

West Virginia University at Parkersburg Board of Governors

POLICY A-44
POLICY AND PROCEDURES REGARDING HARASSMENT AND DISCRIMINATION

Appendix 2

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

PROCESS “B”

1. Nondiscrimination Notice

- 1.1. West Virginia University Parkersburg is an Equal Opportunity nondiscriminatory institution. Auxiliary aids and services are available upon request to individuals with disabilities. West Virginia University Parkersburg will take steps to assure that a lack of English language skills will not be a barrier to admission and participation in career and technical education programs.

2. Overview

- 2.1. West Virginia University 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 VI/Title IX/Section 504 Coordinator¹ or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy.
- 2.2. 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.
- 2.3. 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 or 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.”

3. Initial Assessment

- 3.1. Following intake, receipt of notice, or a complaint of an alleged violation of West Virginia University Parkersburg’s Nondiscrimination Policy, the Title VI/Title IX/Section 504

¹ All references herein to a Title IX Coordinator also include a designee of the Title IX Coordinator.

Coordinator² engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- 3.1.1. The Title VI/Title IX/Section 504 Coordinator reaches out to the Complainant to offer supportive measures.
- 3.1.2. The Title VI/Title IX/Section 504 Coordinator works with the Complainant to ensure he or she has an Advisor.
- 3.1.3. The Title VI/Title IX/Section 504 Coordinator works with the Complainant to determine whether the Complainant prefers a supportive response or an Administrative Resolution.
 - 3.1.3.a. If the Complainant prefers a supportive and remedial response, the Title VI/Title IX/Section 504 Coordinator works with the Complainant to identify his or her wishes and then seeks to facilitate implementation. In this case, the Coordinator will not initiate the Administrative Resolution process i, though the Complainant can elect to initiate it later if desired.
 - 3.1.3.b. If the Complainant prefers an Informal Resolution option, the Title VI/Title IX/Section 504 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.
 - 3.1.3.c. If the Complainant prefers an Administrative Resolution, the Title VI/Title IX/Section 504 Coordinator initiates the investigation process and determines whether the scope of the investigation will address:
 - 3.1.3.c.1. The incident;
 - 3.1.3.c.2. A potential pattern of misconduct; and/or
 - 3.1.3.c.3. A culture/climate issue
- 3.1.4. In some cases, the Title VI/Title IX/Section 504 Coordinator may determine that the Threat Assessment Team should conduct a Violence Risk Assessment (VRA) as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:
 - 3.1.4.a. Interim suspension of a Respondent who is a threat to health/safety;

² 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 if the Coordinator is otherwise unavailable or unable to fulfill his or her duties.

- 3.1.4.b. Whether the Title VI/Title IX/Section 504 Coordinator should pursue Administrative Resolution absent a willing/able Complainant;
 - 3.1.4.c. Whether to put the investigation on the footing of incident and/or pattern and/or climate;
 - 3.1.4.d. Help identifying potentially predatory conduct;
 - 3.1.4.e. Help assessing/identifying grooming behaviors;
 - 3.1.4.f. Whether a Complainant is amenable to Informal Resolution and what modality may be most successful;
 - 3.1.4.g. Whether to permit a voluntary withdrawal by the Respondent;
 - 3.1.4.h. Whether to impose transcript notation or communicate with a transfer institution about a Respondent;
 - 3.1.4.i. Assessment of appropriate sanctions/remedies;
 - 3.1.4.j. Whether a Clery Act Timely Warning and/or Trespass Order is needed.
- 3.1.5. Based on the initial assessment, West Virginia University Parkersburg will initiate one of two responses:
- 3.1.5.a. 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; or
 - 3.1.5.b. Administrative Resolution: investigation of policy violation(s) and recommended finding, subject to a determination by the Title VI/Title IX/Section 504 Coordinator, and the opportunity to appeal to an Appeal Officer.
- 3.2. The investigation and the subsequent Administrative Resolution determine whether a Respondent has violated the Nondiscrimination Policy. If so, West Virginia University Parkersburg will promptly implement effective remedies designed to end the discrimination, prevent its recurrence, and address the effects.
- 3.3. The decision on which process to follow is made at the sole discretion of the Title VI/Title IX/Section 504 Coordinator, taking into consideration the preference of the parties when appropriate. At any point during the initial assessment or formal investigation, if the Title VI/Title IX/Section 504 Coordinator determines that reasonable cause does not support the conclusion that the Respondent has violated the Nondiscrimination Policy, the process and notify the parties of such action.

