gnage and Brady Whipkey.

Guests present included administrators, faculty, and staff.

1. Call to Order

Mr. El Chaar, Chair of the WVU at Parkersburg Board of Governors, called the meeting to order.

2. Roll Call

Roll Call was taken by Brady Whipkey, Executive Assistant to the President, noting that a quorum was present.

3. Board Chair Report

Chairman El Chaar thanked members for attending the meeting.

Next, Chairman El Chaar reported on attending the AACC/ACCT National Legislative Summit with Tyler Ohrn and President Gnage.

Chairman El Chaar also thanked Mr. Winans and those serving on the salary task groups.

4. President's Report

President Gnage thanked members for their support and advocacy.

President Gnage reported on events held at the college despite the weather. On February 6, 2014, the Distinguished Performance Series hosted the show FROGZ! John Ellison was on campus February 17 and at JCC on February 16, for a presentation. The college has partnered with Dupont Washington Works for the Martin Luther King Jr. – A Legacy of Peace, Awards and program.

President Gnage also reported attending the AACC/ACCT NLS and while there had the opportunity to introduce Senator Lamar Alexander at the Senate Congressional Forum and also to attend the White House Welcome Ceremony for the President of France with the Rural Community College Alliance (RCCA).

President Gnage asked Anthony Underwood, Vice President of Student Services to

provide an update on the Tobacco Implementation Committee. Mr. Underwood discussed that the committee has met; and using recommendations of the CDC is working towards putting the plan in place to become a tobacco free campus. The communications process is being worked on.

President Gnage next reported on the Textbook Affordability Committee. An email will be sent to all faculty members asking for approaches they have used that could lead to textbook cost savings. By opening up to faculty, the committee can get more ideas that could lead to better cost savings than what the committee alone could do.

President Gnage then reported that the Faculty and Staff Salary Task Groups have met three times to discuss comparison and benchmarks with more discussion to come.

President Gnage discussed that the HLC preparation continues. There are two town hall meetings scheduled; one for students and one for faculty and staff. President Gnage reviewed the Quality Initiative/Assurance Review Criteria information that was distributed to members.

President Gnage also discussed that the Governor's through Executive order reduced the college's budget .98% decrease effective in January. The college will need to prepare for both a 3.75% and a 7.5% decrease. We need to look at tuition increases to cover the budget decrease. President Gnage has spoken with other colleges and most are doing a tuition increase that will be far more dollars than what our increase would be.

President Gnage lastly reported on the Alumni Magazine that was distributed to members and that she would be attending the Higher Education Day at the Legislature on Friday February 21, 2014.

5. Approval of Minutes

The minutes of the Regular Board meeting of December 17, 2013, were approved upon a motion by Mr. Campbell and second by Mr. Miller.

6. Committee Reports

Executive Committee:

There was no meeting held.

Audit Review Committee:

There was no meeting held.

Administrative Services Committee:

Board members present received reports on the Foundation Executive Director Search, NIP Tax Credits, Grants and Scholarships, and the Foundation Annual Report. Reports were received on renovations; position vacancies and new

hires; and information technology updates.

Academic and Student Services Committee:

Board members present received reports from Academic Affairs, Workforce and Community Education and Student Affairs: an overview of grants, Learn and Earn update and HLC update; welding classes for summer 2014, lubrication theory training, courses for Wincore Windows, Bicycle Mechanics Program, Google Training and report from Bill Shore (Consultant); and an overview and demonstration of student online orientation.

Campus Development and Readiness Center Committee:

Board members present received a report on touring the Community Building and Go-Mart Property; discussed reviewing the naming rights guidelines and will make changes to the dollar amounts; received an update on the Hammond Property and that the purchase has been approved and now we have requested the check; discussed the December 16, 2013 meeting with the National Guard and that the updated construction cost for the Readiness Center would be \$11 million.

7. Executive Session under the authority of WV Code §6-9A-4-2A

Chairman El Chaar asked for a motion to move into Executive Session. Mr. Santer moved to adjourn to Executive Session. Mr. Miller seconded the motion. The motion passed and the Board moved into Executive Session at approximately 6:35 p.m. The Board Chair requested that President Gnage join Executive Session. At approximately 8:38 p.m. Chairman El Chaar announced that the Board would return to the regular meeting. Mr. Santer moved to return to regular session. Ms. Donohoe seconded the motion. Motion passed.

8. Action Items

9. Consent Agenda

Mr. Miller moved to approve the following Consent Agenda Items:

- Policy B-62, Mandatory Reporters
- Revision of Policy A-44, Sexual Harassment

Mr. Ohrn seconded the motion. Motion passed.

10. Information Items

President Gnage provided an overview of Fiscal update and the change in the Organizational Structure.

11. Board Comments/Announcements

Mr. Wilson will set up a meeting with Ms. Donohoe, Ms. Mosser, Ms. Facemyer, and Mr. Miller to discuss JCC expansion by the next board meeting.

12. Next Meeting

The next Board of Governors meeting will be held April 9, 2014 in the Caperton Center.

13. Adjournment

With no further business to be discussed, Mr. Winans moved that the meeting adjourn. Mr. Santer seconded the motion. Motion passed. The next meeting will be April 9, 2014

Respectfully submitted,

Brady Whipkey
Executive Assistant to the President

Gerard El Chaar, Chairman

Cheryl Donohoe, Secretary

MINUTES
WEST VIRGINIA UNIVERSITY AT PARKERSBURG
BOARD OF GOVERNORS
March 5, 2014

An executive session meeting of the West Virginia University at Parkersburg Board of Governors was held on Wednesday March 5, 2014 in the President's Conference Room at the WVU Parkersburg campus beginning at 5:30 p.m. Board members present were: Joe Campbell, Jamie Six, Violet Mosser, Curtis Miller, Jeff Matheny, Sam Winans, Cheryl Donohoe, Gerard El Chaar, Matthew Santer, Karen Facemyer and Tyler Ohrn. Others present included Dr. Marie Foster Gnage and Brady Whipkey.

Guests present included administrators, faculty, and staff.

1. Call to Order

Mr. El Chaar, Chair of the WVU at Parkersburg Board of Governors, called the meeting to order.

2. Roll Call

Roll Call was taken by Brady Whipkey, Executive Assistant to the President, noting that a quorum was present.

3. Executive Session under the authority of WV Code §6-9A-4-2A

Chairman El Chaar asked for a motion to move into Executive Session. Mr. Winans moved to adjourn to Executive Session. Mr. Ohrn seconded the motion. The motion passed and the Board moved into Executive Session at approximately 5:35 p.m. The Board Chair requested that President Gnage join Executive Session. At approximately 7:20 p.m. Chairman El Chaar announced that the Board would return to the regular meeting. Mr. Campbell moved to return to regular session. Mr. Matheny seconded the motion. Motion passed.

4. Board Comments/Announcements

President Gnage reviewed Board of Governors College Completion Summit to be held March 25, 2014 at the Embassy Suites, Charleston WV.

Mr. Campbell discussed interest in revisiting the possibility of electronic board books. Mr. Campbell also reported that he would be meeting with the County Commission to discuss funding and a time frame for the Readiness Center.

12. Next Meeting

The next Board of Governors meeting will be held April 9, 2014 in the Caperton Center.

13. Adjournment

With no further business to be discussed, Ms. Mosser moved that the meeting adjourn. Ms. Donohoe seconded the motion. Motion passed. The next meeting

will be April 9, 2014.

