

Valerie Lopez

From: Melanie Cook <mjcookac@gmail.com>
Sent: Monday, October 19, 2015 11:47 PM
To: Valerie Lopez
Subject: Policy 31--Comments

Dear Valerie,

I could not figure out how to send comments regarding the proposals for Policy 31: Student Code and Discipline Policy

It is a Student Conduct Code--say what it is; "Campus Student Conduct Code/Policy"

So..here are my comments:

First, the Student Conduct Policy needs to be written with less legalese and in language that is understood by the target audience--students.

Hearing Boards or panels are not "tribunals". That is a word that makes no sense in the context of this policy. In fact, it sounds ridiculous. Students, faculty, and staff understand the term hearing board or panel. That is the language of the profession.

4.2--the term "grievance" is used in procedures designated for employees; not students. There are appeals of board and administrative decisions--students can file complaints or indicate violations of the policy. Grievance is another term that does not fit in this context.

6.5.1--Again, remove tribunal and replace with hearing board or panel.

6.5.3-- If using the word "accused", then use the word accuser (complainant is a legal term); students better understand accused and accuser in all contexts.

6.7-- I presume this is in reference to those students in need of a medical withdrawal? It is important to use language that more specifically addresses students that pose a serious threat or are seemingly in need of medical attention. It is written in reactive and "scared" language as opposed to being proactive in maintaining a safe campus.

6.10--In cases of suspension or expulsion, tuition and fees will not be reimbursed. So, the hearing panel has made a decision to suspend or expel, as student is not rewarded with reimbursement of tuition and fees for having violated the Campus Student Conduct Code!

WVU BOG POLICIES 31, 44 – FINAL DRAFTS

Pursuant to Section 5.5.1 of West Virginia University Board of Governors Policy 45 and after further review and consideration of the written comments received, minor changes were made to Policies 31 and 44. Specifically, terms in Sections 6.2, 6.5.1, 6.5.4, and 6.10 of Policy 31 were revised to be clearer and more descriptive (*e.g.*, “tribunal” was changed to “hearing body or other decision maker” and the term “misconduct” was added to Section 6.5.4). Additionally, in Policy 44, contact information for resources at the divisional campuses was added to Section 5.2.3 and old policy language only referencing one aspect of prohibited behavior was revised in Sections 4.1.2, 5.1, and 6.1 (*e.g.*, “sexual misconduct” and “misconduct” were changed to “prohibited conduct”).

Accordingly, the final draft policies will be presented to the Board of Governors with these minor changes at the December 18, 2015, meeting.

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS
POLICY 31**

UNIVERSITY STUDENT CONDUCT AND DISCIPLINE POLICY

Section 1: General.

- 1.1. Scope: The purpose of this policy is to encourage West Virginia University students to engage in proactive and intentional efforts to build connections and relationships with their community and to set forth a policy regarding student conduct and discipline at West Virginia University.
- 1.2. Authority: W. Va. Code § 18B-1-6; § 18B-2A-4.
- 1.3. Effective Date: [\[INSERT DATE\]](#).
- 1.4. Revision History: This is a revision to Policy 31, which was originally effective August 15, 2006 and amended September 8, 2006, again on April 12, 2013, and **[INSERT DATE]**.

Section 2: Preamble.

Students of West Virginia University (“University”), whether on the main campus, its divisional campus(es), or at any of its instructional locations throughout the state of West Virginia, the nation, or the world, are citizens of a broader academic community. As such, the University expects that every member of its academic community share its historic and traditional commitment to honesty, integrity, and the search for truth. In addition, the University is concerned with the living and learning environment of all of its students. It is expected that each person will grow to have greater respect for self, others, and property. In implementing this Policy, the University is not intending to create a substitute for civil or criminal penalties. The collegiate nature of the educational mission requires that all members of the academic community unite to administer and support this Policy and to suggest change and improvement as necessary.

The University seeks to establish basic guidelines for University students to be good neighbors and expects all students to adhere to generally accepted standards of conduct for actions and events occurring within the formal boundaries of the University’s campuses and also to actions and events occurring in the communities off of the University campus. Further, students and student organizations are required to engage in responsible social conduct that reflects credit upon the University and to model good citizenship for the greater academic community. It is the University’s expectation and priority that students feel integrated into the rich fabric of this diverse community and make a positive contribution to it.

It is further expected that every member of the University's academic community will respect the democratic process, a society based on law, and the basic tenets on which our nation was founded. Rights and responsibilities under local, state, and national law are neither abridged nor extended because of student status, and each student must be mindful of these responsibilities.

The University will not request special consideration for any students charged with violations of any law on the basis of their status as students, nor will prosecution by federal, state, or local authorities necessarily preclude disciplinary action by the University.

