



**ADMINISTRATIVE PROCEDURE
HRS-1
EMPLOYEE SEXUAL MISCONDUCT PROCEDURES**

HUMAN RESOURCES

Number: HRS-1	Name: Employee Sexual Misconduct Procedures
Purpose: This administrative procedure sets forth the Procedures and Due Process rights for employees who are accused of violation Board of Governors policies GA-1.	
Responsible Unit: Human Resource Services	
Approved by: <i>Bruce Felder</i> , Chief Talent and Culture Officer	Approval Date: 08/21/2023

MARSHALL UNIVERSITY

TITLE IX GRIEVANCE PROCEDURES FOR EMPLOYEES

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I. INTRODUCTION

Marshall University (“the University”) is committed to providing a safe, non-discriminatory environment for all members of the University community. The University prohibits Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation by or against any member of the University community (together, “Prohibited Conduct”). These forms of Prohibited Conduct are defined in the Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation Policy – Including Title IX (BOG GA-1) (“Policy”). In accordance with Title IX, these are the Title IX Grievance Procedures¹ (the “Procedures”) the University follows when it receives a report alleging Prohibited Conduct under the Jurisdiction of Title IX by an Employee. The University uses these Procedures to investigate and adjudicate any such allegations and to impose disciplinary sanctions against Employees found responsible for violating the Policy².

¹ Although these are referred to a “Grievance Procedures” due to the applicable federal regulation, these Procedures should not be interpreted as amending or affecting the requirements set forth in the West Virginia Public Employees Grievance Board Procedures

² These Procedures should be read in conjunction with the Policy. Capitalized terms used and not otherwise defined in these Procedures
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II. GENERAL RESPONSE TO SEXUAL HARASSMENT

When the University has actual knowledge of sexual harassment in an “education program or activity,” as defined in the Policy, of the University against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent. The University is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

The University will treat Complainants and Respondents equitably by offering supportive measures to the parties and by following these grievance procedures before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined. The Title IX Coordinator must promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant’s wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

III. REPORTING

The University encourages anyone³ who experiences or becomes aware of an incident of Prohibited Conduct involving a Student or Employee to *immediately* report the incident to the University through the following reporting options:

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

Jessica H. Donahue Rhodes, Esq., Title IX Coordinator
Old Main Room 107
jessica.rhodes@marshall.edu or titleix@marshall.edu
304-696-2934

The University’s website for online reporting (which allows for anonymous reporting) is located at <https://www.marshall.edu/titleix>.

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 options at the same time. As set forth in the Policy, a Complainant who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should contact law enforcement directly:

Marshall University Police Department (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)

are defined in the Policy. For purposes of these Procedures, the following definitions apply: (1) the “Title IX Coordinator” means the Title IX Coordinator and/or any of the respective trained designees; (2) “Supervisor” means the individual or individuals to whom an Employee reports in the context of their employment with the University (for academic faculty, that individual may be the Department Chair; Dean or other unity administrator); and (3) “Human Resources” means the University Human Resources and/or the Human Resources professional in an particular school or department.

³ Certain University employees, called “Campus Security Authorities,” are required to report to the Title IX Coordinator all information disclosed to them about an incident of Prohibited Conduct. See “Reporting by University Employees of Disclosures Relating to Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence.”

South Charleston Police (304-744-6903)
Cabell County Sheriff's Department (304-743-1594) (for non-emergencies)
Mason County Sheriff's Department (304-675-3838) (for non-emergencies)

The administrative investigation of complaints filed in accordance with these Procedures is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation is separate and will not take the place of an investigation, adjudication or disposition of a complaint filed in accordance with these Procedures. The results of a law enforcement investigation, adjudication or disposition are not determinative of and do not determine whether an individual is responsible for violating University rules, regulations, policies. The administration of complaints filed in accordance with these procedures may be carried out prior to, simultaneously with, or following civil or criminal investigations and/or proceedings. The University will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus or that affects the University community. Such cooperation may require the institution to temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while the law enforcement agency is in the process of gathering information. Suspension of investigations typically lasts 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 Title IX Coordinator will determine the appropriate manner of resolution, which may include referral to area law enforcement, restriction of access to campus or University activities, or referral to the home school of the third party.

A. **RESOURCES FOR COMPLAINANT**

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

Marshall University Women's & Gender Center

Old Main 115, One John Marshall Drive
Huntington, WV 25755
Phone: 304 696-3338
Email: wcenter@marshall.edu

Marshall University Counseling Center (for students)

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

Marshall Behavioral Health Center

GO1 Gullickson Hall – 18th Street & 3rd Avenue
Huntington, WV 25755
Phone: 304 696-3751

(this resource may have costs associated with it)

Marshall Campus Psychology Clinic

Room 335-A, Harris Hall
Huntington, WV 25755
Phone: 304 696-2772

(this resource may have costs associated with it)

Marshall University Violence Prevention and Response Program

1205 Wellness Center, Rec Center, One John Marshall Drive
Huntington, WV 25755
Phone: 304 696-5701
Email: vprprogram@marshall.edu

CONTACT Rape Crisis Center

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

REACH Family Counseling Connection

Phone: (304) 292-5100
<http://www.tccwv.org/Our-Programs/REACH.aspx>
(Serving: Kanawha, Jackson, and Putnam Counties)

BRANCHES Domestic Violence Shelter

P.O. Box 403, Huntington, WV 25708
24-hour crisis phone: 304-529-2382
Email: info@branchesdvs.org
<https://www.branchesdvs.org/>

Legal Aid of West Virginia

418 8th Street
Huntington, WV 25701
Phone: (304) 697-2070

Office of the Ombuds

University Ombuds Le’Kesha Taylor
MSC BW14
ombuds@marshall.edu
Phone: (304) 696-2438
Faculty Ombuds Dr. Robin Riner
ombuds@marshall.edu
Phone: (304) 696-2788

Primary Care Physician
Family Counseling Center
Clergy
Advisor, see below.

