

**MARSHALL UNIVERSITY
PRESIDENT'S EXECUTIVE ORDER
EFFECTIVE AUGUST 14, 2020**

WHEREAS, on May 19, 2020, new regulations were published in the Federal Register regarding how "schools" must respond to allegations of sexual harassment consistent with Title IX of the Education Amendments of 1972's (Title IX) prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities; and

WHEREAS, Title IX applies to all institutions that receive federal financial assistance from the U. S. Department of Education; and

WHEREAS, the new regulations are required to become effective on August 14, 2020; and

WHEREAS, Marshall University's policies and procedures must be consistent with these new regulations by that same date; and

WHEREAS, the Marshall University Board of Governors' next regularly scheduled meeting will be held on August 27, 2020; and

WHEREAS, the Marshall University Board of Governors Policy GA-1, Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation Policy (GA-1) is required to be amended to effectuate the changes mandated by the new federal regulations; and

WHEREAS, the newly revised policy GA-1 will be presented to the Marshall University Board of Governors at their August 27, 2020, meeting for final approval as attached.

WHEREFORE, I, Dr. Jerome A. Gilbert, President of Marshall University, do hereby **ORDER** that **effective August 14, 2020**, Marshall University shall comply with the attached Marshall University Board of Governors Interim Policy GA-1, Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation Policy -Including Title IX, as it will be presented to the Marshall University Board of Governors on August 27, 2020, as if the same were fully adopted by the Board as of that date. This Interim Policy is subject to amendment by the Marshall University Board of Governors after Committee and Board reviews.

Dated: August 6, 2020



Dr. Jerome A. Gilbert, President
Marshall University

MARSHALL UNIVERSITY BOARD OF GOVERNORS

Policy No. GA-1

DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT, SEXUAL & DOMESTIC MISCONDUCT, STALKING, AND RETALIATION POLICY – INCLUDING TITLE IX

Section 1: General.

- 1.1 Scope & Purpose: Marshall University (“University”) is committed to fostering a diverse and inclusive culture by promoting diversity, inclusion, equality, intercultural and intercommunity outreach. Accordingly, the University does not discriminate on the basis of race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression in the administration of any of its educational programs, activities, or with respect to admission or employment. This Policy sets forth how discrimination, harassment, sexual harassment, sexual and domestic misconduct, certain consensual relationships, stalking, and retaliation will be addressed by Marshall University.
- 1.2 Authority: W. Va. Code §§ 18B-1-6, 18B-2A-4; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681; the West Virginia Human Rights Act, W. Va. Code §§ 5-11-1 to -20; the Campus Sexual Violence Elimination Act (“Clery Act”), 20 U.S.C. §1092, and the Violence Against Women Act (“VAWA”) of 1994, 42 U.S.C. §13925.
- 1.3 Effective Date: August 14, 2020.
- 1.4 Revision History: Originally replaced Board of Trustees Series No. 9 which was transferred by the Higher Education Policy Commission to the institutional boards of governors. This policy was previously numbered as MUBOG Policy No. 5,” amended again on April 27, 2016, and title changed to “Policy Regarding Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation,” which was amended effective February 22, 2017.

Section 2: General Definitions.

- 2.1 “Actual Knowledge” means notice of sexual harassment or other prohibited conduct or allegations of sexual harassment or other prohibited conduct to the University’s Title IX Coordinator or any official of the University who has authority to institute corrective measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the Respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University.

“Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

- 2.2 “Complainant” means, for purposes of this Policy, an individual who is alleged to be the victim of conduct that could constitute sexual harassment (under Title IX) or other 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.
- 2.3 “Reporter” means, for purposes of this Policy, any individual that makes or files a complaint about prohibited conduct under this Policy. The Reporter may be the Complainant, any other person, or the University.
- 2.4 “Respondent” means, for purposes of this Policy, an individual who has been reported to be the perpetrator of conduct prohibited by Section 3. Any “individual” can be a Respondent, whether such individual is a student, faculty member, another employee of the University, or other person with or without any affiliation with the University.
- 2.5 “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.
- 2.6 “Student” means, for purposes of this Policy, an individual subject to the Marshall University Board of Governors Policy SA-3, The Code of Student Rights and Responsibilities.
- 2.7 “Consensual Relationship” means a mutually acceptable romantic, dating, or sexual relationship between individuals.
- 2.8 “Education Program or Activity” includes, for purposes of this Policy, locations, events, or circumstances over which the University exercised substantial control over both Respondent and the context in which the prohibited conduct occurs, and also included any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Section 3: Defining and Recognizing Prohibited Conduct.

