

MARSHALL UNIVERSITY

**PROCEDURES FOR REPORTS OF PROHIBITED
CONDUCT AGAINST EMPLOYEES**

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I. INTRODUCTION

Marshall University (the “University”) is committed to providing a safe and non-discriminatory environment for all members of the University community. The University prohibits Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation by or against any member of the University community (together, “Prohibited Conduct”). These forms of Prohibited Conduct are defined in the Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation Policy (BOG GA-1) (the “Policy”). In accordance with Title IX, these are the procedures (the “Procedures”) the University follows when it receives a report alleging Prohibited Conduct by an Employee. The University uses these Procedures to investigate and adjudicate any such allegations and to impose disciplinary sanctions against Employees found responsible for violating the Policy¹.

¹ These Procedures should be read in conjunction with the Policy. Capitalized terms used and not otherwise defined in these Procedures are defined in the Policy. For purposes of these Procedures, the following definitions apply: (1)

II. REPORTING

The University encourages anyone² who experiences or becomes aware of an incident of Prohibited Conduct involving a Student or Employee to *immediately* report the incident to the University through the following reporting options:

By contacting the University's Title IX Coordinator by telephone, email, or in person:

Debra Hart, Director/ Title IX Coordinator

Old Main Room 206

Hart70@marshall.edu or TitleIX@marshall.edu

Ph: 304-696-2597

The University's website for online reporting (which allows for anonymous reporting) is located at <https://www.marshall.edu/eoaa/complaint-form/>.

Anonymous complaints will be reviewed; however, because the Respondent is entitled to certain due process, including but not limited to the right to confront his/her accuser, the University's ability to address alleged misconduct reported by anonymous sources is significantly limited.

A Complainant may choose to make a report to the University to pursue resolution under these Procedures and may also choose to make a report to law enforcement. A Complainant may pursue either or both of these options at the same time. As set forth in the Policy, a Complainant who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should contact law enforcement directly:

Marshall University Police (304-696-HELP (4357) (for both emergencies and non-emergencies)

911 (for emergencies)

City of Huntington, WV Police Department (304-696-5510) (for non-emergencies)

South Charleston Police (304-744-6903)

Cabell County Sheriff's Department (304-743-1594)(for non-emergencies)

Mason County Sheriff's Department (304-675-3838; for non-emergencies)

The administrative investigation of complaints filed in accordance with these Procedures is

the "Title IX Coordinator" means the Title IX Coordinator and/or any of the respective trained designees; (2) "Supervisor" means the individual or individuals to whom an Employee reports in the context of their employment with the University (for academic faculty, that individual may be the Department Chair; Dean or other unity administrator); and (3) "Human Resources" means the University Human Resources and/or the Human Resources professional in an particular school or department.

² Pursuant to University policy, certain University employees, called "Responsible Employees," are required to report to the Title IX Coordinator all information disclosed to them about an incident of Prohibited Conduct. See "Reporting by University Employees of Disclosures Relating to Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence."

different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation is separate and will not take the place of an investigation, adjudication or disposition of a complaint filed in accordance with these Procedures. The results of a law enforcement investigation, adjudication or disposition are not determinative of and do not determine whether an individual is responsible for violating University rules, regulations, policies. The administration of complaints filed in accordance with these procedures may be carried out prior to, simultaneously with, or following civil or criminal investigations and/or proceedings. The University will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus or that affects the University community. Such cooperation may require the institution to temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while the law enforcement agency is in the process of gathering information. Suspensions of investigations typically last from three (3) to ten (10) days but may be extended depending upon the circumstances of each case and/or as dictated by other provisions of this Procedure. The University will promptly resume its administrative investigation/proceedings as soon as notified by the law enforcement agency that it has completed the evidence gathering process.

The University's ability to take action against third parties may be limited and is determined by the context of the prohibited conduct and the nature of the relationship of the parties to the University. The Evaluation Panel will determine the appropriate manner of resolution, which may include referral to area law enforcement, restriction of access to campus or University activities, or referral to the home school of the third party.

A. RESOURCES FOR COMPLAINANT

The following are confidential resources for individuals who are unsure about whether to report Prohibited Conduct or are seeking counseling or other emotional support in addition to (or without) making a report to the University. Specifically, individuals may contact:

Marshall University Women's Center
143 Prichard Hall, One John Marshall Drive
Huntington, WV 25755
Phone: 304 696-3112
Email: wcenter@marshall.edu

CONTACT Rape Crisis Center
P.O. Box 2963
Huntington, WV 25728-2963
Office Phone: 304 523-3447
24-hour crisis hotline: (304) 304-399-1111
<http://www.contacthuntington.com>
(Serving: Cabell, Wayne, Lincoln and Mason Counties)

REACH Family Counseling Connection
Phone: (304) 292-5100
(Serving: Kanawha, Jackson, and Putnam Counties)

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

Marshall University Counseling Center Staff
Marshall University Women's Center Staff
Marshall University Psychology Clinic Staff

Your Primary Care Physician

Cabell Huntington Hospital

Emergency Department
304-526-2200

http://cabellhuntington.org/services/emergencytrauma/?mi=1_10116

St. Mary's Medical Center

Emergency Services
304-526-1111

<https://www.st-marys.org/centers-services/emergency-services/>

Charleston Area Medical Center (CAMC) – General

304-388-7498

<http://www.camc.org/generaler>

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

Marshall University Counseling Center Staff
Marshall University Women's Center Staff
Marshall University Psychology Clinic Staff

Complainants are entitled to receive information, assistance and a broad range of support and remedial measures regardless of whether they choose to pursue criminal and/or University disciplinary resolution of Prohibited Conduct.