- 3.4. The Complainant may request that the Title VI/Title IX/Section 504 Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Title VI/Title IX/Section 504 Coordinator, but the request is usually only granted in extraordinary circumstances.

4. Resolution Process Pool

- 4.1. The Executive Director of Human Resources and Compliance will announce members of a pool of officials ("Pool") in an annual distribution of the Nondiscrimination Policy to all members of the campus community.
- 4.2. The list of members and a description of the Pool can be found at www.wvup.edu/harassment-and-discrimination/. Members of the Pool are trained annually and can serve in any of the following roles at the direction of the Title VI/Title IX/Section 504 Coordinator:
 - 4.2.1. To provide appropriate intake for and initial guidance pertaining to the allegations;
 - 4.2.2. To act as optional process advisors to the parties;
 - 4.2.3. To investigate allegations;
 - 4.2.4. To serve as a decision maker; and/or
 - 4.2.5. To serve as an Appeal Officer.
- 4.3. The Title VI/Title IX/Section 504 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.
- 4.4. Pool members receive annual training organized by the Title VI/Title IX/Section 504 Coordinator, including a review of West Virginia University 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.
- 4.5. The Pool members also receive annual training on their respective roles. This training includes, but is not limited to:
 - 4.5.1. The scope of West Virginia University Parkersburg's Harassment and Discrimination Policy and Procedures;
 - 4.5.2. How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability;
 - 4.5.3. Implicit bias;

- 4.5.4. Disparate treatment and impact;
- 4.5.5. Reporting, confidentiality, and privacy requirements;
- 4.5.6. Applicable laws, regulations, and State and federal regulatory guidance;
- 4.5.7. How to implement appropriate and situation-specific remedies;
- 4.5.8. How to investigate in a thorough, reliable, and impartial manner;
- 4.5.9. How to uphold fairness, equity, and due process;
- 4.5.10. How to weigh evidence;
- 4.5.11. How to conduct questioning;
- 4.5.12. How to assess credibility;
- 4.5.13. Impartiality and objectivity;
- 4.5.14. Types of evidence;
- 4.5.15. Deliberation;
- 4.5.16. How to render findings and generate clear, concise, evidence-based rationales;
- 4.5.17. The definitions of all offenses;
- 4.5.18. How to apply definitions used by West Virginia University Parkersburg with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy;
- 4.5.19. How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes;
- 4.5.20. How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- 4.5.21. Any technology to be used;
- 4.5.22. Issues of relevance of questions and evidence;
- 4.5.23. Issues of relevance to create an investigation report that fairly summarizes relevant evidence; and
- 4.5.24. How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations.

- 4.6. The college will also provide specific training for Appeal Officers, intake personnel, and Advisors. All Pool members are required to attend this annual training.
- 4.7. 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 VI/Title IX/Section 504 Coordinator.

5. Counterclaims

- 5.1. A Respondent may make counterclaims in good faith but shall not make counterclaims in bad faith or for purposes of retaliation. West Virginia University Parkersburg shall ensure that the processes established in the Nondiscrimination Policy are not used for retaliatory purposes or otherwise abused. Counterclaims made for retaliatory purposes or otherwise made in bad faith may constitute a violation of the Policy on Harassment and Discrimination and will be handled accordingly.
- 5.2. West Virginia University 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. The college will process good faith allegations using the resolution procedures below, typically after resolution of the underlying allegation.
- 5.3. The college will process counterclaims in a timely manner, but is not required to process them at the same time it is processing the original complaint. Allegations and counterclaims may be resolved through the same investigation at the discretion of the Title VI/Title IX/Section 504 Coordinator.