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 Violence Prevention and Response Program

Cabell Huntington Hospital

Emergency Department
304-526-2200
<https://cabellhuntington.org/services/emergency-trauma/>

St. Mary's Medical Center

Emergency Services

304-526-1111

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

Charleston Area Medical Center (CAMC) – General

304-388-7498

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

Complainants are entitled to receive information, assistance and a broad range of supportive 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:

Jessica H. Donahue Rhodes, Esq., Title IX Coordinator

Old Main Room 107

jessica.donahue@marshall.edu or titleix@marshall.edu

304-696-2934

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

Philadelphia Office, Office for Civil Rights, U.S. Department of Education

The Wanamaker Building

100 Penn Square East, Suite 515

Philadelphia, PA 19107-3323

Telephone: 215-656-8541

FAX: 215-656-8605; TDD: 800-877-8339

Email: OCR.Philadelphia@ed.gov

<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

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

Legal Resources:

West Virginia Lawyer Referral Service

The West Virginia State Bar

2000 Deitrick Blvd.

Charleston, WV 25311

304-553-7220 or 800-642-3617

<https://wvlawyerreferral.org>

B. RESOURCES FOR RESPONDENT

Marshall University Counseling Center (for students)

1st Floor Prichard Hall, One John Marshall Drive

Huntington, WV 25755

Phone: 304 696-3111

Marshall Behavioral Health Center

GO1 Gullickson Hall – 18th Street & 3rd Avenue
Huntington, WV 25755
Phone: 304 696-3751
(this resource may have costs associated with it)

Marshall Campus Psychology Clinic

Room 335-A, Harris Hall
Huntington, WV 25755
Phone: 304 696-2772
(this resource may have costs associated with it)

Office of the Ombuds

University Ombuds Le’Kesha Taylor
MSC BW14
ombuds@marshall.edu
Phone: (304) 696-2438
Faculty Ombuds Dr. Robin Riner
ombuds@marshall.edu
Phone: (304) 696-2788

Primary Care Physician
Family Counseling Center
Clergy
Advisor, see below.

Legal Resources:

West Virginia Lawyer Referral Service

The West Virginia State Bar
2000 Deitrick Blvd.
Charleston, WV 25311
304-553-7220 or 800-642-3617
<https://wvlawyerreferral.org>

AFT-WV for its members.

IV. EXPECTATIONS OF COMPLAINANTS AND RESPONDENTS

Pursuant to these Procedures, Complainants and Respondents can expect:

- A. Reasonably prompt and equitable resolution of allegations of Prohibited Conduct;
- B. Privacy in accordance with the Policy and any legal requirements;
- C. Reasonably available interim supportive 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 or these Procedures;
- 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 or these Procedures;
- F. The responsibility to provide truthful information in connection with any report, investigation, or resolution of Prohibited Conduct under the Policy or these Procedures;

- G. The opportunity to articulate concerns or issues about proceedings under the Policy and these Procedures;
- H. Timely notice of any meeting or proceeding at which the party’s presence is contemplated by these Procedures;
- I. The opportunity to choose a representative, including the right to have that representative attend any meeting or proceeding at which the party’s presence is contemplated by these Procedures;
- J. Written notice of an investigation, including notice of potential Policy violations and the nature of the alleged Prohibited Conduct;
- K. Trained Title IX Coordinator(s), Investigator(s), Decision-Maker(s), Review Panel Member(s), or Informal Resolution Facilitator(s), who do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent and the opportunity to challenge the Investigator or any Decision-maker for bias or conflict of interest;
- L. The opportunity to offer information, present evidence, and identify witnesses during an investigation;
- M. An objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations which may not be based on a person’s status as a Complainant, Respondent, or witness;
- N. 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);
- O. Timely and equal access to any information that will be used during Informal or Formal Resolution proceedings and related meetings;
- P. Reasonable time to prepare any response contemplated by these Procedures;
- Q. Written notice of any temporary delay or limited extension of timeframes for a good cause;
- R. 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; and
- S. An opportunity to appeal the findings of the Decision-maker(s).

V. 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 which fall within the jurisdiction of Title IX are defined in the (BOG GA-1) (the “Policy”).

- A. “Actual Knowledge.” Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective or supportive measures on behalf of the recipient, or to any employee of an elementary and secondary school. 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 recipient 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 or supportive measures on behalf of the recipient. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

- B. “Advisor.” Any person intended to assist the Complainant or Respondent during the disciplinary process, including, but not limited to, a University appointed Advisor, faculty member, attorney, or other person. Unless otherwise indicated by the Complainant or Respondent, in writing, the Advisor shall be provided a copy of all materials provided to the Complainant or Respondent. An Advisor may be called as a witness to provide testimony, but if the Advisor is an attorney, such an Advisor may invoke the attorney-client privilege. The advisor may assist the party by helping to prepare materials, draft questions, and confer with the party during meetings and hearings, as long as this does not unreasonably disrupt or delay the process. The advisor also represents the party by asking questions of the other party and witnesses at the hearing; however, the advisor may not make statements on behalf of the party. If a party does not have an advisor to ask the other party and/or witnesses questions at the hearing, one will be appointed for this purpose by the institution.
- C. **Appeal Officer.** Those who have decision-making authority when dismissals under Title IX or findings resulting from a hearing within the grievance process are appealed by one or more of the parties.
- D. “Burden of Proof” means that while protecting every party’s right to consent to the use of the party’s own medical, psychological, and similar treatment records, the burden of proof and burden of gathering evidence rests on the University.
- E. **Business Day.** Weekdays (Monday – Friday) when Marshall University offices are open for normal operations. This excludes weekends or holidays, and holidays at Marshall University are sometimes observed on differing dates due to winter break. See current Holiday Schedule.
- F. “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.
- G. “Complainant” means, for purposes of this Procedure, an individual who is alleged to be the victim of conduct that could constitute sexual harassment, other sexual misconduct, or retaliation under Marshall BOG GA-1 policy. There may be more than one Complainant for an incident.
- H. **Confidential Resource.** An employee who is not a mandatory reporter or is not obligated by Marshall BOG GA-1 policy to share knowledge and reports of sexual harassment, other sexual misconduct, or retaliation with the Title IX Coordinator. On-campus confidential resources

include licensed mental health professionals and health care providers acting within the scope of their confidential roles. These employees have an exception for extreme cases of immediate threat or danger, in cases of abuse of certain populations (e.g., minors), or when required to disclose by law or court order.

- Marshall University confidential resources include:
 - o Licensed professionals and staff at Counseling Center,
 - o Healthcare providers and staff at Marshall Student Clinic,
 - o Licensed professional counselors available through the Employee Assistance Program, and
 - o Licensed professionals and students registered for practice under a licensed psychologist at the Psychology Clinic.

- Off-campus confidential resources include:
 - o Licensed professional counselors and other medical providers,
 - o Rape crisis counselors,
 - o Domestic violence resources,
 - o Local or state assistance agencies,
 - o Clergy/Chaplains, and
 - o Attorneys.

- I. “Consensual Relationship” means a mutually acceptable romantic, dating, or sexual relationship between individuals.

- J. “Decision-maker” means a standing pool of members of the University community or external professionals who are trained on the definition of sexual harassment, the scope of the University’s education program or activity, these procedures, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias who will make determination of responsibility after an independent review of the Investigation Report.

- K. "Employee" means any person hired for permanent employment by Marshall University for a probationary, full- or part-time position.

- L. “Evaluation Panel” means the group of individuals who will conduct the Health and Safety Threat Assessment where law enforcement is not involved and the initial course of action.

