

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS
POLICY 44**

**POLICY REGARDING DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT
SEXUAL & DOMESTIC MISCONDUCT, STALKING, AND RETALIATION**

Section 1: General.

- 1.1 **Scope & Purpose:** West Virginia University is committed to fostering a diverse and inclusive culture by promoting diversity, inclusion, equality, and intercultural and intercommunity outreach. Accordingly, the University does not discriminate on the basis of race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression in the administration of any of its educational programs, activities, or with respect to admission or employment. This Policy sets forth how discrimination, harassment, sexual and domestic misconduct, certain consensual relationships, stalking, and retaliation will be addressed by West Virginia University.
- 1.2 **Authority:** W. Va. Code §§ 18B-1-6, 18B-2A-4; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681; the West Virginia Human Rights Act, W. Va. Code §§ 5-11-1 to -20; the Campus Sexual Violence Elimination Act, 20 U.S.C. § 1092, and the Violence Against Women Act of 1994, 42 U.S.C. § 13925.
- 1.3 **Effective Date:** December 18, 2015.
- 1.4 **Revision History:** Originally effective June 2, 2006 with a title of “Policy and Procedure Regarding Sexual Harassment”; amended June 7, 2012 and titled changed to “Policy Regarding Sexual Misconduct”; and amended again on June 5, 2014 and title changed to “Policy Regarding Discrimination, Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation,” amended again on December 18, 2015 and title changed to “Policy Regarding Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation.”

Section 2: Free Expression, Academic Freedom, and Accountability.

- 2.1 Free expression and academic freedom at West Virginia University (“University”) are necessary to enable the institution to reach its goals to engage students in a challenging academic environment; excel in research, creative activity, and innovation in all disciplines; foster diversity and inclusion; advance international activity and global engagement; and enhance the well-being and the quality of life of the people of West Virginia. Consequently, while this Policy seeks to protect members of the University community from discrimination, harassment, sexual and domestic misconduct, certain consensual relationships, stalking, and retaliation, it should be read in conjunction with

Board of Governors Policies 2, 10, and 11, all related to free expression and academic freedom.

- 2.2 Under the University President, the Division of Diversity, Equity and Inclusion, in conjunction with the Deans, Vice Presidents, Office of Student Conduct, and the appropriate members of the divisional campuses, shall implement and ensure compliance with this Policy.

Section 3: General Definitions.

- 3.1 “Complainant” means, for purposes of this Policy, an individual who is the alleged victim of prohibited conduct that is reported to the University or, where appropriate, the University when proceeding on a complaint when the alleged victim is unavailable or unwilling to participate.
- 3.2 “Reporter” means, for purposes of this Policy, any individual that makes or files a complaint about prohibited conduct under this Policy. The Reporter may be the Complainant, any other person, or the University.
- 3.3 “Respondent” means, for purposes of this Policy, an individual accused of conduct prohibited by Section 4.
- 3.4 “Member of the University community,” for purposes of this Policy only, means an individual engaged in any University activity or program, whether on or off campus, or any individual lawfully on University property, including, but not limited to, any person who is a student, staff, faculty member, other University official, or a visitor.
- 3.5 “Student” means, for purposes of this Policy, an individual subject to the West Virginia University Board of Governors Policy 31, University Student Conduct and Discipline Policy.
- 3.6 “Consensual relationship” means a mutually acceptable romantic, dating, or sexual relationship between individuals.

Section 4: Defining and Recognizing Prohibited Conduct.

- 4.1 General.

The University prohibits Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in this Policy (collectively referred to as “prohibited conduct”) by or against any member of the University community.

4.1.1 Jurisdiction: This prohibition applies to conduct that occurs on University premises or in connection with a University sponsored activity; off-campus conduct that unreasonably interferes with the educational or orderly operation of the University community, its mission, or its objectives determined by a reasonable person; any off campus conduct that, in light of all of the facts and circumstances, would endanger the

health and safety of the University community. As a result, any individual found to have committed these acts against another is subject to appropriate discipline.