6. Advisors

- 6.1. Expectations of an Advisor
 - 6.1.1. West Virginia University Parkersburg expects Advisor to adjust their schedules to allow them to attend West Virginia University 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.
 - 6.1.2. West Virginia University Parkersburg may 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.
 - 6.1.3. Parties whose Advisors are disruptive or who do not abide by West Virginia University Parkersburg policies and procedures may face the loss of that Advisor and/or other consequences that may result from Policy violations.

6.1.4. Advisors are expected to consult with their advisees without disrupting West Virginia University Parkersburg meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

6.2. Expectations of the Parties with Respect to Advisors

6.2.1. Each party may choose an Advisor³ who is eligible and available⁴ to accompany them throughout the process. The Advisor can be anyone, including an attorney, but may 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.

6.2.2. The parties are expected to inform the Investigators of the identity of their Advisor at least two 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.

6.2.3. The parties shall provide timely notice to the Investigator(s) and/or the Title VI/Title IX/Section 504 Coordinator if they change Advisors at any time.

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

7. Resolution Options

7.1. Proceedings are private and confidential. All persons present at any time during the resolution process shall maintain the privacy and confidentiality of the proceedings in accord with West Virginia University Parkersburg Policy; *Provided*, That the parties may share their own experiences with others if they so choose. However, the parties should discuss such action with their Advisors before doing so.

7.2. Informal Resolution

7.2.1. 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 VI/Title IX/Section 504 Coordinator can resolve the matter informally by providing remedies to resolve the situation.

³ 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, it shall offer the same opportunity to all parties.

⁴ "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.

7.2.2. 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, either party may pursue Administrative Resolution.

7.2.3. Alternate Resolution

7.2.3.a. 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.

7.2.3.b. The Title VI/Title IX/Section 504 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.

7.2.3.c. In an Alternate Resolution meeting, a trained administrator facilitates a dialogue with the parties to come 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.

7.2.3.d. The Title VI/Title IX/Section 504 Coordinator shall maintain records of any resolution that is reached, and failure to abide by the resolution may result in appropriate enforcement actions.

7.2.3.e. Alternate Resolution may not be used to address allegations 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 VI/Title IX/Section 504 Coordinator believe it could be beneficial. The results of Alternate Resolution are not appealable.

7.2.4. Respondent Accepts Responsibility for Alleged Violations

7.2.4.a. 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 VI/Title IX/Section 504 Coordinator shall make a determination that the Respondent is in violation of West Virginia University Parkersburg Policy.

7.2.4.b. The Title VI/Title IX/Section 504 Coordinator then shall determine appropriate sanction(s) or responsive actions, which the college shall

promptly implement 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.

7.2.4.c. If the Respondent accepts responsibility for all of the alleged policy violations and the Title VI/Title IX/Section 504 Coordinator has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Coordinator shall inform the Complainant of this outcome.

7.2.4.d. If the Respondent accepts responsibility for only some of the alleged policy violations and the Title VI/Title IX/Section 504 Coordinator has determined appropriate sanction(s) or responsive actions for those violations, which are promptly implemented, the investigator(s) shall continue to investigate the remaining allegations and the Coordinator shall resolve them in accordance with the above-listed provisions. The Coordinator shall inform the Complainant of this outcome. The parties may still seek Alternate Resolution on the remaining allegations, subject to the provisions above.

7.2.5. Negotiated Resolution. – The Title VI/Title IX/Section 504 Coordinator, with the consent of the parties, may negotiate and implement any agreement to resolve the allegations that satisfies all parties and West Virginia University Parkersburg.

7.3. Administrative Resolution

7.3.1. The college may pursue Administrative Resolution at any time during the process for any behavior for which the Respondent has not accepted responsibility that constitutes conduct prohibited by the Harassment and Discrimination Policy. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

7.3.2. If the college initiates Administrative Resolution, the Title VI/Title IX/Section 504 Coordinator shall provide written notification of the investigation to the parties at an appropriate time during the investigation. The investigator shall provide notice to an interviewee at least 48 hours in advance of an interview, unless extenuating circumstances prevent the investigator from doing so. Advance notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

7.3.3. Notification shall be in writing, shall include a meaningful summary of the allegations, 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 stated in official West Virginia University Parkersburg records, or emailed to the parties' West Virginia University Parkersburg-issued email accounts.