- M. “Formal Complaint.” A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator and by any additional method designated by the University.
 - a. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.
 - b. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under these Grievance Procedures.

While a formal complaint may be submitted at any time and without any prior contact with the Title IX Office, Complainants may want to consider submitting a report and meeting with the Title IX Office to learn about supportive measures available to them and options for proceeding before deciding to submit a formal complaint.

- N. “Informal Resolution Facilitator” means an individual appointed by the Title IX Coordinator to facilitate voluntary Informal Resolutions between the parties. Informal Resolutions Facilitators cannot be a witness or provide testimony.
- O. “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.
- P. “Investigator” means a University position responsible for the University’s Title IX investigations who is trained on the definition of sexual harassment, the scope of the recipient’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias. 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 a Title IX Investigator, the Title IX Coordinator may investigate or assign cases to other trained Investigators or external resources.
- Q. “Member of the University Community,” 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.
- R. “Official Method of Communication” means formal correspondence to parties, witnesses, and others engaged in this process will be sent via e-mail to the person’s Marshall University email address or to the email address provided by a participant who is not a member of the Marshall University community. At the discretion of the Title IX Coordinator, an alternative means of delivering formal correspondence may be utilized if circumstances warrant. Once emailed or otherwise sent or given in person, correspondence will be presumptively delivered.

Should a party not respond to the initial attempt to meet for an interview, the Investigator(s) will make two (2) additional attempts to interview the party. If the party does not respond to these attempts, the Investigator(s) will send the party written acknowledgment of their non-participation and notice of the next steps in the grievance process. The party will continue to be notified throughout the investigation and may participate at any point in the process prior to its conclusion.

Should a witness not respond to the initial attempt to meet for an interview, the Investigator(s) will make at least one (1) additional attempt to schedule with the witness before moving forward in the process.

- S. “Participation in the Grievance Process” means should an employee who is a Complainant or Respondent decide not to participate in the grievance process, the process proceeds to a reasonable resolution in their absence. The employee will continue to receive updates regarding the progress of the investigation and hearing, if any, and may re-engage with the grievance process at any time prior to its conclusion.

- T. “Parties” means the Complainant(s) and Respondent(s) in a matter, collectively.
- U. “Privacy within the Grievance Process” means grievance process proceedings are private. All persons present at any time during the grievance process are expected to maintain the privacy of the proceedings in accordance with Marshall University policy and federal and state laws and regulations. Although there is an expectation of privacy around information and evidence shared with the parties during the investigation and hearing, the parties have the discretion to share their own knowledge and evidence with others if they so choose. Parties are encouraged to discuss any sharing of information with their advisors before doing so.
- V. “Prohibited Conduct” means Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in Board of Governors Policy GA-1.
- W. “Reasonable Person” means a reasonable person under similar circumstances and with similar identities to the Complainant.
- X. “Report” means information provided to the Title IX Office indicating that sexual harassment, other sexual misconduct, or retaliation may have occurred.
- Y. “Reporter” means, for purposes of this the Policy, any individual that makes or files a complaint about prohibited conduct under this Policy. The Reporter may be the Complainant, any other person, or the University.
- Z. “Respondent” means, for purposes of this Policy, an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, other sexual misconduct, or retaliation under Marshall BOG GA-1 policy.
- AA. “Review Panel” means Decision-makers from a standing pool of members of the University community or external professionals who are trained decision-makers appointed by the Title IX Coordinator to adjudicate allegations of Prohibited Conduct and to determine the appropriate sanction, pursuant to these procedures.
- BB. “Sanction” means a consequence imposed by the University on a Respondent who is found to have violated BOG GA-1.
- CC. “Standard of Proof” means a Preponderance of the Evidence standard (i.e., the evidence demonstrates that it is more likely than not that the conduct occurred) often referred to as “50 percent plus a feather.”
- DD. “Support Person” means a person chosen by a party (the Complainant or Respondent) to provide support to them at meetings and interviews with investigators and other Marshall staff. The parties may bring up to two support people at a time with them to meetings and interviews, in addition to the party’s advisor. These support people do not have to be the same people every time. Support people do not actively participate in the process but can be present at meetings and interviews to provide support to the party. Support people do not attend the hearing, if any, but the party must be accompanied at the hearing by an advisor. A support person cannot be a witness in the matter in question.

“

EE. “Supportive Measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before and after the filing of a formal complaint or where no formal complaint has been filed. The University will maintain the confidentiality of supportive measures provided to the parties, to the extent that maintaining such confidentiality will not impair its ability to provide the supportive measures. Supportive measures are designed to restore or preserve equal access to the University’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational environment or to deter sexual harassment, other sexual misconduct, and retaliation.

FF. “Third Party” means 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.

GG. “Title IX Coordinator” means the official designated by Marshall University to ensure compliance with Title IX and oversee the implementation of this policy. References to the Title IX Coordinator throughout may also encompass a designee of the Coordinator for specific tasks.

HH. “Title IX Team” means the Title IX Coordinator, Title IX Investigator, Title IX Case Manager, and the members of the grievance process pool.

II. “Witness” means a person who is requested to participate in the grievance process because they may have relevant information about the alleged violation. The Investigator(s) may identify potential witnesses, or their names may be supplied by the Complainant, Respondent, or others with knowledge of the matter.

VI. INITIAL ASSESSMENT

A. REPORT RECEIVED BY LAW ENFORCEMENT/OFFICE OF PUBLIC SAFETY

1. The Office of Public Safety, Marshall University Police Department (MUPD) will notify the Title IX Coordinator that a report of Prohibited Conduct has been received.
2. Upon request, the University will temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while MUPD or other law enforcement agency is in the process of gathering information. Suspension of investigations typically lasts not more than ten (10) business days but may be extended depending upon the circumstances of each case and/or as dictated by other provisions of this Procedure.
3. MUPD or any other law enforcement agency that has requested the suspension of an investigation, will promptly notify the Title IX Coordinator that they have completed their investigation.

B. REPORT RECEIVED BY CAMPUS SECURITY AUTHORITY

1. Before an individual reveals information that they may wish to keep confidential, a Campus Security Authority should make every effort to ensure that the individual understands:
 - a. the employee’s obligation to report the names of the alleged perpetrator and individual involved in the alleged Prohibited Conduct, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator,

- b. the individual's option to request that the school maintain their confidentiality, which the school (e.g., Title IX coordinator) will consider, and
 - c. the individual's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (e.g., sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers).
2. A Campus Security Authority must report to the Title IX Coordinator within two (2) days, all relevant details about the alleged Prohibited Conduct that the individual or another person has shared, and that the University will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged Prohibited Conduct, other students involved in the alleged Prohibited Conduct, as well as relevant facts, including the date, time, and location.