Respectfully submitted,

Brady Whipkey
Executive Assistant to the President

Gerard El Chaar, Chairman

Cheryl Donohoe, Secretary

**West Virginia University at Parkersburg Board of Governors
Meeting of April 9, 2014**

ITEM: Approval of Interim President

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia University at Parkersburg Board of Governors will approve the appointment of an Interim President.

STAFF MEMBER: Gerard El Chaar, Board Chair

BACKGROUND:

West Virginia University at Parkersburg President, Marie Foster Gnage, is serving under a three-year contract that concludes on June 30, 2014. She has informed the Board that she will not be seeking a contract renewal. The Board of Governors will approve the appointment of an Interim President effective July 1, 2014, while a search is conducted for a new president.

**West Virginia University at Parkersburg Board of Governors
Meeting of April 9, 2014**

ITEM: Tuition and Fees

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia University at Parkersburg Board of Governors approves tuition and fees recommendations for 2014-2015 academic year.

STAFF MEMBER: Jeannine Ratliffe, Interim CFO

BACKGROUND:

The Tuition and Fees recommendations for FY 2014-15 will be presented to the Board of Governors for review and approval.

**West Virginia University at Parkersburg Board of Governors
Meeting of April 9, 2014**

ITEM: Adoption of Policy B-62, Mandatory Reporters

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia University at Parkersburg Board of Governors approves an additional 10-day comment period for a revised version of Proposed Policy B-62, Mandatory Reporters and hereby authorizes adoption of said revised policy without further action by the Board if no comments are received.

STAFF MEMBER: Debbie Richards,
Special Assistant to the President for Policy
and Social Justice

BACKGROUND:

At its meeting of February 19, 2014, the Board of Governors authorized a notice of proposed rulemaking for the adoption of Policy B-62, Mandatory Reporters. This proposed policy establishes that all employees of WVU Parkersburg are mandatory reporters for purposes of reporting obligations under the Clery Act, Title VII, Title IX, and W. Va. Code [§ 49-6A-1, et seq.](#)

A notice of proposed rulemaking was issued on February 21, 2014, for a comment period ending on March 26, 2014. Only one formal comment was received and is attached. The policy was revised not only to reflect the recommendation offered in the comment but also to expand and reorganize some content to provide greater clarity. This revision has received legal review.

Web-based training for employees about reporting responsibilities consistent with this proposed policy is underway.

A second notice of proposed rulemaking will be issued regarding the revision of this policy proposal for an additional ten-day comment period. If no comments are received during the comment period, this policy proposal will be considered approved without further action by the Board of Governors.

COMMENTS RECEIVED
Policy B-62, Mandatory Reporters
 Public Comment Period: February 21 – March 26, 2014

Date Received	Comments	Revisions to policy proposal
2/26/14	By way of a formal comment to WVU-P's proposed rule on mandatory reporters, I would suggest the addition of a definition of the term "employee" to be exclusively applied to this policy. I believe the determination of the scope of that definition should be up to WVU-P provided that whatever definition you adopt encompasses each of the individuals who would be considered mandatory reporters under each of the cited laws. Mark Toor	Revised as recommended (Section 4.2)

West Virginia University at Parkersburg Board of Governors

**POLICY B-62
MANDATORY REPORTERS**

Section 1. General

- 1.1 This rule sets forth West Virginia University at Parkersburg's policy regarding mandated reporting by employees of concerning behaviors, discrimination, harassment and crimes ~~by employees~~. It explains briefly the meaning and purpose of mandatory reporters, outlines the legal context, and articulates a straightforward set of guidelines for all employees to follow.
- 1.2 Authority. – WV Code 18B-1-6; Title 135 Procedure Rule, Series 4, WV Council for Community and Technical College; Clery Act, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq); Title VII of the Civil Rights Act of 1964, § 7, 42 U.S.C. § 2000e et seq; W. Va. Code [§ 49-6A-1, et seq](#)
- 1.3 Effective Date. –

Section 2. Purpose

- 2.1 There are three federal laws that establish responsibilities for employees of colleges to report certain types of crimes and incidents, especially sexual misconduct---the Clery Act, Title VII and Title IX. Each of these areas of federal law has a different purpose, but generally the laws are intended to protect members of the campus community, visitors and guests from criminal and discriminatory behavior. The responsibilities established by these laws give rise to the term "mandatory reporter." Reporting of concerning and disruptive behaviors is not legally mandated, but is a mandated by this policy mandate to assist the institution in early identification and detection of at-risk situations. Additionally, state law imposes mandates with respect to the reporting of abuse, including sexual abuse, of children under the age of 18 [W. Va. Code [§ 49-6A-1, et seq](#)]. Reporting requirements for all three federal laws exempt some employees from reporting requirements. This selective approach may create confusion and risk, and it fails to ask everyone to share the responsibility to create an environment free of sexual harassment and discrimination. The purpose of this policy is to explain some of the requirements of the Clery Act, Title VII, Title IX, and W. Va. Code [§ 49-6A-1, et seq](#), and to define all employees as mandatory reporters for purposes of reporting obligations under these and other laws that prohibit discrimination and harassment

Section 3. The Legal Context

3.1 The Clery Act

3.1.1 The Clery Act creates a duty for institutions to report crimes in several different categories and has the broadest scope. It is the college that has the duty to report these crimes and failure to do so can result in substantial fines being imposed on the institution by the Department of Education. Guided by the language of the Clery Act and subsequent amendments, the college is required to define which employees must report crime information they receive.

~~3.1.2 — The language of the Clery Act would allow the college to exclude some faculty some of the time and many professional staff from the obligation to report. Such an approach risks creating confusion for faculty and staff, takes a minimalist approach to the ethical obligation to inform the college community about serious crimes, and makes the institution more vulnerable to enforcement action.~~

3.2 Title VII

~~3.2.1 Title VII of the Civil Rights Act of 1964 prohibits sex discrimination (including sexual harassment) by covered employers. It also prohibits discrimination on the basis of race, color, religion, and national origin focuses on sexual harassment in the workplace and failure to take appropriate action can lead to financial liability for the college. In this case, the law creates a duty to report for employees who supervise other employees, including students being paid by the college.~~

~~3.2.2 — This language means that some faculty and staff would be expected to report while others might be exempted. This selective approach may create confusion and risk, and it fails to ask everyone to share the responsibility to create a work place free of sexual harassment.~~

3.3 Title IX

~~3.3.1 Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs and activities that receive federal financial assistance. Examples of the types of discrimination that are covered under Title IX include sexual harassment including but not limited to acts of sexual misconduct; the failure to provide equal opportunity in athletics; discrimination in a school's science, technology, engineering, and math (STEM) courses and programs; and discrimination based on pregnancy. Title IX focuses on the adverse consequences faced by victims of gender discrimination and sexual harassment and creates obligations for the college to investigate alleged Title IX violations and to provide a "prompt and effective remedy." If the victim is a student, Title IX means among other things that the college must provide a safe environment that does not interfere with the victim's right to pursue an education. The college incurs this obligation when a victim has given notice to a "responsible employee," or when the college, in the exercise of reasonable care, should have known, about the assault or harassment.~~

~~3.3.2 — The definition of "responsible employee" under Title IX would allow the college to treat only some faculty and staff as mandated reporters but with the same possibility of confusion and risk of institutional exposure.~~

3.4 W. Va. Code § 49-6A-1, et seq

3.4.1 W. Va. Code § 49-6A-2 requires any WVU Parkersburg employee or volunteer over the age of eighteen who receives a disclosure from a credible witness or who observes any sexual abuse or sexual assault of a child to immediately notify WVU at Parkersburg, and the Department of Health and Human Resources or the law enforcement agency having jurisdiction to investigate.

