# ADMINISTRATIVE PROCEDURE

## STUDENT-03

### STUDENT DISCIPLINARY PROCEDURES

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**Purpose:**
This administrative procedure sets forth the Procedures and Due Process rights for students who are accused of violation Board of Governors policies GA-1 or SA-1.

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Article I. General Overview

Section 1.01 Code of Student Rights and Responsibilities

Marshall University Board of Governors Policy SA-1, Student Rights and Responsibilities, also referred to as the Student Code of Conduct, reflects the University community’s expectations and standards established for each of its members. The Code of Student Conduct and the student conduct system are founded on principles of fairness and due process, a commitment to the educational development of students, and are designed to balance the interests of the University community as a whole with the protection of students’ individual liberties.

Disciplinary action on campus deals administratively and developmentally with prohibited or unacceptable student behavior in the University community. Any individual may refer any student or organization to the Office of Student Conduct. Official University action will be taken when a student’s or student group’s behavior violates community standards, interferes with the University’s educational purpose, or with its duty to protect and preserve individual health, welfare, and property. When the behavior is aggravated or presents a continuing danger to the University community, accused students are subject to separation from the institution.

Our disciplinary system is substantially less formal than a court of law. The objective of a system of student discipline is to promote responsible citizenship in a complex organizational or social setting while affording due process to the accused.

Section 1.02 Jurisdiction

A. Conduct

These provisions govern Student conduct on, or as it relates to University property, or at official University functions and University-sponsored programs conducted away from the campus. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree. Conduct that occurs before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if his/her conduct is not discovered until after a degree is awarded), is subject to the Student Code of Conduct. The Student Code of Conduct shall apply to a student’s conduct even if the student withdraws from school or a particular course while a disciplinary matter is pending.

B. Off-Campus Conduct

The Director of Student Conduct (Director) is responsible for deciding whether the Student Code of Conduct shall be applied to conduct occurring off-campus, on a case-by-case basis, at his/her sole discretion.

Student conduct that occurs off University property is subject to the Code where it: a) adversely affects the health, safety, or security of any other member of the University community, or the mission of the University; or b) involves academic work or any records or documents of the University. In determining whether or not to exercise jurisdiction over such conduct, the Office of Student Conduct
will consider the seriousness of the alleged offense, the risk of harm involved, whether the victim(s) are members of the campus community and/or whether the off-campus conduct is part of a series of actions that occurred both on and off University property.

C. Student Organization Conduct

Upon registration with Marshall University, each student organization becomes responsible for acting in accordance with the provision of the Code of Student Rights and Responsibilities and all other applicable University and community policies and standards. Official University action will be taken when the behavior of the members of a Student Organization violates community standards and interferes either with the University’s educational purpose, or with its duty to protect individual health, welfare, and property.

Any Student Organization can be held responsible for its actions or the actions of those affiliated with the organization, including but not limited to: one or more of its members (active or inactive), former members, alumni, guests, contractors, and agents. Every student organization or student group has the duty to take all reasonable steps to prevent violations of University regulations and state laws growing out of or related to the activities of the organization. To this end, each organization is expected to educate its members regarding their risk management policy and all applicable University policies and state laws.

Refer to Appendix A, Possible Findings And Sanctions Related To Organizational Discipline for the disciplinary procedures related to Student Organizations.

1. In determining whether a Student Organization may be held collectively responsible for the individual actions of its members, guests, contractors, and/or agents, all of the available factors and circumstances surrounding the specific incident will be reviewed and evaluated. There is no minimum number of Student Organization members who must be involved in an incident to determine group responsibility. A Student Organization may be subject to discipline for activities not sponsored by the Student Organization where the majority of the persons present or responsible for the activity are members or guests of members of the Student Organization.

2. Misconduct on the part of the Student Organization may be cause for disciplinary action by the University when one or more of the following factors exist:

   a. Members of the Student Organization (active or inactive), alumni, former members, agents, contractors, or guests act together to violate the Student Conduct Code;

   b. A member or guest of an organization is failing to discourage such activity, or tacitly condoning the behavior;

   c. One or more officers or members of a Student Organization are present, have knowledge of, planned and/or permitted unlawful conduct or conduct in violation of the University Student Code of Conduct at a Student Organization sponsored, financed or otherwise supported activity or event;
d. A violation of the University Student Code of Conduct occurs on premises and/or in transportation owned, operated, leased or rented exclusively by the Student Organization;

e. A pattern of individual violations has occurred and/or continues to occur without adequate control, response, or sanctioned on the part of the Student Organization;

f. Student Organization or activities related to the Student Organization provided the context for the violation(s);

g. The Student Organization leadership chooses to protect one or more individuals in who are members (active or inactive), alumni, former members, agents, contractors, or guests of the Student Organization from official actions; and/or

h. The acts grow out of or are directly related to the Student Organization’s activities or an environment created by the Student Organization.

D. Residence Hall Violations

Disciplinary procedures for Violations of the Residence Hall Contract or Residence Hall Guide are located in Appendix C of this Administrative Procedure. Provided that, residence hall incidents that involve suspected use or possession of drugs or alcohol, or any actions that could, under the Student Code of Conduct, result in suspension or expulsion, will be referred to the Office of Student Conduct for investigation and adjudication and sanctioning, if applicable, under the procedures set forth herein.

E. Criminal Conduct

Alleged violations of the Student Code of Conduct may also constitute violations of municipal, county, state or federal law. Any individual may report an incident alleging criminal conduct by calling 9-1-1 in an emergency, by contacting the Marshall University Department of Public Safety at 304-696-HELP, or any other local law enforcement agency.

The administrative investigation of complaints filed in accordance with these procedures is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation will not take the place of an investigation, adjudication or disposition of a complaint filed in accordance with these procedures and the results of a law enforcement investigation, adjudication or disposition are not determinative of whether an individual is responsible for violating University rules regulations, policies or the Code of Student Conduct. 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 campus community and 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 to ten days but may be extended depending upon the circumstances of each case. 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.

F. Sexual Misconduct

Please note that the disciplinary procedures regarding allegations related to Sexual Misconduct as defined in the Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, And Retaliation Policy (BOG GA-1) are located in Appendix B of this Administrative Procedure. Further, those procedures supersede these Student Disciplinary Procedures and, to the extent those procedures are differing, they take precedence in those cases related to Sexual Misconduct.

G. Program Specific Conduct Codes

This Code of Student Conduct shall apply to all students enrolled in undergraduate or graduate programs. Academic and professional standards of conduct will also apply to students enrolled in programs that have adopted such standards. All students are subject to this Student Code of Conduct and some students may be concurrently subject to additional standards and sanctions as determined by the respective academic programs. The administration of complaints filed in accordance with these procedures may be carried out prior to, simultaneously with, or following program specific academic and professional standards of conduct investigations and/or proceedings. Sanctions imposed under the Student Code of Conduct may be in addition to sanctions imposed in accordance with program specific academic and professional standards of conduct. For example and without limiting the general language herein, a student found responsible for violating the Student Code of Conduct may receive disciplinary probation as a sanction in accordance with this procedure but may also be dismissed from a program for the same conduct in accordance with program specific procedures and conduct codes.

Section 1.03 Office of Student Conduct

The Office of Student Affairs, Office of Student Conduct supports the mission of Marshall University by objectively and efficiently administering our Student Code of Conduct, promoting academic integrity, balancing individual and community interests in order to encourage student accountability, and connecting students to resources that foster student success.

The Director of Student Conduct (Director) or his/her designee is responsible for administering the Student Code of Conduct. The Director’s responsibilities are set forth in this procedure and include, but are not limited to reviewing complaints, issuing charges, making determinations on the responsibility of accused students, imposing sanctions, selecting and training student Advisors, presenting Complaints to the Student Hearing Board and any other responsibilities related to the Student Code of Conduct as determined by the Vice President of Student Affairs and/or the President that may not be specifically set forth in these procedures.
Article II. PROCEDURES

Section 2.01 Definitions

The definitions set forth in this section apply only to these Student Disciplinary Procedures and are not to be applied to any other University procedure. To the extent definitions in other University policies and procedures differ, the definitions set forth in these procedures control.

A. **Academic Term.** For the purpose of these Procedures, an Academic Term is one year.

B. **Activity.** All or any operations conducted, sponsored, promoted, operated or otherwise engaged in by Marshall University, including, by way of illustration and not as limitation of the foregoing, classroom and course activities, recreational and cultural programs, committee or other business activity, registration, advising, teaching, research, or service.

C. **Advisor.** Any person intended to assist the Respondent during the disciplinary process, including but not limited to, a Student Advisor, faculty member, attorney or other person. Unless otherwise indicated by the Respondent, in writing, the Advisor shall be provided a copy of all materials provided to the Respondent. Advisors may not be witnesses or provide testimony.

D. **Business Day.** Any weekday when university offices are open for official business.

E. **Complainant.** The Individual who brings a complaint alleging that a student has violated the Student Code of Conduct.

F. **Designee.** The person designated by the designated Marshall University official in these Procedures to act on their behalf. Provided that, a Designee cannot be anyone who is part of the hearing or appeal process under these Procedures.

G. **Director of Student Conduct (Director).** The staff member designated by Marshall University, or his/her designee, as responsible for the administration of the Student Code of Conduct. The Director’s duties include, but are not limited to, investigating complaints, charging students with violations, imposing sanctions, and representing the University in hearings. The Director is responsible for making an initial determination of whether or not a Code violation has occurred. The Director supervises the selection and training of Student Advisors.

H. **Educational Sanction.** An assignment, requirement, or task educationally related to the violation.

I. **Executive Session.** Executive session includes the voting members of the board and other non-voting parties at the discretion of the board. Executive Sessions are not a part of the hearing record and shall not be recorded.
J. **Hearing Officer.** Any Marshall University faculty or staff member versed in the student conduct process, appointed to preside over a student conduct hearing. The Hearing Officer’s function is to schedule the hearing and to see that it is conducted fairly and in compliance with stated policy. A Hearing Officer provides “technical” advice to the Hearing Board, but does not vote or participate in decision-making except where the decision of the Hearing Board is a tie.

K. **Justices.** Full-time students, faculty and staff members who, on a voluntary basis, hear student conduct cases and recommend sanctions for students found in violation of the Code of Student Conduct. Justices must meet established criteria and complete University-supervised training.

L. **Medical Amnesty.** Procedure for Students who seek emergency assistance for themselves, another student, or a friend experiencing an alcohol and/or drug related emergency as well as the individual in distress, to be granted limited immunity to disciplinary action under the Student Code of Conduct. Students may still be referred for assessment, counseling and possible treatment.

M. **Notices or Communications.** All notices or other communications which are required in these Procedures, including all appendices, shall be in writing and shall be deemed to have been duly given if (a) delivered by hand, (b) sent to the recipient’s official University email account with a delivery and read receipt; (c) mailed by certified or registered mail with postage prepaid; (d) mailed by reputable overnight courier; (e) sent by facsimile transmission, with confirmation that such transmission has been received.

N. **Respondent.** A person who is alleged to have violated the Student Code of Conduct.

O. **Social Obligation Hold.** If a student is charged with or found responsible for a violation of the Student Code of Conduct, a Social Obligation Hold will be placed on the student’s account. A Social Obligation Hold will prevent the student from conducting University business without the approval of the Director as well as prevents a student from registering for academic courses pending the outcome of the investigation, adjudication and disposition of the complaint. A student who is under a Social Obligation Hold is not permitted to withdraw from the University without the approval of the Director. In situations where a student is found responsible and given a Reportable Sanction a notation will be placed on the Student’s transcript.