C. REPORT RECEIVED BY TITLE IX COORDINATOR

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

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

warning, and take steps to meet those obligations.

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

VII. THREAT ASSESSMENT

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

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

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

Under specific circumstances, Marshall University may remove an employee Respondent from the University's education program or activity, in part or entirely, on an emergency basis. Before an emergency removal is enacted, the Title IX Coordinator in conjunction with the Director of Human Resources or their designee and any other necessary or appropriate University officials conducts an individualized safety and risk analysis. The Title IX Coordinator in conjunction with the Director of Human Resources or their designee and any other necessary or appropriate University officials will also consider the applicability of disability laws to the removal decision. An emergency removal is not tantamount to a determination of responsibility or a sanction. Marshall University may remove a Respondent on an emergency basis whether the grievance process is underway or not. The Title IX Coordinator in conjunction with the Director of Human Resources or their designee and any other necessary or appropriate University officials will implement the least restrictive emergency removal actions possible in light of the circumstances and safety concerns. These actions may include but are not limited to, interim suspension from University premises and activities, and restriction of access to particular areas of campus.

In all cases where an emergency removal is imposed, the student Respondent will be issued a Notice of Removal letter. Notice will be made in writing and will be emailed to the Respondent's Marshall University email account. At the discretion of the Title IX Coordinator, an alternate means of delivering the Notice of Removal letter may be utilized if circumstances warrant. Once emailed or otherwise sent or given in person, notice will be presumptively delivered.

Upon delivery of the Notice of Removal letter, the Respondent may request a review meeting with the Title IX Coordinator where the Respondent may show cause why the removal should not be implemented or should be modified. Requests for a review meeting with the Title IX Coordinator must be made within three (3) business days of delivery of the Notice of Removal. The review meeting will be held as soon as reasonably possible after the request is made by the Respondent. If the Respondent does not request a

meeting within the three (3) business days, objections to the emergency removal will be deemed waived.

The review meeting with the Title IX Coordinator is not a hearing on the merits of the allegation(s) but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. The Respondent may be accompanied by the advisor at the review meeting. The Complainant and their advisor of choice may be permitted to participate in the meeting if the Title IX Coordinator determines it is equitable to do so. At the review meeting with the Title IX Coordinator, the Respondent will be allowed to present their position regarding why they believe the emergency removal should not be implemented or should be modified. The review meeting will be electronically recorded.

The Title IX Coordinator will prepare a written determination/response to the review meeting within two (2) business days of the meeting taking place. The Title IX Coordinator in conjunction with the Director of Human Resources or their designee and any other necessary or appropriate University officials will determine whether to implement or stay an emergency removal and to determine the conditions and duration. The emergency removal decision may be appealed to the Review Panel as outlined in these procedures. If the Sexual Harassment and Other Sexual Misconduct Grievance Process does not move forward following an emergency removal, the emergency removal will be rescinded, and the party notified promptly. Violation of an emergency removal under University Policy will be grounds for separate discipline, which may include actions up to or including expulsion from the University.

A. UNIVERSITY ACTIONS FOLLOWING HEALTH AND SAFETY RISK ASSESSMENT

Upon completion of the health and safety and threat assessment, the Title IX Coordinator and/or will determine the course of action under these Procedures, which may include, without limitation, Formal Resolution and/or Informal Resolution (if available). Where the Complainant requests that personally identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the University will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, the health and safety threat assessment, and the determinations of the Title IX Coordinator 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 not request that personally identifying information not be shared with the Respondent if the Complainant desires to initiate grievance procedures. A Complainant may request that no investigation be pursued and/or that no disciplinary action be taken but must keep in mind that delays may limit access to evidence or present issues with respect to the status and availability of the parties and/or witnesses.

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

If a Complainant requests that no investigation be pursued and/or that no disciplinary action be taken, the report will be referred to the Title IX Coordinator for evaluation under discretionary Title IX Dismissal. They will consider the following factors in evaluating such request(s): (1) the totality of the known circumstances; (2) the potential impact of such action(s) on the Complainant; (3) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct; (4) the existence of any independent information or evidence regarding the Prohibited Conduct; and (5) any other available and relevant information. The University will seek to honor the Complainant's request(s) if it is possible to do so while also protecting the health and safety of the Complainant and the University community.

- a) Determination that a Complainant's Request(s) Can be Honored. Where the Title IX Coordinator determines that a Complainant's request(s) 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 or supportive 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 Informal Resolution.

At any time, the parties may choose to pursue Informal 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.⁴

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

Where the Title IX Coordinator 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.

- c) When a Complainant Declines to Participate. Where a Complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited and such matter may discretionarily be dismissed. 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

⁴ Although a report may be re-opened at any time, the University will only be able to pursue disciplinary resolution and sanctions where the Respondent is an employee of the University.

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 or supportive measures, targeted training or prevention programs, or other remedies tailored to the circumstances).

3. Supportive Measures. Interim measures may be initiated by the Title IX Coordinator 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.

a. Interim suspension. Immediate unpaid separation of an Employee from the University pending an investigation or adjudication. Through the duration of the interim suspension, the Employee may be restricted from University property and may be required to provide prior notice and receive approval from the Title IX Coordinator 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 Employee's own safety and welfare.

b. Mutual No Contact Order. A mutual no contact order is an official University order 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. The Order can be individualized to address other issues of each individual case.

c. 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.

d. 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.

e. Employment accommodations. This may include arranging for alternate University employment for Employees and/or Students employed by the University.

f. 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 an Employee and/or Student and/or the University community. This may include the use of alternate dispute resolution services such as mediation or restorative practices when appropriate.

g. Appeals of Supportive Measures. The Complainant or Respondent may appeal the Title IX Coordinator's decision regarding any Interim Measures to the Review Panel as outlined in these procedures.

4. Protective Order Enforcement. Protective Orders issued by West Virginia Courts are enforceable under West Virginia law. The Violence Against Women Act (VAWA), which is a federal law, states that all valid protective orders granted in the United States receive "full faith and credit" in all state and tribal courts within the United States, including United States territories. If a protective order is issued in another state and the victim is in West Virginia, West Virginia will enforce the valid protective order. Each state must enforce foreign protective orders in the same way it enforces its own orders. Meaning, if there is a violation of the foreign protective order, they will be punished according to the laws of whatever state you are in when the order is violated. The Title IX Coordinator, the appropriate supervisor, and any other necessary or appropriate University

officials or administrator(s) will work to ensure the protective order is followed. The Complainant or Respondent may appeal the decision regarding the enforcement of the protective order to the Review Panel as outlined in these procedures.