- 7.3.4. The notice is considered delivered once it is mailed, emailed, or hand-delivered to the recipient. The notification shall include citation to the policies allegedly violated.
- 7.3.5. West Virginia University Parkersburg shall complete all investigations within 60 business days of the Coordinator's receipt of the complaint; *Provided*, That the Coordinator may extend the investigation for good cause. The Coordinator shall provide written notice of such extension to the parties in a manner specified in subdivision 7.3.3. above.
- 7.3.6. Within two business days of the Coordinator's decision to commence an investigation, the Title VI/Title IX/Section 504 Coordinator shall appoint Pool members to conduct the investigation. Each investigative team shall consist of two Investigators; however, the number of investigators on any investigative team shall be at the discretion of the Coordinator. The Title VI/Title IX/Section 504 Coordinator shall vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.
- 7.3.7. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title VI/Title IX/Section 504 Coordinator shall determine whether the concern is substantiated. If the Coordinator finds that an investigator has a bias or conflict of interest, the Coordinator shall remove that Investigator from the matter and assign a different one from the Pool. If the alleged bias or conflict relates to the Title VI/Title IX/Section 504 Coordinator, the concerned party shall direct his or her objection to the Deputy Title VI/Title IX/Section 504 Coordinator at the main Parkersburg campus.
- 7.3.8. West Virginia University Parkersburg shall make a good faith effort to complete investigations as promptly as circumstances permit, depending on the nature, extent, and complexity of the allegations, the availability of witnesses, any necessary police involvement, and other relevant factors. The Coordinator shall communicate regularly with the parties to update them on the progress and timing of the investigation.
- 7.3.9. The timing of West Virginia University Parkersburg's investigation may be contingent on law enforcement activity when a law enforcement agency is investigating criminal charges based on the same behaviors that are the subject of the complaint.
- 7.3.10. West Virginia University Parkersburg action(s) are not contingent on civil or criminal charges involving the underlying incident(s) being brought, dismissed, or reduced.
- 7.3.11. Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

7.3.12. 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.

8. Notice of Investigation and Allegations

8.1. The Title VI/Title IX/Section 504 Coordinator shall 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. The Coordinator shall also provide a copy of the NOIA to the Complainant, as well as advance notice of when the NOIA will be delivered to the Respondent. The NOIA shall include:

8.1.1. A clear summary of all of the allegations;

8.1.2. The identity of the involved parties (if known);

8.1.3. The precise misconduct being alleged;

8.1.4. The date and location of the alleged incident(s) (if known);

8.1.5. The specific policies alleged to be violated;

8.1.6. A description of the applicable procedures;

8.1.7. A statement of the potential sanctions/responsive actions that could result from a finding of responsibility;

8.1.8. A statement about West Virginia University Parkersburg’s policy on retaliation;

8.1.9. Information about the privacy and confidentiality of the process;

8.1.10. Information on the right to have an Advisor of their choosing present for all meetings attended by the advisee;

8.1.11. A statement informing the parties that West Virginia University Parkersburg’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process;

8.1.12. Detail on how the party may request disability accommodations during the interview process;

8.1.13. A link to West Virginia University Parkersburg’s Violence Against Women Act Brochure, if applicable;

- 8.1.14. The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title VI/Title IX/Section 504 Coordinator any conflict of interest that the Investigator(s) may have; and
- 8.1.15. An instruction to preserve any evidence that is directly related to the allegations.
- 8.2. The Coordinator may make and deliver to the parties any amendments and updates to the NOIA as the investigation progresses and more information becomes available regarding the various allegations.
- 8.3. The NOIA shall be in writing and provided to the parties in the manner specified in subdivision 7.3.3. above.