4.1.2 Role of Supervisor: Those in supervisory positions have a special responsibility to discourage prohibited conduct as well as to implement and enforce this policy.

4.2 Discrimination.

4.2.1 “Discrimination” is conduct that is based upon an individual’s race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression and excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual’s employment, education, living environment or participation in a University program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities. It does not, however, include programs or activities specifically exempt by law. *See, e.g.*, 20 U.S.C. § 1681(a) (2015).

4.3 Harassment and Sexual Harassment.

4.3.1 “Harassment” is conduct that creates a hostile environment, as defined below, and is based upon an individual’s race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression. Harassment may take various forms, including, but not limited to, name-calling, graphic or written statements (including the use of social media, text messages, e-mail, or other similar forms), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not necessarily have to include intent to harm, be directed at a specific target, or involve repeated incidents.

4.3.2 “Hostile environment” means a situation where an individual is subjected to any conduct based on the reasons set forth in Section 4.3.1 and that conduct is sufficiently severe or pervasive, or so objectively offensive, so as to unreasonably interfere with an individual’s educational experience, work or academic performance or deny or limit the individual’s ability to participate in or benefit from the University’s programs, services, opportunities, or activities.

A hostile environment can be created by anyone involved in a University program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a

hostile environment, a serious incident, even if isolated, can be sufficient to create a hostile environment.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as sufficiently severe or pervasive, or objectively offensive. Also, the following factors will be considered:

- (i) The degree to which the conduct affected one or more students' education or individual's employment;
- (ii) The nature, scope, frequency, duration, and location of incident or incidents;
- (iii) The identity, number, and relationships of persons involved; and

- 4.3.3 In addition to hostile environment harassment, sex-based harassment includes sexual harassment and non-sexual harassment based on stereotypical notions of what is female/feminine versus male/masculine or a failure to conform to those gender stereotypes.

“Sexual harassment” means harassment that creates a hostile environment based on sex, as defined above, and also unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature on or off campus that is sufficiently severe or pervasive when (i) submission to such conduct is made either explicitly or implicitly a condition of an individual's employment or academic performance or participation in University programs or activities; or (ii) submission to or rejection of such conduct is used as the basis for employment decisions or for academic evaluation, grades, or advancement. In determining whether alleged conduct constitutes sexual harassment, consideration shall be given to the record as a whole and to the totality of the circumstances, including the nature of sexual behavior and the context in which the alleged incident(s) occurred. Sexual harassment may occur between people of the same sex or people of different sexes.

Examples of sexual harassment may include, but are not limited to, unsolicited, deliberate, or repeated touching, sexual flirtation, advances or propositions which are not welcomed and/or desired; unwelcome jokes, stories, comments, innuendos, or other sexually oriented statements which are specifically designed to embarrass or humiliate through their sexual subject matter content; unwelcome sexual communication such as graphic or degrading comments about one's gender related to personal appearance; unwelcome display of sexually explicit materials, objects, or pictures in an individual's place of work or study, such as viewing material on computers or other electronic devices where others can see. Importantly, these and any other examples in this Policy, are provided only for

illustration purposes and all conduct must still meet the applicable definitions in the Policy before rising to the level of prohibited conduct.