Section 4. Policy

4.1 This policy of West Virginia University at Parkersburg defines **all employees** as mandatory reporters for purposes of reporting obligations under the Clery Act, Title VII, Title IX, or W. Va. Code [§ 49-6A-1, et seq.](#) and any other crime or violation explained in this policy.

~~4.2 For purposes of this policy only, "employee" is defined as any regular full-time or part-time classified staff, non-classified staff, all categories of faculty including adjunct faculty, faculty equivalent/academic~~

professional, or any other individual who is paid wages, a salary or a stipend of any kind from WVU at Parkersburg payroll. The definition of "employee" under this policy also includes volunteers who work/volunteer in any formal capacity that is recognized and approved by the President and who have received training from WVU at Parkersburg on the obligations created by this policy. Neither a volunteer nor any other person satisfying the definition of "employee" under this policy may be exempted from the reporting requirements set forth in this policy. For the purposes of W. Va. Code § 49-6A-1, et seq. any WVU Parkersburg employee or volunteer over the age of eighteen who receives a disclosure from a credible witness or who observes any sexual abuse or sexual assault of a child, whether the employee has had training on this policy or not, must immediately notify WVU at Parkersburg and the Department of Health and Human Resources or the law enforcement agency having jurisdiction to investigate.

Section 5 Reporting of Sexual Misconduct and Discrimination

- 4.2 5.1 If any employee learns about discrimination or sexual misconduct, including any violation of Policy A-44, "Sexual Misconduct and Other Forms of Discrimination and Harassment" or Policy A-34, "Equal Opportunity, Affirmative Action and Nondiscrimination," the employee is expected to promptly contact the campus ~~SJO~~ Social Justice Officer/Title IX Coordinator who will take responsibility for prompt notification of appropriate college officials, including Campus Police and Security when applicable.
- 4.3 5.2 Hate crimes, including larceny/theft, simple assault, intimidation, destruction/damage/vandalism of property, or other reportable criminal offense motivated by bias because of actual or perceived characteristics of race, gender, religion, sexual orientation, ethnicity, disability, gender identity, and national origin--must be immediately reported to ~~Campus Police and Security~~ the SJO/Title IX Coordinator, who will take responsibility for prompt notification of ~~the SJO/Title IX Coordinator~~ Campus Police and Security and ~~appropriate college officials~~.
- 4.4 5.3 Any employee who learns about sex/gender discrimination (including forcible or non-forcible sex offenses, dating violence, domestic violence or stalking) must make an immediate report to ~~Campus Police and Security~~ the SJO/Title IX Coordinator, who will take responsibility for prompt notification of ~~the SJO/Title IX Coordinator~~ Campus Police and Security when any form of sexual misconduct has occurred.
- 5.4 When reporting sexual harassment, discrimination or sexual assault, a non-supervisory employee may initially be able to omit personally identifiable information (the name of the victim, the name of the accused individual, and other identifying details about witnesses, location, etc.) The SJO/Title IX Coordinator will provide guidance regarding how much detail is needed in an initial report. Subsequent to an initial report, campus officials may need additional information in order to fulfill the institution's obligations under Title IX. In taking these subsequent actions, the college will always be guided by the goals of empowering the victim and allowing the victim to retain as much control over the process as possible. No employee (other than counselors, health care providers and clergy employed at WVU Parkersburg to serve in that role) can or should promise confidentiality. Counselors, health service providers and clergy are voluntary reporters, not mandated by law, but this policy creates an expectation to report non-personally identifiable information.
- 5.5 When an employee thinks that a student may be about to report an act of sexual harassment, discrimination or assault, the employee should, if at all possible, tell the student that the college will maintain the privacy of the information, but the employee cannot maintain complete confidentiality, and is required to report the act and may be required to reveal the names of the parties involved. If the student wishes to proceed, the employee should inform the student of the implications of sharing the names of the

parties involved, which puts the college on notice.

5.6 **Rather than speaking to the victim about confidential details, during office hours the employee should offer to accompany the victim to the college counselor for counseling services or to the SJO/Title IX Coordinator for filing a complaint. The employee may also refer the complainant to an area hospital emergency room, to Westbrook Health Services' Crisis Hotline at 304-485-1725 (within Wood County) or 1-800-579-5844 (outside Wood County), or to the Rape, Abuse and Incest National Network's Sexual Assault Hotline at 1-800-656-HOPE (4673).**

5.7 **If any employee (or volunteer) receives a disclosure from a credible witness or observes any sexual abuse or sexual assault of a child under the age of eighteen, the employee is expected to immediately notify the SJO/Title IX Coordinator who will take responsibility for prompt notification of Campus Police and Security. Campus Police and Security shall take responsibility for promptly notifying the Department of Health and Human Resources or the law enforcement agency having external jurisdiction to investigate.**

Section 6 **Reporting of Clery Crimes**

4.5 6.1 Under the Clery Act, college employees are mandatory reporters for a broader array of serious crimes, including the following:

- a. Murder & Non-Negligent Manslaughter
- b. Negligent Manslaughter
- c. Robbery
- d. Aggravated Assault
- e. Burglary
- f. Motor Vehicle Theft
- g. Arson
- h. Weapon Law Violations
- i. Drug Abuse Violations
- j. Liquor Law Violations
- k. Hate Crimes
- l. Sex Offenses, including forcible and nonforcible, incest, statutory rape
- m. Dating violence
- n. Domestic violence.
- o. Stalking

6.2 Employees are expected to report crimes covered by the Clery Act (not including sexual misconduct crimes or hate crimes) to Campus Police and Security without delay.

6.3 The Clery Act requires the reporting of crimes that occur: (1) on campus, (2) on public property within or immediately adjacent to the campus, and (3) in or on noncampus buildings or property that WVU at Parkersburg owns or controls. The definitions for these geographic categories are defined by the Clery Act as follows [[34 CFR 668.46\(a\)](#)]:

6.3.1 **On Campus**

"Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and any building or property that is within or reasonably contiguous to paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor)."

6.3.2 Public Property

“All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.”

6.3.3 Noncampus Buildings or Property

“Any building or property owned or controlled by a student organization that is officially recognized by the institution; or Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution’s educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.”

6.4 All concerning and disruptive behaviors must be timely reported to the Threat Assessment Team using the online incident [reporting form](#).

6.5 When reporting Clery Act crimes, employees may choose -- but are not required -- to provide personally identifiable information (the name of the victim, the name of the accused individual, and other identifying details about witnesses, specific location, etc.) unless a clear threat to health or safety is present, as determined by Campus Police. All concerning and threatening behaviors must be timely reported to the Threat Assessment Team using the online incident [reporting form](#).

4.6 6.6 The Clery Act does not establish an obligation for Campus Police to conduct an investigation of the reported crime, only to report the crime as a statistic following Clery Act guidelines. In some cases, Campus Police may also be required to release a timely warning to the community about a threat to the community. In such cases, an initial investigation or determination of the nature of the threat may be conducted, after which a warning will be issued immediately.

4.7 Sexual harassment and discrimination are not covered by the Clery Act, but reporting of such incidents is required under Title IX. When reporting sexual harassment, discrimination or sexual assault, a college employee may initially be able to omit personally identifiable information (the name of the victim, the name of the accused individual, and other identifying details about witnesses, location, etc.). The SJO/Title IX Coordinator will provide guidance with regard to how much detail is needed in an initial report. Subsequent to an initial report, campus officials may need additional information in order to fulfill the college’s obligations under Title IX. In taking these subsequent actions, the college will always be guided by the goals of empowering the victim and allowing the victim to retain as much control over the process as possible, but no employee, other than counselors, health care providers and clergy (when licensed and appointed to work in these defined roles for WVUP) can or should promise confidentiality. Counselors, health service providers and clergy are voluntary reporters, not mandated by law, but college policy creates an expectation to report non-personally identifiable information.