9. Investigation

- 9.1. The Investigators may take any or all of the following steps as part of the investigation, if not already completed, and not necessarily in this order:
 - 9.1.1. Assist the Title VI/Title IX/Section 504 Coordinator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy;
 - 9.1.2. 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;
 - 9.1.3. Meet with the Complainant to finalize his or her statement, if necessary;
 - 9.1.4. Identify any additional policies that may be implicated by the alleged misconduct, if not already identified;
 - 9.1.5. Consult with the Title VI/Title IX/Section 504 Coordinator about any need to amend the NOIA with any additional or withdrawn allegations;
 - 9.1.6. 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;
 - 9.1.7. Notify the parties of any meeting or interview involving the other party, as far in advance as possible;
 - 9.1.8. Interview all relevant individuals and conduct follow-up interviews as necessary;
 - 9.1.9. Allow each party the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses;

- 9.1.10. Complete the investigation promptly and without unreasonable deviation from the timeline;
 - 9.1.11. Provide regular status updates to the parties and to the Title VI/Title IX/Section 504 Coordinator throughout the investigation;
 - 9.1.12. Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding;
 - 9.1.13. Write a comprehensive investigation report fully summarizing the investigation and all evidence;
 - 9.1.14. Share the draft investigation report with the Title VI/Title IX/Section 504 Coordinator for review and feedback;
 - 9.1.15. 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);
 - 9.1.16. Provide each party with a full and fair opportunity to respond to the report in writing within five business days and incorporate that response into the report;
 - 9.1.17. Respond, at their discretion, in writing in the report to the responses of the parties, and/or share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop; and
 - 9.1.18. Provide the final report to the Title VI/Title IX/Section 504 Coordinator recommending to the Title VI/Title IX/Section 504 Coordinator a finding, based on a preponderance of the evidence (a) that it is more likely than not the Respondent committed a policy violation or (b) there is insufficient evidence to support a probable cause determination in the investigation process is closed with no further action.
- 9.2. If the result of the investigation is a finding of No Probable Cause, the Coordinator shall close the investigation and take no further action other than to notify the parties in writing of the action. If the result of the investigation is a finding of Probable Cause, the Coordinator shall proceed with the determination process set forth below.

10. Determination

- 10.1. Within two to three days of receiving the Investigator's recommendation, the Title VI/Title IX/Section 504 Coordinator or a trained, designated Decision-maker from the Pool⁵ shall review the report and all responses and make the final determination on the basis of the preponderance of the evidence.

⁵ 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 by the college President from the Pool to ensure there is no conflict of interest.

- 10.2. If the record is incomplete, the Title VI/Title IX/Section 504 Coordinator/Decision-maker may direct the Investigators to reopen the investigation or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses.
- 10.3. The Investigators' recommendation is persuasive but is not binding on the Title VI/Title IX/Section 504 Coordinator/Decision-Maker. The Title VI/Title IX/Section 504 Coordinator or Decision-maker may invite and consider impact statements from the parties if and when determining appropriate sanction(s), if any.
- 10.4. The Title VI/Title IX/Section 504 Coordinator shall provide simultaneously to the parties a written Notice of Outcome, which shall include findings, any sanction(s), and a detailed rationale, within five business days.

11. Additional Details of the Investigation Process

- 11.1. **Witness responsibilities.** – Witnesses (as distinguished from the parties) who are faculty or staff of West Virginia University Parkersburg shall cooperate with and participate in West Virginia University 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 subject the employee to discipline.
- 11.2. **Remote processes.** – The Coordinator, the Investigators, or the Decision-maker (hereinafter referred to as the interviewer) may interview parties and witnesses by phone, video conferencing, or similar technologies if any of them 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, at the sole discretion of the interviewer. When the interviewer is conducting interviews remotely, West Virginia University Parkersburg shall make reasonable efforts to ensure the interviewee's privacy and that any technology does not work to the detriment of the parties or subject them to unfairness.
- 11.3. **Recording.** – Neither the parties or any witnesses may make audio or video recording of any kind during the resolution process. If Investigator(s) elect to audio and/or video record interviews, they shall inform all involved parties of such recording.
- 11.4. **Evidence.** – The Coordinator or Decision-maker may consider any evidence that is relevant and credible, including an individual's history of prior misconduct and evidence indicating a pattern of misconduct. The Coordinator or Decision-maker shall not consider irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.
- 11.5. **Sexual history/patterns.** – The Title VI/Title IX/Section 504 Coordinator the Investigator(s), and the Decision-maker may not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern of similar misconduct by the Respondent; (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.

