

# WEST VIRGINIA UNIVERSITY AT PARKERSBURG BOARD OF GOVERNORS

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**AUGUST 27, 2020  
AGENDA**

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## Members

Donna Smith, Board Chair  
Steve Hardman, Vice Chair  
Joseph Oliverio  
Sam Winans  
Jeff Matheny  
Jason Landers

John Denbigh  
John Hushion  
Stephanie McCoy  
Dr. Rose Beebe  
Kim McFee  
Elaina Segsworth

Dr. Chris Gilmer  
President



# SCHEDULE

## **West Virginia University at Parkersburg Board of Governors**

**Wednesday, August 27, 2020**

10:00 a.m. Board Meeting

Zoom/Conference Call

\*Participation Instructions:

WEST VIRGINIA UNIVERSITY AT PARKERSBURG BOARD OF GOVERNORS  
Meeting of August 12, 2020  
Zoom/Conference Call  
3:15 p.m.

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| 1. Call to Order  | Board Chair, Donna Smith   |
| 2. Roll Call  | Brady Whipkey<br>Chief of Staff to the President<br>Secretary to the Board |
| 3. Action Items   |  |
| • Adoption of Emergency Policy A-44, Interim Policy<br>And Procedures Regarding Harrassment and<br>Discrimination | Debbie Richards Ex. Director<br>Policy & Compliance<br>.....               |
| 4. Board Comments/Announcements   |  |
| 5. Next Meeting<br>October 14, 2020   |  |
| 6. Adjournment  |  |

**West Virginia University at Parkersburg Board of Governors  
Meeting of August 27, 2020**

**ITEM:** Adoption of Proposed Policy A-44, *Policy and Procedures Regarding Harassment and Discrimination*

**RECOMMENDED RESOLUTION:** *Resolved*, That the West Virginia University at Parkersburg Board of Governors authorizes a notice of proposed rulemaking for adoption of Policy A-44, *Policy and Procedures Regarding Harassment and Discrimination*, to supersede the June 5, 2014 version of Policy A-44, *Sexual Misconduct and Other Forms of Discrimination and Harassment*, as well as the August 14, 2020 Emergency Policy A-44; and hereby authorizes adoption of said policy without further action by the Board if no comments are received and/or no further edits are recommended within the same period.

**STAFF MEMBER:** Debbie Richards, Executive Director,  
Policy and Compliance / Title IX Coordinator

**BACKGROUND:**

Pursuant to Section 7 of Policy A-45, *Adoption or Amendment of Rules* and with advance approval of Chancellor Sarah Tucker, the Board of Governors approved at its August 12, 2020 meeting Emergency Policy A-44, *Interim Policy and Procedures Regarding Harassment and Discrimination*, for the purpose of complying with new federal regulations ([34 CFR Part 106](#)) from the U.S. Department of Education implementing Title IX of the Education Amendments Act of 1972, which became effective on August 14, 2020.

The proposed policies and procedures attached have been prepared using expert guidance from the Association of Title IX Administrators (ATIXA), including the purchase of a license to incorporate copyrighted policy and procedure template language in an effort to assure compliance with complicated and prescriptive regulatory requirements. Due in part to interpretations regarding the new regulations from the U. S. Department of Education Office for Civil Rights that have been received since the approval of the Emergency version of Policy A-44, subsequent edits made to date are highlighted in the attached copy.

The proposed Policy A-44, *Policy and Procedures on Harassment and Discrimination*, supersedes the June 5, 2014 version of Policy A-44, *Sexual Misconduct and Other Forms of Discrimination and Harassment* (also attached), the August 14, 2020 Emergency Policy A-44, currently posted online at [www.wvup.edu/about/board-of-governors/policy/a-general/](http://www.wvup.edu/about/board-of-governors/policy/a-general/), as well as any other campus procedures that address the discrimination complaint process. The two appendices attached to Policy A-44 provide two procedural options that will allow the institution to address any instance of prohibited harassment or discrimination in a fair and equitable manner, with Process A to be

applied, as determined by the Title IX Coordinator, in cases that meet new Title IX definitions for certain types of sexual harassment, and the less complicated Process B, which may be applied, as determined by the Title IX Coordinator, to cases outside of the new Title IX definitions, regardless of which protected class(es) are involved.

A notice of proposed rulemaking will be issued proposing the formal adoption of the new Policy A-44. If no comments are received during the 30-day comment period and/or no further edits are recommended within the same period, this policy proposal will be considered approved following the comment period without further action by the Board of Governors. Upon approval by the Board of Governors, this policy proposal will be submitted to the Chancellor of the WV Council for Community & Technical College System for final approval.



West Virginia University at Parkersburg Board of Governors

**POLICY A-44**  
**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 – June 5, 2014  
(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](mailto: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
- 3.2.5 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.
- 3.3 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.
- 3.5 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.
- 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.

#### **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;
  - a
- 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 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. 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 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.
- c. 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.
- d.
- e. 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.
- 11.7 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.
- 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, 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.

## **Section 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 13.1 shall promptly investigate the alleged violation contained in the report.
- 13.4 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.

#### **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 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,

## **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/](http://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.
- 19.2 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](mailto:OCR.Philadelphia@ed.gov)  
Website: <http://www2.ed.gov/about/offices/list/ocr/index.html>

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/>

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.

West Virginia University at Parkersburg Board of Governors

**Proposed POLICY A-44  
POLICY AND PROCEDURES REGARDING  
HARASSMENT AND DISCRIMINATION**

**Section 1. General**

**1.1 Purpose and Relevant Scope:**

- A. The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in educational or employment activities. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using WVU at Parkersburg's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.
- B. When the Respondent is a member of the WVU at Parkersburg community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of WVU at Parkersburg community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, and volunteers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

**1.2 Rationale:** WVU at Parkersburg is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, WVU at Parkersburg has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. WVU at Parkersburg values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process.

**1.3 Authority:** [W. Va. Code § 18B-1-6](#); [W. Va. C.S.R. § 135-4](#); [W.Va. C.S.R. § 135-40](#); [34 CFR 106](#) and other relevant state and federal civil rights laws and regulations.

**1.4 Effective Date:** August 14, 2020 – November 14, 2020

**1.5 Policy History:** This interim policy and procedures replaces Policy A-44, "Sexual Misconduct and Other Forms of Discrimination and Harassment," dated June 5, 2014. The prior version of Policy A-44, "Sexual Harassment," dated June 2, 2006, was transferred from WVU Board of Governors on July 1, 2008.

## Section 2. Definitions

- 2.1 **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- 2.2 **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- 2.3 **Complaint (formal)** means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that WVU at Parkersburg investigate the allegation.
- 2.4 **Confidential Resource** means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- 2.5 **Day** means a business day when WVU at Parkersburg is in normal operation.
- 2.6 **Directly Related Evidence** is evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.
- 2.7 **Education program or activity** means locations, events, or circumstances where WVU at Parkersburg exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by WVU at Parkersburg.
- 2.8 **Final Determination:** A conclusion by the preponderance of the evidence standard of proof (more likely than not) that the alleged conduct did or did not violate policy.
- 2.9 **Finding:** A conclusion by the preponderance of the evidence standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- 2.10 **Formal Grievance Process** means “Process A,” a method of formal resolution designated by WVU at Parkersburg to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- 2.11 **Grievance Process Pool** includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- 2.12 **Hearing Decision-maker or Panel** refers to those who have decision-making and sanctioning authority within WVU at Parkersburg’s Formal Grievance process.