4.8 If any employee (or volunteer) receives a disclosure from a credible witness or observes any sexual abuse or sexual assault of a child under the age of eighteen, the employee is expected to immediately notify Campus Police and Security who will take responsibility for prompt notification of the SJO/Title IX Coordinator and the Department of Health and Human Resources or the law enforcement agency having jurisdiction to investigate.

**West Virginia University at Parkersburg Board of Governors
Meeting of April 9, 2014**

ITEM: Replacement of Policy A-44, "Sexual Harassment"

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia University at Parkersburg Board of Governors approves an additional 10-day comment period for a revised version of Proposed Policy A-44, *Sexual Misconduct and Other Forms of Discrimination and Harassment* and hereby authorizes adoption of said revised policy without further action by the Board if no comments are received.

STAFF MEMBER: Debbie Richards
Special Assistant to the President
for Policy and Social Justice

BACKGROUND:

The 2013 reauthorization of the Violence Against Women Act included the Campus Sexual Violence Elimination Act (Campus SaVE), which amended the Jeanne Clery Act. The Campus SaVe Act affords additional rights to campus victims of sexual violence, dating violence, domestic violence, and stalking. The Act establishes requirements for policies regarding sexual misconduct as well as for prevention and awareness programs for postsecondary education institutions.

At its meeting of February 19, 2014, the Board of Governors authorized a notice of proposed rulemaking for the adoption of a new version of Policy A-44 to be titled, *Sexual Misconduct and Other Forms of Discrimination and Harassment*. A notice of proposed rulemaking was issued on February 21, 2014, for a comment period ending on March 26, 2014. No formal comments were received during the 30-day comment period, however, the revisions reflected in the attached copy are recommended upon further legal review.

A second notice of proposed rulemaking will be issued regarding the revision of this policy proposal for an additional ten-day comment period. If no comments are received during the comment period, this policy proposal will be considered approved without further action by the Board of Governors.

West Virginia University at Parkersburg Board of Governors

Proposed Replacement of **POLICY A-44** regarding Sexual Harassment
SEXUAL MISCONDUCT AND OTHER FORMS OF DISCRIMINATION AND HARASSMENT

Section 1. General

- 1.1 Scope - This rule sets forth the policy of the West Virginia University at Parkersburg Board of Governors, which prohibits sexual misconduct and other forms of discrimination and harassment.
- 1.2 Authority - [W. Va. Code § 18B-1-6](#); [W. Va. C.S.R. § 135-4](#)
- 1.3 Effective Date -
(Replaces version titled, "Sexual Harassment," dated June 2, 2006, as transferred from WVU Board of Governors on July 1, 2008.)

Section 2. Definitions

- 2.1 "ADA Coordinator" means the Special Assistant to the President who is responsible for ensuring compliance with the Americans with Disabilities Act.
- 2.2 "Bullying" means repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a Protected Category.
- 2.3 "Complainant" means any current employee, student or applicant to WVU at Parkersburg (regardless of whether he or she is applying for employment or for admission as a student), vendor or contractor representative, or visitor, who reports an alleged violation under this policy. The complainant is not required to be the person who allegedly suffered the discriminatory or harassing treatment; rather, he or she could be a witness to the events or an employee with a reporting obligation.
- 2.4 "Consent" means informed, knowing, voluntary and clear permission, through mutually understandable word or action, to engage in mutually agreed upon sexual activity. Pursuant to [W. Va. Code § 61-8B-2](#), a lack of consent results from: (1) forcible compulsion; (2) incapacity to consent; or (3) if the complaint charges sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct. A person is deemed incapable of consent when such person is: (1) less than sixteen years old; (2) mentally defective; (3) mentally incapacitated; or (4) physically helpless. Consent is discussed in more detail in Section 10.2 of this policy.

- 2.5 “Discrimination” means actions that deprive others of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a Protected Category.
- 2.6 “Domestic Violence/Intimate Partner Violence/Abuse” means the occurrence of any of the following acts/conditions between those in or having previously been in an intimate relationship to each other, including dating, domestic and/or any other intimate relationship.
- 2.6.1 Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;
- 2.6.2 Placing another in reasonable apprehension of physical harm;
- 2.6.3 Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts;
- 2.6.4 Committing sexual assault, sexual abuse, domestic battery or domestic assault as those terms are defined under West Virginia criminal law;
- 2.6.5 Holding, confining, detaining or abducting another person against that person's will.
- 2.7 “Hazing” means acts likely to cause physical or psychological harm or social ostracism to any person within the WVU at Parkersburg community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity on the basis of actual or perceived membership in a Protected Category.
- 2.8 “Hostile Environment” means an environment created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent, or pervasive and objectively offensive so as to interfere with, limit, or deny the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits, or opportunities.
- 2.9 “Incapacitated” means a state where a person cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how of his or her sexual interaction”).
- 2.10 “Intimidation” means implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a Protected Category.
- 2.11 “Minor” means under the statutory age of consent. An individual under the age of 16 years is considered a minor in the context of this policy.
- 2.12 “Non-Consensual Sexual Contact” means any intentional Sexual Touching, however slight, including with any object, by a person upon another person that is without consent and/or by force.
- 2.13 “Non-Consensual Sexual Intercourse” means any Sexual Penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force.
- 2.14 “Protected Category” means a category under which an individual falls or is perceived to fall that is protected under federal, state, or local anti-discrimination laws, or rules of governing bodies with

jurisdiction over WVU at Parkersburg relating to race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age, marital status, veteran or military status, disability, or genetic information.

- 2.15 “Respondent” means the accused employee, student, or campus visitor who allegedly perpetrated acts of discrimination, harassment, or sexual misconduct.
- 2.16 “Retaliation” means any adverse action taken against a person because he or she complained about harassment, supported a complainant involving harassment, or who participated in the investigation of a claim of harassment.
- 2.17 “Sexual Exploitation” means a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact. The term includes, but is not limited to, the following situations:
- 2.17.1 Sexual voyeurism, such as watching a person undressing, using the bathroom or engaging in sexual acts without the consent of the person observed;
- 2.17.2 Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent, such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent;
- 2.17.3 Prostitution;
- 2.17.4 Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection; and
- 2.17.5 Administering alcohol or drugs (such as date rape drugs) to another person without his or her knowledge or consent for the purpose of engaging in sexually-related activity with that person.
- 2.18 “Sexual Harassment” means any unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual/gendered nature. A form of sexual harassment occurs when submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or academic status, submission to or rejection of such conduct by an individual is used as the basis of employment or academic decisions affecting such individual, or such conduct creates a Hostile Environment.
- 2.19 “Sexual Penetration” means vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.
- 2.20 “Sexual Touching” means any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

- 2.21 "Social Justice Officer (SJO)" means the Special Assistant to the President. The Social Justice Officer is the institution's Equal Employment Opportunity/Affirmative Action Coordinator, Section 504/ Americans with Disabilities Act Coordinator, and Title IX Coordinator, and oversees implementation of WVU at Parkersburg's Affirmative Action and Equal Opportunity plan, disability compliance, Title IX compliance, and the college's policy on discrimination and harassment.
- 2.22 "Stalking" means a course of conduct (i.e., repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of another) directed at a specific person that is unwelcome and would cause a reasonable person to feel fear.
- 2.23 "Title IX" means Title IX of the Educational Amendments of 1972, as enforced by the U.S. Department of Education Office for Civil Rights. Title IX is the landmark legislation that bans sex discrimination in schools, whether it be in academics or athletics: "No person in the U.S. shall, on the basis of sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal aid."
- 2.24 "Title IX Coordinator" means the Special Assistant to the President:

Debra L. Richards, M.L.S.
Special Assistant to the President
for Policy and Social Justice
President's Office Complex, Room 1105
West Virginia University at Parkersburg
300 Campus Drive
Parkersburg, WV 26104
E-mail: Social.Justice@wvup.edu
Telephone: (304) 424-8201
FAX: (304) 424-8204

Section 3. General Provisions

- 3.1 WVU at Parkersburg is committed to promoting the goals of fairness and equity in all aspects of the educational enterprise.
- 3.2 This policy applies to behaviors that take place on campus, at college-sponsored events, and may also apply off-campus and to actions online when the Social Justice Officer/Title IX Coordinator determines that the off-campus conduct affects a substantial college interest. A substantial college interest includes, but is not limited to, the following:
- 3.2.1 Any action that constitutes a criminal offense as defined by federal or state law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where WVU Parkersburg is located;

3.2.2 Any situation where it appears that the accused individual may present a danger or threat to the health or safety of him/herself or others;

3.2.3 Any situation that significantly impinges upon the rights, property or achievements of others or significantly breaches the peace and/or causes social disorder; or

3.2.4 Any situation that is detrimental to the educational interests of WVU at Parkersburg; or

~~3.2~~ 3.2.5 Any online postings or other electronic communication, including cyber-bullying, cyber-stalking, cyber-harassment, occurring within WVU Parkersburg's control (e.g. college networks, websites or between college email accounts). Any online postings or other electronic communication, including cyber-bullying, cyber-stalking, cyber-harassment, occurring outside of WVU Parkersburg's immediate jurisdiction will be investigated when those online behaviors may have the effect of creating a Hostile Environment.

~~3.2.5~~ 3.3 The provision of this rule apply equally to and against vendors, contractors, suppliers and any other outsiders who may interact with WVU at Parkersburg or its students or employees.

3.4 3.5 Inquiries about this policy may be made internally to the Special Assistant to the President who serves as the institution's Social Justice Officer (EEO/AA, 504/ADA, and Title IX Coordinator) and whose contact information is provided in Section 2.24. ~~who can be reached at 300 Campus Drive, Parkersburg, WV 26104; in person in Office 1105; via telephone at 304-424-8201, or via email at SocialJustice@wvup.edu.~~

~~3.5~~ 3.6 All new students, newly hired employees and existing employees will be trained in primary prevention and awareness programs relating to sexual misconduct, domestic violence and related offenses. At a minimum, that training will inform on the nature of prohibited conduct, the definitions of various prohibited behaviors, the definition of "consent" as applied by the institution, safe and positive options for bystander intervention in risky situations, means of recognizing signs of domestic violence and abusive behavior and on-going prevention and awareness of related issues. In addition, that training will inform attendees of the relevant provisions of this policy for purposes of recognizing and reporting instances of prohibited conduct.

~~3.6~~ — Inquiries may be made externally to the Office for Civil Rights, at <http://www.ed.gov/ocr>.

Section 4. Affirmative Action

4.1 As more fully described in [Policy A-34](#), WVU at Parkersburg subscribes to the principles and regulations pertaining to equal opportunity and affirmative action.

4.2 In compliance with these regulations, WVU Parkersburg shall maintain an Affirmative Action Plan.

Section 5. Nondiscrimination

5.1 As stated in [Policy A-34](#), WVU at Parkersburg will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, color,

religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age, marital status, veteran or military status, disability, or genetic information.

- 5.2 This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the college community, guest or visitor who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the college community on the basis of their actual or perceived membership in a Protected Category is in violation of this policy.

Section 6. Accommodation of Disabilities

- 6.1 WVU at Parkersburg is committed to compliance with the Americans with Disabilities Act of 1990 (“ADA”) as amended and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.
- 6.2 The SJO/ADA Coordinator is responsible for coordinating efforts to comply with the disability laws set forth in Section 6.1, including investigation of any employee or student complaint alleging noncompliance.
- 6.3 Students with Disabilities
- 6.3.1 Pursuant to the ADA, WVU at Parkersburg will provide reasonable accommodations and support to all students who have a qualifying disability to ensure equal access to the programs and activities of WVU Parkersburg.
- 6.3.2 All accommodations are made on a case-by-case basis by the Director of Disability Services. Students requesting any accommodation should contact the Disability Services Office, who will review documentation provided by the student and in consultation with the student and other appropriate resources, determine which accommodation, if any, is appropriate to the student’s particular needs and programs. Accommodations for student examinations must also be made through the Office of Disability Services.
- 6.4 Employees with Disabilities
- 6.4.1 Pursuant to the ADA, WVU at Parkersburg will provide reasonable accommodations to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

- 6.4.2 An employee with a disability is responsible for requesting an accommodation in writing from his or her supervisor, who will consult with the individual and the Human Resources Director to identify which essential functions are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.
- 6.4.3 Employees requesting accommodation may be required to provide medical certification from the employee's health care provider that includes: (1) identification of the health care provider; (2) the health care provider's diagnosis of the disabling condition; (3) specific limitations and/or suggested restrictions and their relation to the disability; and (4) suggested accommodations.

Section 7. Discriminatory Harassment

- 7.1 WVU Parkersburg is committed to providing a work and educational environment free of discriminatory harassment. The college will take steps to prevent the recurrence of any harassment/discrimination. This harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters.
- 7.2 The following forms of harassment are prohibited under this policy:
 - 7.2.1 Discriminatory and Bias-Related Harassment
 - a. Harassment constitutes a form of discrimination that is prohibited by law. This policy explicitly prohibits any form of harassment on the basis of actual or perceived membership in a Protected Category by any member or group of the community, which creates a Hostile Environment, both objectively and subjectively. Merely offensive conduct and/or harassment of a generic institutional nature not on the basis of an actual or perceived membership in a Protected Category is not prohibited by this policy, and should be addressed with civil confrontation or effective conflict resolution mechanisms. For assistance with conflict resolution, employees may contact the Office of Human Resources or students may contact the Office of Counseling Services. Harassment that does not rise to the level of creating a Hostile Environment is still a concern to WVU Parkersburg and should be reported so that appropriate intervention and remedies can be implemented, if needed.
 - b. WVU Parkersburg will not tolerate discriminatory harassment against any employee, student, visitor, or guest on the basis of his or her actual or perceived membership in a Protected Category.
 - 7.2.2 Sexual Harassment, which applies to employer and employees and students, is a form of sex/gender discrimination, is an unlawful discriminatory practice, and is a violation of this policy.

Section 8. Additional Misconduct Offenses

- 8.1 Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a Protected Category;
- 8.2 Intimidation;
- 8.3 Hazing;
- 8.4 Bullying;
- 8.5 Domestic Violence/Intimate Partner Violence/Abuse;
- 8.6 Stalking; and
- 8.7 Violating any other college policies or procedures, when such violation is motivated by the actual or perceived membership of the victim in a Protected Category.