P. **Student.** Any persons taking courses at or from Marshall University, both full-time and part-time, pursuing undergraduate, graduate, or professional studies and those who attend educational institutions other than Marshall University and who reside in Marshall University residence halls or utilize Marshall University facilities or services for the purpose of pursuing studies at those institutions. For the purposes of this policy, persons who have been admitted to Marshall University, but are not officially registered for a particular term, and/or who have a right to, or expectation of, a continuing or future student relationship with Marshall University are considered “students.” A person shall be considered a student during any break or holiday period that occurs during a term in which that person is registered or between terms for which that person registers. A person shall be considered a student while suspended from the institution, or while the person is attending or participating in any activity preparatory to the beginning of a term, including, but not limited to, athletic training, orientation, placement testing, and residence
hall check-in. A person is considered a student after the awarding of a degree or certificate for
the purposes of addressing any conduct alleged to have occurred during any of the times set forth
in this definition.

Q. **Student Advisor.** A full-time student approved to provide, on a voluntary basis, advice, assistance
and representation to students charged with violating the Student Code of Conduct. Full-time
student advisors must meet established criteria and complete University-sponsored training.

R. **Student Conduct Hearing Board (Hearing Board).** A review board that adjudicates cases where
the matter cannot be resolved directly with the Director of Student Conduct. The Board will
consist of one faculty or staff Justice and two student Justices.

S. **Student Organization.** Any group of five(5) or more Students or persons who have complied with
formal requirements for provisional or full recognition as a student organization at Marshall
University or who are otherwise united around a common interest. Student Organizations
include, but are not limited to, social fraternities and sororities, sports clubs, academic clubs and
organizations whose recognition has been suspended.

T. **University.** This term, where used in this document, refers to Marshall University, including all
branch campuses and affiliated units and centers.

U. **University Property.** All the land, buildings, facilities, and other property including intellectual and
virtual property, owned, used, leased or controlled by Marshall University, including adjacent
streets and sidewalks. This includes all University campuses and facilities. University property
also includes computers and network systems owned, maintained or controlled by the University
or funded by University budgets or designated by the campus as subject to these policies.

V. **Witness.** A person who has relevant information to share.

**Section 2.02  Intake and Review Procedures**

A. **Filing a Complaint.** Any faculty member or staff, student, or any other person may meet with
the Director to discuss alleged misconduct. If the Complainant wants to file a formal complaint,
the Complainant must submit to the Director his/her official Statement of Complaint (Complaint)
and all materials supporting the complaint within seven (7) days of the meeting. Such materials
may include, but are not necessarily limited to: Witness List, contact information of witnesses if
known, detailed statements prepared by factual witness(es), written correspondence shared
between the parties, documents, photographs, property receipts, medical reports, and any other
information relevant to the Complaint.

The Complainant may not submit more than 50 pages of materials to be included in the case file.
Statements should be in legible hand writing or typed using a clear font that is easily readable.
The Office of Student Conduct recommends Calibri or Times New Roman. Typed statements should be double-spaced on standard-sized paper (8.5” x 11”) with 1” margins on all sides.

These materials will become part of the Official Case File.

At the conclusion of the seven (7) calendar day deadline for submission of the Complaint and all supporting materials, the Complainant’s official Statement of Complaint is rendered complete. The only additional materials that he/she will be allowed to submit is information that responds specifically to information submitted by the Respondent that could not have reasonably been anticipated by and addressed in the Complainant’s original Statement of Complaint.

B. **Anonymous Complaints.** Although anonymous complaints will be reviewed, 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.

C. **Review.** The Director will review the Complaint, interview the Complainant and may interview any witnesses named in the Complaint in order to determine whether there is sufficient information and/or or evidence to support the allegations of misconduct. As part of the interview, the Director will advise the Complainant and/or witnesses of their potential role in the Code of Student Conduct adjudicatory process. If the Director determines the allegations set forth in the complaint, if proven, would not constitute a violation of the Code of Student Conduct, or that insufficient evidence/information exists to support the allegations in the Complaint, the Director will notify the Complainant via United States Mail or the University email system that charges against the responding student will not be pursued. A dropped charge may be reinstated at the discretion of the Director if substantial new information should become available. If a charge is reinstated, the Respondent will be sent a notice of the charge. If a charge is dropped, the student will have no disciplinary history related to it. If the Director determines that the allegations, if proven would constitute a violation of the Code of Student Conduct and that sufficient evidence/information exists to support the allegations in the Complaint, the Director will issue the Respondent a Charge Letter.

D. **Interim Measures.** Interim measures may be initiated by the Director to protect the safety and well-being of persons involved in an incident and/or the campus community pending the outcome of the investigative and adjudicative processes. Interim measures may include the following to the extent reasonably available and appropriate.

1. **Interim suspension.** Immediate separation of a Student from the University and/or housing by the Director (or designee) pending an investigation or adjudication. Through the duration of the interim suspension, the Student may be restricted from University property and may be required to provide prior notice and receive approval from the Director for the purpose of conducting University business. Interim suspension will be imposed only in exceptional circumstances to ensure the health, safety or welfare of members of the University or University property or to ensure the Student’s own safety and welfare. Interim Suspension/Emergency Suspension procedures are set forth more fully in Section 2.03.
2. **No Contact Directive.** A no contact directive is an official University directive that serves as notice to an individual(s) that they must not have physical contact with or proximity to, or direct verbal, electronic, written, and/or indirect third party communications with another individual.

3. **Cease and Desist Directive.** During the pendency of any investigation undertaken pursuant to these procedures. The Vice President of Student Affairs or designee, may impose a cease and desist notice on a Student or Student Organization.

4. **Academic accommodations.** This may include assistance in transferring to another section of a course, in requesting withdrawal or an incomplete grade in a particular course, leaves of absence or withdrawal from the University, or requesting alternate methods of completing coursework.

5. **Housing accommodations.** This may include requiring a Student to relocate housing pending the outcome of a conduct investigation or proceeding. This may also include facilitating changes in on-campus housing location to alternate housing.

6. **Employment accommodations.** This may include arranging for alternate University employment for Students employed by the University.

7. **Other accommodations.** Any other measure that may be arranged by the University (to the extent reasonably available) to ensure the safety and well-being of a Student and/or the University community. This may include the use of alternate dispute resolution services such as mediation or restorative practices when appropriate.

8. **Deferral of the degree.** The Student Conduct Hearing Board, or the Vice President of Student Affairs may withhold the conferral of the degree until the disciplinary action has been resolved. Deferral of a degree is an interim measure that is NOT dependent upon the health, safety or welfare of the campus but is imposed in cases where the disciplinary proceedings may not be resolved prior to Commencement.

E. **Multiple Charges.** If a report of a violation also implicates any other violation(s) of the University’s Code of Student Conduct, the Director in consultation with other appropriate University personnel will evaluate all reported allegations to determine whether the allegation(s) and the alleged Code of Student Conduct violation(s) may be appropriately investigated together without unduly delaying the resolution of the violations. Where the Director determines that a single investigation is appropriate, the determination of responsibility for the violation of University policy will be evaluated under the applicable policy (i.e., the Housing and Residence Life Policy, Sexual Misconduct policy or the Student Code of Conduct), but the investigation and resolution will be conducted in accordance with the Student Disciplinary Procedures for violation of the Student Code of Conduct. Program specific violations will be handled separately by the program involved.

The procedures for addressing Sexual Misconduct as defined in the Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, And Retaliation Policy (BOG GA-1) are located in Appendix B of this Administrative Procedure.
F. **Charge Letter.** If the Director determines that there is sufficient information/evidence to support the allegation(s) of misconduct set forth in the complaint, the Director will issue Respondent a Charge Letter directing the student to meet with the Director to discuss the allegations. The Charge Letter should include:

- a. the University Policy, campus regulation(s) and/or sections of the Student Code of Conduct the Respondent is alleged to have violated;
- b. a summary of the Complaint including the specific conduct;
- c. whenever possible, the date, time, and location of the alleged offense;
- d. a statement of the sanction(s) that may be imposed, if applicable;
- e. a statement that if the student is found responsible for the misconduct; the student’s prior disciplinary record may be considered when imposing sanctions
- f. notice of any interim measures that have been imposed in accordance with Section 2.03;
- g. notice of the student’s right to be accompanied by an Advisor at any stage of the proceedings at the student’s own expense;
- h. notice of the student’s right to a hearing ( Formal Resolution)
- i. in cases where suspension and/or expulsion from the University or University program are not possible outcomes, the right to engage in Voluntary Resolution
- j. notice to the student of his/her right to request a copy of the student’s own conduct file;
- k. directions on how to obtain a copy of the Student Code of Conduct and these procedures.

The Charge Letter will also inform the Respondent that a Social Obligation Hold will be placed upon the Respondent’s record pending the outcome of the Disciplinary Process. A Social Obligation Hold prevents a student from registering for academic courses.

When appropriate, the Director may place a student on interim suspension by issuing a Notice of Interim Suspension (see Interim Suspension, Section 2.03).

G. **Respondent Meeting With Director.** The purpose of the meeting is to provide the Respondent with an opportunity to discuss and respond to the charges set forth in the Charge Letter as well as to provide the Respondent with an opportunity to choose a course of action. During the meeting, the Respondent is presented with a copy of the Complainant’s Statement of Complaint and the supporting materials. The University’s student adjudication process is explained and the Respondent’s questions are answered. The Respondent is provided an opportunity to present his/her perspective of the allegations.

1. **Voluntary Resolution:** During the meeting or at any time prior to a Hearing, the Respondent may choose to engage in Voluntary Resolution of the complaint by accepting responsibility for the conduct set forth in the Charge Letter. **By accepting responsibility for the conduct set forth in the Charge Letter and accepting Voluntary Resolution of the Complaint, the Respondent student waives all rights to a hearing and/or any other due process rights the student may be entitled to receive under this process or any other State or Federal law.** Investigation of the Complaint ends and the Respondent and the Director will discuss and agree upon sanctions and enter into a Voluntary Resolution Agreement. If the Director and the student cannot reach a mutually acceptable agreement regarding sanctions, then the charges will be sent
to the Hearing Board for a decision to be made on the sanction alone. The Director will notify the Complainant of the Voluntary Resolution of the Complaint via United States Postal Service or the University’s email system. The Director will not provide the Complainant with any sanction information unless the sanctions directly involve the Complainant.

2. **Mediation:** A Student or Student Organization may be referred to mediation prior to and in lieu of Formal Resolution. Mediation may be available for issues pertaining to Students or Student Organizations. All parties must agree to attempt resolution through the mediation process. Provided that, the nature of some conflicts, especially those involving violence, may not be appropriate for mediation. Mediation is done by the Director or his/her designee. Failure to comply with agreed upon conditions of mediation will result in a formal resolution. If a matter is resolved through mediation it is considered closed and may not be reopened.

3. **Medical Amnesty.** In order to promote a living and learning environment Marshall University encourages students to seek medical attention in life–threatening situations that result from alcohol and/or drug use. Therefore, Students who have received medical attention for alcohol and/or drug use and/or who have helped other students obtain medical attention who want to apply for medical amnesty are required to follow the procedures outlined in Section 4.01 of this policy. Medical Amnesty will provide the Student with limited immunity to disciplinary action under the Marshall Student Code of Conduct.

4. **Formal Resolution.** If the Respondent does not accept responsibility, the Director will continue to investigate the Complaint for the purpose of making a decision on responsibility and if applicable sanctions. The Respondent is given seven (7) calendar days from the date of the meeting with the Director to submit, in writing, his/her official Statement of Response and all supporting materials. Such materials may include, but are not necessarily limited to: Witness List, detailed statements prepared by witness(es), written correspondence shared between the parties, photographs, property receipts, medical reports, etc. The Director will review the documents to ensure their inclusion meets established policies and procedures. These materials will become part of the Official Case File.

The Respondent may not submit more than 50 pages of materials to be included in the case file. Statements should be legibly handwritten or typed and double-spaced on standard-sized paper (8.5” x 11”) with 1” margins on all sides. The Office of Student Conduct recommends Calibri or Times New Roman.