5. Contact Information. When someone is a victim of sexual misconduct, they have the right to receive contact information about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available both on-campus and in the community. *See* Section III and III.A. for contact information for services or they can be found at www.marshall.edu/eoaa/resources/. These are also referred to as supportive measures.

B. NOTICE TO PARTIES 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 supportive measures) that will directly impact the Respondent and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator retains the discretion to impose and/or modify any supportive measures based on all available information. Interim protective or supportive measures will remain in effect until the resolution of the report by the Review Panel, unless new circumstances arise which warrant reconsideration of the protective or supportive measures prior to the hearing and determination by the Review Panel. A Complainant or Respondent may challenge supportive measures or other actions, or failure to impose supportive measures or take other actions, by contacting the Title IX Coordinator to address any concerns.

VIII. GROUNDS FOR DISMISSAL OF TITLE IX FORMAL COMPLAINT

Grounds for mandatory or discretionary dismissals:

1. **Mandatory Dismissal:** If the conduct alleged in the formal complaint (a) would not constitute sexual harassment as defined in Policy GA-1 even if proved, (b) did not occur in the recipient's education program or activity, or (c) did not occur against a person in the United States, then the University must dismiss the formal complaint with regard to that conduct for the purposes of sexual harassment under Title IX or this part; such dismissal does not preclude action under another provision of the University's code of conduct.
2. **Discretionary Dismissal:** The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing; (a) a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; (b) the respondent is no longer enrolled or employed by the University; or (c) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein

Upon dismissal required or permitted, the University must promptly send written notice of the dismissal and reason(s) for the dismissal simultaneously to the parties. Both parties have an equal opportunity to file an Appeal to challenge the dismissal of any Title IX Formal Complaint.

A dismissal under these sections does not preclude action under another provision of the University's policies or code of conduct and the Title IX Coordinator will notify the Office of Human Resources of any matter involving an employee dismissed for reasons stated above.

IX. UNIVERSITY RESOLUTION

These Procedures offer two (2) 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 and
2. **Informal Resolution**, which includes a variety of informal options for resolving reports.

A. FORMAL RESOLUTION

Formal Resolution is commenced when:

- i. A Complainant reports that an Employee has engaged in one or more instances of Prohibited Conduct and requests, at any time, an investigation and disciplinary action; or
- ii. Informal 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 VII.A of these Procedures, the Title IX Coordinator has determined, based upon a review of the totality of the circumstances, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the Complainant's request that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

1. **Investigation**. Whenever Formal Resolution is commenced, the Title IX Coordinator will refer the matter to a University Investigator who will designate himself 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 other investigators or external investigators. All Investigators will receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law, provide parties with notice and a meaningful opportunity to be heard, and protect 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; (9) provide a link for the Policy and these Procedures; (10) include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; (11) inform the parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review both inculpatory and exculpatory evidence; and (12) inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or

knowingly submitting false information during the grievance process. Notice will be made in writing and will be emailed to the parties' Marshall University email account. At the discretion of the Title IX Coordinator, an alternate means of delivering the Notice of Investigation may be utilized if circumstances warrant. Once emailed or otherwise sent or given in person, notice will be presumptively delivered.

- b) Joint Investigations. At the discretion of the Title IX Coordinator, matters involving multiple Complainants or Respondents may be investigated in the same investigation. Additionally, matters where there is a counterclaim or cross complaint (i.e., both parties allege that the other violated University Policy or codes) may also be investigated in the same investigation. However, the Title IX Coordinator may determine that the investigation for each Respondent should be conducted separately.
- c) Notice to Supervisors. The Title IX Coordinator will also notify, in writing, the Respondent's supervisor, Human Resources, and any other necessary or appropriate University officials or administrator(s) on an as need to know basis but must maintain confidentiality of the matter. Such notice will inform these individuals that (1) the Title IX Coordinator has received a report alleging that the Respondent has engaged in Prohibited Conduct under the Policy; (2) the report will be investigated in accordance with these Procedures; (3) the supervisor and Human Resources are obliged to monitor the relevant environment, depending on the facts of the case, for Retaliation; and (4) information related to the report is confidential (including the identity of the Complainant) and will only be shared as needed to either obtain information pertinent to the investigation or to facilitate fulfillment of the duty of the supervisor and/or Human Resources to address any concerns regarding safety or Retaliation.
- d) Ongoing Notice Requirement. 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.
- e) Consolidation of Formal Complaints. The University may consolidate formal complaints as to allegations of prohibited conduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where the University resolution involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.
- f) Counterclaims. Counterclaims may be resolved through the same investigation and hearing as the underlying allegation, or the investigation of such claims may take place after resolution of the underlying allegation, at the discretion of the Title IX Coordinator.
- g) Presumption of Non-Responsibility and Participation by the Parties. The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator and/or Review Panel conclude that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Policy. Neither party is required to participate in the investigation nor any form of

resolution under these Procedures. Further, the University will not draw any adverse inference from a decision by either of the parties not to participate.

- h) Respondent Initial Meeting. After the Notice of Investigation has been sent, the investigator(s) will schedule an initial meeting with the Respondent. The Respondent may be accompanied at the initial meeting by an advisor and up to two support people as defined above. The purpose of this meeting is to review the information sent to the respondent in the Notice of Investigation, to provide additional information about the grievance process and available supportive measures, and to answer any questions the Respondent or their advisor may have. The Respondent will not be asked any questions about the allegations at the initial meeting. The information that will be discussed with the respondent, if applicable based on the nature of the report and the status of the respondent, includes but is not limited to:
- A review of the information included in the Notice of Investigation;
 - The name and contact information of the Title IX Coordinator;
 - The rights of the complainant and respondent, including the right to be accompanied at all meetings and the hearing, if applicable, by an advisor;
 - Possible supportive measures, including the availability of mental health and other resources both on campus and in the surrounding community;
 - The process for investigating and resolving alleged violations of sexual harassment, other sexual misconduct, and retaliation;
 - The general timeline of the grievance process;
 - The importance of preserving potential evidence; and
 - Amnesty available to students participating in the grievance process for alcohol or drug-related violations of the Student Code of Conduct.

Should the Respondent not respond to the initial attempt to meet, the investigator(s) will make two additional attempts. If the Respondent does not respond at all, the investigator(s) will send the respondent written acknowledgment of their non-participation and notice of the next steps in the process. The Respondent will continue to be notified throughout the investigation and may participate at any point in the process prior to its conclusion.