- 2.13 **Investigator** means the person or persons charged by WVU at Parkersburg with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- 2.14 **Mandated Reporter** means an employee of WVU at Parkersburg who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the designated official who serves as the institution's Title IX Coordinator.
- 2.15 **Notice** means that an employee, student, or third-party informs the official designated as Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- 2.16 **Official with Authority** (OWA) means an employee of WVU at Parkersburg explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of WVU at Parkersburg.
- 2.17 **Parties** include the Complainant(s) and Respondent(s), collectively.
- 2.18 **Process A** means the Formal Grievance Process detailed in Appendix 1.
- 2.19 **Process B** means the administrative resolution procedures detailed in Appendix 2 that apply only when Process A does not, as determined by the Title IX Coordinator.
- 2.20 **Protected Activity:** In the context of this policy, Protected Activity pertains to actions taken by students, employees, or third parties to assert their rights for protection against harassment and discrimination, pursuant to civil rights laws or rules applicable to WVU at Parkersburg.
- 2.21 **Recipient** means a postsecondary education program that is the recipient of federal funding.
- 2.22 **Relevant Evidence** is evidence that tends to prove or disprove an issue in the complaint.
- 2.23 **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to WVU at Parkersburg's educational program.
- 2.24 **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- 2.25 **Resolution** means the result of an informal or Formal Grievance Process.
- 2.26 **Retaliation** means any adverse action taken against a person because he or she complained about harassment or discrimination, supported a complainant alleging harassment or discrimination, or participated in the investigation of a claim of harassment or discrimination.
- 2.27 **Sanction** means a consequence imposed by WVU at Parkersburg on a Respondent who is found to have violated this policy.

2.28 **Sexual Act**, as specifically defined by federal regulations under forcible sexual offenses (see Section 16 of this policy) includes one or more of the following:

A. Forcible Rape:

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

B. Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

C. Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

D. Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

2.28 **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section 16 for greater detail.

2.29 **Student**: For the purpose of this policy, any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with WVU at Parkersburg.

- 2.30 **Title IX Coordinator** is the official designated by WVU at Parkersburg to ensure compliance with Title IX and WVU at Parkersburg's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- 2.31 **Title IX Team** refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

### **Section 3. Title IX Coordinator**

- 3.1 The Executive Director, Policy and Compliance, reports directly to the President and serves as the Title IX Coordinator and ADA/504 Coordinator. The Executive Director oversees implementation of WVU at Parkersburg's affirmative action and equal opportunity program, disability compliance, and WVU at Parkersburg's policy regarding harassment and discrimination. Pursuant to Title IX regulations, the Title IX Coordinator has the primary responsibility for coordinating WVU at Parkersburg's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

### **Section 4. Independence and Conflict-of-Interest**

- 4.1 Pursuant to Title IX regulations, the Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.
- 4.2 Any concern involving bias or conflict of interest by the Title IX Coordinator may be directed to the Deputy Title IX Coordinator at the Parkersburg campus of WVU at Parkersburg. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.
- 4.3 Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Deputy Title IX Coordinator at the Parkersburg campus of WVU at Parkersburg. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

### **Section 5. Administrative Contact Information**

- 5.1 Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Debbie Richards, Title IX Coordinator  
Executive Director, Policy & Compliance  
Room 1010  
300 Campus Drive  
Parkersburg, WV 26104  
(304) 424-8201  
Email: [Debbie.Richards@wvup.edu](mailto:Debbie.Richards@wvup.edu)  
Web: [TBA](#)

Scott Poe, Deputy Title IX Coordinator  
Executive Director, Human Resources  
Room 1008  
300 Campus Drive  
Parkersburg, WV 26104  
(304) 424-8212  
Email: Scott.Poe@wvup.edu

Steven Smith, Deputy Title IX Coordinator  
Dean & CEO, Jackson County Center  
107 Academy Drive  
Ripley, WV 26170  
(304) 372-6948  
Email: Steven.Smith@wvup.edu

5.2 WVU at Parkersburg has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team members listed above, reports or allegations addressed to these Officials with Authority will put WVU at Parkersburg “on notice” to take appropriate action steps pursuant to this policy:

- President
- Provost/Executive Vice President, Academic & Student Affairs
- Executive Vice President, Finance and Administration
- Vice President, Enrollment Management
- Vice President, Institutional Advancement
- Vice President, Facilities

5.3 WVU at Parkersburg has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. (See [Policy B-62](#), *Mandatory Reporters*.)

5.4 Inquiries may be made externally to:

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

The West Virginia Human Rights Commission  
1321 Plaza East – Room 108A

Charleston, WV 25301  
Telephone: 304-558-2616  
Toll Free: 888-676-5546  
Facsimile: 304-558-0085  
Website: <http://www.wvf.state.wv.us/wvhrc/>

For complaints involving employees:

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/>

## **Section 6. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

- 6.1 Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:
- A. File a complaint with, or give verbal notice to, the Title IX Coordinator, Deputy Title IX Coordinator, or an Official with Authority. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
  - B. Report online, using the reporting form posted at [www.wvup.edu/about/social-justice/](http://www.wvup.edu/about/social-justice/). Anonymous reports are accepted but can give rise to a need to investigate. WVU at Parkersburg tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as WVU at Parkersburg respects Complainant requests to dismiss complaints unless, **as determined by the Title IX Coordinator,** there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows WVU at Parkersburg to discuss and/or provide supportive measures.
- 6.2 A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that WVU at Parkersburg investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by WVU at Parkersburg) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that WVU at Parkersburg investigate the allegations.
- 6.3 If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.



## Section 7. Supportive Measures

- 7.1 WVU at Parkersburg will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation. (The ultimate determination of what is reasonable will be reserved for the institution taking into consideration the party's wishes and the particular circumstances.)
- 7.2 Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to WVU at Parkersburg's education program or activity, including measures designed to protect the safety of all parties or the institution's educational environment, and/or deter harassment, discrimination, and/or retaliation.
- 7.3 The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, WVU at Parkersburg will inform the Complainant, in writing, that they may file a formal complaint with WVU at Parkersburg either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.
- 7.4 WVU at Parkersburg will maintain the privacy of the supportive measures, provided that privacy does not impair the institution's ability to provide the supportive measures. WVU at Parkersburg will act to ensure as minimal an academic or workplace impact on the parties as possible. WVU at Parkersburg will implement measures in a way that does not unreasonably burden the other party.
- 7.5 These actions may include, but are not limited to:
- Referral to counseling, medical, and/or other healthcare services
  - Referral to the Employee Assistance Program
  - Referral to community-based service providers
  - Visa and immigration assistance
  - Student financial aid counseling
  - Education to the institutional community or community subgroup(s)
  - Altering work arrangements for employees or student-employees
  - Safety planning
  - Providing campus safety escorts
  - Implementing contact limitations (no contact orders) between the parties
  - Academic support, extensions of deadlines, or other course/program-related adjustments
  - [Timely warnings](#)
  - Class schedule modifications, withdrawals, or leaves of absence
  - Increased security and monitoring of certain areas of the campus
  - Any other actions deemed appropriate by the Title IX Coordinator
- 7.6 Violations of no contact orders will be referred to appropriate student or employee conduct processes

for enforcement.

## **Section 8. Emergency Removal**

- 8.1 WVU at Parkersburg can act to remove a Respondent entirely or partially from its education program, workplace, or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the institution's Threat Assessment Team using its standard objective violence risk assessment procedures.
- 8.2 In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.
- A. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a **defined** timely manner, objections to the emergency removal will be deemed waived.
  - B. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. There is no appeal process for emergency removal decisions.
  - C. A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.
- 8.3 The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.
- 8.4 WVU at Parkersburg will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intramural sports.
- 8.5 At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.
- 8.6 Where the Respondent is an employee, any other existing provisions for interim action are applicable.