Section 9. Consensual Relationships

- 9.1 There are inherent risks in any romantic or intimate relationship between individuals in unequal positions. Thus, except as otherwise provided in Section 9.2, any romantic or intimate relationships in which power differentials are inherent are prohibited, which include, but are not limited to, the following:
 - 9.1.1 Relationships between students or applicants for admission and administrators, faculty, preceptors, coaches, athletic trainers or any other WVU Parkersburg employee where a direct power differential exists between the student or applicant for admission and the employee;
 - 9.1.2 Relationships between a WVU Parkersburg employee holding a direct or indirect supervisory and/or evaluative role over the other person in the relationship; or
 - 9.1.3 Any other romantic or intimate relationship between students or applicants for admission and employees or between employees where any employment-related power differential exists between the persons in the relationship.
- 9.2 Notwithstanding the prohibitions in Section 9.1, any romantic or intimate relationship prohibited in Section ~~6.1~~9.1 that exists prior to the creation of a power differential between the individuals involved in the romantic or intimate relationship shall not violate this policy if (a) the individuals in the relationship report the existence of the relationship as required in Section 9.4 upon the creation of the power differential and (b) the individuals consent to the removal of any potential power differential that could exist. This may require appropriate administrative action, including but not limited to shifting or otherwise relocating an employee within a separate department or reporting

capacity from the other individual involved in the relationship or the shifting of grading or other decision-making responsibilities of a faculty member which affect a particular student in the case of a pre-existing relationship with that student.

- 9.3 Issues may also arise in the educational setting or workplace from romantic or intimate relationships between students or applicants for admission and WVU Parkersburg employees or between WVU Parkersburg employees where a direct or indirect supervisory and/or evaluative role or other power differential does not exist between the persons in the relationship. Thus, while not prohibited, such relationships are highly discouraged.
- 9.4 If a relationship develops that falls under Sections 9.2 or 9.3, the student, applicant for admission, or employee and the faculty member or supervisor involved in the relationship must timely report the existence and termination, if any, of such relationship as follows: applicants for admission, ~~and~~ students, ~~and faculty~~ shall report to the Senior Vice President for Academic Affairs, and employees and supervisor shall report to the Director of Human Resources.
- 9.5 Once a relationship is reported under Section 9.4, the Senior Vice President for Academic Affairs and the Director of Human Resources, respectively, shall inform the persons involved in the relationship of WVU Parkersburg's standards concerning consensual relationships, may set parameters while the persons are on campus, and may take other steps as appropriate.
- 9.6 Persons who engage in any relationship prohibited by Section 9.1 or who engage in any relationship listed in Sections 9.2 and 9.3 and who fail to timely report shall be subject to administrative action, up to and including termination of employment or dismissal from WVU Parkersburg, as applicable.

Section 10. Sexual Misconduct

- 10.1 Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. The following acts of sexual misconduct are prohibited:
 - 10.1.1 Sexual Harassment, as set forth in Section 7.2.2 of this policy;
 - 10.1.2 Non-Consensual Sexual Intercourse;
 - 10.1.3 Non-Consensual Sexual Contact; and
 - 10.1.4 Sexual Exploitation.
- 10.2 Consent
 - 10.2.1 Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the sexual activity. For consent to be valid, there must be a clear

expression in words or actions that the other individual consented to that specific sexual activity.

10.2.2 A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the individual initiating or furthering the sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other.

10.2.3 This policy also covers a person whose incapacity results from mental disability, age, involuntary physical restraint, and/or from the taking of incapacitating drugs.

10.2.4 Consent to some sexual contact, such as kissing or fondling, cannot be presumed to be consent for other sexual activity, such as intercourse. A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

10.2.5 In the State of West Virginia, a minor cannot consent to sexual activity. Thus, sexual contact by an adult with a person younger than 16 years old is a crime as well as a violation of this policy, even if the minor wanted to engage in the act.

Section 11. Filing of Complaints

11.1 The President or President's designee (upon approval by the President) may establish administrative procedures to implement this policy including but not limited to, establishing procedures for the investigation and disposition of complaints. The procedures shall insure that both parties are afforded due process during the investigation of the complaints. Upon completion of an investigation, complaints may be referred to the appropriate campus official for final disposition and/or a hearing if applicable, pursuant to applicable college procedures.

11.2 The Complaint Form and an information packet for Complainants and Respondents A [Complaint Form](#) designated for this purpose. Forms may be obtained from the SJO/Title IX Coordinator in the Office of the President, or from a Deputy SJO/Title IX Coordinator (Director of Human Resources for Parkersburg campuses and Director of the Jackson County Center for the Ripley campus), or on the college website at <http://www.wvup.edu/about/social-justice/discrimination/>. The SJO/Title IX Coordinator will provide assistance in completing the form.

11.3 Anonymous complaints will be accepted, however, the college may be limited in its options in investigating and/or resolving anonymous complaints because of the unique challenges they

present. There is no way to assess the author's veracity and no ability to obtain additional information from the complainant if the complaint is unclear or confusing. However, if the anonymous complaint contains sufficiently detailed information which, if true, would constitute: (a) a crime, then the complaint will be forwarded to the appropriate law enforcement agency for appropriate action; or (b) a violation of this policy, the complaint will be investigated to the best of the SJO/Title IX Coordinator's ability given the anonymous nature of the complaint. A record will be kept of all anonymous complaints.

- 11.4 Knowingly providing false information in a complaint or during the investigation of a complaint or during a disciplinary proceeding or hearing by anyone is prohibited and is considered misconduct subject to disciplinary action up to and including termination of employment and/or expulsion. The Title SJO/Title IX Coordinator is responsible for investigating reports of filing false information.
- 11.5 The SJO/Title IX Coordinator is empowered to investigate allegations of, and to recommend sanctions for, any conduct that violates this policy and/or violations of any other standards of conduct directly related to the alleged violation of this policy. Such related misconduct may include, without limitation, unprofessional conduct, violations of interim directive(s), filing a false claim, and/or any other misconduct that occurred in the course of the alleged discrimination, harassment, act of domestic violence or abuse, filing a false claim, sexual misconduct or retaliation even if the underlying allegations are not substantiated.
- 11.6 WVU at Parkersburg will ensure that any person designated to conduct an investigation into allegations raised under this policy is fully and adequately trained in the conduct of such investigations, the dynamics of domestic and sexual violence and other matters significant to an understanding of the issues underlying the investigation. The college will also ensure that the conduct of such investigations is done in such a manner as to protect the safety of victims and to promote accountability.
- ~~11.3~~ ~~Completed Complaint Forms shall be submitted to the SJO/Title IX Coordinator as soon as possible after the incident. If a complaint is against the SJO/Title IX Coordinator, the Complaint Form shall be filed with the Director of Human Resources/Deputy SJO/Title IX Coordinator, who will immediately designate a person or persons to begin an investigation consistent with this policy.~~
- 11.7 Violators of this policy, including those who fail to report a witnessed incident of sexual harassment or sex discrimination to the appropriate authority or authorities, may be subject to disciplinary sanctions. Appropriate disciplinary actions for students may include but are not limited to counseling, educational sanctions, disciplinary probation, suspension or expulsion. Employees who violate this policy may be subject to disciplinary action up to and including suspension without pay and employment termination. All other violators will be sanctioned as appropriate and in a manner not inconsistent with this policy and/or other West Virginia University at Parkersburg policy.
- 11.8 The SJO/Title IX Coordinator shall conduct or oversee a prompt, thorough, reliable, and impartial investigation of all complaints. Interim corrective measures may be taken during the

investigation process. Parties will be informed, on an ongoing basis, of the status of the investigation. ~~Parties will also be informed of their right to have others present during any part of the institutional disciplinary process.~~

~~11.5 At the victim's discretion, WVU Parkersburg will employ measures designed to ensure the confidentiality of the fact, contents and findings of an investigation. Such measures may include, among other things, a coding system for complaints so as to hide any personally identifiable information on victims and internal controls on access to information so as to ensure the dissemination of such information on a need-to-know basis.~~

11.9 The standard of evidence to be applied in the investigation of a complaint is that of a preponderance of the evidence. In other words, to substantiate a complaint filed under this rule the evidence collected and considered during the investigation must demonstrate that it is more likely than not that the alleged conduct constituted a violation of this policy.