The U.S. Department of Education's Office for Civil Rights (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972. Title IX protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. A Complainant may choose to make a report to the OCR at any time by contacting:

Philadelphia Office
Office for Civil Rights
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541
FAX: 215-656-8605; TDD: 800-877-8339
Email: OCR.Philadelphia@ed.gov
<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

A statement about Title IX and a link for filing a complaint or making a report are provided on University websites. Any changes to these procedures will result in notification through email to the University community.

Legal Resources:

West Virginia Lawyer Referral Service

The West Virginia State Bar

2000 Deitrick Blvd.

Charleston, WV 25311

304-553-7220 or 800-642-3617

<https://wvlawyerreferral.org>

B. RESOURCES FOR RESPONDENT

Primary Care Physician

Family Counseling Center

Clergy

Advisor, see below

Legal Resources:

West Virginia Lawyer Referral Service

The West Virginia State Bar

2000 Deitrick Blvd.

Charleston, WV 25311

304-553-7220 or 800-642-3617

<https://wvlawyerreferral.org>

AFT-WV for its members.

III. EXPECTATIONS OF COMPLAINANTS AND RESPONDENTS

Pursuant to these Procedures, Complainants and Respondents can expect:

- A. Prompt and equitable resolution of allegations of Prohibited Conduct;
- B. Privacy in accordance with the Policy and any legal requirements;
- C. Reasonably available interim remedial measures, as described in these Procedures;
- D. Freedom from Retaliation for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy;
- E. The responsibility to refrain from Retaliation directed against any person for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy;
- F. The responsibility to provide truthful information in connection with any report,

investigation, or resolution of Prohibited Conduct under the Policy or these Procedures;

- G. The opportunity to articulate concerns or issues about proceedings under the Policy and these Procedures;
- H. Timely notice of any meeting or proceeding at which the party's presence is contemplated by these Procedures;
- I. The opportunity to choose a representative, including the right to have that representative attend any meeting or proceeding at which the party's presence is contemplated by these Procedures;
- J. Written notice of an investigation, including notice of potential Policy violations and the nature of the alleged Prohibited Conduct;
- K. The opportunity to challenge the Investigator or any member of the Review Panel for bias or conflict of interest;
- L. The opportunity to offer information, present evidence, and identify witnesses during an investigation;
- M. The opportunity to be heard, orally and/or in writing, as to the determination of a Policy violation and the imposition of any sanction(s);
- N. Timely and equal access to any information that will be used during Alternative or Formal Resolution proceedings and related meetings;
- O. Reasonable time to prepare any response contemplated by these Procedures;
- P. Written notice of any extension of timeframes for good cause; and
- Q. Written notice of the outcome of any Formal Resolution proceedings, including the determination of a Policy violation, imposition of any sanction(s), and the rationale for each.

IV. DEFINITIONS

The University prohibits Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in this the Policy by or against any member of the University community (together, "Prohibited Conduct"). These forms of Prohibited Conduct are defined in the (BOG GA-1) (the "Policy").

- A. "Advisor" Any person intended to assist the Complainant or Respondent during the disciplinary process, including but not limited to, a University appointed Advisor, faculty member, attorney or other person. Unless otherwise indicated by the Complainant or

Respondent, in writing, the Advisor shall be provided a copy of all materials provided to the Complainant or Respondent. An Advisor cannot be a witness or provide testimony.

- B. “Complainant” means, for purposes of this Procedure, 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.
- C. “Consensual Relationship” means a mutually acceptable romantic, dating, or sexual relationship between individuals.
- D. "Employee" means any person hired for permanent employment by Marshall University for a probationary, full- or part-time position.
- E. “Interpersonal Violence” occurs when one person uses power and control over another through physical, sexual, or emotional threats or actions, economic control, isolation, or other kinds of coercive behavior.
- F. “Investigator” is an employee of the University or outside person who has been trained in performing Title IX investigations pursuant to these procedures.
- G. “Reporter” means, for purposes of this the 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.
- H. “Respondent” means, for purposes of this Policy, an individual accused of Prohibited Conduct.
- I. “Responsible Employee” any employee: who has the authority to take action to redress Prohibited Conduct; who has been given the duty by the University of reporting incidents of Prohibited Conduct or any other misconduct to the Title IX coordinator or other appropriate school designee; or whom an individual could reasonably believe has this authority or duty.
- J. “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.
- K. “Prohibited Conduct” means Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in Board of Governors Policy GA-1.
- L. “Review Panel” means a standing pool of trained members of the University community or external professionals who adjudicate allegations of Prohibited Conduct on campus, pursuant to these procedures.

- M. “Student” means, for purposes of this Policy, an individual subject to the Marshall University Board of Governors Policy SA-1, The Code of Student Rights and Responsibilities.
- N. “Title IX Investigator” is a University position responsible for the University’s Title IX investigations with a particular emphasis on investigating reports of sexual assault, sexual harassment, stalking and intimate partner violence. Investigations may be done by the University Title IX Investigator or such other trained individual he/she designates or assigns to a particular matter. Provided that, in the absence of the Title IX Investigator, the Title IX Coordinator may assign cases to investigators.

V. INITIAL ASSESSMENT

A. Initial Complaint received by Law Enforcement/Office of Public Safety

1. The Office of Public Safety (MUPD) will notify the Title IX Coordinator that a report of Prohibited Conduct has been received.
2. The University will temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while the law enforcement agency is in the process of gathering information. Suspensions of investigations typically last from three to ten days but may be extended depending upon the circumstances of each case and/or as dictated by other provisions of this Procedure.
3. MUPD will promptly notify the Title IX Coordinator that they have completed their investigation.