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

- 3.1.1 Jurisdiction.

- 3.1.1.1 – Jurisdiction for Title IX Complaints.

The University will address prohibited “Sexual Harassment” in its programs and activities, including locations, events, or circumstances over which the University

exercises substantial control over both the Respondent and the context in which the alleged sexual harassment occurs. Locations include buildings owned or controlled by officially recognized student organizations.

Jurisdiction for Title IX Complaints does not apply if:

- (1) the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy, even if proved;
- (2) the conduct alleged did not occur in the University's education program or activity; or
- (3) the conduct alleged did not occur against a person in the United States.

If any of the above do not apply, the University must dismiss the formal complaint with regard to that conduct for the purposes of sexual harassment under Title IX; however, such dismissal does not preclude action under another provision of the University's policies or procedures. Off-campus conduct at private residences, businesses, events, or other locations outside of the University's substantial control do not fall under the University's jurisdiction for Title IX Complaints.

3.1.1.2 – Jurisdiction for Non-Title IX Complaints.

This prohibition applies to other conduct for which jurisdiction under Title IX does not apply that occurs on University premises or in connection with a University education program or activity; off-campus conduct that unreasonably interferes with the educational or orderly operation of the University community, its mission, or its objectives as determined by a reasonable person; any off campus conduct that, in light of all of the facts and circumstances, would endanger the health and safety of the University community. As a result, any individual found to have committed these acts against another is subject to appropriate disciplinary action.

3.2 Discrimination.

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

3.3 Harassment and Sexual Harassment.

- 3.3.1 "Harassment" means conduct that creates a hostile environment, as defined below, and is based upon an individual's race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression. Harassment may take various forms,

including, but not limited to, name-calling, graphic or written statements (including the use of social media, text messages, e-mail, or other similar forms), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not necessarily have to include intent to harm, be directed at a specific target, or involve repeated incidents.

- 3.3.2 “Hostile Environment” means a situation where an individual is subjected to any conduct based on the reasons set forth in Section 3.3.1 and that conduct is sufficiently severe or pervasive, or so objectively offensive, so as to unreasonably interfere with an individual’s educational experience, work or academic performance or deny or limit the individual’s ability to participate in or benefit from the University’s programs, services, opportunities, or activities.

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

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

- 3.3.2.1 The degree to which the conduct affected one or more students’ education or individual’s employment;
- 3.3.2.2 The nature, scope, frequency, duration, and location of incident or incidents;
- 3.3.2.3 The identity, number, and relationships of persons involved; and
- 3.3.2.4 The nature of higher education.

- 3.3.3 In addition to hostile environment harassment, sex-based harassment includes sexual harassment and non-sexual harassment based on stereotypical notions of what is female/feminine versus male/masculine behavior or nonconformity with gender stereotypes.

- 3.3.4 “Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:

- 1) An employee of the University conditioning the provision of aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct (i.e. *quid pro quo*); or
- 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity; or

3) “sexual assault” as defined in the Clery Act – 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in VAWA 34 U.S.C. 12291(a)(8), or “stalking” as defined in VAWA 34 U.S.C. 1229(a)(30).

Comments or communications may be verbal, written, or electronic. Behavior does not need to be directed at or to a specific individual in order to constitute sexual harassment but may consist of generalized unwelcome and inappropriate comments based on sex or gender stereotypes.

Determination of whether alleged conduct constitutes sexual harassment requires consideration of all the circumstances, including the context in which the alleged incidents occurred.

3.3 Sexual Misconduct.

3.4.1 “Sexual Misconduct” means any act of a sexual nature perpetrated against an individual without effective consent or when an individual is unable to freely give consent. Effective consent is defined in 3.4.6 of this Policy. Sexual misconduct includes, but is not limited to:

3.4.1.1 Attempted or completed intercourse or penetration (anal, oral or vaginal), however slight, with any body part or any object, by one person upon another person, without effective Consent. This includes vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact).

3.4.1.2 Sexual touching (including disrobing or exposure), however slight, with any body part or any object, by one person upon another person, without effective consent. Sexual touching includes any contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts, when such touching would be reasonably and objectively offensive.

3.4.2 “Sexual Assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting system. A sex offense is any act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

3.4.2.1 “Rape” means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

3.4.2.2 “Fondling” means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

3.4.2.3 “Incest” means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law in West Virginia.