The Complainant will receive a copy of the Respondent’s materials from the Director and will have two (2) business days to respond to material submitted by the Respondent which could not have reasonably been anticipated by and addressed in the Complainant’s original Statement of Complaint. If the Complainant submits any additional material, the Director will review the materials to ensure their inclusion
meets process’-established policies and procedures. The Complainant cannot submit more than 10 pages of materials in response to the Respondent’s materials.

5. No Response. If the Respondent fails to attend the meeting with the Director and/or fails to provide a written response without requesting an extension of time and/or notifying the Director, the Director is authorized to make a decision on responsibility and to issue sanctions based upon the information provided by the Complainant.

H. Decision. Within a reasonable time after receipt of all information from the Complainant and the Respondent, the Director will issue a decision on responsibility and sanctions if applicable. The Director will use the preponderance of the evidence standard to determine responsibility, that is, the Director will determine whether it is more likely true than not true that the Respondent is responsible for violating the Student Code of Conduct. The Director will notify the Respondent and the Complainant of his/her final decision in the same manner that Notice is to be provided under these procedures. The Director will not provide the Complainant with any sanction information unless the sanctions directly involve the Complainant.

This Decision is part of the Official Case File.

I. Request for Hearing. Within four (4) business days of receipt of the Director’s decision, the Respondent may submit to the Director a written request for a hearing before the Hearing Board. Email requests must be time stamped on or before the close of business on the fourth (4th) day after receipt. Requests sent by any postal service must be postmarked on or before the fourth (4th) business day after receipt. Once a request for hearing is made, the Director’s decision will be stayed or held in abeyance (temporarily delayed), unless the Director determines that the health, safety, and welfare of the University community would be placed in jeopardy.

If the Respondent does not request a hearing in accordance within the timeframe set forth in this section, the Director’s Decision will become final and sanctions will be implemented on the fourth business day after the expiration of the appeal timeframe.

Section 2.03 Interim/Emergency Suspension

A. If, in the opinion of the Vice President of Student Affairs (or his/her designee), in consultation with the Student Affairs Assessment Team, that the presence of a Respondent constitutes a continuing danger to persons or property or is an ongoing threat of disrupting the academic process and/or administrative operations at the University, the Vice President of Student Affairs (or his/her designee) or the Director (or his/her designee) may immediately suspend the Respondent for up to ten business days. The Student Affairs Assessment Team shall include, at a minimum: (1) a representative from the office of the Vice President of Student Affairs, (2) a representative of the University Police Department (the “MUPD Representative”), and (3) a representative from the Office of Student Conduct. The Student Affairs Assessment Team may also consult with such other members of the University community it deems necessary to complete its evaluation.
B. Health And Safety Assessment

1. Risk Factors. Provided that MUPD did not receive the initial report, the Student Affairs Assessment Team will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the Complainant or to any other member of the University community. The Student Affairs Assessment Team will make this determination based upon a review of the totality of the known circumstances, and will be guided by a consideration of the following factors (the “Risk Factors”):

1) Whether Respondent has prior arrests, is the subject of prior reports and/or complaints related to any form of student misconduct, or has any history of violent behavior;
2) 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;
3) Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
4) Whether the alleged misconduct involved multiple Respondents;
5) Whether the alleged misconduct 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;
6) Whether the report reveals a pattern of Student Code of Conduct violations (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
7) Whether any other aggravating circumstances or signs of predatory behavior are present.

2. Disclosure(s) of Information to Law Enforcement. Provided that law enforcement is not already involve, the Student Affairs Assessment Team is required to disclose information about alleged Prohibited Conduct to law enforcement in the following circumstances:

1) If the Student Affairs Assessment Team (or, in the absence of consensus within the Student Affairs Assessment Team, the MUPD Representative) concludes that there is a significant and articulable threat to the health or safety of the Complainant or to any other member of the University community and that disclosure of available information (including the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident) is necessary to protect the health or safety of the Complainant or other individuals, the MUPD Representative will immediately disclose the information to the law enforcement agency that would be responsible for investigating the alleged act of criminal misconduct.

2) If the alleged act of criminal misconduct constitutes a felony violation of the West Virginia Code, the MUPD Representative will so inform the other members of the Student Affairs Assessment Team and will, within 24 hours, (i) consult with the appropriate Prosecuting Attorney or other prosecutor who would be responsible for prosecuting the alleged act of
criminal misconduct (the “Prosecuting Attorney”), and (ii) disclose to the Prosecuting Attorney the information then known to the Student Affairs Assessment Team. Such disclosure will exclude the names and 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 “Identifying Information”), unless the Identifying Information was disclosed to law enforcement under the health and safety exception described in paragraph (a), above, in which case the Identifying Information also will be disclosed to the Prosecuting Attorney.

C. University Process for Emergency Suspensions

1) A Hearing on the interim suspension shall be scheduled within three (3) business days of the suspension, unless the Respondent requests a continuance.

2) Written notification of the time and place of the Hearing will be delivered to the Respondent or his/her Advisor on behalf of the Respondent at least one day prior to the Hearing date.

3) Written notice of the charges against him/her and an explanation of the evidence the University has shall be given to the Respondent.

4) The Hearing will be conducted in accordance with Section 2.04 of these Procedures.

5) The Director’s decision will not be stayed or held in abeyance (temporarily delayed) pending the Hearing.

Section 2.04  Student Conduct Hearing Board Procedures

A. Respondent’s Rights. Respondent will be provided the following rights:

1. An opportunity to present any evidence on his/her behalf including but not limited to papers, letters, photographs, cards, tapes, medical reports and/or recordings that are relevant to the misconduct alleged in the complaint.

2. An opportunity to present witnesses on his/her behalf and the opportunity to question any other witnesses either in person or via alternate methods such as video conferencing.

3. An opportunity to challenge the Hearing Board members for bias.

4. Opportunity to have legal counsel present at his/her own expense

5. Adequate time to prepare for the hearing.

B. File Review. The Hearing Officer will review the Official Case File to determine if anything is missing from the file. If anything is missing from the file, the Hearing Officer will request the Director to provide the information. If anything is added to the file, the Complainant and the Respondent will be provided with copies within a reasonable time prior to the hearing.
C. Process

1. Pre-hearing Information.

The Hearing Officer will provide written notice of the hearing to the Respondent and Complainant. The notice must include:

i. The approximate date, place, and nature of the alleged violations.

ii. The date, place, and time of the scheduled hearing.

iii. The code violations the Student Conduct Hearing Board will address.

iv. The web location of the procedures for the hearing.

v. A statement concerning the Respondent’s right to review the case file prior to the hearing.

vi. A statement concerning the Respondent’s right to have an Advisor present during the hearing.

vii. A statement that the hearing may go forward if the Student fails to appear.

viii. The names of the individuals who will be on the Hearing Board, with direction that all communications are to be directed to the Hearing Officer and that neither the Respondent, Complainant or person acting on their behalf are to contact the Board Members directly.

ix. Procedure for requesting a continuance.

x. Notice that any information in the case file will be considered by the Hearing Board to make a decision, that the case file is part of the record and anything in the case file does not need to be resubmitted at the hearing.

xi. Names of the Hearing Board members and the procedure for challenging the members for bias.

2. Pre-Hearing Procedures.

i. The Student Advisor may meet with the student prior to the hearing to assist him/her in preparation.

ii. A hearing may proceed regardless of the failure of a Respondent to appear, as long as the Respondent has been properly notified of the hearing at least five business days prior to the hearing.

iii. Hearings will be closed. The Hearing Officer may exclude or remove from the hearing room any person who may interfere with the orderly process of the hearing. Provided that the Complainant and his/her Advisor are allowed to be present for all parts of the hearing at which a Respondent may be present, with the exception of any discussion of the Respondent’s disciplinary history. Witnesses (other than the Complainant) may be present only while presenting evidence or testimony.

iv. The Director is responsible for presenting the charge and any evidence supporting the charge to the Hearing Board.
v. **Witness List:** The Director and Respondent must provide the Hearing Officer and each other with the name of each fact witness four business days prior to the hearing.

The Hearing Officer, will issue a notices of appearance to witnesses. Either party may request that the Hearing Officer issue a notice of appearance **no later than noon two (2) business days** before the hearing. Only Marshall University students may be required to attend a hearing. Witness notices will include the procedure for requesting that testimony be taken by alternate means.

The Hearing Officer may also at his/her discretion consider the participation of witnesses whose names were not submitted by the deadline.

Character witnesses will only be allowed to present written statements that may be read by the Hearing Board in the sanctioning phase.

Testimony must be truthful. Individuals may be subject to disciplinary action if they provide false information in the hearing process.

The Hearing Officer may arrange for testimony to be taken at an alternate time at which time there will be an opportunity for oral or written questioning by both parties and the Hearing Board members, with the consent of the parties.

vi. The hearing will be electronically recorded by the Hearing Board. The Respondent, 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 “official” record of the proceedings. Provided that, upon the prior approval of the Hearing Officer, the Respondent may utilize the services of a Certified Court Reporter at their own expense. If a Certified Court Reporter is utilized the Respondent 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.

3. **Hearing Board Procedures**

The Hearing Officer will ensure that:

i. The Hearing Board consists of one faculty and/or staff member Justice and two Students Justices.

ii. The Respondent, Complainant, and their respective Advisors are introduced.

iii. The members of the Student Conduct Hearing Board, the Director, and other authorized personnel are introduced.

iv. The Respondent and the Complainant may challenge the objectivity of any voting member of the Hearing Board. Such a challenge must be based on a prior
relationship that may result in substantial bias. Justices shall have the obligation to disclose any potential conflict of interest prior to the hearing.

a) In the event of such a challenge, the Hearing Board will meet in Executive Session without the challenged member to determine whether the challenged member may continue to serve on the committee. Following this determination, the hearing will proceed with the remaining members present.

v. The record is identified.

vi. Documentary evidence, statements, and memoranda included in the hearing file are presented.

vii. Additional information is received or identified. The Hearing Officer will determine whether any new information is to be added to the hearing file and, if so, whether this addition requires a continuance.

viii. The hearing proceeds in an orderly fashion, as follows:

The complaint, charges, and any pre-hearing investigation are summarized by the Director.

a) Any person, including the Director, Complainant or Respondent who will be giving testimony will be sworn. Advisors may not act as witnesses and therefore, should not be sworn.

b) The Director will provide a narrative or verbal description of the alleged incident.

c) The Hearing Officer will ask the Respondent whether he/she is responsible or not responsible for the alleged charges. If the Respondent agrees that he/she is responsible, the Hearing Board may move immediately to sanctioning.

d) Both the Director and Respondent will be allowed to make Opening Statements to the Hearing Board limited to five (5) minutes. The Director will offer his/her statement first. This statement should not be a presentation of the case, but instead should offer a brief overview or outline of what their case will be, and what witnesses or evidence will demonstrate to the Hearing Board. As this is not an actual presentation of the details of the case, these statements are NOT subject to immediate questioning.

e) The Hearing Board initiates questioning of parties and other witnesses. Parties may ask questions of each other and witnesses in the order determined by the Hearing Officer.
f) Witnesses are escorted into the room one at a time to make statements. Witnesses will be administered an oath or affirmation. All questions are asked appropriately, in the following manner:

(i.) All witnesses are questioned first by the Hearing Board.

(ii.) The Respondent and Director are invited to ask questions. Provided that, to allow for the orderly presentation of evidence and to avoid any intimidation, all questions asked by the Respondent or the Director must be directed through the Hearing Officer rather than posed directly to the other party or the Complainant. Other witnesses may be questioned directly by the party at the discretion of the Hearing Officer.

(iii.) No student witness may be compelled to incriminate him/herself. The Respondent may remain silent and his/her silence should not be taken as inference of culpability.