B. Complaint received by Responsible Employee

1. Before an individual reveals information that he or she may wish to keep confidential, a Responsible Employee should make every effort to ensure that the individual understands: (i) the employee’s obligation to report the names of the alleged perpetrator and individual involved in the alleged Prohibited Conduct, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator, (ii) the individual’s option to request that the school maintain his or her confidentiality, which the school (e.g., Title IX coordinator) will consider, and (iii) the individual’s ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (e.g., sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers)
2. The Responsible Employee must report to the Title IX Coordinator within 2 business days, all relevant details about the alleged Prohibited Conduct that the individual or another person has shared and that the University will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if

known), the student who experienced the alleged Prohibited Conduct, other students involved in the alleged Prohibited Conduct, as well as relevant facts, including the date, time, and location.

C. Complaint received by Title IX Coordinator

Upon receipt of a report of Prohibited Conduct committed by an Employee, the Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. In this initial assessment, the Title IX Coordinator will:

- A. Assess the Complainant's safety and well-being and offer the University's immediate support and assistance;
- B. Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
- C. Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- D. Inform the Complainant about University and community resources, the right to seek appropriate and available remedial and protective measures, and how to request those resources and measures;
- E. Inform the Complainant of the right to seek Alternative Resolution (where available) or Formal Resolution under these Procedures; ascertain the Complainant's expressed preference (if the Complainant has, at the time of the initial assessment, expressed a preference) for pursuing Alternative Resolution, Formal Resolution, or neither; and discuss with the Complainant any concerns or barriers to participating in any University investigation and resolution under these Procedures;
- F. Explain the University's prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation;
- G. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
- H. Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and
- I. Communicate with the Marshall University Office of Public Safety (MUPD) and other appropriate University officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or

issuance of a timely warning, and take steps to meet those obligations.

The Title IX Coordinator will ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet to discuss those resources and options. When a decision is reached to initiate an investigation or to take any other action under these Procedures that impacts a Respondent (including the imposition of interim protective measures), the Title IX Coordinator will ensure that the Respondent is notified, receives a written explanation of all available resources and options, and is offered the opportunity to meet to discuss those resources and options.

VI. THREAT ASSESSMENT

Following the initial assessment, the Title IX Coordinator will promptly contact the Director of Human Resources and provide the information about the reported incident of Prohibited Conduct. Such information includes, if known, the names and/or any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident.

The Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials will determine any interim measures which need to be taken regarding the employee.

Further if the Title IX Coordinator, in conjunction with the Director of Human Resources and any other necessary or appropriate University officials determine that a criminal act has likely been committed, the Title IX Coordinator will contact the MUPD so that it can be disclosed to the appropriate law enforcement agency.

A. UNIVERSITY ACTIONS FOLLOWING HEALTH AND SAFETY THREAT ASSESSMENT

Upon completion of the health and safety and threat assessment, the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials will determine the course of action under these Procedures, which may include, without limitation, Formal Resolution and/or Alternative Resolution (if available). Where the Complainant requests that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the University will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, the health and safety threat assessment, and the determinations of the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials will be documented and retained by the University in accordance with applicable law.

- 1. Where the Complainant Wishes to Pursue Formal Resolution.** In *every* case in which the Complainant reports Prohibited Conduct and requests an investigation and disciplinary action, the Title IX Coordinator will promptly initiate Formal Resolution under these Procedures.

- 2. Where the Complainant Requests Anonymity, that an Investigation not be Pursued, and/or that No Disciplinary Action Be Taken.** A Complainant may request that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

The University attempts to balance the needs of the parties for privacy with the institutional responsibility of ensuring a safe educational environment and workplace. Confidentiality is an aspiration, but is not always possible or appropriate. An individual's requests regarding the confidentiality of reports of Prohibited Conduct will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the institution's legal obligation to ensure a working and learning environment that is free from discrimination or sexual misconduct and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation and to ensure that the institution meets its obligations under Title IX. The institution may be limited in its response and investigation if confidentiality is requested.

If a Complainant requests anonymity, the report will be referred to the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials. They will consider the following factors in evaluating such request(s) for anonymity (1) the totality of the known circumstances; (2) the potential impact of such action(s) on the Complainant; (3) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct; (4) the existence of any independent information or evidence regarding the Prohibited Conduct; and (5) any other available and relevant information. The University will seek to honor the Complainant's request(s) if it is possible to do so while also protecting the health and safety of the Complainant and the University community.

- a) Determination that a Complainant's Request(s) Can be Honored. Where Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials determines that a Complainant's request(s) (that personally- identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken) can be honored, the University may nevertheless take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances as a form of Alternative Resolution.

At any time, the Complainant may choose to pursue Alternative Resolution (if available) or Formal Resolution under these Procedures. The Title IX Coordinator also may request that a report be re-opened and pursued under these Procedures if

any new or additional information becomes available.³

- b) Determination that a Complainant's Request(s) Cannot be Honored. Where the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials has determined that a Complainant's request(s) (that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken) *cannot* be honored (i.e., because honoring the Complainant's request(s) would impede the University's ability to ensure the health and safety of the Complainant and other members of the University community), the Title IX Coordinator will take any appropriate University actions, which may include, without limitation, (i) imposing a No-Contact Directive or an Interim Disciplinary Suspension on the Respondent; (ii) initiating an investigation and Formal Resolution under these Procedures; and/or (iii) arranging, imposing, or extending any other appropriate remedial and/or protective measures.

Where the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials has determined that the University must proceed with an investigation despite a Complainant's request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, actions that may be required as part of the University's investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that the University intends to proceed with an investigation, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by the University.

Where a Complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited. In such cases, the Title IX Coordinator may pursue the report if it is possible to do so without the Complainant's participation in the investigation or resolution (e.g., where there is other relevant evidence of the Prohibited Conduct, such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct). In the absence of such other evidence, however, the University will only be able to respond to the report in limited and general ways (i.e., through the provision of remedial measures, targeted training or prevention programs, or other remedies tailored to the circumstances).