4.4 Sexual Misconduct.

- 4.4.1 “Sexual Misconduct” means “Sexual Assault” or “Sexual Exploitation,” as defined below. It is a broad term used to encompass unwelcome behavior of a sexual nature that is prohibited by Title IX and West Virginia University.
- 4.4.2 “Sexual Assault” means sexual intercourse or sexual contact that occurs without Consent. Sexual Assault also means an offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI’s UCR program.
- 4.4.3 “Sexual Contact” means any (1) intentional touching, either directly, through clothing, or with an object, of the breasts, buttocks, anus or any part of the sex organs of another person; or (2) intentional touching of any part of another person’s body by the actor’s sex organs.
- 4.4.4 “Sexual intercourse” is defined as anal, oral, or vaginal penetration, however slight, by an inanimate object or another’s body part, including, but not limited to a penis, tongue, or finger.
- 4.4.5 “Consent” is defined as agreement, approval, or permission as to some act or purpose that is given knowingly, willingly, and voluntarily by a competent person. A person is not competent and therefore lacks the ability to consent where there is either forcible compulsion or incapacity to consent. A person is deemed incapable of consent when that person is either less than sixteen years old, mentally incapacitated, or physically unable to resist. It is important to remember that silence, by itself, cannot constitute consent. “Forcible compulsion” means (a) physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or (b) threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or (c) fear by a person under sixteen years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim. Consent to one sexual act does not constitute or imply consent to a different sexual act. Previous consent cannot imply consent to future sexual acts. Consent is required regardless of the parties’ relationship status or sexual history together. Intoxication from alcohol or drug use, alone, does not bar consent, but can when a party is so intoxicated as to be incapacitated; i.e., unable to knowingly and intentionally make decisions for him or herself. Incapacitation negates consent when the alleged perpetrator knows, or a reasonable person in his or her position, under the circumstances, should know, that the alleged victim is incapacitated.
- 4.4.6 “Sexual exploitation” means taking sexual advantage of another person without his or her consent. Sexual advantage includes, without limitation, causing or

attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third parties to observe private sexual acts; and engaging in voyeurism.

4.5 Domestic Misconduct.

4.5.1 “Domestic Misconduct” means “Domestic Violence” and “Dating Violence” as defined below.

4.5.2 “Domestic Violence” means a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the alleged victim, by a person with whom the alleged victim shares a child in common, by a person who is cohabitating with or who has cohabitated with the alleged victim as a spouse, by a person similarly situated to a spouse of the alleged victim under the domestic or family laws of the State of West Virginia, by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the State of West Virginia. “Domestic Violence” under the laws of the State of West Virginia, which is also prohibited by this Policy, means: (i) unlawfully and intentionally making physical contact of an insulting or provoking nature with one’s family or household member(s); (ii) unlawfully and intentionally causing physical harm to one’s family or household member(s); (iii) unlawfully attempting to commit a violent injury against one’s family or household member(s); or (iv) unlawfully committing an act which places one’s family or household member(s) in reasonable apprehension of immediately receiving a violent injury.

4.5.2.1 For purposes of this subsection, “family or household members” means persons who: (1) are or were married to each other; (2) are or were living together as spouses; (3) are or were sexual or intimate partners; (4) are or were dating: provided, that a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship; (5) are or were residing together in the same household; (6) have a child in common regardless of whether they have ever married or lived together; (7) have the relationships described in W. Va. Code § 48-27-204.

4.5.3 “Dating Violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship. The view of the Complainant shall generally be controlling in determining whether such a relationship existed. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence, for purposes of this Policy, does not include emotional abuse.

4.6 Stalking. “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress. One engages in an impermissible course of conduct under this definition if one engages in two or more acts that include, but are not limited to, acts in which the stalker 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 in a way prohibited as described above, or interferes with a person’s property. A “reasonable person”, for purposes of this definition, means a reasonable person under similar circumstances and with similar identities to the victim. “Substantial emotional distress”, for purposes of this definition, means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

4.7 Consequences & Corrective Action.

Violators of this Policy are subject to appropriate disciplinary action that may include sanctions such as warning, suspension, or discharge of an employee, suspension or expulsion of a student in accord with the Student Code of Conduct, or other action depending on the particular circumstances. In addition, prohibited conduct that constitutes a criminal law violation will be referred to the appropriate authorities for prosecution.

Furthermore, although conduct may not violate this Policy, it may still be prohibited by the University under a different policy or standard of behavior. Accordingly, in such cases, the University reserves the ability to take any necessary action.