## Section 9. Promptness

- 9.1 All allegations are acted upon promptly by WVU at Parkersburg once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but WVU at Parkersburg will avoid all undue delays within its control.
- 9.2 Any time the general timeframes for resolution outlined in the institution's procedures will be delayed, the Title IX Coordinator will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## Section 10. Privacy

- 10.1 Every effort is made by WVU at Parkersburg to preserve the privacy of reports.<sup>1</sup> WVU at Parkersburg will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.
- 10.2 WVU at Parkersburg reserves the right to determine which WVU at Parkersburg officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).
- 10.3 Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Title IX Coordinator, Deputy Title IX Coordinator(s), specific individuals in Academic or Student Affairs, Campus Police, and/or Threat Assessment Team. Information will be shared, as necessary, with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

## Section 11. Jurisdiction of WVU at Parkersburg

- 11.1 This policy applies to the education program and activities of WVU at Parkersburg, to conduct that takes place on the campus or on property owned or controlled by WVU at Parkersburg, at college-sponsored events, or in buildings owned or controlled by any WVU at Parkersburg recognized student organizations. The Respondent must be a member of WVU at Parkersburg's community (for example, a student, employee or other person over which the institution has jurisdiction to take disciplinary action)

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<sup>1</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of WVU at Parkersburg employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in WVU at Parkersburg's FERPA procedures. The privacy of employee records will be protected in accordance with state law and Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. WVU at Parkersburg has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see Section 18.

in order for its policies to apply.

- 11.2 This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to WVU at Parkersburg's educational program. WVU at Parkersburg may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial WVU at Parkersburg interest.
- 11.3 Regardless of where the conduct occurred, WVU at Parkersburg will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial WVU at Parkersburg interest includes:
  - A. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
  - B. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
  - C. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
  - D. Any situation that is detrimental to the educational interests or mission of WVU at Parkersburg.
- 11.4 If the Respondent is unknown or is not a member of WVU at Parkersburg community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.
- 11.5 Further, even when the Respondent is not a member of WVU at Parkersburg's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.
- 11.6 In addition, WVU at Parkersburg may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from WVU at Parkersburg property and/or events.
- 11.7 All vendors serving WVU at Parkersburg through third-party contracts are subject to these policies and procedures to which their employer has agreed to be bound by their contracts.
- 11.8 When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.
- 11.9 Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to WVU at Parkersburg where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **Section 12. Time Limits on Reporting**

- 12.1 There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to WVU at Parkersburg's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.
- 12.2 Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.
- 12.3 When notice/complaint is affected by significant time delay, WVU at Parkersburg will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

## **Section 13. Online Harassment and Misconduct**

- 13.1 The policies of WVU at Parkersburg are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on WVU at Parkersburg's education program and activities or use WVU at Parkersburg networks, technology, or equipment.
- 13.2 Although WVU at Parkersburg may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to WVU at Parkersburg, it will engage in a variety of means to address and mitigate the effects.
- 13.3 Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of WVU at Parkersburg community.
- 13.4 Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of WVU at Parkersburg's control (e.g., not on WVU at Parkersburg networks, websites, or between WVU at Parkersburg email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.
- 13.5 Off-campus harassing speech by employees, whether online or in person, may be regulated by WVU at Parkersburg only when such speech is made in an employee's official or work-related capacity.

## **Section 14. Policy on Nondiscrimination**

- 14.1 WVU at Parkersburg adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education.
- 14.2 WVU at Parkersburg does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of age, disability, national origin, color, ancestry, race, religion, sex, gender identity, pregnancy, sexual orientation, veteran status, genetic information, or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.
- 14.3 This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of WVU at Parkersburg community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of WVU at Parkersburg community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of WVU at Parkersburg policy on nondiscrimination.
- 14.4 When brought to the attention of WVU at Parkersburg, any such discrimination will be promptly and fairly addressed and remedied by WVU at Parkersburg according to the appropriate grievance process described below.

## **Section 15. Policy on Disability Discrimination and Accommodation**

- 15.1 WVU at Parkersburg is committed to full 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 and regulations pertaining to individuals with disabilities.
- 15.2 Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.
- 15.3 The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by WVU at Parkersburg, regardless of whether they currently have a disability. 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.
- 15.4 The Executive Director, Policy and Compliance, has been designated as WVU at Parkersburg's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.
- 15.5 Grievances related to disability status and/or accommodations will be addressed using the procedures below. For details relating to disability accommodations at WVU at Parkersburg, see [Policy A-43, Disability Accommodations](#).
- 15.6 Students with Disabilities

- A. WVU at Parkersburg is committed to providing qualified students with disabilities with academic adjustments auxiliary aids and other reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of WVU at Parkersburg.
- B. All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Executive Director of Student Support Services, who coordinates services for students with disabilities in accordance with WVU at Parkersburg's applicable [procedures](#).

#### 15.7 Employees with Disabilities

- A. Pursuant to the ADA, WVU at Parkersburg will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to WVU at Parkersburg.
- B. An employee with a disability is responsible for submitting a request for an accommodation and providing necessary documentation to the Executive Director in the Human Resources Department, in accordance with [Policy A-43, Disability Accommodations](#), and applicable institutional [procedures](#).
- C. The Executive Director in the Human Resources Department will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties in accordance with WVU at Parkersburg's applicable [procedures](#).

### 16. Policy on Discriminatory Harassment

16.1 Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. WVU at Parkersburg's 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 protected by academic freedom.

16.2 The sections below describe the specific forms of legally prohibited harassment that are also prohibited under WVU at Parkersburg policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of WVU at Parkersburg policy, though supportive measures will be offered to those impacted. All policies encompass actual and/or attempted offenses.

#### 16.3 Discriminatory Harassment

- A. Discriminatory harassment constitutes a form of discrimination that is prohibited by WVU at Parkersburg policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

- B. WVU at Parkersburg does not tolerate discriminatory harassment of any employee, student, visitor, or guest. WVU at Parkersburg will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.”
- C. A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities.<sup>2</sup> This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive **and** objectively offensive.
- D. When discriminatory harassment rises to the level of creating a hostile environment, WVU at Parkersburg may also impose sanctions on the Respondent through application of the appropriate grievance resolution process.
- E. WVU at Parkersburg reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under WVU at Parkersburg policy, but may be addressed through respectful conversation, remedial actions, education, and/or informal resolution mechanisms.
- F. For assistance with informal resolution techniques and approaches, employees should contact the Executive Director of Human Resources, and students should contact the Executive Director of Student Support Services.

#### 16.4 Sexual Harassment

- A. The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of West Virginia regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.
- B. WVU at Parkersburg has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.
- C. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.
- D. Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:
  - 1. Quid Pro Quo:
    - an employee of WVU at Parkersburg,
    - conditions<sup>3</sup> the provision of an aid, benefit, or service of WVU at Parkersburg,
    - on an individual’s participation in unwelcome sexual conduct.

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<sup>2</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department of Education Office for Civil Rights, [Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance](#).

<sup>3</sup> Implicitly or explicitly.

## 2. Sexual Harassment:

- unwelcome conduct,
- determined by a reasonable person,
- to be so severe, and
- pervasive, and,
- objectively offensive,
- that it effectively denies a person equal access to WVU at Parkersburg's education program or activity.<sup>4</sup>

## 3. Sexual assault, defined as:

### a) Sex Offenses, Forcible:

- Any *sexual act* directed against another person<sup>5</sup>,
- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.

### b) Sex Offenses, Non-forcible:

- Incest:
  - Non-forcible sexual intercourse,
  - between persons who are related to each other,
  - within the degrees wherein marriage is prohibited by West Virginia law.
- Statutory Rape:
  - Non-forcible sexual intercourse,
  - with a person who is under the statutory age of consent (16).