³ Although a report may be re-opened at any time, the University will only be able to pursue disciplinary resolution and sanctions where the Respondent is an employee of the University.

B. NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY ACTIONS

The Title IX Coordinator will promptly inform the Complainant of any action(s) undertaken by the University to respond to a health or safety threat to the Complainant or the University community, including the decision to proceed with an investigation. The Title IX Coordinator also will promptly inform the Respondent of any action(s) (including any interim protective measures) that will directly impact the Respondent, and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator retains the discretion to impose and/or modify any interim protective measures based on all available information. Interim protective measures will remain in effect until the resolution of the report by the Review Panel, unless new circumstances arise which warrant reconsideration of the protective measures prior to the hearing and determination by the Review Panel. A Complainant or Respondent may challenge interim protective measures or other actions, or failure to impose interim protective measures or take other actions, by contacting the Title IX Coordinator to address any concerns.

VII. UNIVERSITY RESOLUTION

These Procedures offer two forms of resolution of reports of Prohibited Conduct: (1) Formal Resolution, which involves an investigation, and review and sanction (if applicable) by a Review Panel (as described in Section VII.A. of these Procedures), and (2) Alternative Resolution (as described in Section VII.B of these Procedures), which includes a variety of informal options for resolving reports.

A. FORMAL RESOLUTION

Formal Resolution is commenced when:

- i. A Complainant reports that an Employee has engaged in one or more instances of Prohibited Conduct and requests, at any time, an investigation and disciplinary action; or
- ii. Alternative Resolution does not resolve a reported incident of Prohibited Conduct and, in the Title IX Coordinator's discretion, an investigation of the report of Prohibited Conduct is required; or
- iii. At the conclusion of the threat assessment process described in Section VI.A of these Procedures, the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials has determined, based upon a review of the totality of the circumstances, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the Complainant's request that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

O. 1. Investigation. Whenever Formal Resolution is commenced, the Title IX Coordinator will refer the matter to the University Title IX Investigator who will

designate himself/herself or one or more Investigators and/or an experienced external investigator to conduct a prompt, thorough, fair, and impartial investigation. Provided that, in the absence of the Title IX Investigator, the Title IX Coordinator may assign cases to investigators. All Investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, relationship violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and the University community while promoting accountability.

- a) Notice of Investigation. The Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation. Such notice will (1) identify the Complainant and the Respondent; (2) specify the date, time (if known), location, and nature of the alleged Prohibited Conduct; (3) identify potential Policy violation(s); (4) identify the Investigator; (5) include information about the parties' respective expectations under the Policy and these Procedures; (6) explain the prohibition against Retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the Investigator on the basis of bias or a conflict of interest; and (9) provide a copy of the Policy and these Procedures.

The Title IX Coordinator will also notify, in writing, the Respondent's supervisor, Human Resources and the appropriate administrator(s). Such notice will inform these individuals that (1) the Title IX Coordinator has received a report alleging that the Respondent has engaged in Prohibited Conduct under the Policy; (2) the report will be investigated in accordance with these Procedures; (3) the supervisor and the Human Resources are obliged to monitor the relevant environment, depending on the facts of the case, for Retaliation; and (4) information related to the report is confidential (including the identity of the Complainant) and will only be shared as needed to either obtain information pertinent to the investigation or to facilitate fulfillment of the duty of the supervisor and/or Human Resources to address any concerns regarding safety or Retaliation.

The Title IX Coordinator will send an Amended Notice(s) of Investigation to each party should the Investigation reveal additional allegations of misconduct to be investigated

- b) Presumption of Non-Responsibility and Participation by the Parties. The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator and/or Review Panel conclude that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Policy. Neither party is required to participate in the investigation nor any form of resolution under these Procedures. Further, the

Investigator will not draw any adverse inference from a decision by either of the parties not to participate.

- d) Timeframe for Completion of Investigation; Extension for Good Cause. Typically, the period from commencement of an investigation through resolution (finding and sanction, if any) will not exceed sixty (60) calendar days. This timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. The Investigator will notify the parties in writing of any extension of this timeframe and the reason for such extension.
- e) Overview of Investigation. During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party).
- f) Advisors. Throughout the investigation and resolution process, each party has the right to choose and consult with an advisor and/or representative, as applicable. The advisor may be any person, including an attorney paid for by the party desiring their services, who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. While they may provide support and advice to the parties at any meeting and/or proceeding, they may not in any manner disrupt, such meetings and/or proceedings.
- g) Prior or Subsequent Conduct. Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of

pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. Such prior or subsequent conduct may also constitute a violation of University policy, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

- h) Prior Sexual History. The sexual history of a Complainant or Respondent will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history of either of the parties is generally not relevant to the determination of a Policy violation and will be considered only in limited circumstances. For example, if the existence of Affirmative Consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether Affirmative Consent was sought and given during the incident in question. However, even in the context of a relationship, Affirmative Consent to one sexual act does not, by itself, constitute Affirmative Consent to another sexual act, and Affirmative Consent on one occasion does not, by itself, constitute Affirmative Consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.
- i) Relevance. The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait.
- j) Site Visit(s). The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.
- k) Expert Consultation(s). The Investigator may consult medical, forensic, technological or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.
- l) Coordination with Law Enforcement. The Investigator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the request of law enforcement, the Investigator may delay the University investigation temporarily while

an external law enforcement agency is gathering evidence. The Investigator will promptly resume the University investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