4.8 Consensual Relationships.

Although consensual relationships are within the purview of individual privacy, those engaging in such relationships that occur between persons in inherently unequal and closely related positions at the University or employees within the same reporting line, including those between supervisors and supervisees, must remain aware that such relationships could lead to circumstances that result in harassment or sexual or domestic misconduct.

In these specific cases of consensual relationships, the individuals shall notify their immediate supervisor or other appropriate administrator. The supervisor or administrator shall be responsible for making arrangements to eliminate or to mitigate any conflict of interest or other legitimate occupational interest related to employment, the consequences of which might prove detrimental to the University or to either party in the relationship. In some instances, if no suitable way to eliminate or mitigate the conflict is reasonably feasible, one or both individuals may be separated from employment at the University.

It is important to note that these types of consensual relationships also may result in a hostile or offensive environment affecting other employees or students. For example, others may perceive a person involved in the consensual relationship as receiving favorable treatment in employment or educational decisions and actions.

4.9 Teacher-Student Relationships.

A faculty member or instructor is prohibited from engaging in consensual relationship with a student whom the faculty member or instructor evaluates, supervises, instructs, or advises.

Where there is a pre-existing consensual relationship, the faculty member or instructor shall notify his or her immediate supervisor or other appropriate administrator. The supervisor or other appropriate administrator shall be responsible for making arrangements to eliminate or to mitigate any conflict, the consequences of which might prove detrimental to the University or to either party in the relationship.

Section 5: Reports of Misconduct and Complaints.

5.1 Coordinator.

The President or the President's designee shall appoint an administrator to act as the University's Coordinator to handle all reports of prohibited conduct and complaints under this Policy, including acting as the University's Title IX Coordinator. The Coordinator will oversee all complaints filed under this Policy generally and identify and address any patterns or systemic problems that arise during the review of such complaints. The Coordinator is further responsible for coordination of training, education, communications, and administration of complaint procedures for faculty, staff, students, and other members of the University community. The Coordinator may also appoint deputy coordinators to assist the University in furthering this policy.

5.2 Reporting.

Any member of the University community who believes he or she has been subject to any of the prohibited conduct set forth in Section 4, or he or she has witnessed or is aware of such prohibited conduct, is encouraged to report this information.

5.2.1 All Responsible Employees must report incidents of prohibited conduct to the University's Title IX Coordinator at:

Title IX Coordinator
Division of Diversity, Equity and Inclusion
Equity Assurance Office
1085 Van Voorhis Road Suite 250 | P.O. Box 6202
Morgantown, WV 26506-6202
Phone: 304-293-5600 | Fax: 304-293-8279
Email: titleIX@mail.wvu.edu

5.2.2 "Responsible Employees" are those employees in a leadership or supervisory position, or who have significant responsibility for the welfare of students or employees. The term includes Deputy Title IX Coordinators; University Police Officers; senior staff members in Residence Life, Student Life, and Athletics;

senior administrators in each of the University's campuses and colleges; resident assistants; faculty; and athletic team coaches and their staff.

- 5.2.3 Confidential resources are available for members of the University community who have been subject to prohibited conduct. Specifically, individuals may contact:

WELLWVU

Carruth Center for Psychological and Psychiatric Services
Health and Education Building
390 Birch Street
Morgantown, WV 26506-6422
Phone: 304-293-4431
Email: wvucccps@mail.wvu.edu

The Rape and Domestic Violence Information Center (RDVIC)

P.O. Box 4228
Morgantown WV, 2650
RDVIC 24-hour crisis hotline (304) 292-5100

Ruby Memorial Hospital

Emergency Department
304-598-4172
<http://wvuhealthcare.com/hospitals-and-clinics/student-health/>

Monongalia General Hospital, Emergency Department

304-598-1460
www.mongeneral.com

At the Potomac State College Campus:

Potomac Valley Hospital

100 Pin Oak Lane
Keyser, WV 26726
Phone: (304)597-3500

Western Maryland Health System

12500 Willowbrook Road
Cumberland, MD 21502
Phone: (240) 964-7000
www.wmhs.com
Email: webmaster1@wmhs.com

At the West Virginia University Institute of Technology and Beckley Campuses:

Montgomery General Hospital

401 6th Ave.