## 4. Dating Violence, defined as:

- violence,
- on the basis of sex,
- committed by a person,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

a) The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

b) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

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<sup>4</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>5</sup> This would include having another person touch you sexually, forcibly, or without their consent.

c) Dating violence does not include acts covered under the definition of domestic violence.

5. Domestic Violence, defined as:

- violence,
- on the basis of sex,
- committed by a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of West Virginia, or
- by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of West Virginia.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6. Stalking, defined as:

- engaging in a course of conduct,
- on the basis of sex,
- directed at a specific person, that
  - would cause a reasonable person to fear for the person's safety, or
  - the safety of others; or
  - suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## 16.5 Force, Coercion, Consent<sup>6</sup>, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

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<sup>6</sup> The state definition of consent, which is applicable to criminal prosecutions for sex offenses in West Virginia, is found in [§61-8B-2](#) and may differ from the definition used on campus to address policy violations.

- A. **Force** is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.
- B. **Coercion** is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- C. **Consent** is:
- knowing, and
  - voluntary, and
  - clear permission
  - by word or action
  - to engage in sexual activity.
1. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
  2. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.
  3. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.
  4. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.
  5. 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 intimate relationship is not sufficient to constitute consent.
  6. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on WVU at Parkersburg to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from

the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

7. Consent in relationships must also be considered in context. When parties consent to BDSM<sup>7</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so WVU at Parkersburg’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.
- D. **Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.
1. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.
  2. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
  3. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
  4. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## 16.6 Expectations Regarding Unethical Relationships

- A. There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.
- B. Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. WVU at Parkersburg does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with

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<sup>7</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

the goals and policies of WVU at Parkersburg. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student, supervisor-employee) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

- C. Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains.
- D. While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.
- E. Violation of these expectations regarding unethical relationships is an employee relations matter addressed in consultation with the Human Resources Department, unless the elements of the definition of harassment or discrimination are met, in which case they shall be addressed under the appropriate resolution process of this policy.

## 16.7 Other Civil Rights Offenses

In addition to the forms of sexual harassment described above, which are covered by Title IX, WVU at Parkersburg additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.

- A. Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - 1. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - 2. Invasion of sexual privacy
  - 3. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
  - 4. Prostituting another person

5. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
  6. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  7. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  8. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
  9. Knowingly soliciting a minor for sexual activity
  10. Engaging in sex trafficking
  11. Creation, possession, or dissemination of child pornography
- B. Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- C. Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- D. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- E. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within WVU at Parkersburg community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity as defined further in the institution's policy prohibiting hazing.
- F. Bullying, defined as:
- Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control, or diminish another person,
  - physically and/or mentally
  - that is not speech or conduct otherwise protected by the First Amendment.
- G. Violation of any other WVU at Parkersburg policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.
- H. Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

**Section 17. Retaliation**

- A. Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in

providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

- B. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. WVU at Parkersburg will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.
- C. WVU at Parkersburg and any member of the institution's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.
- D. Filing a complaint within Process B could be considered retaliatory if those charges could be applicable under Process A, when the Process B charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, WVU at Parkersburg vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.
- E. The exercise of rights protected under the First Amendment does not constitute retaliation.
- F. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

*Section 18. Mandated Reporting  
and Confidential Resources*

- 18.1 All WVU at Parkersburg employees (faculty, staff, administrators), except for designated confidential resources, are expected to report actual or suspected discrimination or harassment pursuant to [Policy B-62](#), *Mandatory Reporters*. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources.
- 18.2 At WVU at Parkersburg, the college counselor located in the Center for Student Support Services, may maintain confidentiality and is not required to report actual or suspected discrimination or harassment; however, will timely submit anonymous statistical information for Clery Act purposes. The counselor may maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases involving a threat of danger or abuse of a minor, or when required to disclose by law or court order. The counselor may offer options and resources without any obligation to inform campus officials unless a Complainant has requested the information be shared. The campus counselor is available to help students free of charge and may be consulted on an emergency basis during normal business hours.
- 18.3 The Employee Assistance Program provides external counseling resources for employees.

18.4 If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

#### **Section 19. When a Complainant Does Not Wish to Proceed**

19.1 If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

19.2 The Title IX Coordinator has ultimate discretion over whether WVU at Parkersburg proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

19.3 The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires WVU at Parkersburg to pursue formal action to protect the community.

19.4 A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. WVU at Parkersburg may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

19.5 The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and WVU at Parkersburg's ability to pursue a Formal Grievance Process fairly and effectively.

19.6 When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

19.7 When WVU at Parkersburg proceeds, the Complainant may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. When the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

19.8 Note that WVU at Parkersburg's ability to remedy and respond to notice may be limited if the Complainant does not want WVU at Parkersburg to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing WVU at Parkersburg's obligation to protect its community.

19.9 In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow WVU at Parkersburg to honor that request, WVU at Parkersburg will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

19.10 If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by WVU at Parkersburg, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **Section 20. Federal Timely Warning Obligations**

20.1 Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, WVU at Parkersburg must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

20.2 WVU at Parkersburg will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **Section 21. False Allegations and Evidence**

21.1 Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

21.2 Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under WVU at Parkersburg policy.

## **Section 22. Amnesty for Student Complainants and Witnesses**

22.1 WVU at Parkersburg community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to WVU at Parkersburg officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

22.2 It is in the best interests of WVU at Parkersburg community that Complainants choose to report misconduct to WVU at Parkersburg officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

22.3 To encourage reporting and participation in the process, WVU at Parkersburg maintains a policy of offering student parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

22.4 Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that

collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

- 22.5 Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the Campus Police). WVU at Parkersburg maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, WVU at Parkersburg may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

### **Section 23. Preservation of Evidence**

- 23.1 The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and particularly time-sensitive. WVU at Parkersburg will inform the Complainant of the importance of preserving evidence by taking the following actions:

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- Try not to urinate.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

- 23.2 During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

### **Section 24. Revision of this Policy and Associated Procedures**

- 24.1 This Policy and the associated procedures provided in Appendices 1 and 2 supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator.

- 24.2 During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially in consultation with the President and with notice upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

- 24.3 If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings. This document does not create legally enforceable protections beyond the

protection of the background state and federal laws which frame such policies and codes, generally.

## Appendix 1

### **Interim Formal Grievance Process for Resolution of Alleged Violations of the Policy on Harassment and Discrimination:**

#### **PROCESS “A”**

##### **1. Overview**

WVU at Parkersburg will act on any formal or informal notice/complaint of violation of the policy on Harassment and Discrimination (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking), as described in Section 16.4 of the Policy and involving students, staff, administrator, or faculty members.

If other sections of the Policy are invoked, such as on protected class harassment or discrimination, see Appendix 2 for a description of the procedures applicable to the resolution of such offenses, known as “Process B.”

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in the Policy) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through Policy D-46, Code of Student Conduct, or Policy B-21, Employee Discipline.

##### **2. Notice/Complaint**

Upon receipt of a complaint or notice of an alleged violation of the Policy to the Title IX Coordinator or other OWA, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps WVU at Parkersburg needs to take.

The Title IX Coordinator will initiate at least one of three responses:

- Offer supportive measures when the Complainant does not want to file a formal complaint; and/or
- Offer an informal resolution (upon submission of a formal complaint); and/or
- Offer a Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

WVU at Parkersburg uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, the institution will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

### 3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>8</sup> engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. In this case, no Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
- If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
- If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
  - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
    - an incident, and/or
    - a pattern of alleged misconduct, and/or
    - a culture/climate issue, based on the nature of the complaint.
  - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies or sections may apply, which resolution process is applicable, and will refer the matter accordingly. Dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit WVU at Parkersburg’s authority to address a complaint with an appropriate process and remedies.