- i) Reasonably Prompt Timeframe for Completion of Investigation; Extension for Good Cause. Typically, the period from commencement of an investigation through Final Investigation Report will not exceed ninety (90) business days.⁵ 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, the need for language assistance, the absence of parties and/or witnesses, accommodations for disabilities or health conditions, and/or for other legitimate reasons. The Investigator or Title IX Coordinator will notify the parties in writing of any extension of this timeframe and the reason for such extension. The Investigator or the Title IX Coordinator will notify the parties in writing of any delay or the limited extension of this timeframe and the reason for such actions along with providing parties with status updates, if necessary. Extensions will be permitted during attempts at Informal Resolution and will not be shared with parties in writing. The investigation will promptly resume as soon as feasible. During such a

⁵ This is an estimated timeframe which may vary on a case-by-case basis.

delay, the Title IX Coordinator will implement supportive measures as deemed appropriate. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

- j) 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).

Interviews of the parties and witnesses may be conducted in person, or if circumstances warrant, they may be conducted remotely using Microsoft Teams or a similar technology, or by phone, if necessary. The Investigator(s) will take appropriate steps to ensure the security and privacy of remote interviews. Following each interview, the Investigator(s) will combine notes into a summary of the relevant information from the interview. Interviewed parties and witnesses will be given the opportunity to review and verify the summary of their respective interviews written by the Investigator(s). Clarifications resulting from a misunderstanding or error on the part of the Investigator(s) will be corrected before the summary is finalized. Additions or changes to the information provided by the party or witness will be added to the summary with a notation.

- k) Advisors. Throughout the investigation and resolution process, each party has the right to choose and consult with an Advisor and/or representative, as applicable. The advisor may be any person, including an attorney paid for by the party desiring their services. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. While they may provide support and advice to the parties at any meeting and/or proceeding, they may not in any manner disrupt such meetings and/or proceedings. If a party is being represented by an attorney, or an Advisor not provided by the University, they must advise the Title IX Coordinator at least forty-eight (48) hours prior to the scheduled meeting or hearing and a University assigned Advisor will no longer be provided.
- l) Prior or Subsequent Conduct. Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. Such prior or subsequent conduct may also constitute a violation of University policy, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information and both parties will

be informed if evidence of prior or subsequent conduct is deemed relevant.

- m) Prior Sexual History. The sexual history of a Complainant or Respondent will never be used to prove character or reputation. Moreover, Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove:
- i. That someone other than the Respondent committed the conduct alleged by the Complainant, or
 - ii. If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent.

The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

- n) 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. If unclear, the Investigator may request that the parties explain how witnesses they suggest are connected to the matter being investigated and what relevant information they believe the person can provide to the Investigator. Investigators may decline to interview witnesses unlikely to yield relevant information. The investigator will decline to interview character witnesses if they have no relevant information about the incident.

The parties will also be given the opportunity to suggest questions they want the Investigator to ask the other party and the witnesses. The questions provided by the parties will be provided in writing to the Investigator and will be documented in the Investigative Report, along with notations for which questions were asked and a rationale for any changes or omissions.

- o) Site Visit(s). The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.
- p) Expert Consultation(s). The Investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed to achieve a fuller understanding of the issues under investigation.
- q) Coordination with Law Enforcement. The Investigator may 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.
- r) Draft Investigation Report and Right to Inspect, Review, and Respond to the Investigative File. Prior to the conclusion of the investigation, the parties and their

advisors (if so desired by the parties) will be provided access to an electronic copy of the Draft Investigative Report, as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct. This directly related evidence will include evidence, if any, which the Investigator(s) do not believe is relevant and do not intend to include in the finalized investigative report for the Review Panel to rely on in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. The Draft Investigative Report will include the following: the names of the Investigator(s), a list of involved parties and witnesses, policies applicable to the matter, an overview of the allegations, the charges placed in the matter, summaries of the interviews with the parties and the available relevant witnesses, and other information as deemed relevant by the Investigator(s). Appendices will include relevant physical or documentary evidence, questions asked by the Investigator(s) and suggested by the parties, and a comprehensive timeline of the investigation. An Investigator may redact personally identifiable information or protected information from the evidence obtained during the investigation.

The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their Draft Investigative Report. The Draft Investigative Report and directly related evidence will be available to the parties and their advisors of choice for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence in writing. The written response will be included as an addendum to the "Investigative File," which the Investigator(s) will consider prior to completion of the "Investigative Report." The parties will have an opportunity to review the Investigative File; meet with the Investigator(s); submit additional comments and information to the Investigator(s); identify any additional witnesses or evidence for the Investigator(s) to pursue; and submit any further questions that they believe should be directed by the Investigator(s) to the other party or to any witness. The parties may elect to waive the full ten days. The parties may elect to provide additional evidence or identify additional witnesses in response to the Draft Investigative Report but should understand that doing so at this point of the investigation may delay the completion of the grievance process.

Investigator will then promptly provide each party's responses to the Draft Investigative File to the other party. Parties will have three (3) business days to reply to the other party's response.

s) Final Investigation Report. Unless there are significant additional investigative steps requested by the parties or identified by the Investigator after the review of the Draft Investigative File receipt and consideration of any additional comments, questions and/or information submitted by the parties during the designated review and response period, the Investigator(s) will prepare a Final Investigative Report. If the parties submit written responses to the Draft Investigative Report and directly related evidence, the Investigator(s) will incorporate relevant elements of those written responses into the Final Investigative Report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Final Investigative Report will:

- i. Fairly summarize and analyze the relevant information and relevant evidence gathered;
- ii. Outline the contested and uncontested information;

- iii. Outline the corroborated and uncorroborated information;
- iv. Include a credibility assessment; however, the credibility assessment must not be a determination regarding responsibility; and
- v. Include a recommendation as to whether there is sufficient evidence, by a Preponderance of the Evidence, which could support a finding of responsibility for a violation of the Policy.

The Investigator may make a recommendation as to mandatory or discretionary dismissal to the Title IX Coordinator based upon a review of the Title IX jurisdiction on a case-by-case matter.

The Investigator will deliver the Final Investigation Report to the Title IX Coordinator. The parties will also be provided access to a file of any directly related evidence that was not deemed relevant and was, therefore, not included in the report.