- 3.4.2.4 “Statutory Rape” means sexual intercourse with a person who is under the statutory age of consent in West Virginia (Age 16).
- 3.4.5 “Sexual Intimidation” means threatening to commit a sexual act upon another person, stalking, cyber-stalking, or engaging in indecent exposure
- 3.4.6 “Consent” or “Effective Consent” means informed, freely and actively given, mutually understandable words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. In the absence of mutually understandable words or actions it is the responsibility of the initiator, that is, the person who wants to engage in the specific sexual activity, to make sure that they have consent from their partner(s). Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to do the same act, in the same way, at the same time, with each other. Relying solely upon non-verbal communication can lead to miscommunication. It is important not to make assumptions. If confusion or ambiguity on the issue of consent arises anytime during the sexual interaction, it is important the initiator stop and verbally clarify the other individual’s willingness to continue.
- 3.4.6.1 Consent may not be inferred from silence, passivity, or lack of active resistance alone.
- 3.4.6.2 A current or previous dating or sexual relationship (or the existence of such a relationship with anyone else) may not, in itself, be taken to imply consent.
- 3.4.6.3 Consent cannot be implied or inferred by attire, or from purchases made such as, the buying of dinner or the spending of money on a date.
- 3.4.6.4 Consent to one type of sexual act may not, in itself, be taken to imply consent to another type of sexual act.
- 3.4.6.5 Consent expires. Consent lasts for a reasonable time, depending on the circumstances.
- 3.4.6.6 Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly; upon clear communication, all sexual activity must cease.
- 3.4.6.7 Consent which is obtained by use of deception, fraud or force, whether that force is physical force, threats, intimidation, or coercion, is ineffective consent. Intimidation or coercion is determined by reference to the reasonable perception of a person found in the same or similar circumstances.
- 3.4.6.8 Consent may never be given by:
- 3.4.6.8.1 Minors under the age of 16
 - 3.4.6.8.2 Mentally disabled persons
 - 3.4.6.8.3 Persons who are incapacitated as a result of alcohol or other drugs or

who are unconscious or otherwise physically helpless. Incapacitation means being in a state where a person lacks the capacity to appreciate the nature of given consent to participate in sexual activity.

- 3.4.6.9 One may not engage in sexual activity with another whom one knows, or should reasonably have known, is incapacitated as a result of alcohol or other drugs.
- 3.4.6.10 The use of alcohol or other drugs can have unintended consequences. Alcohol or other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and effectively given. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of the use of alcohol or drugs on another's ability to give consent. Being intoxicated or high does not diminish one's responsibility to obtain consent and is never an excuse for sexual misconduct.
- 3.4.7 "Forcible Compulsion" means (a) physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or (b) threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to oneself or another person or in fear that oneself or another person will be kidnapped.
- 3.4.8 "Sexual Exploitation" means taking non-consensual, unjust or abusive sexual advantage of another, for one's own advantage or benefit; or to benefit or advantage anyone other than the one being exploited. Sexual exploitation encompasses a wide range of behaviors which may include, but are not limited to:
 - 3.4.6.1 Inducing incapacitation with the intent to rape or sexually assault a student or other individual;
 - 3.4.6.2 Non-consensual video or audio-recording of sexual activity;
 - 3.4.6.3 Allowing others to observe a personal act of consensual sex without knowledge or consent of the partner;
 - 3.4.6.4 Engaging in voyeurism;
 - 3.4.6.5 Knowingly transmitting a sexually transmitted disease, including HIV, to a student or other individual;
 - 3.4.6.6 Prostituting a student or other individual (e.g.-personally gaining money, privilege, or power from the sexual activities of another individual)

3.5 Domestic Misconduct.

3.5.1 "Domestic Misconduct" means "Domestic Violence" and "Dating Violence" as defined below.

3.5.2 "Domestic Violence" means a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the alleged victim, by a person with whom the alleged victim shares a child in common, by a person who is cohabitating with or who has cohabitated with the alleged victim as a spouse, by a person similarly situated to a spouse of the alleged victim under the domestic or family laws of the State of West Virginia, by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of West Virginia. The term spouse or intimate partner of the victim includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of

the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

“Domestic Violence” under the laws of the State of West Virginia, which is also prohibited by this Policy, means: (i) unlawfully and intentionally making physical contact of an insulting or provoking nature with one’s family or household member(s); (ii) unlawfully and intentionally causing physical harm to one’s family or household member(s); (iii) unlawfully attempting to commit a violent injury against one’s family or household member(s); or (iv) unlawfully committing an act which places one’s family or household member(s) in reasonable apprehension of immediately receiving a violent injury.