- m) Draft Investigation Report. At the conclusion of the investigation, the Investigator will prepare a Draft Investigation Report summarizing the information gathered and outlining the contested and uncontested information. The Draft Investigation Report will not include any credibility assessment of the parties or the witnesses nor the Investigator's findings of responsibility/no responsibility.. The Complainant and the Respondent will have an opportunity to review the Draft Investigation Report; meet with the Investigator; submit additional comments and information to the Investigator; identify any additional witnesses or evidence for the Investigator to pursue; and submit any further questions that they believe should be directed by the Investigator to the other party or to any witness. The Investigator will designate a reasonable time for this review and response by the parties, not to exceed five (5) calendar days. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator during the designated review and response period will not be considered in the determination of responsibility for a violation of the Policy, and will not be considered by the Review Panel.
- n) Final Investigation Report. Unless there are significant additional investigative steps requested by the parties or identified by the Investigator, within five (5) calendar days after receipt and consideration of any additional comments, questions and/or information submitted by the parties during the designated review and response period, the Investigator will prepare a Final Investigation Report, which will include a recommendation as to whether there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility for a violation of the Policy. The Investigator will deliver the Final Investigation Report to the Title IX Coordinator. The Title IX Coordinator will notify both parties, simultaneously, that the Final Investigation Report is complete and available for review.
- o) Recommended Finding(s) of Responsibility. When the Investigator determines that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility on one or more of the allegations, the Respondent may accept or contest such recommended finding(s) by so notifying the Title IX Coordinator, in writing within five (5) days of receiving the Final Report the Title IX Coordinator will refer the case to the employees supervisor to determine the appropriate disciplinary action.

If the Respondent contests one or more of the recommended finding(s), the Respondent may submit to the Title IX Coordinator a written statement explaining why the Respondent contests such finding(s). The Title IX

Coordinator will ensure that the Complainant has an opportunity to review and respond in writing to any such statement. The Title IX Coordinator will provide the Final Investigation Report, together with any statements by the parties, to the Review Panel for further proceedings as outlined in Section VI.B.3 of these Procedures.

If the Respondent is only contesting the disciplinary action imposed and no appeal has been filed by the Complainant, the Respondent may immediately file a grievance in accordance with requirements of the West Virginia Public Employees Grievance Board.

- p) Recommended Finding(s) of No Responsibility. When the Investigator determines that there is insufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility on one or more of the allegations, the Complainant may accept or contest the recommended finding(s) by so notifying the Title IX Coordinator, in writing within five (5) days of receiving the Final Report. If the Complainant accepts the recommended finding(s) of no responsibility, the investigation will be closed and documented in accordance with applicable University policies. If the Complainant contests one or more of the recommended finding(s), the Complainant may submit to the Title IX Coordinator a written statement explaining why the Complainant contests such finding(s). The Title IX Coordinator will ensure that the Respondent has an opportunity to review and respond in writing to any such statement. The Title IX Coordinator will provide the Final Investigation Report, together with any statements by the parties, to the Review Panel for further proceedings as outlined in Section VIIA.3. of these Procedures.
- q) Impact and Mitigation Statements. Where there is a finding of responsibility on one or more of the allegations, both parties may submit a statement to the Title IX Coordinator for consideration by the Review Panel in determining an appropriate sanction. The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The Title IX Coordinator will ensure that each of the parties has an opportunity to review any statement submitted by the other party. The Title IX Coordinator will provide any statement(s) with the Final Investigation Report and the parties' other written submissions to the Review Panel. Impact and mitigation statements must be received within 5 calendar days
- r) Timing of Investigation. The investigation typically will be completed within forty-five (45) calendar days. This period may be extended to account for a previous attempt, if any, at Alternative Resolution, or for other good cause, as described Section VII.A.3(b) of these Procedures. Any extension, other than for Alternative Resolution, and the reason for the extension, will be shared with the parties in writing.

2. **Acceptance of Responsibility.** The Respondent may, at any time, elect to resolve the Formal Resolution process by accepting responsibility for the Prohibited Conduct, in which case the Title IX Coordinator will refer the matter to the Employees supervisor to determine the appropriate sanction(s).

3. **Review Panel Hearing.** The Title IX Coordinator will appoint a standing pool of trained members of the University community and, at the discretion of the Title IX Coordinator, external professionals with experience adjudicating cases of Prohibited Conduct. The Title IX Coordinator will select three members from this pool to serve on the Review Panel. The Review Panel shall elect one member as Chair. In addition, the Hearing Officer shall serve as a non-voting Meeting Chair. Where the Respondent is an academic faculty member, at least two of the voting members of the Review Panel will be appropriately trained full-time faculty members. The Review Panel will review the Investigator's recommended finding(s) and, if applicable, determine any appropriate sanction(s) under these Procedures. All persons serving on any Review Panel (or as the Hearing Officer) must be impartial and free from actual bias or conflict of interest.
 - a) Standard of Review. If either of the parties contests the Investigator's recommended finding(s) of responsibility (or no responsibility) for an alleged violation of the Policy, the Review Panel will hold a Hearing to determine (1) whether the concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation; and, if not, (2) whether there is sufficient evidence to support the Investigator's recommended finding(s) by a Preponderance of the Evidence.
 - b) Notice and Timing of Hearing. Typically, a Hearing will be held within fifty- five (55) calendar days from the date of the Notice of Investigation, subject to extension for good cause. The Hearing Officer will notify the parties in writing of the date, time, and location of the Hearing; the names of the Review Panel members and the Hearing Officer; and how to challenge participation by any member of the Review Panel or the Hearing Officer for bias or conflict of interest. The Hearing will usually be scheduled within five (5) calendar days from the date of the Notice of Hearing, subject to extension for good cause at the discretion of the Title IX Coordinator. Good cause for extension may include the unavailability of the parties, the timing of semester breaks or University holidays, or other extenuating circumstances. Any extension, including the reason for the extension, will be shared with the parties in writing.
 - c) Postponement of Hearing. Permission to postpone a Hearing may be granted provided that the request to do so is based on a compelling emergency and communicated to the Hearing Officer prior to the time of the Hearing.

d) Hearing Format. The Hearing is an opportunity for the parties to address the Review Panel, in person and to provide information relevant to the issue(s) to be decided by the Review Panel.

