

West Virginia University at Parkersburg Board of Governors

**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:** September 29, 2020

**1.5 Policy History:** This policy and attached procedures replace 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.

2.29 **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.

2.30 **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.

2.31 **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.

2.32 **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: [www.wvup.edu/harassment-and-discrimination/](http://www.wvup.edu/harassment-and-discrimination/)

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](mailto: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](mailto: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: [www2.ed.gov/about/offices/list/ocr/index.html](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: [www.wvf.state.wv.us/wvhrc/](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: [www.eeoc.gov/](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/harassment-and-discrimination/](http://www.wvup.edu/harassment-and-discrimination/). 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).

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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.

- 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 educational 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 whom the institution has jurisdiction to take disciplinary action) 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.
  2. Sexual Harassment:
    - unwelcome 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.

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

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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.

- 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:

- 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

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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.



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.

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

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 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 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**

- 17.1 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.
- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 The exercise of rights protected under the First Amendment does not constitute retaliation.
- 17.6 Charging an individual with a code of conduct violation for making a materially false statement in bad faith 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.