- t) Distribution of the Final Investigation Report. Upon receipt of the Final Investigation Report, the Title IX Coordinator will distribute the Investigation Report to each party and each party's advisor. The parties will have ten (10) business days to review the Investigative Report and submit a written response. The Title IX Coordinator will also notify the Director of Human Resources or their designee, any other necessary or appropriate University officials or administrator(s) on an as need to know basis but must maintain confidentiality of the matter. and the Respondent's immediate supervisor simultaneously, that the Final Investigation Report is complete and available for review.
- u) Title IX Coordinator's Role After Distribution of Final Investigation Report. Upon reviewing the "Investigative Report" and any written responses thereto, the Title IX Coordinator will:
 - i. Determine whether the investigation reveals facts requiring or permitting dismissal of the formal complaint. If dismissal is warranted, the Title IX Coordinator will inform the parties, in writing, of the dismissal decision, the reason therefore, and an opportunity to appeal the dismissal.
 - ii. Determine that the matter should not be dismissed and send a Notice of Referral for a Review Panel Hearing contemporaneously to the parties and the Review Panel Hearing Officer. The Title IX Coordinator will provide the ability to access the entire Investigative file to the parties, advisors, and the Review Panel. The preferred method to provide the materials is electronically, but other methods can be available upon request.
- v) Impact and Mitigation Statements. Where the matter has been referred to the Review Panel for Live Hearing, both parties may submit a statement to the Title IX Coordinator for consideration by the Review Panel in determining an appropriate sanction. The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The Title IX Coordinator will hold the impact statement(s) and only provide them to the Review Panel if Respondent is determined to be in violation, and the Review Panel is making a sanction determination. Impact and mitigation statements must be received within five (5) business days prior to the hearing.

2. **Review Panel Hearing.** The Title IX Coordinator will appoint a standing pool of members of the University community or external professionals who are trained on the definition of sexual harassment; the scope of the University's education program or activity; these Procedures; how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias; and who will make determination of responsibility after an independent review of the Investigation Report.⁶ The Title IX Coordinator will select three (3) members from this pool to serve on the Review Panel. The Review Panel shall elect one (1) member as Chair.⁷ The Hearing Chair will answer all questions of procedure. In addition, the Hearing Officer shall serve as a non-voting member and will conduct the hearing from a script. Where the Respondent is an academic faculty member, at least two (2) of the voting members of the Review Panel will be appropriately trained, full-time faculty members. The Review Panel will review the Investigator's recommended finding(s) and, if applicable, determine any appropriate sanction(s) under these Procedures, will review the Title IX Coordinator's decision regarding any Supportive Measures, will review an emergency removal decision or will review any decision regarding a protective order(s). All persons serving on any Review Panel (or as the Hearing Officer) must be impartial and free from actual bias or conflict of interest. Any Review Panel member who cannot make an objective determination must notify the Title IX Coordinator and recuse themselves from the proceeding. If a Review Panel member is unsure if bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible. The Review Panel members cannot be the same person(s) as the Title IX Coordinator, or the Investigator(s) assigned to the matter.

- a) **Standard of Review.** 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 and Pre-Hearing Conference.** Typically, a Live Hearing will be held within thirty (30) business days from the date of the referral to the Review Panel, subject to extension for good cause. The Title IX Coordinator or Hearing Officer will notify the parties in writing of the date, time, and location of the Hearing; any technology that will be used to facilitate the hearing; if the live hearing will be held in person or via video technology and the process for requesting alternate arrangements for hearing participation if it is scheduled to be held in person; a statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence; a reminder that disability accommodations, language assistance, and/or interpretation services may be requested for the hearing and such a request must be made to the Title IX Coordinator no later than ten (10) business days prior to 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 pursuant to Section IX. A. 2. C. of these procedures. Said notice will be issued at least ten (10) business days prior to the Live Hearing date. Once emailed, mailed, and/or received in person, notice will be presumptively delivered. Any extension, including the reason for the extension, will be shared with the parties in writing.

⁶ The Review Panel has an obligation to make an independent decision about responsibility separate from the Investigator's credibility assessment and recommended finding regarding responsibility following the live hearing.

⁷ The Hearing Officer and the Chair of the Review Panel are not the same individual.
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Additionally, a pre-hearing conference will be scheduled (at least one (1) week prior to the hearing) with each of the parties, their Advisors, the Hearing Officer, and the Review Panel to explain the hearing protocol. At least three (3) business days prior to the pre-hearing conference, the parties shall submit proposed questions and proposed areas of questioning for cross examination with respect to the other party, their own witnesses, and any witnesses of the other party. Parties' advisors will be permitted to pose or submit (as appropriate) additional questions (not submitted in advance) during the hearing to the other party and/or witnesses. Prior to the hearing, the parties and their advisors will be notified regarding which questions and areas of questions the Review Panel has deemed relevant to the hearing and any reasoning such is deemed not relevant.

- 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 Title IX Coordinator at least five (5) business days prior to the hearing. 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 recommendation as to whether to grant the challenge, and the same is to be provided to the Title IX Coordinator promptly to allow the Title IX Coordinator to make a decision at least three (3) days prior to the hearing and provide a written decision to the parties concerning the same. Review Panelists will only be removed if there is a conclusion that their demonstrated bias or conflict of interest precludes an impartial hearing of the allegations. A challenge for Conflict of Interest will be considered good cause to continue or postpone the hearing if a Decision-maker 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. The Title IX Coordinator may also request a continuation for good cause.
- e) Live Hearing Required. Live hearings may be in person or virtual live hearings. Live hearings may be conducted with all the parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the Review Panel and all participants simultaneously to see and hear each other. All participants must be both seen and heard. In addition, all participants appearing virtually, must identify if there are any other individuals present with them at their location. Individuals who are not a part of the process or who will testify later, may be required to leave the location during the hearing. Other individuals may appear at the hearing as long as there is no objection by the other party.
- f) Live Hearing Format. The Live 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.
 - 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. Cross Examination:
 - a. The parties may not directly question each other.
 - b. Each party's Advisor is permitted to ask the other party and any witness relevant questions and relevant follow-up questions, including those challenging credibility.
 - c. Before a Complainant, Respondent, or Witness answers a cross-examination or other question, the Review Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
 - d. Parties will provide proposed questions and proposed areas of questioning prior to the hearing as stated above.
 - e. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
 - f. No harassing or abusive questioning allowed during cross-examination.
 - i. Examples of questioning that may be harassing or abusive:
 - Advisor yells or screams at the other party/witness,
 - Advisors stands and physically leans into the party/witness' personal space, or
 - Advisor asks questions in a manner designed to promote rape myths or sex-based stereotypes.
- iv. Advisors may directly question a party or any witness that is not a party.
- v. The Live hearing format is at the discretion of the Hearing Officer and may include the following:
 - a. The Hearing Officer will begin the hearing by discussing expectations for the hearing.
 - b. The Hearing Officer will give a brief overview of the nature of the allegations and whether Respondent accepts responsibility. If Respondent does accept responsibility for violating each of the provisions of the Policy, then the hearing shall proceed with the presentation of information from the Investigator and Complainant to allow for any cross examination and information limited to that which should be considered in the imposition of sanctions. If Respondent does not accept responsibility for all allegations, then the hearing shall proceed. If Respondent only accepts responsibility for some of the allegations, then the hearing shall proceed on the allegations for which the Respondent has not accepted responsibility, and then information from the Investigator and Complainant will be presented to allow for any cross examination and information will be presented to be consider in the imposition of sanctions regarding the allegations the Respondent has accepted and any allegations the Review Panel has found the Respondent to be responsible for.
 - c. Parties are given an opportunity to make opening statements.
 - d. The Review Panel will have an opportunity to ask Complainant questions, then the Complainant's advisor has an opportunity to ask Complainant relevant questions, and Respondent's advisor will be given the opportunity to ask relevant questions of Complainant as described below.
 - e. The Review Panel will have an opportunity to ask Respondent questions, the Respondent's advisor has an opportunity to ask Respondent relevant questions, and Complainant's advisor will be given the opportunity to ask relevant questions of Respondent as described below.
 - f. The Review Panel will call the Investigator(s) and any witness(es) they deem relevant and ask them questions. The Complainant's advisor has an