11.6. **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 VI/Title IX/Section 504 Coordinator with information about previous good faith allegations and/or findings when that information suggests a potential pattern and/or predatory conduct. The Coordinator or Decision-maker may consider previous disciplinary action of any kind involving the Respondent in determining the appropriate sanction(s), in accordance with a progressive discipline system, when applicable.

11.7. **Character witnesses or evidence.** – The parties may offer character witnesses or evidence. The Coordinator shall determine if the character evidence is relevant and exclude it if it is not.

11.8. **Notification of outcome.** –

11.8.1. If the Respondent admits to the violation(s), or is found in violation, the Title VI/Title IX/Section 504 Coordinator, in consultation with other administrators as appropriate, shall determine sanction(s) and/or responsive actions, which the college shall promptly implement 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.

11.8.2. The Title VI/Title IX/Section 504 Coordinator shall inform the parties of the determination in writing within two to three business days of the resolution, delivered as specified in subdivision 7.3.3. above. Service is considered complete in accordance with subdivision 7.3.4. above.

11.8.3. The Notification of Outcome shall specify the finding for each alleged policy violation, any sanction(s) that may result that West Virginia University Parkersburg is permitted to share pursuant to State or federal law, and the rationale supporting the essential findings, to the extent West Virginia University Parkersburg is permitted to share it under State or federal law.

11.8.4. The Notification of Outcome shall detail when the determination is considered final and will detail any changes that are made prior to finalization.

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

12. Sanctions

- 12.1. Factors the Coordinator may consider when determining any sanction(s)/responsive action(s) include, but are not limited to:
 - 12.1.1. The nature, severity of, and circumstances surrounding the violation;
 - 12.1.2. An individual's disciplinary history;
 - 12.1.3. Previous allegations or allegations involving similar conduct;
 - 12.1.4. The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation;
 - 12.1.5. The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation;
 - 12.1.6. The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community;
 - 12.1.7. The impact on the parties; and
 - 12.1.8. Any other information deemed relevant by the Title VI/Title IX/Section 504 Coordinator
- 12.2. The college shall implement any sanction(s) as soon as practicable after the Coordinator issues the determination. 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.
- 12.3. Student Sanctions. – The following are the sanctions that the college may impose upon students or organizations singly or in combination:
 - 12.3.1. *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any West Virginia University Parkersburg policy, procedure, or directive will result in more severe sanctions/responsive actions;
 - 12.3.2. *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;
 - 12.3.3. *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. The college shall articulate the terms of the probation, which 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 the college deems appropriate;

- 12.3.4. *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until the student meets specific criteria. The college may automatically place students who return from suspension on probation through the remainder of their tenure as a student at West Virginia University Parkersburg. The college shall note this sanction as a Conduct Suspension on the student's official transcript so long as that suspension remains in effect;
- 12.3.5. *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend West Virginia University Parkersburg-sponsored events. The college shall note this sanction permanently as a Conduct Expulsion on the student's official transcript;
- 12.3.6. *Withholding Diploma*: Holding back a student's diploma for a specified period of time and/or denying 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;
- 12.3.7. *Revocation of Degree*: Rescinding a degree previously awarded by West Virginia University Parkersburg if it finds a student has committed fraud, misrepresentation, and/or other violation of West Virginia University Parkersburg policies, procedures, or directives in obtaining the degree or for other serious violations committed by a student prior to graduation;
- 12.3.8. *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including West Virginia University Parkersburg registration) for a specified period of time; and/or
- 12.3.9. *Other Actions*: Any other sanctions the college deems appropriate.
- 12.4. Employee Sanctions/Responsive Actions. – Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:
- 12.4.1. Verbal or written warning;
- 12.4.2. Performance Improvement Plan/Management Process;
- 12.4.3. Enhanced supervision, observation, or review;
- 12.4.4. Required counseling;
- 12.4.5. Required training or education;
- 12.4.6. Probation;
- 12.4.7. Denial of pay increase;
- 12.4.8. Loss of oversight or supervisory responsibilities;