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<sup>8</sup> If circumstances require, the Executive Director of Human Resources, serving as Deputy Title IX Coordinator, will oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

### **a. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Threat Assessment Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by a student Respondent;
- Whether to impose transcript notation or communicate with a transfer institution about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning and/or Trespass order is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, or law enforcement officers. A VRA authorized by the Title IX Coordinator should occur in collaboration with the Threat Assessment Team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

### **b. Dismissal (Mandatory and Discretionary)<sup>9</sup>**

WVU at Parkersburg must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or

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<sup>9</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

2. The conduct did not occur in an educational program or activity controlled by WVU at Parkersburg (including buildings or property controlled by recognized student organizations), and/or WVU at Parkersburg does not have control of the Respondent; and/or
3. The conduct did not occur against a person in the United States; and/or
4. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of WVU at Parkersburg<sup>10</sup>.

WVU at Parkersburg may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by WVU at Parkersburg; or
3. Specific circumstances prevent WVU at Parkersburg from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, WVU at Parkersburg will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the procedures for appeal below.

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

#### **4. Counterclaims**

WVU at Parkersburg is obligated to ensure that the grievance process is not abused for retaliatory purposes. WVU at Parkersburg permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, made for purposes of retaliation, instead. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **5. Right to an Advisor**

The parties may each have an Advisor<sup>11</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>12</sup>

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<sup>10</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

<sup>11</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

<sup>12</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

#### **a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the WVU at Parkersburg community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose to have an Advisor assigned from the pool available from WVU at Parkersburg, the Advisor will be trained by WVU at Parkersburg and be familiar with WVU at Parkersburg's resolution process.

If the parties choose an Advisor from outside the pool of those identified by WVU at Parkersburg, the Advisor may not have been trained by WVU at Parkersburg and may not be familiar with WVU at Parkersburg policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

#### **b. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

WVU at Parkersburg cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, WVU at Parkersburg is not obligated to provide an attorney.

#### **c. Advisors in Hearings/WVU at Parkersburg-Appointed Advisor**

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, WVU at Parkersburg will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, WVU at Parkersburg will appoint an Advisor who will do so **thoroughly**, regardless of the participation or non-participation of the advised party in the

hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

#### **e. Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews or other meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and WVU at Parkersburg's policies and procedures.

#### **f. Advisor Violations of WVU at Parkersburg Policy**

All Advisors are subject to the same WVU at Parkersburg policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **g. Sharing Information with the Advisor**

WVU at Parkersburg expects that the parties may wish to have WVU at Parkersburg share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

WVU at Parkersburg also provides a consent form that authorizes WVU at Parkersburg to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before WVU at Parkersburg is able to share records with an Advisor.

#### **h. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by WVU at Parkersburg. WVU at Parkersburg may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by WVU at Parkersburg's privacy expectations.

#### **i. Expectations of an Advisor**

WVU at Parkersburg generally expects an Advisor to adjust their schedule to allow them to attend WVU at Parkersburg meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

WVU at Parkersburg may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **j. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

### **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with WVU at Parkersburg policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. WVU at Parkersburg encourages parties to discuss any sharing of information with their Advisors before doing so.

#### **a. Informal Resolution**

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, usually before a formal investigation takes place; see discussion in b., below.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see discussion in c., below.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, WVU at Parkersburg will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by WVU at Parkersburg.

WVU at Parkersburg will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

### **b. Alternate Resolution Mechanism**

Alternate Resolution is an informal mechanism by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of allegation;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

### **c. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged

misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and WVU at Parkersburg are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of WVU at Parkersburg policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

#### **d. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and WVU at Parkersburg. Negotiated Resolutions are not appealable.

## 7. Grievance Process Pool

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all members of the campus community.

The list of Pool members and a description of the Pool can be found at [www.wvup.edu/about/social-justice/](http://www.wvup.edu/about/social-justice/).

### a. Pool Member Roles

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Officer

### b. Pool Member Appointment

The Title IX Coordinator, in consultation with the President, appoints the Pool<sup>13</sup>, which acts with independence and impartiality in their assigned roles. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, WVU at Parkersburg can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

The Pool includes representation from Human Resources, Academic and Student Affairs, the Jackson County Center, at least one representative from the Campus Police and Security Department, as well as other administrators or professional staff. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

### c. Pool Member Training

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

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<sup>13</sup> This does not preclude WVU at Parkersburg from having all members of the Pool go through an application and/or interview/selection process.

- The scope of WVU at Parkersburg's Harassment and Discrimination Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by WVU at Parkersburg with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

Specific training is also provided for Appeal Officers, intake personnel, Advisors (who are WVU at Parkersburg employees), and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: [www.wvup.edu/about/social-justice/](http://www.wvup.edu/about/social-justice/).

## **8. Formal Grievance Process**

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

WVU at Parkersburg operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

## **9. Appointment of Investigators/ Ensuring Impartiality**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

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. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and 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 Deputy Title IX Coordinator on the Parkersburg campus.

## 10. Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent. The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that WVU at Parkersburg presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about WVU at Parkersburg’s policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that WVU at Parkersburg’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to WVU at Parkersburg’s VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the U.S. Postal address indicated in official WVU at Parkersburg records, or emailed to the parties’ college-issued email accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## 11. Resolution Timeline

WVU at Parkersburg will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate

cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

## **12. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

WVU at Parkersburg will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

## **13. Delays in the Investigation Process and Interactions with Law Enforcement**

WVU at Parkersburg may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

WVU at Parkersburg will communicate in writing the anticipated duration of the delay and reason to the parties, and provide the parties with status updates if necessary. WVU at Parkersburg will promptly resume its investigation and resolution process as soon as feasible. During such a delay, WVU at Parkersburg will implement supportive measures as deemed appropriate.

WVU at Parkersburg action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **14. Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation.

- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties.
- Meet with the Complainant to finalize their statement, if necessary.
- Consult with the Title IX Coordinator about any need to amend the NOIA with any additional or dismissed allegations.
- 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 their respective interviews and meetings.
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible.
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the Title IX Coordinator and to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding.
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which WVU at Parkersburg does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- May elect to share the responses between the parties for additional responses.
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- Share the report with the Title IX Coordinator for their review and feedback.
- Incorporate any relevant feedback, then share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. Investigators should also provide parties with a file of any directly related evidence that was not included in the report.

## **15. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of WVU at Parkersburg are expected to cooperate with and participate in WVU at Parkersburg's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. WVU at Parkersburg will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

## **16. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties will be made aware of audio and/or video recording. Such recordings are property of WVU at Parkersburg and copies will not usually be provided to any party or witness.

## **17. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

## **18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select the appropriate Decision-maker(s) from the Pool depending on whether the Respondent is an employee or a student. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the context and nature of the alleged misconduct.

## **19. Hearing Decision-maker Composition**

WVU at Parkersburg will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the panel members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. 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.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

## **20. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator (or the Chair) will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding

all other campus activities.

- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- 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 testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and WVU at Parkersburg will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.<sup>14</sup>
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties may or may not bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by WVU at Parkersburg and remain within the 60-90 business day goal for resolution.

~~In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.~~

## **21. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.

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<sup>14</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

## **22. Pre-Hearing Preparation**

The Chair or hearing facilitator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

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 holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

## **23. Pre-Hearing Meetings**

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

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend **pre-hearing** meetings.

Recording of the pre-hearing meeting(s) is optional at the discretion of the Chair.