- i. The parties may address any information in the Final Investigation Report, supplemental statements submitted in response to the Final Investigation Report, and any impact and mitigation statements.
- ii. Each party has the opportunity to be heard, to identify witnesses for the Review Panel's consideration, and to respond to any questions of the Review Panel.
- iii. The parties and/or their Advisors may not directly question each other or any witness, although they may proffer questions for the Review Panel to the Hearing Officer, the Hearing Officer may choose, in his/her discretion in consultation with the Review Panel, to pose appropriate and relevant questions to the Investigator, the parties and/or any witnesses. A typical hearing may include brief opening remarks by the Complainant and/or Respondent, with follow-up questions posed by the Review Panel; information presented by the Investigator or witnesses deemed relevant by the Review Panel, with follow-up questions by the Review Panel of the Investigator or witnesses; and brief concluding remarks by the Complainant and/or Respondent. The Chair of the Review Panel has the discretion to determine the specific Hearing format.
- iv. Formal rules of evidence and court procedures are not used and do not apply. Student conduct hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures, requirements for pleadings, and the hearsay rule do not apply in student disciplinary hearings.
- v. The Respondent and the Complainant shall each have the opportunity to testify, but may not be required to testify.
- vi. The hearing will be electronically recorded. The Respondent and the Complainant, upon request shall be provided with a copy of the recording. The original recording will remain the property of the University and will be considered the investigation record. Provided that, upon the prior approval of the Hearing Officer, the Respondent and/or the Complainant may utilize the services of a Certified Court Reporter at their own expense. If a Certified Court Reporter is utilized the party utilizing the Certified Court Reporter shall provide the University with the original transcript at no charge to the University. The original transcript will then become the official record of the proceedings. If both parties are requesting to use a Certified Court Reporter, only one Certified Court Reporter will be permitted and the Respondent and Complainant shall share the costs.

e) **Participation in Hearing**.

- i. Parties. Both the Complainant and the Respondent have a right to

be present at the Hearing. Either party may request alternative methods for participating in the Hearing that do not require physical proximity to the other party, including participating through electronic means. This request should be submitted to the Hearing Officer at least two (2) calendar days prior to the Hearing.

If, despite being notified of the date, time, and location of the Hearing, either party is not in attendance, the Hearing may proceed and applicable sanctions may be imposed. Neither party is required to participate in the hearing in order for the Hearing to proceed.

- ii. Investigator or other witnesses. The Review Panel may request the presence of the Investigator or any other witness it deems necessary to its determination. The parties may also request the presence of any witness they deem relevant to the determination by the Review Panel. The Review Panel has absolute discretion to determine which witnesses are relevant to its determination and may decline to hear from witnesses where it concludes that the information is not necessary for its review.
 - iii. Advisors. Both the Complainant and the Respondent have the right to be accompanied at the Hearing by an Advisor of their choosing. The Advisor may be anyone, including an attorney, who is not otherwise a party or witness. The Advisor may provide support and advice to a party at the Hearing, the Advisor may speak on behalf of the party or otherwise participate in, the Hearing as set forth in these Procedures. Provided, that, the University reserves the right to remove any individual whose actions are disruptive to the proceedings.
- f) **Determination by the Review Panel.** Where either of the parties has contested the recommended finding(s) of responsibility, the members of the Review Panel will, at the conclusion of the Hearing, determine, by majority vote, (1) whether the concern(s) stated by the contesting party raise substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation; and, if not, (2) whether there is sufficient evidence to support the Investigator's recommended finding(s) by a Preponderance of the Evidence.

If the Review Panel finds that concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation, it will remand the matter to the Title IX Coordinator with instructions for further investigation or other action. The instructions may include guidance regarding the scope of information to be further investigated and any appropriate stipulations, including the appointment of a new Investigator.

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation, but

determines there is insufficient evidence to support the Investigator's recommended finding, it may remand the matter for further investigation, or reject the Investigator's recommended finding(s) and make alternative finding(s).

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation *and* affirms that there is sufficient evidence to support a recommended finding of responsibility by a Preponderance of the Evidence, it will then determine, by majority vote, the recommended sanction(s) for the Prohibited Conduct.

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation *and* affirms a recommended finding of no responsibility, the matter will be considered resolved and the investigation will be closed. The Title IX Coordinator may nevertheless ensure that remedial measures remain in effect to support a Complainant.

The Review Panel will issue a Final Outcome Letter, as set forth in VII.A.3.(i). No decision will be communicated orally.

g) Sanctions. Where disciplinary action has been imposed, such action, may include one or more of the following: informal and formal counseling, progressive disciplinary action, No-Contact Directive, transfer of position, removal of administrative appointment, demotion, suspension, and termination of employment.

The Policy prohibits a broad range of conduct, all of which is serious in nature. The propriety of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances outlined in the Decision Packet. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Review Panel has and wide latitude in the imposition of sanctions tailored to the facts and circumstances of the Prohibited Conduct, the impact of the conduct on the Complainant and University community, and accountability for the Respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved or so deleterious to the educational process that it requires severe sanctions, including suspension or termination of employment from the University.