(iv.) Any party wishing to have a witness testify telephonically must contact the Hearing Officer to make arrangements for the same. Whether a witness will be permitted to testify telephonically will be determined the Hearing Officer.

g) If further information is deemed necessary by the Hearing Officer, the Hearing Board will suspend its hearing in order to pursue such inquiries and request the Director or the Respondent attempt to secure additional information.

h) Both the Director and Respondent will be allowed to make Closing Statements to the Hearing Board limited to ten (10) minutes. The Director will offer his/her statement first.

i) The Respondent is invited to make a final written or verbal comment.

j) The Director may present evidence regarding an appropriate sanction, considering the nature of the violation admitted or found to have occurred, aggravating or mitigating circumstances, and University policies and practices regarding sanctions imposed in similar cases.

k) After the Director and Respondent have concluded their Closing Statements, the Hearing Board will adjourn the hearing for deliberations on responsibility and if applicable sanctions. The Hearing Board will decide whether the student is responsible or not responsible for violating the Code of Student Conduct. The decision of the Student Conduct Hearing Board will be by a simple majority vote. The Hearing Board may consider the prior disciplinary record of the Respondent when determining sanctions. Deliberations are not recorded.
l) The decision of the Hearing Board will not be communicated orally, but will be delivered in accordance with Section 2.04.C.4, below.

ix. 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.

x. The Respondent and the Complainant shall each have the opportunity to testify, but may not be required to testify.

xi. The Respondent and Director may present witnesses and other evidence regarding the facts of the suspected violation and whether a violation occurred.

xii. Eyewitness testimony and circumstantial evidence in any form (e.g., documents, pictures, electronic, and/or physical evidence) may be presented to the Hearing Board.

xiii. One person's report of another's statements (hearsay) may be received by the Hearing Board. The Hearing Board may discount hearsay evidence in part or in whole as appropriate.

xiv. A criminal plea, trial, and/or conviction, including a court order, opinion, transcript of sworn testimony, or other official record may be received as evidence.

xv. The Student Conduct Hearing Board may weigh credibility and make findings based on the testimony of one witness against another or against other evidence.

xvi. The Hearing Officer may exclude irrelevant or unduly repetitious evidence.

xvii. The Respondent may be represented by the person/Advisor of their choosing, including an attorney. Provided that, if the Respondent is being represented they must advise the Hearing Officer at least forty-eight hours prior to the scheduled hearing.

xviii. The Director/University reserves the right to be represented by Counsel at any proceeding.

xix. All Advisors are required to adhere to the above procedures.

i. The Respondent will be notified, in writing, by hand delivery, email or certified mail, within three (3) business days of the hearing of the Student Conduct Hearing Board’s decision. If a sanction is imposed, this letter will include a statement of the Respondent’s right to appeal to the Vice President of Student Affairs within five business days from the date that Respondent receives the decision.

ii. The Complainant will be notified of the Hearing Board’s decision on responsibility but will not be notified of any sanctions if applicable unless the sanctions relate directly to the Complainant. If a student is found to have violated a specific act set forth in the Student Code of Conduct and that act constitutes a crime of violence or non-forcible sex offense, as defined by 34 C.F.R. § 99.39 (2015), then, pursuant to 34 C.F.R. § 99.31(a)(14)(i) (2015) and the University’s Family Educational Rights and Privacy Act notification, the University may disclose the final results of the proceedings to anyone. For purposes of this disclosure, “final results” means the name of the student, the basic nature of the violation the student was found to have committed, and a description and duration of any sanction imposed against the student.

iii. If the Complainant is deceased as a result of such crime or offense, the administrator or executor of such victim’s estate shall be treated as the Complainant for purposes of this paragraph. If the Complainant does not have an administrator or executor, then the next of kin shall be notified.

Section 2.05 Sanctions

Sanctions in disciplinary action - The following sanctions may be imposed upon students as a result of disciplinary actions by the University:

A. Non-Reportable. The following formal sanctions are not recorded on the academic transcript or released to others without a legitimate educational interest.

1. Formal Warning. A Formal Warning is an official communication that a student’s behavior is inappropriate for a member of the academic community. A Formal Warning is maintained in the student’s disciplinary file until the student graduates and would serve as a basis for further sanctioning should subsequent violations occur. A Formal Warning will not appear on the academic transcript.

2. Conduct Probation. Conduct Probation is a strong communication that a student is no longer in good disciplinary standing with the academic community. Any subsequent violations of the Student Code of Conduct will be evaluated in the context of the student’s probationary status. The Office of Student Conduct will notify the dean of the student’s college and a Social Obligation Hold will be placed on the student’s record. The Social Obligation Hold will remain on the student’s record until the obligation is fulfilled. The record of Conduct Probation is maintained in the Student Conduct office for seven years. Conduct Probation may include one or more of the following:

   i. Loss of Participation: The student may not represent the University in any extracurricular activities such as, but not limited to, intercollegiate athletics, debate
teams, University Theater, band, or other similar activities however, the student may participate in informal activities of a recreational nature sponsored by the University.

ii. Self-Improvement: A program of self-development will be planned in conjunction with a faculty or staff person assigned to assist in a counseling/guidance capacity. Numerous resources may be used to assist the student in identifying and clarifying experiences, goals, educational and career choices, and other personal objectives.

iii. Surrender of Student Activity Privileges: A student required under this section to relinquish Student Activity privileges may not participate in, or attend, events that provide a discount or privilege for students through payment of their tuition and fees. Exceptions may be granted by the Student Conduct Office in those instances where attendance at such events is required by academic courses or programs.

iv. Loss of Privilege of Participation in Advanced Registration: The student will relinquish their advanced registration privileges during their sanction obligation. During this time, the student will register by filling out a scheduled adjustment form instead of the online process. Exceptions may be granted by the Office of Student Conduct.

B. Reportable. The following formal sanctions are recorded on the academic transcript.

1. Probationary Suspension. Suspension is withheld pending careful evaluation of a student’s behavior during a probationary period, not to exceed one year. If the student is involved in any further offense, or if otherwise warranted, this suspension of disciplinary action may be revoked by the Vice President of Student Affairs or his/her designee and the full sanction of suspension enforced subject to appeal to the Hearing Board. While a student is on Probationary Suspension, any of the conditions under probation may be imposed.

2. Suspension. Suspension shall be imposed upon a student when it is determined by the Director that the student's relationship with the university must be suspended from the university for a definite period of time. A suspended student may apply for re-admission to the University through the Office of Student Conduct and the Office of Admissions at the end of the suspension period specified by the conduct action. Suspension records are maintained indefinitely. Any suspension imposed shall be recorded on the student's transcript during the suspension period and until the student matriculates for the following academic term. Should a student remain out of the university during an academic term following a suspension, he/she must apply for readmission as would a student who had withdrawn from the university. The Office of Student Conduct may deny readmission in those instances where the suspended student fails to demonstrate a positive change in behavior which indicates that the suspended student is prepared to again become a responsible member of the University community. Numerous resources may be used to assist the student in identifying and clarifying experiences, goals, educational and career choices, and other personal objectives. At the end of a suspension period, the student is placed on Conduct Probation until graduation, unless mitigating circumstances warrant a different sanction.

3. Expulsion. Expulsion shall be imposed upon a student when the Director determines that the student’s relationship with the University must be terminated. This sanction includes termination of all student status, including any remaining right and/or privilege to receive
any benefits, recognition or certification. When Expulsion is imposed upon a student, he/she may petition the Vice President of Student Affairs for readmission to the University after the specified time. A copy of the notice will be forwarded to the Dean of the Student’s College and to the Registrar for a notation on the transcript. Expulsion records are maintained indefinitely. Expulsion shall be noted on the student’s transcript until such time as the student is readmitted to the University or successfully petitions for the removal of the notation. Permission for readmission by the Vice President of Student Affairs does not abrogate the right of any dean or director to deny readmission on the basis of scholarship. At such time as a student is readmitted to the University, the student is placed on Conduct Probation until graduation, unless mitigating circumstances warrant a different sanction. During the expulsion, the person is barred from coming onto or using University property and facilities. The action will appear on the student’s official transcript until such time as an appeal is made to and granted by the Vice President of Student Affairs to terminate the expulsion.

4. Deferred Suspension. In rare cases, the Student Conduct Hearing Board may determine that a certain sanction is the appropriate formal sanction, but strong mitigating circumstances warrant holding the formal sanction in abeyance. The student may continue enrollment under restrictions and conditions. Formal sanctions may only be held in abeyance by the Student Conduct Hearing Board or the Vice President of Student Affairs. A student found to have violated the conditions or restrictions of a formal sanction held in abeyance will minimally have the formal sanction imposed. A copy of the notice will be forwarded to the Dean of the Student’s College and to the Registrar for a notation on the transcript. The notation remains until either the end of the formal sanction held in abeyance period or graduation unless a petition for early removal is approved. Formal sanctions held in abeyance shall be terminated automatically upon graduation. This is a suspension which becomes effective at a specified future date. It is normally used near the end of a semester to avoid the financial penalty of immediate suspension. During this period of deferred suspension, probationary status as described in Probationary Suspension above will exist.

C. Other Conditions or Restrictions

1. Deferral of the degree. The Student Conduct Hearing Board, or the Vice President of Student Affairs may withhold the conferral of the degree until the disciplinary process has been resolved.

2. Withholding of the degree. In cases in which a student has not been awarded the degree but has completed all requirements for the degree, the Student Conduct Hearing Board or the Vice President of Student Affairs may direct that the degree be withheld for a period not to exceed one year from the date the condition or restriction is imposed.

3. A degree awarded by the institution may be revoked for fraud, misrepresentation, or other violation of the university standards in obtaining a degree.

4. The Vice President of Student Affairs may authorize any other sanctions he/she deems to be just and appropriate.
D. Minimum sanctions for first offenses, without aggravating circumstances

1. Suspension
   i. Fighting
   ii. Operating a motor vehicle under the influence of alcohol or drugs
   iii. Negligent Bodily Harm
   iv. Throwing objects from or causing objects to fall from University buildings, where no bodily harm or death is caused
   v. Unauthorized possession or use of narcotics
   vi. Unauthorized possession or use of alcoholic beverages or beer
   vii. Disruptive or disorderly behavior attributable to the use of alcohol and other controlled substance(s), including public intoxication
   viii. Misbehavior at Sports Events, Concerts, Social/Cultural Events or other University Events
   ix. Failure to comply with the lawful direction of University or other law enforcement officers, or University officials in the proper performance of their duties
   x. Negligent Destruction or Impairment of Property or Services
   xi. Misuse of University Keys
   xii. Gambling, including but not limited to, unauthorized raffles or lotteries.
   xiii. Scalping Tickets
   xiv. Passing worthless checks or failing to promptly redeem a worthless check submitted to the University

2. Probationary Suspension
   i. Obstructing the free flow of vehicular or pedestrian traffic on University premises
   ii. Attempted theft or unauthorized possession or use of, or misuse of, or interference with property or services provided by or for other persons, groups or organizations
   iii. Negligent Risk of Destruction or Impairment of Property or Services
   iv. Unauthorized presence or improper use of University building or facilities or trespassing at the University
   v. Using the Marshall University telephone system in an improper manner.
   vi. Failure to follow the policies or procedures for demonstrations and mass gatherings
   vii. Misuse of the internet
   viii. Violation of or failure to follow the policies or procedures for University fundraising, sales and/or solicitation

3. Conduct Probation
   i. Violation of University policies regarding smoking and tobacco use on University property
   ii. Behavior that evidences underage consumption of alcohol
   iii. Unauthorized animals on campus or other violation of the University Animals on Campus policy
   iv. Disruptive or disorderly conduct, disturbing the peace through noise, rowdiness, or pranks
   v. Violation of the Housing and Residence Life policies
vi. Failure to report of change of address to the Registrar

C. Transcript Notations. A notation of non-academic disciplinary action will be made on an academic transcript whenever Reportable Sanctions are imposed. Notations will not include the substance of the charges but will only note the disciplinary action taken. Students may submit a written petition for the removal of non-academic disciplinary transcript notations to the Vice President of Student Affairs.