## **24. Hearing Procedures**

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Harassment and Discrimination.

Participants at the hearing will include the Chair, any additional panelists, the Investigator(s) who conducted the investigation, the parties (or up to three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, and any called witnesses. Additionally, a hearing facilitator, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services may be present.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties, and the witnesses will then be excused.

## **25. Evidentiary Considerations in the Hearing**

Any evidence that the Chair determines is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, in accordance with a progressive discipline system, when applicable. This information is only considered at the sanction stage of the process, and is not

shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

## **26. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

## **27. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Chair or hearing facilitator then conducts the hearing according to the hearing script. 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 non-voting 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.

## **28. Investigator Presents the Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

## **29. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

### **30. Refusal to Submit to Cross-Examination and Inferences**

Pursuant to federal regulations, if a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement provided by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

~~If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.<sup>15</sup>~~

Cross-examination is an all or nothing proposition, meaning that if any question is refused, no statements of that party or witness are admissible. Only if a party or witness is willing to submit to cross-examination, and

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<sup>15</sup> Based on language provided in the preamble to the regulations (Federal Register, May 19, 2020, p. 30349).

answers all questions, will their statements prior to or at the hearing be fully admissible. If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard all statements. Evidence provided that is something other than a statement by the party or witness may be considered. Whether a party or witness does or does not answer questions from the Decision-maker, their statements will be admissible as long as they are willing to submit to cross-examination questions, even if they are not asked such questions. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions. If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions. If a party's Advisor of choice refuses to comply with the institution's established rules of decorum for the hearing, WVU at Parkersburg may require the party to use a different Advisor. If an institution-provided Advisor refuses to comply with the rules of decorum, the institution may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with WVU at Parkersburg's established rules of decorum for the hearing, WVU at Parkersburg may require the party to use a different Advisor. If a WVU at Parkersburg-provided Advisor refuses to comply with the rules of decorum, WVU at Parkersburg may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **31. Recording Hearings**

Hearings (but not deliberations) are recorded by WVU at Parkersburg for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of WVU at Parkersburg will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **32. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to

determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but would be there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then – at their discretion – consider the previously submitted party impact statements in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies).

The Decision-maker(s) will also review any pertinent conduct history provided by the appropriate administrator and will determine the appropriate sanction(s), possibly in consultation with other appropriate administrator(s), if required.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **33. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair and consult with general counsel to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within seven (7) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the U.S. Postal address of the parties as indicated in official WVU at Parkersburg records, or emailed to the parties' college-issued email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by WVU at Parkersburg from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent WVU at Parkersburg is permitted to share such information under state or federal law; any sanctions issued which WVU at Parkersburg is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to WVU at Parkersburg's educational or employment program or activity, to the extent WVU at Parkersburg is permitted to share such information under state or federal law. (This detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent.)

The Notice of Outcome will also include information on when the results are considered by WVU at Parkersburg to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **34. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

#### **a. Student Sanctions**

The following are the sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any WVU at Parkersburg policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Education/Counseling:* A mandate to meet with and engage in specified educational activities and/or college-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension may be automatically

placed on probation through the remainder of their tenure as a student at WVU at Parkersburg. This sanction will be noted as a Conduct Suspension on the student's official transcript so long as that suspension remains in effect.

- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend WVU at Parkersburg-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma*: WVU at Parkersburg may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities **if the student has an allegation pending or** as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: WVU at Parkersburg reserves the right to revoke a degree previously awarded from WVU at Parkersburg for fraud, misrepresentation, and/or other violation of WVU at Parkersburg policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including WVU at Parkersburg registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, WVU at Parkersburg may assign any other sanctions as deemed appropriate.

#### **b. Employee Sanctions/Responsive Actions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions*: In addition to or in place of the above sanctions/responsive actions, WVU at Parkersburg may assign any other responsive actions as deemed appropriate.

### **35. Withdrawal or Resignation While Charges Pending**

**a. Students:** ~~If a student has an allegation pending for violation of the Policy on Harassment and Discrimination, WVU at Parkersburg may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.~~

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from WVU at Parkersburg, the resolution process ends, as WVU at Parkersburg no longer has disciplinary jurisdiction over the withdrawn student.

However, WVU at Parkersburg will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to WVU at Parkersburg. Such exclusion applies to all campuses of WVU at Parkersburg. ~~A hold will be placed on their ability to be readmitted.~~ They may also be barred from WVU at Parkersburg property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to WVU at Parkersburg unless and until all sanctions have been satisfied.

**b. Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as WVU at Parkersburg no longer has disciplinary jurisdiction over the resigned employee.

However, WVU at Parkersburg will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with WVU at Parkersburg or any campus of WVU at Parkersburg, and the records retained by the Title IX Coordinator and the Human Resources Department will reflect that status.

All WVU at Parkersburg responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter and is not eligible for rehire.

## **36. Appeals**

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within 5 (five) business days of the delivery of the Notice of Outcome.

An Appeal Officer will be designated by the Title IX Coordinator. No Appeal Officer will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Officer for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **a. Grounds for Appeal**

Appeals are limited to the following grounds:

- 1) A procedural error or omission occurred that significantly impacted the outcome (e.g., material deviation from established procedures, failure to correctly apply the evidentiary standard).
- 2) To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- 3) Substantiated bias on the part of Decision-makers, Investigators or Title IX Coordinator.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Officer and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Officer will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) by mail, email, and/or by hand-delivery of the request with the approved grounds and then be given 5 (five) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Officer to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Officer and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in five (5) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Officer will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than five (5) business days, barring exigent circumstances.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which WVU at Parkersburg is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent WVU at Parkersburg is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by mail, email or hand-delivery. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

#### **b. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive

measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, WVU at Parkersburg may still place a holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal. When the original sanctions included separation of a student. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator or designee whose determination is final.

### **c. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Officers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Officer may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal decision may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to WVU at Parkersburg or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **37. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies **owed offered** by WVU at Parkersburg to the Respondent to ensure no effective denial of educational access. WVU at Parkersburg will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair WVU at Parkersburg's ability to provide these services.

### **38. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Officer).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from WVU at Parkersburg and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **39. Recordkeeping**

WVU at Parkersburg will maintain indefinitely records of:

- a. Each sexual harassment or discriminatory harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- b. Any disciplinary sanctions imposed on the Respondent;
- c. Any remedies provided to the Complainant designed to restore or preserve equal access to WVU at Parkersburg's education program or activity;
- d. Any appeal and the result therefrom;
- e. Any Informal Resolution and the result therefrom;
- f. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:

- The basis for all conclusions that the response was not deliberately indifferent;
- Any measures designed to restore or preserve equal access to WVU at Parkersburg's education program or activity; and
- If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

WVU at Parkersburg will maintain records of all materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process for a minimum of seven (7) years. WVU at Parkersburg will make these training materials publicly available on the institution's website. WVU at Parkersburg will also maintain any and all records in accordance with state and federal laws.

#### **40. Disabilities Accommodations in the Resolution Process**

WVU at Parkersburg is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to WVU at Parkersburg's resolution process.

Any student needing such accommodations or support should contact the Executive Director of Student Support Services, and any employee should contact the Executive Director of Human Resources. The respective Executive Director will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

## Appendix 2

### **Interim Administrative Resolution Procedures for Alleged Violations of the Policy on Harassment and Discrimination:**

#### **PROCESS “B”**

##### **1. Overview**

WVU at Parkersburg will act on any formal or informal allegation or notice of violation of the Policy on Harassment and Discrimination that is received by the Title IX Coordinator<sup>16</sup> or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy.