The University has the inherent authority to discipline and to protect itself and its property. However, when such authority must be exercised, students will be provided any substantive and procedural due process rights and the right of appeal, as required by law. The student's right to be treated with respect and dignity will be protected.

When a student is charged with a specific violation, the University will use procedures for determining if the charge is fair and accurate. This Policy enumerates and explains that specific procedures shall be used in determining the fairness and accuracy of such charges and the sanctions which might be imposed if the charges are found to be true. In adjudicating alleged violations, the process is not intended to be punitive or deterrent in the criminal sense, but rather seeks to determine whether the student is qualified to continue as a member of the University community. Thus, the standards applicable to this administrative process are, by their very nature, distinct from those found in criminal or other courts of law.

Opportunities for participation in the process and equality of treatment are afforded all students. 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 or activities, or with respect to admission or employment. In this regard, compliance with all applicable state and federal regulations and the requirements of Title VI of the Civil Rights Act and Title IX of the Higher Education Act of 1972 is expected.

The primary mission of the University is to educate its students and prepare them for responsible and full participation in society. The implementation of this Policy is designed to ensure that University students conduct themselves in an acceptable manner in accordance with the mission and values of the University.

Section 3. Off-Campus Conduct and Community Responsibility.

University students are expected to be good neighbors to the families, professionals, retired individuals, and others who make up the diverse communities adjacent to and near each University campus. Students who live in these neighborhoods should keep these

individuals and their own personal rights in mind when living off campus. Importantly, students must understand that behavior that violates the Campus Student Code, even though it occurs off campus, may result in sanctions.

Section 4: Definitions.

- 4.1. The term “University” means West Virginia University and its divisional campuses.
- 4.2. The term “student” means all persons taking or auditing courses at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies; persons who are not officially enrolled for a particular term but who have a continuing relationship with the University or who have been notified of their acceptance for admission; or persons who are living in University supervised housing at any time, even if not enrolled at the University. A person will continue to be a “student” until such status is terminated upon the occurrence of one or more of the following events:
 - a. Graduation (without any indication of intent to pursue post graduate activities at the University during the following semester);
 - b. Voluntary withdrawal of the student from West Virginia University; or
 - c. Involuntary dismissal (or other withdrawal of the student initiated by the University) from all programs and activities of the University, and the exhaustion of all internal grievance procedures to redress the dismissal or withdrawal (if applicable).
- 4.3. The term “University official” means any person employed by, or acting on behalf of, the University, performing assigned academic, administrative or professional responsibilities.
- 4.4. The term “member of the University community” means an individual engaged in any University activity or program, whether on or off campus, or an 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.
- 4.5. The term “University premises” means all land, buildings, facilities, and other property owned, leased, operated, used, supervised or controlled by the University (including adjacent streets and sidewalks).
- 4.6. The term “student organization” means any number of students who have complied with the formal requirements for University recognition.

Section 5: Campus Student Code.

5.1. General.

The President or the President’s designee shall establish appropriate procedures for each of the University’s campuses that contain written rules and regulations concerning student conduct and discipline (the “Campus Student Code”). Each Campus Student Code shall comply with this Policy and contain within it, at a minimum, the requirements set forth here.

5.2. Campus Student Code Administrators.

On each campus, at least one professional shall be responsible for implementing and maintaining efficient administration of the Campus Student Code and performing all necessary functions mandated by the Campus Student Code and this Policy (a “Campus Student Code Administrator”). The Campus Student Code Administrator(s) shall be available to assist any student, student organization, or University official in understanding and applying the Campus Student Code and this Policy.

5.3. Statement of Jurisdiction.

Each Campus Student Code should include a statement of jurisdiction indicating that the Campus Student Code shall apply to student conduct that occurs on University premises; at University sponsored activities; to any conduct that does not occur on University premises but adversely affects or interferes with the educational or orderly operation of the University, its mission, or the pursuit of its objectives, including failing to engage in conduct which is appropriate for an academic institution; and to conduct that does not occur on University premises but, in light of all of the facts and circumstances, would endanger the health, safety, or property of the University, the University community, or its neighboring communities.

Conduct from the time of application for admission through the actual awarding of a degree, even if conduct occurs before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment, is subject to the applicable Campus Student Code and this Policy. The applicable Campus Student Code shall apply to a student’s conduct even if the student withdraws from school while a disciplinary matter is pending, and even if the student’s conduct is not discovered until after a degree is awarded.

Further, each Campus Student Code shall apply to all students enrolled in undergraduate, graduate, and professional programs. Academic and professional standards of conduct may also apply to students enrolled in programs that have adopted such standards, i.e., all students are subject to this Policy and some students may be concurrently subject to additional standards as determined by the respective academic programs.