Once the Review Panel has determined that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility under the Policy, it may affirm any sanction previously imposed and recommend any one or more sanctions may be imposed. In determining the appropriate sanction(s), the Review Panel will be guided by a number of considerations,

including:

- i) The severity, persistence or pervasiveness of the Prohibited Conduct;
- ii) The nature or violence (if applicable) of the Prohibited Conduct;
- iii) The impact of the Prohibited Conduct on the Complainant;
- iv) The impact or implications of the Prohibited Conduct within the University community;
- v) Prior misconduct by the Respondent, including the Respondent's prior disciplinary history, at the University or elsewhere, and any criminal convictions;
- vi) Whether the Respondent has accepted responsibility for the Prohibited Conduct;
- vii) The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning; and
- viii) Any other mitigating, aggravating, or compelling factors.

The Review Panel will consult with other administrators as needed, including Human Resources, the Office of the Provost, and the Title IX Coordinator, to ensure that any disciplinary action is appropriate for the violation and consistent with the disciplinary procedures for the Employee type and prior University action for similar policy violations. The Review Panel will also determine any other appropriate actions, which may include (1) imposing or extending a No-Contact Directive; (2) imposing or extending University employment modifications; (3) other restorative remedies for the Respondent, such as formal referral for formal or informal counseling; (4) imposing or extending increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; (5) arranging for conducting targeted or broad-based education programming or training for relevant persons or groups; and/or (6) imposing any other remedial or protective measures that are tailored to achieve the goals of the Policy.

Any sanction or combination of sanctions recommended to the University to be imposed upon a Respondent will be directed to the Director of Human Resources. Nothing in these Procedures prevents the Review Panel from recommending disciplinary action against a Respondent where the Final Investigative Report demonstrates that the Respondent engaged in other conduct prohibited by the University, regardless of whether the Respondent has been found responsible for violating the Policy.

Neither the Review Panel nor the Title IX Coordinator may impose a sanction against an employee, but may only recommend the sanction(s) to be imposed. The University Chief of Staff or Provost or his/her designee, as appropriate to the employee's status, shall make the final determination as to the sanction to be imposed.

- h) Notice to the Title IX Coordinator.** The Chair of the Review Panel will notify the Title IX Coordinator in writing of its decision, outlining his or her

acceptance or rejections of the Review Panel decision, the rationale for the decision, any recommended sanction(s) against the Respondent, the rationale for such sanction(s) (including why the Review Panel did or did not accept the sanction(s) recommended by the Review Panel), and any other remedial actions for the Complainant, the Respondent, and/or community to be implemented as a result of the finding.

- i) **Final Outcome Letter.** The Review Panel Chair will simultaneously issue a written decision (the “Final Outcome Letter”) to both the Complainant and the Respondent, with a copy to the Title IX Coordinator, within five (5) calendar days following the Review Panel Hearing (or such longer time as the Chair may for good cause determine).
- a. The Final Outcome Letter to the Respondent will set forth the violation(s) of the Policy for which the Respondent was found responsible or not responsible, as supported by the rationale set forth in the Final Investigation Report and/or modified by the Review Panel; the sanction(s) (if applicable) recommended against the Respondent; and the rationale for any sanction(s) recommended. The Final Outcome Letter may also identify protective measures implemented with respect to the Respondent or the broader University community. The Final Outcome Letter will not disclose any remedial measures provided to the Complainant. The Final Outcome letter will set forth the Respondent’s right to appeal this decision to the Title IX Coordinator.
 - b. The contents of the Final Outcome letter issued to the Complainant will set forth the violation(s) of the Policy (and, if applicable, the Code of Student Conduct) for which the Respondent was found responsible or not responsible, as supported by the rationale set forth in the Final Investigation Report and/or modified by the Review Panel. The Final Outcome letter will disclose to the Complainant the sanctions recommended in accordance with State and Federal law. The Final Outcome letter will set forth the Complainant’s right to appeal this decision to the Title IX Coordinator.
- b) Appeal of Final Outcome Letter. Appeals are not new hearings. Rather, review will be limited to a record of the original hearing and supporting documents. The individual appealing must provide a Statement of Appeal in writing as defined below. The appellant must base the appeal exclusively on one or more of the grounds below:
- a. The hearing was not conducted fairly or in conformity with prescribed university procedures. The appellant must show that any alleged bias or deviation from these Procedures is likely to have adversely affected the outcome of the original hearing.

- b. Any sanctions recommended by the Review Panel were not appropriate for the violation(s) for which the student was found responsible.
- c. New, substantive information, sufficient to alter the decision, exists and was clearly not available at the time of the original hearing.
- d. The requirements of Title IX were not followed.

4. Appeals to the Title IX Coordinator.

- a) Who May Appeal. The Complainant and/or the Respondent may appeal a decision of the Review Panel. The individual appealing is referred to as the appellant. In situations where more than one party appeals, they will be designated as Complainant/Appellant, Respondent/Appellant and/or Director Appellant as appropriate.
- b) Statement of Appeal. The Appellant must submit a Statement of Appeal to the Title IX Coordinator within five business days of receipt of the Final Determination Letter. Upon showing of good cause, an extension may be requested in writing and may be granted by the Title IX Coordinator.
- c) Content of Statement of Appeal. The Notice of Appeal must contain at least the following: (1) specific grounds for appeal; (2) specific relief requested (3) appellant's reasons in support of the relief requested. Appeals must be in writing. Verbal appeals are not accepted.
- d) The Title IX Coordinator may request the non-appealing party to make a written response to the Statement of Appeal.
- e) Sanction Held in Abeyance Pending Appeal. The effective date of any sanction, not already imposed, will be held in abeyance (temporarily delayed) automatically during the period in which an appeal may be filed and until the Title IX Coordinator reaches a decision on any appeal filed; however, the Title IX Coordinator has the right to retain certain conditions or restrictions, particularly those related to life-safety issues and “no contact” directives.
- f) Authority of the Title IX Coordinator. After reviewing the record below, the Title IX Coordinator may:
 - a. Affirm the action, at which time the matter will be considered final and binding upon all involved.
 - b. Reverse the action taken by the Review Board and dismiss the case. A case will be dismissed only in rare and extreme circumstances.
 - c. Remand the case to the Review Board for a new hearing.
 - d. Recommend an increase or decrease any sanctions imposed based on information presented during the appeal process.