The Vice President of Student Affairs has the discretion to grant or deny petitions. The Vice President will consider the current demeanor of the student, the student’s conduct subsequent to the violation, and the nature of the violation, including the damage, injury, or harm.

As a reminder, for either academic or non-academic disciplinary transcript notations, if a student is granted a removal of the transcript notation, the student may still need to disclose information regarding their disciplinary record to a third party, including but not limited to, a potential employer, a professional governing body (ex. a Bar or Medical Board), or another university through an admissions process.

Article III. APPEALS

Section 3.01 Appeals to the Vice President of Student Affairs

A. Jurisdiction. The Vice President of Student Affairs accepts appeals from the Student Conduct Hearing Board decisions.

B. Grounds for Appeal. Appeals are not new hearings. Rather, the appellate review will be limited to a record of the original hearing and supporting documents. Respondents may appeal based ONLY on one or more of the grounds below:

1. 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 Student Disciplinary Procedures is likely to have adversely affected the outcome of the original hearing.

2. Sanctions imposed by the hearing body were substantially disproportionate to the violation(s) for which the student was found responsible.

3. New, substantive information, sufficient to alter the decision, exists and was clearly not known at the time of the original hearing.

C. Who May Appeal. The Respondent may appeal a decision of the Student Conduct Hearing Board.
D. **Statement of Appeal.** The Respondent may appeal the Hearing Board’s final decision, in writing, within five business days of receipt of the decision by submitting a Statement of Appeal to the Vice President of Student Affairs within five business days of receipt of the Hearing Board’s decision. The Statement of Appeal must contain the following: (1) specific grounds for appeal; (2) specific relief requested; (3) appellant's reasons in support of the relief requested. If new evidence is the grounds for appeal, the Statement of Appeal must include a summary of the new evidence and its potential impact on the original finding. Appeals must be signed by the appealing party, may not be submitted the University’s email system and must be postmarked or hand delivered on or before five business days after receipt of the Hearing Board’s decision at the Office of the Vice President for Student Affairs. The Vice President of Student Affairs may request the non-appealing party to make a written response to the Statement of Appeal.

E. **Sanction Held in Abeyance (temporarily delayed) Pending Appeal.** The effective date of any sanction will be held in abeyance (temporarily delayed) automatically during the period in which an appeal may be filed and until the Vice President of Student Affairs reaches a decision; however, the Vice President of Student Affairs has the right to retain certain conditions or restrictions, particularly those related to health and safety issues and “no contact” directives.

F. **Authority of Vice President of Student Affairs.** After reviewing the record below, the Vice President of Student Affairs may:

1. Affirm the action, at which time the matter will be considered final and binding upon all involved.
2. Reverse the action taken by the Hearing Board and dismiss the case. A case will be dismissed only in rare and extreme circumstances.
3. Remand the case to the Hearing Board for a new hearing.
4. 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 Vice President of Student Affairs will notify the parties in writing of the decision via hand delivery, University email or certified mail, return receipt.

H. **Final Decision.** The decision of the Vice President of Student Affairs or his designee shall be final.

**Article IV. MISCELLANEOUS**

**Section 4.01 Medical Amnesty Process**

Marshall University considers the safety and personal well-being of the student body a priority. The University recognizes that there may be alcohol or other drug-related medical emergencies in which the potential for disciplinary action could act as a barrier to students who want to seek medical assistance for themselves or others.
The Medical Amnesty Process is designed to enable students and their guests to seek professional medical treatment in an alcohol or other drug-related emergency by reducing the possible barrier of disciplinary consequences.

a. Any student who, in good faith and in a timely manner, seeks emergency medical assistance for a person who reasonably appears to be experiencing an overdose from alcohol or drugs may not be held responsible for a violation of prohibited alcohol or drug related conduct only, as defined in the Code, if the student does all of the following:

i. Remains with the person who reasonably appears to be in need of emergency medical assistance due to an overdose until such assistance is provided;
ii. Identifies himself or herself, if requested by emergency medical assistance personnel, law‐enforcement officers, or University officials;
iii. Cooperates with and provides any relevant information requested by emergency medical assistance personnel, law‐enforcement officers, or University officials needed to treat the person reasonably believed to be experiencing an overdose; and
iv. If the person who reasonably appears to be experiencing an overdose from alcohol or drugs is also a student, he or she will not be held responsible for a violation of prohibited alcohol or drug related conduct, as defined in this Code, but may be required to complete additional conditions imposed by the Director in order to receive amnesty.

Medical Amnesty only applies to the Marshall University Student Code of Conduct policies. This policy does not prohibit or preclude law enforcement agencies from enforcing any applicable laws including the filing of criminal charges against the student(s) involved.

1. Medical Amnesty Guidelines: Students seeking Medical Amnesty will be required to meet with the Director. For the first request, the Director will evaluate the situation to determine they qualify for Medical Amnesty.
2. The Director may also refer the student to a substance abuse specialist or campus counselor for assessment, counseling, and treatment if needed.
3. Students who are referred but fail to meet and comply with the recommendations may be subject to discipline under the Student Code of Conduct.
4. Even if the disciplinary sanction is waived, the Office of Student Conduct may still notify parents of the event.
5. A record of the incident will be filled in the Office of Student Conduct and will only be used as a prior record if a subsequent alcohol or drug violation occurs.
6. The sanction will not be reflected on the student’s transcript and will be destroyed after seven years per federal guidelines as long as a subsequent alcohol or drug violation does not occur.
7. Students that are involved any subsequent alcohol and/or drug use incidents will meet with the Director and may be referred to the Hearing Board to determine if the student qualifies for Medical Amnesty. Those that do not qualify for Medical Amnesty will be subject to disciplinary action under the Student Conduct Office.
8. The availability of medical amnesty for students will be determined on a case by case basis using the following information:

   a. Medical Amnesty applies to Students who have initiated and sought assistance and/or medical treatment on behalf of themselves, another student, or a friend experiencing a medical emergency from alcohol and/or drug use.

   b. If a representative of an MU student organization hosting an event calls for medical assistance, this act of responsibility might mitigate potential University sanctions that could arise against the organization. Marshall Student organizations involved in an alcohol and/or drug related incident must agree to take recommended steps to address concerns from campus administration.

The Medical Amnesty Procedure applies only to alcohol and other drug-related medical emergencies. It does not apply to other prohibited behaviors, like allegations relating to the commission of sexual misconduct, disorderly conduct, property damage or distribution of illegal or prohibited substances. In those cases, students would not be eligible for medical amnesty.

Additional resources for alcohol and drug education, can be found here:

Student Health Education Programs  
MU Rec Center Wellness Suite  
Huntington, WV 25755  
304-696-4800  
shep@marshall.edu

This provision only applies to violations of this Code. As it relates to any criminal prosecution, students should see the West Virginia Alcohol and Drug Overdose Prevention and Clemency Act, W. Va. Code §§ 16-47-1 to -6, which can be found here:

http://www.legis.state.wv.us/wvcode/Code.cfm?chap=16&art=47#47

Section 4.02 Student Conduct Hearing Board Justice Selection and Removal

A. Goal. In order to staff the Student Conduct Hearing Board, students, faculty and staff are encouraged to apply for this opportunity. Information concerning the application process will be available in the Office of Student Affairs. In addition, this information should be distributed to the Student Government Association, Faculty Senate, Classified Staff Council and other campus offices requesting that they encourage interested students, faculty and staff to serve.

B. Minimum qualifications of Student Justices. Minimum qualifications of Student Justices are:

   1) A student enrolled full-time at Marshall University.
   2) Must have completed one full semesters toward their degree.
3) Maintain at least a 2.5 grade point average.
4) Be in good academic and disciplinary standing.

C. **Minimum qualifications of Faculty Justices.** Minimum qualifications of Faculty Justices are:
   1) A faculty member with a full time faculty appointment.
   2) Experience in teaching, advising and/or student development.
   3) Not currently subject to disciplinary action, on probation and/or subject to an improvement plan.
   4) Approved by College Dean.

D. **Minimum qualifications of Staff Justices.** Minimum qualifications of Staff Justices are:
   1) A full time (.53 FTE or higher) staff member.
   2) Experience with student related issues.
   3) Not currently subject to disciplinary action, on probation and/or subject to an improvement plan.
   4) Approved by Supervisor.

E. **Selection Process.**
   1) All applications will be submitted to the Student Affairs office.
   2) Applications will be reviewed by the Director and a representative from the Student Government Association (Selection Committee).
   3) The Selection Committee will make their recommendations to the Vice President of Student Affairs who will select applicants to serve as members of the Hearing Board.
   4) The Hearing Officer will be selected by the Vice President of Student Affairs.
   5) The Hearing Officer will be responsible for scheduling the Justices for a particular hearing. If the original hearing is continued the same Justices will serve until the matter is completed. Provided that, if a Justice becomes unable to serve another Justice can be substituted in their place.

F. **Appointment.** Appointments will be effective on the first day of classes of the succeeding fall semester or spring semester. The appointment term is for one (1) year. Appointment for an additional term may occur upon approval of the Vice President of Student Affairs.

G. **Emergency Appointments.** Emergency, one-time appointments to the Student Conduct Hearing Board may be made by the Vice President of Student Affairs if that appointee has been previously trained on the disciplinary procedures.

H. **Hearing Officer.** The Student Conduct Hearing Board Hearing Officer must be a full time employee of the University who is selected by the Vice President of Student Affairs.

I. **Training.** Each Justice will receive training in the following areas:
   1. The Code of Student Conduct
   2. Possible violations
3. Our Process and Procedures
4. Hearing Process
5. Types of Evidence and Weighing of Information
6. Fact Finding and Determining Responsibility
7. Sanctioning
8. Conflicts of Interest

J. **Removal.** A Student Conduct Hearing Board member may voluntarily terminate his/her appointment at any time. A member may be involuntarily removed from service for cause. Examples of removal for cause are:

1. Failure to attend two (2) hearing without prior notice;
2. Breach of confidentiality;
3. Poor performance;
4. Disruptive behavior during the proceedings;
5. Becoming the subject of a disciplinary action; and/or
6. Acting in a manner that is not in the best interest of the University.

K. **Removal Process.** Requests to involuntarily remove a member for cause shall be brought to the attention of the Vice President of Student Affairs, who shall have ultimate authority to consider or refuse to consider a request for removal.

**Section 4.03 Student Petitions**

A. **Petition for Clemency.** The University has established standards of conduct for students, and imposes sanctions for violations of these standards in order to sustain the personal, educational, and social development of its students. The University expels students when the student’s behavior is so egregious that the University concludes that their continued affiliation with the University is antithetical to the safety or interests of the University community.

The University recognizes that, following a long separation from the University, people may change. Consequently, it is appropriate that the University consider granting clemency to expelled former students in circumstances where they are able to provide significant evidence of rehabilitation and a renewed commitment to the standards of conduct and scholarship expected of Marshall University students. For the purposes of this document, a petition for clemency is a procedure whereby the expelled individual requests the opportunity to complete her/his degree, and asks the University to consider new circumstances and facts that might alter the original sanction.

Individuals who have been expelled from the University may seek clemency under the following circumstances and conditions:
1. The individual must wait a minimum of four (4) calendar years after the original expulsion before initiating a request for clemency.

2. The request for clemency must be made in writing to Vice President of Student Affairs. The written request should include a description of the conduct for which the sanction was assigned appropriate documentation concerning the individual’s status during the intervening years since the expulsion, any additional mitigating circumstances with appropriate documentation, and any additional information about character or change of behavior that may be appropriate. This documentation may include records pertaining to mental health status, employment, criminal or probation records, educational records, social service records, and letters of recommendation. NOTE: A victim impact statement will be allowable if relevant. The Vice President should arrange for its inclusion in the assembled documents.

3. Upon receipt of the request for clemency, the Vice-President may consult with whomever he or she wishes and may empanel an advisory panel to advise her/him. The Vice-President or advisory panel will review the request for clemency, and may conduct a personal interview with the individual, and/or conduct other forms of inquiry as needed. If a advisory panel is empaneled, the panel will make a recommendation to the Vice-President.