Section 6: Requirements of Each Campus Student Code.

Each Campus Student Code is expected to reflect the culture, resources, and organization of the associated campus. Regardless, each Campus Student Code shall ensure due process under the law for all students; outline necessary time frames or scheduling deadlines; clearly articulate requirements or prohibitions with respect to witnesses, evidence, or hearing matters; and include the following:

6.1. Prohibited Conduct.

All students of the University are expected and required to obey applicable laws, to comply with the policies of the West Virginia University Board of Governors, with institutional or campus rules and regulations, with directives issued by any University official acting in the course of his or her authorized duties, and to observe standards of conduct appropriate for an academic institution. These standards apply on or off of University premises or property.

Accordingly, each Campus Student Code shall list specific acts of prohibited conduct that will result in sanctions being sought by the Campus Student Code Administrator. The list of specific acts of prohibited conduct should further the goals and mission of the University and the statements located in the preamble of this Policy.

6.2. Sanctions.

It is expected that the Campus Student Code Administrator and/or any hearing ~~tribunal~~ [body or other decision maker](#) will impose or seek a sanction that is fair under the circumstances. Each Campus Student Code should include and explain, at a minimum, the following sanctions: Expulsion; Suspension; Probation; Warning; Community Service; Loss of Privileges; Fines; and Restitution.

6.3. Reporting.

Each Campus Student Code must establish a manner by which allegations of a student's prohibited conduct are to be reported to the Campus Student Code Administrator.

6.4. Investigation.

Each Campus Student Code must establish a process by which allegations of a student's prohibited conduct, from any credible source, are thoroughly investigated by the Campus Student Code Administrator or his or her designee(s). To ensure a thorough investigation, the Campus Student Code Administrator or designee(s) shall have the authority to summon by written or electronic request any member of the University community for a meeting for the purposes of investigating and/or discussing allegations of prohibited conduct and those summoned shall be obliged to attend any such meeting. Finally, each Campus Student Code must establish a minimal threshold for allegations to proceed through the conduct process.

6.5. Procedures and Processes Required.

At a minimum, each Campus Student Code shall incorporate the following for each of the processes listed below. Based on the facts and evidence obtained during the investigation, the Campus Student Code Administrator will determine the sanction being sought, which, in turn, will determine the process to be followed. In deciding which sanction to seek, the Campus Student Code Administrator shall consult with appropriate University officials, including academic officials, so that any impact on a student's current academic program is considered.

6.5.1. Complaints Seeking Suspension or Expulsion.

Each Campus Student Code shall provide a process for determining responsibility and a sanction for matters or situations in which the alleged actions, if true, would justify a suspension or an expulsion. This process must incorporate each of the following, to the extent required by law: notice of the charge, which at a minimum shall include a brief, but detailed, statement of facts that support the allegation and put the accused student on notice of the alleged conduct and the potential sanction(s) which may result if it is determined that the accused student is responsible for the alleged prohibited conduct, and also clearly articulates whether past code violations will be considered in determining a sanction for the alleged current conduct; an agreed resolution procedure; a hearing process procedure; the procedure for selecting an impartial hearing ~~tribunal~~ body or other decision maker, which should ensure that both the due process rights of any accused student and the fairness of the process are preserved; a notice of outcome, which at a minimum, shall plainly state the decision and shall plainly state the rationale for the decision; in the event that the student is found responsible for violating the Campus Student Code, the notice of outcome should include a brief statement of the facts relied upon by the decision maker, the assigned sanction, the impact that the student's past conduct may have had on the determination of the assigned sanction, and an explanation of any appeal rights; the right to counsel; and appeal.

6.5.2. Complaints Not Seeking Suspension or Expulsion – Conduct Conference.

Each Campus Student Code shall have a process for the administrative disposition of complaints not seeking suspension or expulsion through an informal conference ("Conduct Conference"). The Conduct Conference will be used for determining responsibility and a sanction for matters or situations in which the alleged actions, if true, would not justify a suspension or an expulsion and must incorporate each of the following: notice of the charge; an opportunity for an agreed resolution; opportunity to present evidence; notice of outcome; and appeal.

6.5.3. All Complaints or Reports of Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation.

In matters or situations involving complaints of Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation, all

as defined in West Virginia University Board of Governors Policy 44, the interests of the complainant and the accused must be equally protected. The process for determining responsibility and a sanction for matters or situations in which the alleged Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation, if true, would justify sanctions must ensure that the accused student and complainant are afforded the same rights. Therefore, each campus should have a process for investigating and resolving complaints of Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation in such a manner so as to achieve a prompt and equitable resolution. This process should complement Policy 44 and any procedure implemented in support of the same.