11.10 Upon the completion of the investigation, the complainant and the respondent shall be concurrently notified in writing of the disposition of the complaint and the process for appeal.

11.11 If the Title IX Coordinator finds a student responsible for sexual misconduct and recommends the sanction of expulsion, the matter will be referred to a sexual misconduct board for a hearing on the merits of the charges. The Title IX Coordinator will notify the complainant and the accused student that the matter has been referred to the board for a hearing on the merits and will provide each with a copy of the investigation report.

11.12 WVU Parkersburg may institute remedial, community-based efforts such as educational initiatives and/or trainings regardless of whether a policy violation is substantiated.

Section 12. Receipt of Notice

12.1 Regardless of whether a complaint is filed ~~under Section 14~~, if an employee of WVU Parkersburg receives notice concerning alleged sexual misconduct or other violation of this policy, then that employee shall report to the SJO/Title IX Coordinator as much of the information as that employee is permitted to report under applicable confidentiality laws or that has not been requested by the victim to be specifically withheld, unless an immediate threat of harm exists to self or others. Additional guidance regarding employee reporting responsibilities is provided in Policy B-62, Mandatory Reporters. Upon receipt of the notice, the SJO/Title IX Coordinator shall investigate the information contained in the notice, determine what sexual misconduct or other violation of this policy occurred, if any, and respond appropriately. The SJO/Title IX Coordinator's response may vary, depending on the information contained in the particular notice, including initiation of the formal investigation process ~~set forth in Section 13~~.

~~Section 13. Investigation~~

~~13.1~~ ~~Following the receipt of a report or complaint of discrimination, harassment, sexual misconduct, hostile environment, retaliation or other violation of this policy, the respondent will be notified that a~~

~~report/complaint has been filed and will be given written notice of the allegations. The respondent will have the opportunity to submit a written statement within five business days, whenever possible. The respondent and complainant will be given the opportunity to meet separately with the SJO/Title IX Coordinator (or designee) to review the policy and procedure.~~

~~13.2 A specially trained investigator(s) designated by the SJO/Title IX Coordinator will interview the complainant, respondent, and any witnesses. The assigned investigator(s) will also gather any pertinent documentation materials. The investigator(s) will not interview witnesses whose sole purpose is to provide character information. The investigator(s) will then prepare a report detailing the relevant content from the interviews and the documentation materials gathered.~~

~~13.3 Upon completion of the investigation, the SJO/Title IX Coordinator shall provide a written report of investigation, which will set forth the final determination of the complaint on the basis of the legal standard of "preponderance of the evidence." Parties will be notified simultaneously and in writing of the disposition of the complaint and the process for administrative resolution and appeal.~~

~~13.4 WVU Parkersburg may institute remedial, community based efforts such as educational initiatives and/or trainings regardless of whether a policy violation is substantiated.~~

~~13.5 A report of the investigation shall be provided to the appropriate administrator(s) with recommendation(s) for resolution, when appropriate. The Vice President for Student Services shall determine the sanction for students found in address violation(s) of this policy in accordance with the disciplinary process set forth in Policy D-46, Code of Student Conduct. The Director of Human Resources will advise the appropriate supervisor/administrator regarding actions to be taken to address employee misconduct.~~

~~13.6 The complainant and respondent will be made aware of the sanctioning decision within five (5) business days of receiving the SJO/Title IX Coordinator's report of findings. The respondent and complainant will then have the opportunity to appeal the findings of the investigation and/or the sanctioning decision.~~

Section 14. Appeals

~~13.1 Recommendations not related to sexual misconduct or other violations of this policy that do not fall under Title IX shall be addressed through applicable college policies and procedures concerning employee and student conduct, as set forth in Section 20.2.~~

~~13.2 Any party who wishes to appeal the findings of an investigation related to sexual misconduct or other violations of this policy falling under Title IX, including the sanctions imposed, may do so by submitting that party's appeal in writing to the President. Signed appeals should be hand-delivered or emailed in pdf format to the President within five (5) business days of the issuance of the sanction decision. The President or designee (hereinafter "Appeals Officer") shall share a copy of the written appeal with the other party, who will be given an opportunity to respond to the appeal. All responses to the appeal must be submitted in writing to the Appeals Officer within five (5) business days of receiving the copy of the appeal from the Appeals~~

Officer.

~~13.3 All appeals and responses are then reviewed by the Appeals Officer to determine if the appeal request meets the limited grounds and is timely. The original recommendations and sanctions will stand if the appeal is not timely or does not fall within the grounds for appeal set forth below, and the decision is final. The original recommendations and sanctions will also remain in effect pending the outcome of any appeal. If the appeal has standing, the Appeals Officer will consider the appeal. The party requesting the appeal has the burden of proving the error, as the original recommendations and sanctions are presumed to have been decided reasonably and appropriately. The only grounds for appeal are as follows:~~

~~a. A procedural or substantive error occurred that significantly impacted the outcome of the investigation, such as substantiated bias or material deviation from established procedures;~~

~~b. To consider new evidence, unavailable during the original investigation, that could substantially impact the original recommendations or sanctions (a detailed description of this new evidence and its potential impact must be included); or~~

~~c. The sanctions imposed are substantially disproportionate to the severity of the violation.~~

~~14.4 Within ten (10) business days of receiving the response(s) to the appeal(s), if any, the Appeals Officer will provide to both parties a Memorandum of Decision.~~

~~14.5 If the Appeals Officer determines that a material procedural or substantive error occurred, the Appeals Officer may return the matter to the original investigators with instructions to reconvene to cure the error. The results of a reconvened investigation cannot be appealed. In rare cases where the procedural or substantive error cannot be cured by the original investigators, as in cases of substantiated bias, the Appeals Officer may order a new investigation on the complaint with new investigators. The results of a new investigation can be appealed, once, on the applicable grounds for appeals.~~

~~14.6 If the Appeals Officer determines that new evidence should be considered, the Appeals Officer will return the matter to the original investigators to reconsider in light of the new evidence only. The reconsideration of the original investigators is not appealable.~~

~~14.7 If the Appeals Officer determines that the sanction(s) or disciplinary action is disproportionate to the severity of the violation, the Appeals Officer will return the matter to the administrator who issued the sanction(s) to modify the sanctions according to the directions of the Appeals Officer. The modified decision of the administrator is final.~~

~~14.8 Once an appeal is completed, the parties will be notified, simultaneously, in writing of the final determination and any changes that result.~~