- g) Notice and Record of Decision. Within ten business days of receipt of the Statement of Appeal, the Title IX Coordinators' decision will be communicated to all parties in the same manner as the Final Determination Letter.
 - h) Extension of Issuing a Decision. The time period for the Title IX Coordinators' decision may be extended upon agreement of the Respondent and Complainant. If the Director appealed, his/her agreement will also be required.
 - i) Final Decision. The decision of the Title IX Coordinator or his/her designee shall be final.
- g) **Decision of the Title IX Coordinator is Final.** The decision outlined in this notice is final under the Policy and not subject to further University appeal. Provided that, nothing in these Procedures abrogates post-adjudication rights as provided by state and federal law (i.e. West Virginia State Grievance Procedure). See W. Va. Code §6C-2 -1, *et. seq.*, <http://www.pegb.wv.gov/links/Pages/default.aspx>; the [West Virginia Human Rights Commission](#); the [Office of Civil Rights](#); and the [Equal Opportunity Employment Commission](#).

B. ALTERNATIVE RESOLUTION

The Complainant may seek Alternative Resolution in place of an investigation and Formal Resolution. The University, however, has the discretion to determine whether the nature of the reported conduct is appropriate for Alternative Resolution, to determine the type of Alternative Resolution that may be appropriate in a specific case, and, pursuant to Section VII.A of these Procedures, to refer a report for Formal Resolution at any time. In addition, Alternative Resolution may not be available where the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials has determined that one or more of the following Risk Factors is present. **Forms of Alternative Resolution that involve face-to-face meetings between the Complainant and the Respondent, such as mediation, are not available in all cases involving Prohibited Conduct.**

Risk Factors:

- a) Whether Respondent has prior arrests, is the subject of prior reports and/or complaints related to any form of Prohibited Conduct, or has any history of violent behavior;
- b) Whether the Respondent has a history of failing to comply with any University No-Contact Directive, other University protective measures, and/or any judicial protective order;

- c) Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
- d) Whether the Prohibited Conduct involved multiple Respondents;
- e) Whether the Prohibited Conduct involved physical violence. “Physical violence” means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking and brandishing or using any weapon;
- f) Whether there is a pattern of Prohibited Conduct (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- g) Whether the Prohibited Conduct was facilitated through the use of “date/acquaintance-rape” or similar drugs or intoxicants;
- h) Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring;
- i) Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18); and/or
- j) Whether any other aggravating circumstances or signs of predatory behavior are present.

Participation in Alternative Resolution (including any specific form of Alternative Resolution) is voluntary. The University will not compel a Complainant or Respondent to engage in Alternative Resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from Alternative Resolution at any time. The University may decline the request for Alternative Resolution in any particular case and may terminate an ongoing Alternative Resolution process at any time. Pursuing Alternative Resolution does not preclude later use of Formal Resolution if the Alternative Resolution fails to achieve a resolution acceptable to the parties and the University. Where the Complainant or the Respondent withdraws from Alternative Resolution or Alternative Resolution is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the Alternative Resolution may be considered in a subsequent investigation and Formal Resolution.

With any form of Alternative Resolution, each party has the right to choose and consult with an advisor or representative, as applicable. The parties may be accompanied by their respective Advisors at any meeting or proceeding held as part of Alternative Resolution. The Advisor may provide support and advice to the parties at any meeting and/or proceeding, they may not in any manner disrupt, such meetings and/or proceedings.

Alternative Resolution may involve individual and/or community remedies that are designed to address a report of Prohibited Conduct, such as:

- A. One-on-One Communication: If a Complainant wishes to address a situation with a Respondent without the direct involvement of a third party, the Complainant may

communicate directly with the Respondent. This form of Alternative Resolution is appropriate only if the Complainant does not feel threatened, there is no risk of physical harm, and the Complainant reasonably believes the Respondent will be receptive to the communication. **Complainants are NOT required to engage in one-on-one communication before seeking the third party assistance or other help.**

- B. Resolution with the Assistance of a Third Party: A Complainant may seek assistance in informally resolving a report of Prohibited Conduct from (i) the Complainant's supervisor, if the Complainant is an Employee; (ii) the Respondent's supervisor; (iii) the Human Resources Office; (iv) the Office of the Provost (Faculty); (v) The Office of Equity Programs or the Title IX Coordinator; or (vi) other third party as agreed to by the parties. The availability of this form of Alternative Resolution, and any resolution reached through such form of Alternative Resolution, is subject to the agreement of the Title IX Coordinator, the Complainant and the Respondent. This form of Alternative Resolution may not be used in all allegations of Prohibited Conduct.
- C. Interventions and Remedies: Alternative Resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant's access to educational, extracurricular, and/or University employment activities; increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or University housing modifications for Student Complainants; workplace modifications for Employee Complainants; one or more of the restorative remedies or other sanctions described in these Procedures; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the Policy.

Any form of Alternative Resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Alternative Resolution, the terms of the agreement are implemented and the matter is resolved and closed. If an agreement is not reached, and the Title IX Coordinator determines that further action is necessary, or if a Respondent fails to comply with the terms of the Alternative Resolution, the matter may be referred for an investigation and Formal Resolution under these Procedures.

The Title IX Coordinator will maintain records of all reports and conduct referred for Alternative Resolution, which typically will be completed within thirty (30) calendar days.

VIII. RECORDS RETENTION

The University shall retain all records relating to a report of Prohibited Conduct, including investigation files and personnel record documentation of disciplinary or other personnel actions, in accordance with the University's record retention policy.