6.5.4. Cases of Academic Dishonesty or Misconduct.

Cases of academic dishonesty or misconduct shall be concurrently subject to this Policy and its disciplinary sanctions as well as to academic sanctions in accordance with West Virginia University Policy 15 or other applicable academic procedures. Such matters may be brought to the Student Code Administrator for investigation in accordance with the applicable Campus Student Code and/or may be addressed in accordance with Policy 15 or other applicable academic procedures.

6.6. Interim Suspension.

Each Campus Student Code will have a process for the interim suspension of students. The President or the President's designee shall be authorized to impose an interim suspension prior to a formal hearing or other disposition of allegations against a student. Such immediate interim disciplinary action may be taken as is appropriate under the circumstances for a time period and under those conditions as may be determined by the President or the President's designee when it is necessary to ensure the safety and well-being of members of the University community or to preserve University property; to ensure the student's own physical or emotional safety and well-being; or to deter a threat of disruption or interference with the normal operations of the University.

At a minimum, the process for the interim suspension must require that written notice be given as soon as possible to a student issued an interim suspension and the matter promptly brought to hearing or other disposition.

6.7. Additional Necessary Procedures.

Subject to applicable state and federal law, the President or the President's designee shall be authorized to establish processes through which the welfare of the members of the University community shall be preserved, including a process to address any student who poses a direct threat. The processes may or may not be an integrated part of the Campus Student Code, but must ensure due process to the student giving students a reasonable opportunity to be heard and respond before a final decision can be made. The processes shall be implemented in a nondiscriminatory manner with all determinations based on

individualized assessment of a student’s observed conduct, actions, and statements, and not merely on knowledge or belief that a student is or may be an individual with a disability. Further, all determinations to remove a student will be made in consultation with a qualified healthcare professional to interpret all available information, and will not be based on a slightly increased, speculative, or remote risk of substantial harm.

6.8. Appeals.

Each Campus Student Code shall contain a right to appeal, except -matters involving an agreed resolution. Each Campus Student Code shall contain provisions ensuring that all appeals will be processed according to clearly articulated requirements and time frames and shall identify to whom such appeals must be directed. Moreover, in cases involving Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation, the complainant shall also have a right to appeal.

6.9. No Reprisal or Retaliation.

Each Campus Student Code must provide that no reprisal or retaliation of any kind shall be taken by any member of the University community against any student who asserts his/her rights under this Policy.

6.10. Withholding Transcripts, Grades, and Degrees.

Each Campus Student Code shall provide that the Campus Student Code Administrator may direct the Registrar (or other appropriate campus office) to withhold the issuance of an official transcript, grade, diploma, certificate, or degree to a student, pending a hearing or conference, agreed resolution, and/or exhaustion of appellate rights if, in the opinion of the Campus Student Code Administrator, the best interests of the University would be served by this action. In the event that such action is taken pending the conclusion of Campus Student Code proceedings, the Campus Student Code Administrator shall inform the Registrar of the action within five (5) consecutive days of the conclusion of the proceedings and shall withdraw or continue such withholding, as is determined by the hearing ~~tribunal~~ body or other decision maker or in any other disposition.

Section 7: Residence Life.

The President or the President’s designee shall have the authority to establish a separate process to hear matters that involve Campus Student Code violations that occur within University supervised housing, whether committed by residents or nonresidents. This process may include sanctions, with the exception of expulsion or suspension.

Section 8: Classroom Behavior.

The primary responsibility for managing the classroom environment rests with the faculty. Students who engage in any prohibited or unlawful behavior that results in disruption of a class may be directed by the faculty member to leave the class for the remainder of the class period. Longer suspensions from a class, or dismissal on disciplinary grounds, must be subject to the appropriate Campus Student Code. The term “prohibited or unlawful behavior” would include behavior prohibited by a faculty member. It must be emphasized that this provision shall not be used to punish classroom dissent. The lawful expression of a disagreement with a faculty member is not in itself disruptive behavior. However, dissent must be presented in a manner consistent with the classroom environment set by the faculty. A student who believes that he or she has been treated in an arbitrary manner in this regard should contact his or her Dean of Students or the Campus Student Code Administrator.

Section 9: Student Organizations.

The President or the President’s designee shall have the authority to establish a process to hear matters that involve Campus Student Code violations or unlawful activity that involve a student organization. This process may include sanctions, including the student organization’s loss of selected rights and privileges or deactivation (loss of all privileges, including University recognition).

Section 10: Institutional Discretion.

Subject to this Policy, the President or the President’s designee shall have sufficient latitude and authority to implement any reasonable process necessary for the fair and efficient administration of this Policy.

**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. INSERT DATE
- 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 INSERT DATE 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 ~~sexual misconduct~~ 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 ~~misconduct~~ 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 ~~sexual misconduct~~ 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.

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