5. The final decision will be made by the Vice-President. The Vice-President will notify the student via United States Mail, return receipt requested of his her final decision. The Vice-President’s decision will include any special terms and conditions. Failure to adhere to the special terms and conditions and/or any other violations of University rules regulations and policies could result in additional disciplinary action up to and including expulsion.

6. The decision of the Vice-President is final.

7. The Vice President of Student Affairs’ decision to grant the petitioner the right to pursue the readmission process does not abrogate the right of any college or program to deny readmission on the basis of scholarship and/or failure to meet program specific admissions requirements.

8. If clemency is granted, the individual may reapply to the University and to the school, program, or successor unit from which he or she was expelled or to a different academic unit within the University. The student must follow all current application procedures and must meet all admissions requirements, including but not limited to any program specific admission requirements, in place at the time of the application submission. The individual must meet whatever graduation requirements are in place at the time of readmission. The student will remain on disciplinary probation which will be noted on the students academic transcript, until any degree is completed, at which time it will be removed as will the notation regarding the original expulsion.

A record of the expulsion will remain in the student’s disciplinary records maintained by the Office of Student Conduct, and is not subject to expunction.
B. **Petition for Transcript Notation Removal** – For sanctions other than expulsion, students may submit the Vice President of Student Affairs a written petition for removal of notation from their academic transcript for any non-academic disciplinary action.

1. Petitions to the Vice-President should include a notation a description of the conduct for which the sanction was assigned; a description of all of the sanctions the student was required to complete and the degree to which he/she completed them; a description of the remedial actions the student has taken since the incident(s); description of completed sanction(s); and the student’s anticipated graduation date and the career and/or additional education plans he/she has following graduation.

2. Upon receipt of the Petition, the Vice-President may consult with whomever he or she wishes and may empanel an advisory panel to advise her/him. The Vice-President or advisory panel will review the request for removal of notation from their academic transcript for any non-academic disciplinary action, and may conduct a personal interview with the individual, and/or conduct other forms of inquiry as needed. If a advisory panel is empaneled, the panel will make a recommendation to the Vice-President.

3. The final decision will be made by the Vice-President. The Vice-President will notify the student via United States Mail, return receipt requested of his/her final decision.

4. The decision of the Vice-President is final.

**Section 4.04 Access to Records and Record Retention**

The Office of Student Conduct maintains a disciplinary record for every student. This file is automatically destroyed after seven (7) years after the final resolution of the student’s case, unless the student was expelled.

Disciplinary files are considered educational records pursuant to the Federal Educational Rights and Privacy Act (FERPA) and cannot be provided to outside parties, including but not limited to spouses, advisors, and legal counsel, without the student’s written permission.

The files maintained by the Office of Student Conduct are separate from transcripts, which are maintained by the University Registrar.

A student may request a copy of his or her disciplinary record or request that the record, including information related to pending charges, be provided to a third party by completing a release authorization form. The completed form should be provided to the Director.
APPENDIX A

POSSIBLE FINDINGS AND SANCTIONS RELATED TO STUDENT ORGANIZATIONA DISCIPLINE

1) Actions include, but are not limited to, the following:

a) **Finding of No Violation.** This action can occur at any stage of the procedure. If a finding of no violation occurs, the organization has no disciplinary history for this event. This information will not be considered in future proceedings.

b) **Charge(s) Dropped.** This action shall be taken when the Director or the hearing body determines that the organization cannot be found in violation of the University's regulations governing student conduct. For example, the behavior may have been unrelated to the rules of conduct, or evidence may be unobtainable or insufficient. A dropped charge may be reinstated at the discretion of the Director if substantial new information should become available. If a charge is reinstated, the Respondent will be sent a charge notice. If a charge is dropped, the student will have no disciplinary history related to it.

c) **Finding of Violation.** This action occurs when the Student Conduct Hearing Board has established that a policy of the Student Code of Conduct has been violated based on a preponderance of the information.

d) **Continuance.** The Hearing Officer may continue the proceedings when he/she determines it is in the best interest of the University community. Respondent may appeal a continuance decision of longer than thirty business days to the Vice President of Student Affairs.

2) **Sanction Options:**

a) **Formal Warning.** A Formal Warning is an official communication that an organization's behavior is inappropriate as a member of the University community. A Formal Warning is maintained in the organization's file and would serve as a basis for further sanctioning should subsequent violations occur.

b) **Conduct Probation.** Conduct Probation is a strong communication that an organization is no longer in good disciplinary standing with the University community. Any subsequent violations of the Student Code of Conduct will be evaluated in the context of the organization’s probationary status. Conduct Probation may include one or more of the following:

   1. Loss of Participation: The organization may not represent the University in any extracurricular activities such as, but not limited to, intercollegiate athletics, debate teams, University Theater, band, or other similar activities however, the student may participate in informal activities of a recreational nature sponsored by the University.
2. Improvement Plan: A program of development will be planned in conjunction with a faculty or staff person assigned to assist in a counseling/guidance capacity.

3. Surrender of Organization Activity Privileges: An organization required under this section to relinquish its privileges may not participate in campus events.

c) **Probationary Suspension.** Suspension is withheld pending careful evaluation of an organization’s behavior during a probationary period not to exceed one year. If the organization is involved in any further offense, or if otherwise warranted, this suspension of disciplinary action may be revoked by the Vice President of Student Affairs or his/her designee and the full sanction of suspension enforced subject to appeal to the Hearing Board.

d) **Suspension.** Suspension shall be imposed upon an organization when it is determined by the Director that the organization’s relationship with the university must be suspended from the university for a definite period of time.

e) **Revocation.** Revocation of registered organization status shall be imposed upon an organization when the hearing body determines that the organization’s relationship with the university must be terminated. When revocation is imposed upon an organization, the organization may petition the hearing body for recognition by the university after the specified time. Revocation records are maintained indefinitely. At such time as an organization successfully achieves recognition by the university, the organization is placed on Conduct Probation for four years, unless mitigating circumstances warrant a different sanction.

f) **Formal Sanction Held in Abeyance (temporarily delayed).** In rare cases, the Student Conduct Hearing Board, or Director may determine that a certain sanction is the appropriate formal sanction for an organization, but strong mitigating circumstances warrant holding the formal sanction in abeyance (temporarily delayed). The organization will continue to be recognized under restrictions and conditions. An organization found to have violated the conditions or restrictions of a formal sanction held in abeyance (temporarily delayed) will minimally have the formal sanction imposed. Formal sanctions held in abeyance (temporarily delayed) for organizations must include an expiration date.

g) The Hearing Board may authorize any other sanctions it deems to be just and appropriate.
Appendix B
MARSHALL UNIVERSITY
PROCEDURES FOR REPORTS OF PROHIBITED
CONDUCT AGAINST STUDENTS

INVESTIGATING AND RESOLVING REPORTS OF SEXUAL AND GENDER-BASED HARASSMENT AND OTHER
FORMS OF INTERPERSONAL VIOLENCE COMMITTED BY STUDENTS UNDER THE POLICY

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I. **INTRODUCTION**

Marshall University (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 as defined in this Policy 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)(Policy). This Appendix identifies the procedures (Procedures) the University follows when it receives a report alleging Prohibited Conduct by a Student. The University uses these Procedures to investigate and adjudicate any such allegations and to impose disciplinary sanctions against Students found responsible for violating the Policy.

These procedures supersede the Student Disciplinary Procedures and to the extent these procedures are differing they take precedence. 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 “Title IX Coordinator” means the Title IX Coordinator, any Deputy Title IX Coordinator, and/or any of their respective trained designees.

II. **REPORTING**

The University encourages anyone¹ who experiences or becomes aware of an incident of Prohibited Conduct to immediately report the incident to the University through the following reporting options:

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

**Debra Hart, Director/ Title IX Coordinator**  
Old Main Room 324  
Hart70@marshall.edu or TitleIX@marshall.edu  
304-696-2597

The University’s website for online reporting (which allows for anonymous reporting) is located at https://www.marshall.edu/eeoa/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. A Complainant who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should contact their local 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)

¹ Pursuant to Title IX, 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. “
The administrative investigation of complaints filed in accordance with these Procedures is 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, or the Code of Student Conduct. 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 University also offers access to 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:

1. Confidential Resources

   a. Marshall University Counseling Center
      1st Floor Prichard Hall, One John Marshall Drive
      Huntington, WV 25755
      Phone: 304 696-3111

   b. Marshall University Women’s & Gender Center
      115 Prichard Hall, One John Marshall Drive
      Huntington, WV 25755
      Phone: 304 696-3112
      Email: wcenter@marshall.edu

   c. 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)
d. **REACH Family Counseling Connection**  
   Phone: (304) 292-5100  
   [http://www.tccwv.org/Our-Programs/REACH.aspx](http://www.tccwv.org/Our-Programs/REACH.aspx)  
   (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 & Gender Center Staff  
- Marshall University Psychology Clinic Staff  
- Marshall University Student Health  
- Marshall University Student Health Education Programs

2. **Medical Resources**

   a. **Cabell Huntington Hospital**  
      Emergency Department  
      304-526-2200  
      [http://cabellhuntington.org/services/emergency-trauma/](http://cabellhuntington.org/services/emergency-trauma/)

   b. **Cabell Huntington Health Department**  
      703 7th Avenue  
      Huntington, WV 25701  
      304-523-6483  
      [https://www.cabellhealth.org/](https://www.cabellhealth.org/)

   c. **St. Mary's Medical Center**  
      Emergency Services  
      304-526-1111  
      [https://www.st-marys.org/centers-services/emergency-services/](https://www.st-marys.org/centers-services/emergency-services/)

   d. **Charleston Area Medical Center (CAMC) – General**  
      304-388-7498  
      [http://www.camc.org/generaler](http://www.camc.org/generaler)

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.

Although Third Parties do not have the same standing in the University internal process as members of the University community, they may report prohibited conduct to:  
Debra Hart, Director/ Title IX Coordinator  
Old Main Room 324  
Hart70@marshall.edu or TitleIX@marshall.edu  
304-696-2597

The University’s website for online reporting (which allows for anonymous reporting) is located at [https://www.marshall.edu/eeoaa/complaint-form/](https://www.marshall.edu/eeoaa/complaint-form/).

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:
B. RESOURCES FOR RESPONDENT

The following resources are available for anyone who has been accused of committing Prohibited Conduct.

1. Marshall University Counseling Center
   1st Floor Prichard Hall, One John Marshall Drive
   Huntington, WV 25755
   Phone: 304 696-3111

2. Marshall University Office of Student Affairs
   MSC 2W38
   Marshall University
   Huntington, WV 25755
   304-696-6422

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 outlined in these Procedures;

I. The opportunity to choose an Advisor, including the right to have that Advisor 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) as outlined in these procedures;

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 Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation Policy (BOG GA-1) (the “Policy”).

A. Advisor. Any person intended to assist the Complainant or Respondent student 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. 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.
C. **Consensual Relationship.** A mutually acceptable romantic, dating, or sexual relationship between individuals.

D. **Evaluation Panel.** The group of individuals identified in Section IV.A. who will conduct the Health and Safety Threat Assessment where law enforcement is not involved and the initial course of action.

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.** An employee of the University or outside person who has been trained in performing Title IX investigations pursuant to these procedures.

G. **Reporter.** 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.** 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 sexual violence; who has been given the duty by the University of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student 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.** Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in Board of Governors Policy GA-1.

L. **Review Panel.** 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. **Social Obligation Hold.** A Hold will be placed on the student’s account if a student is charged with or found responsible for Prohibited Conduct. A Social Obligation Hold will prevent the student from conducting University business without the approval of the Title IX Coordinator as well as prevents a student from registering for academic courses pending the outcome of the investigation, adjudication and disposition of the complaint. A student who is under a Social Obligation Hold is not permitted to withdraw from the University without the approval of the Title IX Coordinator. In situations where a student is found responsible and given a Reportable Sanction a notation will be placed on the Student’s transcript.