The procedures described below apply to allegations of harassment or discrimination on the basis of protected class status involving students, staff, faculty members, or third parties.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through Policy D-46, Code of Student Conduct, or Policy B-21, Employee Discipline.

##### **2. Initial Assessment**

Following intake, receipt of notice, or a complaint of an alleged violation of WVU at Parkersburg's nondiscrimination Policy, the Title IX Coordinator<sup>17</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive response or an Administrative Resolution.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. In this case, the Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.

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<sup>16</sup> All references herein to a Title IX Coordinator also include a designee of the Title IX Coordinator.

<sup>17</sup> If circumstances require, the Executive Director of Human Resources, serving as Deputy Title IX Coordinator, will oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- If Administrative Resolution is preferred, the Title IX Coordinator initiates the investigation process and determines whether the scope of the investigation will address:
  - Incident, and/or
  - A potential pattern of misconduct, and/or
  - A culture/climate issue.
- In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Threat Assessment Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:
  - Interim suspension of a Respondent who is a threat to health/safety;
  - Whether the Title IX Coordinator should pursue Administrative Resolution absent a willing/able Complainant;
  - Whether to put the investigation on the footing of incident and/or pattern and/or climate;
  - To help identify potentially predatory conduct;
  - To help assess/identify grooming behaviors;
  - Whether a Complaint is amenable to Informal Resolution, and what modality may be most successful;
  - Whether to permit a voluntary withdrawal by the Respondent;
  - Whether to impose transcript notation or communicate with a transfer institution about a Respondent;
  - Assessment of appropriate sanctions/remedies;
  - Whether a Clery Act Timely Warning and/or Trespass order is needed.

Based on the initial assessment, WVU at Parkersburg will initiate one of two responses:

- Informal Resolution – typically used for less serious offenses and only when all parties agree to Alternate Resolution, or when the Respondent is willing to accept responsibility for violating policy. This can also include a remedies-only response.
- Administrative Resolution – investigation of policy violation(s) and recommended finding, subject to a determination by the Title IX Coordinator and the opportunity to appeal to an Appeal Officer.

The investigation and the subsequent Administrative Resolution determine whether the nondiscrimination policy has been violated. If so, WVU at Parkersburg will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator. At any point during the initial assessment or formal investigation, if the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

The Complainant may request that the Title IX Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary circumstances.

### **3. Resolution Process Pool**

The resolution processes rely on a pool of officials (“Pool”) to carry out the process. Members of the Pool are

announced in an annual distribution of this Policy to all members of the campus community.

The list of members and a description of the Pool can be found at [www.wvup.edu/about/social-justice/](http://www.wvup.edu/about/social-justice/). Members of the Pool are trained annually and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake for and initial guidance pertaining to the allegations
- To act as optional process Advisors to the parties
- To investigate allegations
- To serve as a Decision-maker
- To serve as an Appeal Officer

The Title IX Coordinator carefully vets Pool members for potential conflicts of interest or disqualifying biases and, in consultation with the President, appoints the Pool, which acts with independence and impartiality in their assigned roles.

Pool members receive annual training organized by the Title IX Coordinator, including a review of WVU at Parkersburg policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.

The Pool members also receive annual training on their respective roles. This training includes, but is not limited to:

- The scope of WVU at Parkersburg's Harassment and Discrimination Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- Types of evidence
- Deliberation
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by WVU at Parkersburg with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes

- How to serve impartially, by avoiding prejudice of the facts at issue, conflicts of interest, and bias
- Any technology to be use
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations

Specific training is also provided for Appeal Officers, intake personnel, and Advisors. All Pool members are required to attend this annual training.

The Resolution Process Pool includes representation from Human Resources, Academic and Student Affairs, the Jackson County Center, at least one representative from the Campus Police and Security Department, as well as other administrators or professional staff. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

#### **4. Counterclaims**

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. WVU at Parkersburg is obligated to ensure that any process is not abused for retaliatory purposes.

WVU at Parkersburg permits the filing of counterclaims, but uses the initial assessment, described in the Policy on Harassment and Discrimination, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of the Policy on Harassment and Discrimination.

#### **5. Advisors**

##### **a. Expectations of an Advisor**

WVU at Parkersburg generally expects an Advisor to adjust their schedule to allow them to attend WVU at Parkersburg meetings when planned, but the college may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

WVU at Parkersburg may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

Parties whose Advisors are disruptive or who do not abide by WVU at Parkersburg policies and procedures may face the loss of that Advisor and/or possible Policy violations.

Advisors are expected to consult with their advisees without disrupting WVU at Parkersburg meetings

or interviews. Advisors do not represent parties in the process; their role is only to advise.

### **b. Expectations of the Parties with Respect to Advisors**

Each party may choose an Advisor<sup>18</sup> who is eligible and available<sup>19</sup> to accompany them throughout the process. The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Investigator(s) and/or the Title IX Coordinator if they change Advisors at any time.

Upon written request of a party, WVU at Parkersburg will copy the Advisor on all communications between WVU at Parkersburg and the party. The Advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

## **6. Resolution Options**

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with WVU at Parkersburg Policy.

While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose, but are encouraged to discuss with their Advisors first before doing so.

### **a. Informal Resolution**

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternate Resolution or when the Respondent accepts responsibility for violating Policy, or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the fact, Administrative Resolution may be pursued.

#### **1) Alternate Resolution**

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<sup>18</sup> This could include an attorney, advocate, or support person. Witnesses are not entitled to Advisors within the process, though they can be advised externally. If WVU at Parkersburg allows more than one Advisor for one party, they should do so for all parties.

<sup>19</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Alternate Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts. The parties must consent to the use of Alternate Resolution.

The Title IX Coordinator determines if Alternate Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternate Resolution.

In an Alternate Resolution meeting, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. Institutionally-imposed sanctions are not possible as the result of an Alternate Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternate Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the Administrative Resolution process is completed should the parties and the Title IX Coordinator believe it could be beneficial. The results of Alternate Resolution are not appealable.

## **2) Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of WVU at Parkersburg Policy.

The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties are still able to seek Alternate Resolution on the remaining allegations, subject to the stipulations above.

### **3) Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement any agreement to resolve the allegations that satisfies all parties and WVU at Parkersburg.

#### **b. Administrative Resolution**

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by the Harassment and Discrimination Policy at any time during the process. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If Administrative Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given at least 48 hours in advance of an interview. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, will be made in writing, and may be delivered by one or more of the following methods: in person, mailed to the U.S. Postal address of the parties as indicated in official WVU at Parkersburg records, or emailed to the parties' WVU at Parkersburg-issued email account.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

WVU at Parkersburg aims to complete all investigations within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

Once the decision is made to commence an investigation, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) days of determining that an investigation should proceed. The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the Deputy Title IX Coordinator at the main Parkersburg campus.

Investigations are completed expeditiously, normally within 10-20 business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. WVU at Parkersburg will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with

the parties to update them on the progress and timing of the investigation.

WVU at Parkersburg may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke WVU at Parkersburg's resolution process are being investigated by law enforcement. WVU at Parkersburg will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete.