- 12.4.9. Demotion;
- 12.4.10. Transfer;
- 12.4.11. Reassignment;
- 12.4.12. Delay of tenure track progress;
- 12.4.13. Assignment to new supervisor;
- 12.4.14. Restriction of stipends and/or professional development resources;
- 12.4.15. Suspension with pay;
- 12.4.16. Suspension without pay;
- 12.4.17. Termination; and/or
- 12.4.18. Any other responsive actions as the college deems appropriate.

13. Withdrawal or Resignation While Charges are Pending

13.1. Students

- 13.1.1. If a student has an allegation pending for violation of the Policy on Harassment and Discrimination, West Virginia University Parkersburg may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.
- 13.1.2. Should a student decide not to participate in the resolution process, the process proceeds to a reasonable resolution absent the student's participation. Should a student Respondent permanently withdraw from West Virginia University Parkersburg, the resolution process ends, as West Virginia University Parkersburg no longer has disciplinary jurisdiction over the withdrawn student.
- 13.1.3. However, West Virginia University Parkersburg will continue to address and remedy any systemic issues or 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 West Virginia University Parkersburg. Such exclusion applies to both campuses of West Virginia University Parkersburg. The college shall place a hold on the student's ability to be readmitted. The college may also bar the student from West Virginia University Parkersburg property and/or events.
- 13.1.4. If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the college may continue the resolution process remotely, and that student may not return to West Virginia University Parkersburg

unless and until he or she satisfies all sanctions issued by West Virginia University Parkersburg.

13.2. Employees

13.2.1. Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as West Virginia University Parkersburg no longer has disciplinary jurisdiction over the resigned employee.

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

13.2.3. The employee who resigns with unresolved allegations pending is not eligible for rehire with West Virginia University Parkersburg or any campus of West Virginia University Parkersburg, and the records retained by the Title VI/Title IX/Section 504 Coordinator and the Human Resources Department will reflect that status.

14. Appeals

14.1. Either party aggrieved by the Coordinator's determination may submit an appeal in writing to the Title VI/Title IX/Section 504 Coordinator within five business days of delivery of the Notification of Outcome. The appeal shall only be based on one or more of the below grounds:

14.1.1. A procedural error or omission that significantly impacted the outcome (e.g., material deviation from established procedures, failure to correctly apply the evidentiary standard);

14.1.2. To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. An appeal on this ground must include a summary of the new evidence, an explanation of why it was not available at the time of the investigation, and an explanation of its potential impact on the investigation; and/or

14.1.3. Substantiated bias on the part of Decision-maker(s), Investigator(s) or Title VI/Title IX/Section 504 Coordinator.

14.2. The Coordinator shall designate an Appeal Officer from those members of the Pool who have not been involved in the process previously.

14.3. When any party files an appeal, the Title VI/Title IX/Section 504 Coordinator shall share it with the other party(ies) and other appropriate persons, such as the Investigator(s), who may file a response within three business days. The non-appealing party's response may be or include his or her own appeal on different grounds from those in the original appeal;

Provided, that this appeal may only be on the grounds specified in subdivisions 14.1.1 through 14.1.3 above.