N. **Student.** 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.

O. **Third Party.** An individual who is not a University student, faculty or staff member. Third parties may be a participant in any University related program or activity, for example, visitors, guests, independent contractors, and vendors.
P. **Title IX Investigator.** 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. MUPD will be responsible for the completing the necessary Threat Assessment, independent of the Evaluation Panel.
3. 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.
4. MUPD will promptly notify the Title IX Coordinator that they have completed their investigation.

B. Complaint received by Responsible Employee

1. Before a student reveals information that he or she may wish to keep confidential, a Responsible Employee should make every effort to ensure that the student understands:
   a. the employee’s obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator,
   b. the student’s option to request that the school maintain his or her confidentiality, which the school (e.g., Title IX coordinator) will consider, and
   c. the student’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 two (2) business days, all relevant details about the alleged Prohibited Conduct that the student 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 sexual violence, other students involved in the alleged sexual violence, 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 a Student, 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:
1. Assess the Complainant’s safety and well-being and offer the University’s immediate support and assistance;

2. Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;

3. Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;

4. 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;

5. 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;

6. Explain the University’s prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation;

7. 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 witnesses, and/or any other third party with knowledge of the reported incident;

8. 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

9. 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.

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**

Provided that MUPD did not receive the initial report, following the initial assessment, the Title IX Coordinator will promptly forward to an Evaluation Panel all information then known 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.
A. EVALUATION PANEL

An Evaluation Panel will evaluate every report of Prohibited Conduct. The Evaluation Panel will
convene (in person, by telephone, and/or by videoconference) within 72 hours after receiving
information from the Title IX Coordinator, as described above, and will convene again, as necessary,
to review new information as it becomes available. The Evaluation Panel shall include, at a minimum:
(1) the Title IX Coordinator, (2) a representative of the University Police Department (the “MUPD
Representative”), (3) a representative from the Office of Student Conduct, and (4) a representative of
the Marshall University Counseling Center2. In addition, the Evaluation Panel may include other
representative from the University Community including, but not limited, Housing and Residence
Life, Human Resources Office or the Office of the Provost, depending on the circumstances of the
reported incident and the status of the Complainant and the Respondent.

The Evaluation Panel may consider, to the extent the information is available, otherwise confidential
information, including law enforcement records, criminal history record information; health records;
University disciplinary, academic and/or personnel records; and any other information or evidence known
to the University or to law enforcement. The Evaluation Panel may seek additional information about the
reported incident through any other legally permissible means.

B. HEALTH AND SAFETY THREAT ASSESSMENT

1. Risk Factors. The Evaluation Panel will determine whether the reported information and any other
available information provides a rational basis for concluding that there is a threat to the health
or safety of the Complainant or to any other member of the University community. The
Evaluation Panel will make this determination based upon a review of the totality of the
known circumstances, and will be guided by a consideration of the following factors (the “Risk
Factors”):

   a. Whether Respondent has prior arrests, is the subject of prior reports, 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 the report reveals 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;

2 The representative of the Marshall University Counseling Center may not have counseled or be assigned to
counsel either the Complainant or Respondent involved in the allegations of Prohibited Conduct.
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.

2. Disclosure(s) of Information to Law Enforcement. The Evaluation Panel is required to disclose information about alleged Prohibited Conduct to law enforcement in the following circumstances:

a. If the Evaluation Panel (or, in the absence of consensus within the Evaluation Panel, the MUPD Representative) concludes that there is a significant and articulable threat to the health or safety of the Complainant or to any other member of the University community and that disclosure of available information (including the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident) is necessary to protect the health or safety of the Complainant or other individuals, the MUPD Representative will immediately disclose the information to the law enforcement agency that would be responsible for investigating the alleged act of Prohibited Conduct. The Evaluation Panel will make this determination based upon a review of the totality of the known circumstances and consideration of the list of Risk Factors, as described in Section VI.B.1 of these Procedures. The Title IX Coordinator will promptly notify the Complainant whenever such disclosure has been made.

b. If the alleged act of Prohibited Conduct constitutes a felony violation of the West Virginia Code, the MUPD Representative will so inform the other members of the Evaluation Panel and will, within 24 hours: (i) consult with the appropriate Prosecuting Attorney or other prosecutor who would be responsible for prosecuting the alleged act of Prohibited Conduct (the “Prosecuting Attorney”), and (ii) disclose to the Prosecuting Attorney the information then known to the Evaluation Panel. Such disclosure will exclude the names and 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 “Identifying Information”), unless the Identifying Information was disclosed to law enforcement under the health and safety exception described in paragraph (a), above, in which case the Identifying Information also will be disclosed to the Prosecuting Attorney.

C. UNIVERSITY ACTIONS FOLLOWING HEALTH AND SAFETY THREAT ASSESSMENT

Upon completion of the health and safety threat assessment, by either MUPD or the Evaluation Panel, as set forth above in these procedures, then the Evaluation Panel 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 Evaluation Panel 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 Evaluation Panel 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 discrimination, or harassment, including but not limited to sexual misconduct, 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 Evaluation Panel. The Evaluation Panel will consider the following factors in evaluating request(s) for anonymity: (1) the totality of the known circumstances; (2) the presence of any Risk Factors, as described in Section VI.B.1 of these Procedures; (3) the potential impact of such action(s) on the Complainant; (4) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct; (5) the existence of any independent information or evidence regarding the Prohibited Conduct; and (6) 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 the Evaluation Panel 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 Evaluation Panel 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

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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 continues to be a University “Student” (i.e., continues to be registered or enrolled for credit or non-credit-bearing coursework at the University).
health and safety of the Complainant and other members of the University community), the Evaluation Panel will direct the Title IX Coordinator to take any appropriate University actions, which may include, without limitation, (i) causing the Director to impose a No-Contact Directive or an Interim Disciplinary Suspension on the Respondent; (ii) causing the Director to place a “social obligation hold” on the Respondent’s University record; (iii) initiating an investigation and Formal Resolution under these Procedures; and/or (iv) arranging, imposing, or extending any other appropriate remedial and/or protective measures.

Where the Evaluation Panel 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).

D. 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 affect 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 shall include, but not be limited to those, outlined in Section 2.02.D of the Student Disciplinary Procedures. Interim protective measures will remain in effect until the resolution of the report by the Review Panel, unless new circumstances arise which that 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. Provided that, if the Respondent is given an Interim Suspension, he/she will be entitled to a hearing on the suspension within three (3) business days before the Review Panel.
E. NOTICE OF POTENTIAL UNIVERSITY ACTIONS AGAINST STUDENT GROUPS OR ORGANIZATIONS.

If, upon completion of the health and safety threat assessment, the Evaluation Panel determines that a report of Prohibited Conduct reveals involvement of, or a pattern of behavior by, a particular Student group or organization (e.g., agency group, special status organization, fraternity, sorority, contracted independent organization, club sport, and/or athletic team), the Evaluation Panel will direct the Title IX Coordinator to impose any appropriate remedial or protective measures as outlined in these Procedures (e.g., training and/or prevention programs targeted to Student members of the group or organization). The Title IX Coordinator will also consult with relevant University officials regarding any appropriate University action directed at the Student group or organization, including, but not limited to, modification, suspension or termination of the Student group’s or organization’s agreement or status with the University.

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.3 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 a Student 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.B of these Procedures, the Evaluation Panel has determined, based upon a review of the totality of the circumstances and guided by a consideration of the Risk Factors, 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.

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 send an Amended Notice(s) of Investigation to each party should the Investigation reveal additional allegations of misconduct to be investigated.

b. **Other Forms of Discriminatory and/or Harassing Conduct and/or Violations of the Student Conduct Code.** If a report of Prohibited Conduct, as defined in and governed by the University Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking And Retaliation Board of Governors Policy, GA-1 also implicates any other violation(s) of the University’s Code of Student Conduct and/or Housing and Residence Life’s policies, the Title IX Coordinator, in conjunction with the Director and other appropriate University officials, will evaluate all reported allegations to determine whether the alleged Prohibited Conduct and the alleged Code of Student Conduct violation(s) and/or Housing and Residence Life’s policies may be appropriately investigated together without unduly delaying the resolution of the report of Prohibited Conduct. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of responsibility for the violation of University policy will be evaluated under the applicable policy (i.e., the Policy or the Student Code of Conduct and/or Housing and Residence Life’s policies), but the investigation and resolution will be done in accordance with Appendix B of the Student Disciplinary Procedures.

c. **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 with any form of resolution under these Procedures, and 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. The Advisor may be any person, including an attorney paid for by the student, 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. Although, the Advisors may provide support and advice to the party they represent at any meeting and/or proceeding, they may not, in any manner, disrupt such meetings and/or proceedings. Provided that, if a party is being represented by an attorney they must advise the Title IX Coordinator at least forty-eight (48) hours prior to the scheduled meeting or hearing.

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 the Code of Student Conduct, 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 (and, where
applicable, the Code of Student Conduct). The Investigator will deliver the Final
Investigation Report to the Title IX Coordinator. The Title IX Coordinator will notify both
parties and their Advisors, simultaneously, and separately, that the Final Investigation
Report is complete and available for review.

o. **Recommended Finding(s) Determination 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. If the Respondent accepts the
recommended finding(s) of responsibility, the Title IX Coordinator will refer the case for
a Hearing as set forth in Section VII.A.3 before the Review Panel solely on the issue of sanctions. The sanctions to be imposed are outlined in Section VII.A.3(h) of these Procedures. 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 VII.A.3 of these Procedures.

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) as specified by the Title IX Coordinator. 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 VII.A.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 as specified by the Title IX Coordinator. 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 five (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.1(d) 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 Review Panel to determine the appropriate sanction(s). By accepting responsibility for the Prohibited Conduct, the Respondent waives all rights to a hearing and/or any other due process rights the student may be entitled to receive under this process or any other State or Federal law.

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 (3) 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 member. 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, as described in Section VII.A.1(d) of these Procedures. 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 Hearing Officer. 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. **Challenge Due to Conflict of Interest.** If either party believes that any member of the Review Panel or Hearing Officer has a conflict of interest, their written challenge must be sent to the Hearing Officer. The challenge must state which individual(s) are the subject of the challenge and the basis for the challenge. Upon receipt of the challenge the Hearing Officer shall forward the same to the Review Panel for consideration and a decision as to whether or not to grant the challenge. The Review Panel shall make their decision within 24 hours of receipt of the challenge and provide a written decision to the parties concerning the same. A challenge for Conflict of Interest will be considered good cause to continue or postpone the hearing, if a decision cannot be reached before the scheduled hearing of if an individual must be replaced.

d. **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.

e. **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. 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. In order to aid in the efficiency of the Hearing, it is highly recommended that the parties have questions prepared prior to the Hearing.

iv. The parties and/or their Advisors may directly question any witness that is not a party to this Complaint or similar complaint involving either party.

v. 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.

vi. 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.

vii. The Respondent and the Complainant shall each have the opportunity to testify, but may not be required to testify.

viii. 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 official record of the proceedings. 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.

f. 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. Proposed witness lists shall be provided to the Hearing Officer at least four (4) calendar days prior to the Hearing and said lists shall contain a brief statement of the need or relevancy of the proposed witness’s
presence at the Hearing. 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.

a. It is the responsibility of each of the parties to arrange for the attendance of any proposed witness who is not affiliated with the University.

b. The University does not have subpoena power to compel the attendance of witnesses who are not affiliated with the University.

iii. Advisors. Both the Complainant and the Respondent have the right to be accompanied at the Hearing by one Advisor of their choosing. The Advisor may be anyone, including an attorney, who is not otherwise a party or witness. If the Complainant or Respondent is consulting with more than one Advisor, the Complainant or Respondent must designate their “Advisor” for purposes of these proceedings. 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 VII. A. 3. Provided, that, the University reserves the right to remove any individual whose actions are disruptive to the proceedings.

g. 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 appropriate 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.(j). No decision will be communicated orally.
h. **Sanctions.** Where there is a finding or acceptance of responsibility, the Review Panel may impose one or more sanctions. Sanctions may include any of the sanctions that are available for violations of the University’s Code of Student Conduct as set forth in Section 2.05 of the Student Disciplinary Procedures.