Section 15-13. Reporting of Violations

- 13.1 Reports of violations of this policy should be made promptly as follows:
- 13.1.1 Reports of discrimination, harassment, sexual misconduct, hostile environment, retaliation, or other violations of this policy should be made to the Special Assistant to the President who serves as the institution's Social Justice Officer/Title IX Coordinator;
 - 13.1.2 Reports of violations of this policy involving the SJO/Title IX Coordinator should be made to the Director of Human Resources who serves as Deputy SJO/Title IX Coordinator.
 - 13.1.3 Reports of violations of this policy involving the President of WVU Parkersburg should be made to the Chair of the WVU at Parkersburg Board of Governors; and
 - 13.1.4 Reports of violations of this policy involving the Chair of the WVU at Parkersburg Board of Governors should be made to the Chancellor of the West Virginia Council for Community and Technical College Education.
- 13.2 If a reporting individual believes that an immediate threat of harm exists to self or others or that an individual has violated federal, state, or local law, the reporting individual should immediately contact law enforcement.
- 13.3 Upon receiving a report of an alleged violation of this policy, the appropriate administrator listed in Section ~~16.1~~ 13.1 shall promptly investigate the alleged violation contained in the report.
- 13.4 ~~Although reports of violations of this policy should be made promptly, there is no time limitation on the filing of reports, as long as the accused individual remains subject to WVU Parkersburg's jurisdiction. Individuals responsible for receiving and investigating complaints made under this rule shall ensure victims are notified of their option to seek—or not to seek—assistance from law enforcement and/or campus authorities and the potential consequences of any such election. In addition, victims shall be provided with contact information for the local domestic violence shelter and magistrate court for purposes of determining whether to seek civil relief from the complained-of conduct.~~
- ~~15.5~~ ~~A complete information packet for complainants and respondents is available on the WVU at Parkersburg website at www.wvup.edu/about/ under the "Social Justice" link. Additional information regarding Title IX can also be found on the "Current Students" link or "Faculty/Staff" link.~~

Section 14. Criminal Conduct

- 14.1 Alleged conduct reported under this policy including but not limited to, hazing, sex discrimination and/or acts of sexual violence, sexual assault and other sexual misconduct, may also constitute criminal conduct. Any individual may report an incident alleging criminal conduct by calling 9-1-1 in an emergency or by contacting the SJO/Title IX Coordinator who will notify Campus Police and Security if a complaint contains allegations of criminal conduct. (See Policy B-62, Mandatory

Reporters.)

14.2 The administrative investigation of complaints filed pursuant to this policy is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation will not take the place of an investigation or disposition of a complaint filed under this policy and the results of a law enforcement investigation or adjudication are not determinative of whether an individual is responsible for violating college policy. An investigation conducted pursuant to this policy may be carried out prior to, simultaneously with, or following a law enforcement investigation and/or civil or criminal proceedings. The college will cooperate fully with law enforcement and other external 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 college will promptly resume its administrative investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process.

Section 15. Retaliation

15.1 Retaliation against an individual for alleging harassment, supporting a complainant or for participating in the investigation of information relevant to a claim of harassment is a serious violation of this policy, will be treated as another possible instance of harassment or discrimination, and should be reported immediately as set forth in Section ~~16~~ 11. WVU at Parkersburg will take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Section 16. Remedial Action

16.1 WVU at Parkersburg will implement initial remedial and responsive actions upon notice of alleged harassment, retaliation, or discrimination, and will take additional prompt remedial and/or disciplinary action with respect to any member of the college community, guest, or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. The nature of the remedial action will necessarily depend on the nature of the conduct, ~~the results of the investigation and the totality of the circumstances. That remedial action, however, may encompass actions as minor as a verbal reprimand and as significant as termination of employment or dismissal from the institution. Deliberately false and/or malicious accusations of harassment, as opposed to complaints which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.~~

Section 17. Confidentiality of Reported Information

17.1 Individuals wishing to report violations of this policy must be aware that WVU at Parkersburg administrators, depending on their roles, have varying reporting responsibilities and abilities to maintain the confidentiality of the individual making the report. Prior to reporting a violation of this policy to a particular administrator, an individual should inquire as to whether that

administrator is bound by certain confidentiality and mandatory reporting requirements. Some college resources may be able to maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless the reporting person requests information to be shared or the information indicates an immediate threat of harm to self or others. An information packet for complainants and respondents is available on the WVU at Parkersburg website at www.wvup.edu/about/ under the "Social Justice" link. Additional information regarding Title IX can also be found on the "[Current Students](#)" link or "[Faculty/Staff](#)" link.

17.2 The accused has a due process right to know his/her accuser. If the complainant requests confidentiality, the college will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation taking into consideration and consistent with the college's state and federal obligations including but not limited to Title IX. The college will also consider its responsibility to protect the safety and welfare of the campus community.

17.3 If a complainant insists that his or her name or other identifiable information not be disclosed to the accused or asks that the complaint not be investigated, the college will respond to the complaint consistent with its state and federal obligations including but not limited to its Title IX obligations. The college's ability to respond, however, may be limited.

17.4 The college will evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The college may weigh the request for confidentiality against the following factors: the seriousness of the alleged conduct; whether there have been other harassment complaints about the same individual; the college's responsibility to provide a safe working and learning environment and the accused's right to receive information about the allegations if the information is maintained by the school as an "education record" under FERPA.

17.5 The college cannot ensure confidentiality or that a complaint will not be investigated because of the complainant's confidentiality request.

Section 18. Federal Timely Warning Obligations

18.1 Victims of sexual misconduct should be aware that WVU at Parkersburg administrators must issue timely warnings to the college community for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. No such warning will identify a victim or contain information that could do so unless permitted by the victim.

Section 19. Violations of Policy

19.1 Any employee or student who is found to have violated this policy will be subject to administrative action, up to and including termination of employment or dismissal from WVU at Parkersburg, as applicable.

9.2 Except as provided in Section 15 of this policy concerning sexual misconduct or other violations of this policy falling under Title IX, violations of this policy shall be addressed as follows:

20.2.1 Violations by students shall be addressed according to [Policy D-46](#), Code of Student Conduct.

20.2.2 Violations by employees shall be addressed through the West Virginia Council for Community and Technical College Education rules and procedures and WVU at Parkersburg policies and procedures on employee conduct.

Section 20. Implementation of Policy

20.1 This policy will be implemented using applicable West Virginia Council for Community and Technical College Education rules and procedures and WVU Parkersburg policies and procedures. Other policies notwithstanding, the President or designee is responsible for implementing this policy which includes but is not limited to establishing complaint procedures. In the event the individual, name, title, or contact information changes for any of the individuals listed in this policy, the President of WVU Parkersburg may revise such information within this policy without re-submittal of this policy through the rulemaking process.

20.2 Additional information regarding the enforcement of State and Federal anti-discrimination/harassment/retaliation laws and complaint procedures may be obtained from the following agencies:

Office of Civil Rights
U.S. Department of Education
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541
FAX: 215-656-8605; TDD: 877-521-2172
Email: OCR.Philadelphia@ed.gov

The West Virginia Human Rights Commission
1321 Plaza East – Room 108A
Charleston, WV 25301
Telephone: 304-558-2616
Toll Free: 888-676-5546
FAX: 304-558-0085
Website:

<http://www.wvf.state.wv.us/wvhrc/>

Website: <http://www2.ed.gov/about/offices/list/ocr/index.html>

Employees only:

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

20.3 Individuals are at all times free to pursue a complaint with the Equal Employment Opportunity Commission, the West Virginia Human Rights Commission, the United States Department of Education Office for Civil Rights (responsible for enforcing Title IX), the United States Department of Labor (Office of Federal Contract Compliance Programs), the West Virginia Public Employees Grievance Board, or by consulting an attorney at her or his own expense.

21. Application/Authority and Amendments

21.1 This policy defines and prohibits discrimination, harassment, retaliation, sexual harassment and sex discrimination including acts of sexual violence on the basis of federal and state law as interpreted by the courts and the agencies responsible for enforcing the laws. To assure continued compliance with Title IX and/or any other state or federal anti-discrimination/harassment/retaliation laws, if state or federal statutory provisions, regulatory guidance, or court interpretations or guidance provided by any authorized regulating agency change, or conflict with College policy and/or procedure, the college's policy and/or procedure will be deemed amended as of the time of the decision, ruling, legislative enactment or guidance. These procedures may be modified to protect the due process rights of the parties.