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

3.5.3 “Dating Violence” means violence committed by a person:

- (1) who is or has been in a social relationship of a romantic or intimate nature with the victim and
- (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) the length of the relationship;
 - (ii) the type of relationship; and
 - (iii) the frequency of interaction between the persons involved in the relationship.

The view of the Complainant shall generally be controlling in determining whether such a relationship existed. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence, for purposes of this Policy, does not include emotional abuse.

3.6 “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (i) Fear for the person’s safety or the safety of others; or
- (ii) Suffer substantial emotional distress.

For the purposes of this definition:

(1) “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

(2) “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.

(3) “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

3.7 Consequences & Corrective Action.

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

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

3.8 Consensual Relationships.

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

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

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

3.9 Prohibited Relationships with Students.

Staff Members, Faculty Members, Instructors, Coaches, or other employees are prohibited from engaging in a consensual relationship with a student whom one may instruct, evaluate, supervise, advise, or coach.

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

Although Marshall University cannot prohibit consensual relationships between

employees and students, whom they do not instruct, evaluate, supervise, advise, or coach, the University strongly discourages such relationships. In addition, nothing contained in this Policy would otherwise prohibit a complaint being made by either.

Section 4: Reports of Misconduct and Complaints.

4.1 Coordinator.

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

4.2 Reporting.

Any member of the University community who believes someone has been subject to any of the prohibited conduct set forth in Section 3, or they have witnessed or is aware of such prohibited conduct, is encouraged to report this information.

4.2.1 All Campus Security Authorities must report incidents of prohibited conduct to the University's Title IX Coordinator at:

Title IX Coordinator
Office of Equity Programs
Old Main 324
One John Marshall Drive
Huntington, WV 25755
Phone: 304-696-2597 | Fax: 304-696-6844
Email: titleIX@marshall.edu
<http://www.marshall.edu/eoaa/>

4.2.2 “Campus Security Authority” means an official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. For example, a dean of students who oversees student housing, a student center, or student extra-curricular activities, has significant responsibility for student and campus activities. Similarly, a director of athletics, team coach, and faculty advisor to a student group also have significant responsibility for student and campus activities. A single teaching faculty member is unlikely to have significant responsibility for student and campus activities, except when serving as an advisor to a student group. A physician in a campus health center or a counselor in a counseling center whose only responsibility is to provide care to students are unlikely to have significant responsibility for student and campus activities. Also, clerical staff are unlikely to have significant responsibility for student and campus activities.

- 4.2.3 Confidential resources are available for members of the University community who have been subject to prohibited conduct. For a more detailed list of confidential resources available to members of the University community, please see:

Marshall University Office of Equity Programs/Title IX Staff
Marshall University Counseling Center Staff
Marshall University Women's & Gender Center Staff
Marshall University Violence Prevention and Response Program Staff
Marshall University Psychology Clinic Staff

4.3 Filing a Complaint.

Any member of the University community who believes one has been subject to, has witnessed, or is aware of any of the prohibited conduct set forth in Section 3 may file a complaint in any manner set forth in the applicable procedure.

4.4 Procedure for Responding to Complaints.

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

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

4.5 Disclosure and Confidentiality.

The University respects the privacy of those reporting prohibited conduct and will endeavor to respect requests for confidentiality to the extent permissible by law. However, the University has certain legal obligations to address this conduct and to prevent its recurrence and, as a result, cannot guarantee confidentiality to a complainant in all cases. In determining whether, an individual's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, the University may consider a range of factors, including: whether there have been other sexual violence complaints about the same alleged perpetrator; whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence; whether the alleged perpetrator threatened further sexual violence or other violence against the complainant or others; whether the sexual violence was committed by multiple perpetrators; whether the complainant's report or allegation reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group; whether the sexual violence was perpetrated with a weapon; the age of the complainant subject to the sexual violence; and whether the University possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence). Pursuant to Title IX Regulations, the University must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal

complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. That said, as set forth in Section 4.2.3., there are places where a victim can receive confidential services and the complaint procedure must identify clearly additional resources, if any, where a victim can go to receive such services without having to risk confidentiality.

4.6 Dishonest or Frivolous Complaints.

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

Section 5: Retaliation Prohibited.

- 5.1 The University nor other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).
- 5.2. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.
- 5.3 Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph 5.1, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.