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, 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 relevant 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.

Unless the safety or security of the Complainant or the University community are of concern, the Sanction will become effective as provided in the Final Outcome Letter.

In addition to other sanctions, the Review Panel may direct the Title IX Coordinator to impose or extend a No-Contact Directive and impose or extend academic, University housing and/or University employment modifications, as may be appropriate; impose or extend increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; arrange for conducting targeted or broad-based educational programming or training for relevant persons or groups; impose one or more restorative remedies to encourage a Respondent to develop insight about the Prohibited Conduct, learn about the impact of that Prohibited Conduct on the Complainant and the University community, and identify how to prevent that Prohibited Conduct in the future (including community service and mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); and/or impose any other remedial or protective measures that are tailored to achieve the goals of the Policy.

i. **Transcript Notations.** If the Review Panel imposes a Reportable Sanction, the Title IX Coordinator will notify the University Registrar to place a prominent notation on the Respondent’s transcript, as provided in Section 2.05 of the Student Disciplinary Procedures.

j. **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).

i. The Final Outcome Letter to the Respondent 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 sanction(s) (if applicable) imposed against the Respondent; and the rationale for any sanction(s)
imposed. 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.

ii. 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 imposed 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.

k. 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 Notice of Appeal in writing as defined below. The appellant must base the appeal exclusively on one or more of the grounds below:

i. 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.

ii. Any sanctions imposed by the Review Panel were not appropriate for the violation(s) for which the student was found responsible.

iii. New, substantive information, sufficient to alter the decision, exists and was clearly not available at the time of the original hearing.

iv. 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 Director may also appeal a decision, but only if he/she determines that the decision was manifestly unfair to the University community. 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 (5) business days of receipt of the Final Outcome 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 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:

   i. Affirm the action, at which time the matter will be considered final and binding upon all involved.
   ii. Reverse the action taken by the Review Board and dismiss the case. A case will be dismissed only in rare and extreme circumstances.
   iii. Remand the case to the Review Board for a new hearing.
   iv. Increase or decrease any sanctions imposed based on information presented during the appeal process.

g. **Notice and Record of Decision.** Within ten (10) 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.

5. **Release of Documents.** Under federal privacy laws, the Final Investigation Report, statements of one party that are shared with the other party in the resolution process, and any documents prepared by the University, including documents by or for the Review Panel in advance of the Hearing, constitute education records which may not be disclosed outside of the proceedings, except as may be required or authorized by law. The University does not, however, impose any restrictions on the parties regarding re-disclosure of the incident, their participation in proceedings under these Procedures, or the Final Outcome Letter.

The Title IX Coordinator maintains a record of Title IX investigations.

Title IX files are considered educational records pursuant to the Federal Educational Rights and Privacy Act (FERPA) and cannot be provided to outside parties, including but not limited to spouses, Advisors, and legal counsel, without the student’s written permission.

The files maintained by the Title IX Coordinator are separate from transcripts, which are maintained by the University Registrar.

A student may request a copy of his or her Title IX investigation record or request that the record, including information related to pending charges, be provided to a third party by completing a release authorization form. The completed form should be provided to:

**Debra Hart, Director/ Title IX Coordinator**
Old Main Room 324
Marshall University
Requests for records may be redacted if required by University policy, practice, state or federal law or if a Complainant requested confidentiality or as required by law.

6. **Prevention.** The University will take steps to prevent recurrence of any Title IX violation including sexual violence and remedy discriminatory effects on the Complainant and others, if appropriate.

**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 V.C of these Procedures, to refer a report for Formal Resolution at any time. In addition, Alternative Resolution may not be available where the Evaluation Panel has determined that one or more of the Risk Factors listed in Section VI.B.1 of these Procedures 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 cases involving Sexual Assault and Interpersonal violence allegations.**

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 an Alternative Resolution for any reason within forty-five (45) days of signing the Alternative Resolution. Any party wishing to withdraw an Alternative Resolution after forty-five (45) days of signing the Alternative Resolution must show good cause reason for the withdrawal and good cause reason that the Alternative Resolution was not working appropriately. 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. The Advisor may be any person, including an attorney, who is not otherwise a party or witness to the reported incident(s). The parties may be accompanied by their respective Advisors at any meeting or proceeding held as part of Alternative Resolution. While the Advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

Alternative Resolution may include:

1. **Resolution with the Assistance of a Third Party.** A Complainant may seek assistance in informally resolving a report of Prohibited Conduct from the Title IX Coordinator, who can arrange to have a trained representative facilitate a meeting or meetings between 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 where the allegation involves Sexual Assault.
2. **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.

C. **RECORDS RETENTION**

The University shall retain all records relating to a report of Prohibited Conduct for a period of ten years after the date the report was received, and the University shall retain all of such records for a period of twenty years in cases in which the Respondent was found responsible for Prohibited Conduct.
Appendix C

MARSHALL UNIVERSITY

PROCEDURES FOR REPORTS OF
CONDUCT VIOLATIONS BY STUDENTS IN THE RESIDENCE
HALLS

INVESTIGATING AND RESOLVING REPORTS OF CONDUCT VIOLATIONS BY STUDENTS IN THE RESIDENCE
HALLS UNDER THE POLICY

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I. INTRODUCTION

The Department of Housing and Residence Life, in conjunction with the Office of Student Conduct regulates the policies and procedures necessary to maintain the orderly function of campus residence halls. The Department of Housing and Residence Life’s policies and procedures are described within “The Residence Hall Guide”.

By signing the “Residence Hall Contract,” the student agrees to respect and adhere to all policies and procedures pertaining to university housing and dining services as outlined in the “Residence Hall Contract” and “The Residence Hall Guide.” In addition, all university students that visit residence halls on campus are expected to abide by the Department of Housing and Residence Life’s policies and procedures. Any university student or guest who violates policies and procedures may be subject to loss or restriction of residence hall visitation privileges as well as related financial restitution.

The Department of Housing and Residence Life’s policies are specific to the operation of residence halls and will be adjudicated within the Department with violations resulting in residence hall based sanctions. The adjudication process includes adequate notice of violations, fair review of charges, and a just appeals process. Residence hall incidents that involve suspected use or possession of drugs or alcohol, or any actions that could, under the code, result in suspension or expulsion, will be referred to the Office of Student Conduct for adjudication with violations resulting in University based sanctions. The Office of Student Conduct will notify the Department of Housing and Residence Life of the final outcome of all disciplinary proceedings related to the residence halls.

If a student is found to be in violation of any university policies or procedures, as specified in the “Residence Hall Contract,” “The Residence Hall Guide,” or the Student Code of Conduct, the Department of Housing and Residence Life reserves the right to change the student’s assignment or to consider cancelling the student’s housing contract. Assignment changes or cancellation of housing contract decisions are made on the basis of if the student or situation is deemed to be a health or safety threat either to the individual student or community at large. When residency is cancelled, refunds will only be made in accordance with the terms of the “Residence Hall Contract.”

II. REPORTING

Housing encourages anyone who experiences or becomes aware of an incident of Conduct Violations involving a Student to report the incident in writing to the University through the following reporting options:

By contacting a Housing and Residence Life or a staff member by telephone, email, or in person:

Housing and Residence Life
1 John Marshall Drive
housing@marshall.edu
Ph: 304-696-6766

The administrative investigation of complaints filed in accordance with these Procedures is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation will not take the place of an investigation, adjudication or disposition of a complaint filed in accordance with these procedures and 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 or the Student Conduct. 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 to ten 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.

III. DEFINITIONS

1. “Level One Judicial Ban” occurs when a student fails to meet with a member of the Housing and Residence Life staff within three business days of being charged with a conduct violation. The Level One Judicial Ban prohibits the student from signing guests into a residence hall, checking out residence hall equipment and amenity keys.

2. “Level Two Judicial Ban” occurs when a student fails to meet with a member of the Housing and Residence Life staff within five business days of a Level One Judicial Ban being placed on the student. The Level Two Judicial Ban prohibits the student from being signed in as a guest in any residence hall, signing guests into a residence hall, checking out residence hall equipment and amenity keys.

3. “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.

IV. PROCEDURES

Housing and Residence Life Adjudication Process

1. Upon receipt of a report of an alleged violation, the Residence Director/Assistant Residence Director will notify the student(s) involved by sending a charge letter within two business days.

2. The student(s) are required to set up an appointment with their Residence Director/Assistant Residence Director within three business days of receiving notification of alleged violations.
   a. Student will receive an email confirming the day and time they are scheduled to meet with the Residence Director.
   b. If a meeting is not scheduled within the required time a level one judicial ban will be placed on the student until a meeting is held.
   c. If no meeting is scheduled within five business days of the Level One judicial ban being placed, the student will be sanctioned in absentia with failure to comply and will receive a level two judicial ban until a meeting is held with the Office of Student Conduct.

3. Student(s) who meet with their Residence Director will receive written notification by email of the meeting outcome including any sanction information.

4. Sanctions that are not completed or adhered to within the required time frame will result in a level two judicial ban being placed on the student until a meeting is held with the Office of Student Conduct.
V. **SANCTIONS**

Housing and Residence Life reserves the discretion to determine appropriate sanctions to be imposed upon a student for any violation of the Residence Hall Guide or Housing Contract up to and including housing cancellation. The sanctions may be cumulative, and no sanction need be exhausted before any other sanction may be imposed. Sanctions may be determined based on a past disciplinary record, the severity of behavior, the impact upon the community or any combination of these considerations. The Residence Director or their designee will consider these factors when determining the possible sanction to be imposed.

**Housing Warning:** A Housing warning is formal reiteration of policies and procedures to a student found in violation of a Department of Housing and Residence Life policy.

**Housing Probation:** Housing Probation is a predetermined period of time in which a student must adhere all policies and procedures to avoid further disciplinary action. Additional violations of policy during a probationary period could escalate the student’s disciplinary status.

**Housing Relocation:** Housing Relocation is a determination that a student is disruptive to the community in which they reside or involved in a situation such as but not limited to prohibited conduct or other university conduct violations and a change is necessary for the betterment of that community and the individual in question.

**Housing Cancellation:** Housing Cancellation is the formal cancellation of the student’s Housing Contract because the student’s behavior has been deemed a threat to the health and safety of the individual in question or the community at large.

**Educational Sanctions:** Educational Sanctions are conditions of sanctions that require the Respondent to complete a task (e.g. community service, apology letters, term papers)

**Financial Sanctions:** Financial Sanctions are the required payments needed to make restitution for prohibited behavior in the Residence Halls. Common financial sanctions are cleaning $25.00, Smoking, $25.00, or assessed damages to university or student property.

VI. **APPEALS**

Students have the right to appeal a sanction given if they feel the sanction is aggrieved. To appeal a sanction:

1. Submit a letter outlining the rationale as to why the sanction or disciplinary status is unjust within three (3) business days of receipt of your outcome letter to the Assistant Director or their designee(s).
2. The Assistant Director or their designee(s) will meet with the resident within five (5) business days.
3. The appeal decision will be final, except in cases resulting in cancellation of the student’s contract.
4. All contract cancellations based on conduct violations may be appealed, within two (2) business days of receipt of the cancellation notice, to the Senior Vice President for Administration, or their designee. Grounds for appeal are limited to:
   a. Procedural errors.
   b. Evidence not available at the time of the decision or to the maker(s) of the decision.
   c. Insufficient grounds to support the cancellation decision.
   d. Misinterpretation of Housing and Residence Life’s policies.