WVU at Parkersburg action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

## **7. Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Administrative Resolution Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor, if any, to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent. The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement about WVU at Parkersburg's policy on retaliation,
- Information about the privacy of the process,
- Information on the right to have an Advisor of their choosing present for all meetings attended by the advisee,
- A statement informing the parties that WVU at Parkersburg's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to WVU at Parkersburg's VAWA Brochure, if applicable
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the U.S. Postal address indicated in official WVU at Parkersburg records, or emailed to the parties' college-issued email accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **8. Investigation**

The Investigators typically take the following steps, if not already completed (not necessarily in this order):

- Assist the Title IX Coordinator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy.
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses.
- Meet with the Complainant to finalize their statement, if necessary.
- Identify all policies implicated by the alleged misconduct if not already identified.
- Consult with the Title IX Coordinator about any need to amend the NOIA with any additional or withdrawn allegations.
- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness.
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible.
- Interview all relevant individuals and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses.
- If there is insufficient evidence to support reasonable cause, the investigation process is closed with no further action.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the parties and to the Title IX Coordinator throughout the investigation.
- Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding.
- Write a comprehensive investigation report fully summarizing the investigation and all evidence.
- Share the draft investigation report with the Title IX Coordinator for review and feedback.
- Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s).
- Provide each party with a full and fair opportunity to respond to the report in writing within five (5) business days and incorporate that response into the report.
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop.

- Provide the final report to the Title IX Coordinator. Recommend to the Title IX Coordinator a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not).

## **9. Determination**

Within two to three days of receiving the Investigator's recommendation, the Title IX Coordinator or a trained, designated Decision-maker from the Pool<sup>20</sup> reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the Title IX Coordinator/Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The recommendation of the investigation should be strongly considered but is not binding on the Title IX Coordinator/Decision-Maker. The Title IX Coordinator or Decision-maker may invite and consider impact statements from the parties if and when determining appropriate sanction(s), if any.

The Title IX Coordinator then timely provides the parties with a written Notice of Outcome to include findings, any sanction(s), and a detailed rationale, delivered simultaneously (without undue delay) to the parties.

## **10. Additional Details of the Investigation Process**

### **a. Witness responsibilities**

Witnesses (as distinguished from the parties) who are faculty or staff of WVU at Parkersburg are expected to cooperate with and participate in WVU at Parkersburg's investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.

### **b. Remote processes**

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) or Decision-maker determine that timeliness or efficiency dictates a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. Where remote technologies are used, WVU at Parkersburg makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

### **c. Recording**

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<sup>20</sup> When the Title IX Coordinator is the Investigator or has been heavily involved in the process prior to determination, a Decision-maker should be designated from the Pool to ensure there is no conflict of interest.

No unauthorized audio or video recording of any kind is permitted during the resolution process. If Investigator(s) elect to audio and/or video record interviews, all involved parties will be made aware.

#### **d. Evidence**

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

#### **e. Sexual history/patterns**

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); or (3) the character of the parties.

#### **f. Previous allegations/violations**

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s), in accordance with a progressive discipline system, when applicable.

#### **g. Character witnesses**

Neither the Title IX Coordinator nor the Investigator(s) meet with character witnesses, but the Investigator(s) may accept up to two (2) letters supporting the character of each of the parties. Such letters must be provided to the Investigator(s) prior to the report being finalized; otherwise, the parties have waived their right to provide such letters. Character witnesses or evidence may be offered. The investigation and hearing will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

#### **h. Notification of outcome**

If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator, in consultation with other administrators as appropriate, determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Title IX Coordinator informs the parties of the determination within two to three business days of the resolution, ideally simultaneously, but without significant time delay between notifications. Notifications are made in writing and may be delivered by one or more of the following methods: in

person; mailed to the U.S. Postal address of the parties as indicated in official WVU at Parkersburg records; or emailed to the parties' WVU at Parkersburg-issued email accounts. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which WVU at Parkersburg is permitted to share pursuant to state or federal law, and the rationale supporting the essential findings to the extent WVU at Parkersburg is permitted to share under state or federal law.

The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found below.

## 11. Sanctions

Factors considered when determining any sanction(s)/responsive action(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Title IX Coordinator

The sanction(s) will be implemented as soon as is feasible. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

### a. Student Sanctions

The following are the sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any WVU at Parkersburg policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Education/Counseling:* A mandate to meet with and engage in specified educational activities and/or college-sponsored or external counseling to better comprehend the misconduct

and its effects.

- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension may be automatically placed on probation through the remainder of their tenure as a student at WVU at Parkersburg. This sanction will be noted as a Conduct Suspension on the student's official transcript so long as that suspension remains in effect.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend WVU at Parkersburg-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma*: WVU at Parkersburg may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: WVU at Parkersburg reserves the right to revoke a degree previously awarded from WVU at Parkersburg for fraud, misrepresentation, and/or other violation of WVU at Parkersburg policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including WVU at Parkersburg registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, WVU at Parkersburg may assign any other sanctions as deemed appropriate.

## **b. Employee Sanctions/Responsive Actions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*

- *Restriction of stipends and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, WVU at Parkersburg may assign any other responsive actions as deemed appropriate.

## 12. Withdrawal or Resignation While Charges are Pending

**a. Students:** If a student has an allegation pending for violation of the Policy on Harassment and Discrimination, WVU at Parkersburg may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from WVU at Parkersburg, the resolution process ends, as WVU at Parkersburg no longer has disciplinary jurisdiction over the withdrawn student.

However, WVU at Parkersburg will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to WVU at Parkersburg. Such exclusion applies to all campuses of WVU at Parkersburg. A hold will be placed on their ability to be readmitted. They may also be barred from WVU at Parkersburg property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to WVU at Parkersburg unless and until all sanctions have been satisfied.

**b. Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as WVU at Parkersburg no longer has disciplinary jurisdiction over the resigned employee.

However, WVU at Parkersburg will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with WVU at Parkersburg or any campus of WVU at Parkersburg, and the records retained by the Title IX Coordinator and the Human Resources Department will reflect that status.

All WVU at Parkersburg responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter and is not eligible for rehire.

## 13. Appeals

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the written finding of the Title IX Coordinator or other Decision-maker.

Any party may appeal the findings only under the grounds described below.

An Appeal Officer chosen from the Pool will be designated by the Title IX Coordinator from those who have not been involved in the process previously. Any party may appeal, but appeals are limited to the following grounds:

- 1) A procedural error or omission occurred that significantly impacted the outcome (e.g., material deviation from established procedures, failure to correctly apply the evidentiary standard).
- 2) To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- 3) Substantiated bias on the part of Decision-makers, Investigators or Title IX Coordinator.

When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party(ies) or other appropriate persons such as the Investigator(s), who may file a response within three (3) business days. The other party may also bring their own appeal on separate grounds.

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) business days. These responses or appeal requests will be shared with each party. The Appeal Officer will review the appeal request(s) within three (3) business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the Appeal Officer dismisses the appeal.

When the Appeal Officer finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Appeal Officer are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Appeal Officer to substitute their judgment for that of the original Investigator(s) or Title IX Coordinator/Decision-maker merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Appeal Officer.
- Sanctions imposed as the result of Administrative Resolution are implemented immediately unless the Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - For students: Graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing within five (5) business days of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.

- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.
- In rare cases when a procedural or substantive error cannot be cured by the original Investigator(s) and/or Title IX Coordinator/Decision-maker (as in cases of bias), the Appeal Chair/Panel may recommend a new investigation and/or Administrative Resolution process, including a new resolution administrator.
- The results of a new Administrative Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's reinstatement to WVU at Parkersburg or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

#### **14. Long-Term Remedies/Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedial requirements **owed** **offered** by WVU at Parkersburg to the Respondent.

#### **15. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from WVU at Parkersburg and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## **16. Recordkeeping**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept indefinitely, or as required by state or federal law or institutional policy, **by the Title IX Coordinator in the Title IX case database.**

## **17. Disabilities Accommodation in the Resolution Process**

WVU at Parkersburg is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to WVU at Parkersburg's resolution process.

Any student needing such accommodations or support should contact the Executive Director of Student Support Services, and any employee should contact the Executive Director of Human Resources. The respective Executive Director will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

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