- 14.4. If the second appealing party raises new grounds, the original appealing party may submit a written response to these new grounds within three (3) business days of delivery of them. The Coordinator shall share the appeals and responses with each party. The Appeal Officer shall review the appeal(s) and responses within three business days of completing the pre-appeal exchange of materials. The Appeal Officer shall dismiss any appeal if it is based on anything other than the grounds listed in subdivisions 14.1.1 through 14.3.3 above or if it is untimely.
- 14.5. If an appeal is timely and based on allowed grounds, the Appeal Officer's review shall be conducted in accordance with the following principles:
 - 14.5.1. Decisions by the Appeal Officer shall be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s) or responsive action(s) only if there is compelling justification to do so.
 - 14.5.2. Appeals are not intended to be, and shall not be, full re-hearings (de novo) of the allegation(s). Appeals shall be confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
 - 14.5.3. An appeal is not an opportunity for the Appeal Officer to substitute his or her judgment for that of the original Investigator(s) or Title VI/Title IX/Section 504 Coordinator/Decision-maker merely because the Appeal Officer disagrees with the finding and/or sanction(s).
 - 14.5.4. The Appeal Officer shall remand appeals granted based on new evidence to the Investigator(s) for reconsideration; *Provided*, That the Appeal Officer may remand other appeals to the Investigator(s) or to the Coordinator at his or her sole discretion.
 - 14.5.5. The college shall immediately impose the sanctions stated in the Notification of Outcome unless the Title VI/Title IX/Section 504 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 the appeal process.
 - 14.5.6. The Appeal Officer shall notify all parties of his or her decision in writing within five business days of the outcome of the appeal in accordance with the provisions of subdivisions 7.3.3 above
 - 14.5.7. The Appeal Officer's decision is final and may not be appealed, even if a decision or sanction is changed on remand.

- 14.5.8. In cases where the original Investigator(s) and/or the Coordinator or Decision-maker cannot cure a procedural or substantive error (as in cases of bias), the Appeal Chair/Panel may recommend a new investigation and/or Administrative Resolution process, including a new resolution administrator.
- 14.5.9. Either party may appeal the results of the new Administrative Resolution process on any of the grounds f listed in subdivisions 14.1.1 through 14.3.3 above.
- 14.5.10. In cases in which the appeal results in Respondent's reinstatement to West Virginia University Parkersburg or resumption of privileges, the college shall make all reasonable attempts to restore the Respondent to his or her prior status, recognizing that some opportunities lost may be irreparable in the short term.

15. Long-Term Remedies/Actions

- 15.1. Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title VI/Title IX/Section 504 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:
 - 15.1.1. Referral to counseling and health services;
 - 15.1.2. Referral to the Employee Assistance Program;
 - 15.1.3. Education to the community;
 - 15.1.4. Permanent alteration of work arrangements for employees;
 - 15.1.5. Provision of campus safety escorts;
 - 15.1.6. Climate surveys;
 - 15.1.7. Policy modification;
 - 15.1.8. Implementation of long-term contact limitations between the parties; and/or
 - 15.1.9. Implementation of adjustments to academic deadlines, course schedules, etc.
- 15.2. At the discretion of the Title VI/Title IX/Section 504 Coordinator, the college may also provide long-term remedies to the Complainant even if the Decision-maker did not find a policy violation.

- 15.3. When the Decision-maker does not find a policy violation, the Title VI/Title IX/Section 504 Coordinator shall advise the Respondent of any remedial requirements offered by West Virginia University Parkersburg.

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

- 16.1. All Respondents shall comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title VI/Title IX/Section 504 Coordinator.
- 16.2. 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 West Virginia University Parkersburg and may be noted on a student's official transcript.
- 16.3. The college will only lift a suspension when the Respondent has achieved compliance to the satisfaction of the Title VI/Title IX/Section 504 Coordinator.

17. Recordkeeping

- 17.1. The Title VI/Title IX/Section 504 Coordinator shall retain all records of all allegations, investigations, resolutions, and hearings as required by the appropriate federal law and institutional policy.

18. Disabilities Accommodation in the Resolution Process

- 18.1. West Virginia University Parkersburg is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to West Virginia University Parkersburg's resolution process.
- 18.2. Affected students may contact the Executive Director of Student Support Services, and affected employees may contact the Chief Human Resources Officer to request such accommodations. The respective Executive Director shall review the request and, in consultation with the person requesting the accommodation and the Title VI/Title IX/Section 504 Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.