Montgomery, WV 25136
Phone: (304) 442-5151
Email: info@mghwv.org

Raleigh General Hospital

1710 Harper Road
Beckley, WV 25801
Phone: (304) 256-4100

For a more detailed list of confidential resources available to members of the University community, please see:

<http://titleix.wvu.edu/information-for-victims/confidential-resources>

5.3 Filing a Complaint.

Any member of the University community who believes he or she has been subject to, has witnessed, or is aware of any of the prohibited conduct set forth in Section 4 may file a complaint in any manner set forth in the applicable procedure.

5.4 Procedure for Responding to Complaints.

The President or the President's designee(s) shall formulate a complaint procedure to investigate and respond to all complaints regarding alleged misconduct in violation of this Policy. In all cases, complaints will be handled in such a manner so as to achieve a prompt and equitable resolution. Further, the University will take the appropriate steps to end the misconduct, prevent any further misconduct or retaliation, remedy the effects of misconduct, and eliminate any hostile environment that has been created.

If a student has been accused of prohibited conduct, the complaint will be handled pursuant to West Virginia University Board of Governors Policy 31, which can be found:

http://campuslife.wvu.edu/office_of_student_conduct

If an employee has been accused of prohibited conduct, the complaint will be handled pursuant to the Division of Diversity, Equity and Inclusion Complaint and Investigation Process, which can be found here:

<http://titleix.wvu.edu/>

Any investigation resulting from a complaint will be separate from and in addition to any criminal investigation that may result.

5.5 Disclosure and Confidentiality.

The University respects the privacy of those reporting prohibited conduct and will endeavor to respect requests for confidentiality to the extent permissible by law.

However, the University has certain legal obligations to address this conduct and to prevent its recurrence and, as a result, cannot guarantee confidentiality to a complainant in all cases. In determining whether, an individual's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, the University may consider a range of factors, including: whether there have been other sexual violence complaints about the same alleged perpetrator; whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence; whether the alleged perpetrator threatened further sexual violence or other violence against the complainant or others; whether the sexual violence was committed by multiple perpetrators; whether the complainant's report or allegation reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group; whether the sexual violence was perpetrated with a weapon; the age of the complainant subject to the sexual violence; and whether the University possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

That said, as set forth in Section 5.2.3., there are places where a victim can receive confidential services and the complaint procedure must identify clearly additional resources, if any, where a victim can go to receive such services without having to risk confidentiality.

5.6 Dishonest or Frivolous Complaints.

If a party is found to have intentionally or maliciously been dishonest, reckless, or frivolous in making allegations of a violation under this Policy, that party shall be subject to appropriate disciplinary action.

Section 6: Retaliation Prohibited.

6.1 No individual may retaliate against any Reporter or Complainant, any person that assists a Complainant in the filing of a complaint of prohibited conduct, or a witness. Complaints of retaliation for such activities will be treated the same way as other complaints under this policy.

6.2 "Retaliate" means to take an adverse action against an individual or subject an individual to conduct that has the purpose or effect of unreasonably interfering with that individual's educational experience, work or academic performance, or creates an educational experience or academic or work environment that a reasonable person would find intimidating or hostile because of something that individual did to further this Policy, including but not limited to filing a complaint or being a witness in or supporter of or against a complaint. This includes interfering with the reporting of or the investigation of prohibited behavior, such as tampering with or destroying relevant evidence; intimidating, threatening or attempting to influence, in any way, the testimony or information of a Reporter, Complainant, or witness.