- opportunity to ask relevant questions of those individual(s) questions, and Respondent's advisor will be given the opportunity to ask relevant questions of those individual(s) as described below.
- g. The Complainant will call any witness(es) they deem relevant and ask them questions. The Complainant's advisor has an opportunity to ask relevant questions of those individual(s) questions, and Respondent's advisor will be given the opportunity to ask relevant questions of those individual(s) as described below. The Review Panel will have an opportunity to ask those witness(es) questions.
 - h. The Respondent will call any witness(es) they deem relevant and ask them questions. The Respondent's advisor has an opportunity to ask relevant questions of those individual(s) questions, and Complainant's advisor will be given the opportunity to ask relevant questions of those individual(s) as described below. The Review Panel will have an opportunity to ask those witness(es) questions.
 - i. Both parties will have an opportunity to ask any additional relevant questions that may have come up during the hearing of the other party through their advisors.
 - j. Complainant and Respondent will be given an opportunity to report how the situation affected them.
 - k. Parties are given an opportunity to make closing statements.
 - l. The Review Panel reserves the right to ask questions of anyone at the hearing at any time. Additionally, the Review Panel reserves the right to recess the hearing at any point and reconvene at a later time or date, should circumstances warrant.
- b.
- vi. During the hearing, the parties and witnesses will submit to questioning by the Review Panel and then by the parties through their advisors. The Review Panel members and advisors will remain seated during questioning. The Review Panel Chair will determine the relevance of all questions. The advisor will pose any additional proposed question that was not submitted prior to the hearing, the proceeding will pause to allow the Review Panel Chair and the rest of the Review Panel, if necessary, to consider it, and the Review Panel Chair and the rest of the Review Panel, if necessary, will determine if the question will be permitted, disallowed, or rephrased. The Review Panel Chair will then state their decision on the question for the record and advise the party or witness to whom the question was directed to answer or not answer the question accordingly. The Review Panel Chair and the rest of the Review Panel, if necessary, will explain any decision to exclude a question as not relevant or to reframe it for relevance. The Review Panel Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. Questions and evidence about Complainant's sexual predisposition or prior sexual behavior will not be considered relevant unless such questions and evidence about Complainant's prior sexual behavior are offered to prove that someone other than Respondent committed the conduct alleged by Complainant or if the questions and evidence concern specific incidents of Complainant's prior sexual behavior with respect to Respondent and are offered to prove consent. The Review Panel Chair has the ultimate final say on all questions and determinations of relevance. The Review Panel Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain arguments from the advisors on relevance once the Review Panel Chair has ruled on a question.
 - vii. Formal rules of evidence and court procedures are not used and do not apply unless specified herein. Employee 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 employee disciplinary hearings.

- viii. The Live Hearing will be electronically recorded for purposes of review in the event of an appeal. Only the hearing, and not the deliberations, will be recorded. The Parties, upon request, shall be provided with a copy of the recording. The original recording will remain the property of the University and will be considered the investigation record. 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, as agreed upon by the parties, will be permitted, and the Respondent and Complainant shall share the costs. The Review Panel members, the parties, their advisors, the Appeal Officer (if appropriate), and appropriate Marshall University administrators will be permitted to listen to the recording.
- ix. At the discretion of the Title IX Coordinator, matters involving multiple Complainants or Respondents may be heard in the same hearing. Additionally, matters where there is a counterclaim or cross-complaint (i.e., both parties allege that the other violated University Policy or Codes) may also be heard in the same hearing. However, the Title IX Coordinator may determine that the hearing for each Respondent should be conducted separately. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

g) Participation in Hearing.

- i. Parties. Both the Complainant and the Respondent have a right to be present at the Live 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) business days prior to the Hearing. Any or all parties, witnesses, and other participants may appear at the Live Hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- ii. Party's Failure to Attend. 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. If the parties are fifteen (15) minutes late or failing to show for their hearing without prior notice for an extension, proceedings and decision-making will continue in their absence. Neither party is required to participate in the hearing for the Hearing to proceed. If a party does not appear for the hearing, their advisor may still appear for the exclusive purpose of asking cross examination questions of the other party and witnesses.
- iii. Investigator or other witnesses. The Review Panel will request the presence of the Investigator(s) 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 five (5)

business days prior to the Pre-Hearing Conference 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 of their own proposed witnesses.
 - b. The University does not have subpoena power to compel the attendance of witnesses who are not affiliated with the University. Parties must request at least five (5) business days prior to the hearing for an official excuse for attendance at the Live Hearing from the Hearing Officer for any students and/or employee witnesses that are students and/or employees of Marshall University.
 - c. Witnesses will not be present for or hear the testimony of the parties and/or other witnesses.
 - d. If a party or witness does not submit to cross-examination at the Live Hearing, the Review Panel may consider any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Review Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- iv. Advisors. Both the Complainant and the Respondent must be accompanied to the Pre-Hearing Conference and Hearing by one (1) Advisor, unless required by law, of their choosing, who may or may not be an attorney. If the parties are consulting with more than one (1) Advisor, they must designate their "Advisor" for purposes of these proceedings. During the Hearing, an Advisor will conduct direct examination of their party and witnesses in addition to cross-examination. Advisors may present an opening or closing statement on behalf of their party. The University reserves the right to remove any individual whose actions are disruptive to the proceedings. If an Advisor is removed for failure to abide by the hearing rules, the hearing will continue after a new Advisor is appointed by the University, who may or may not be an attorney.
- a. If a party's Advisor is also a witness, the party may have an alternative Advisor temporarily step-in to question the Advisor/witness.
 - b. If a party does not choose an Advisor or the chosen Advisor becomes unavailable, the University will appoint an Advisor for the party, who may or may not be an attorney.
- h) **Determination by the Review Panel**. At the conclusion of the Live Hearing, the Review Panel must, by a simple majority vote, issue a Final Outcome Letter and determination regarding responsibility. To reach this determination, the recipient must apply the preponderance of the standard of evidence. The Review Panel will deliberate in closed session.

considered. The Review Panel will not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent; or 3) information protected by a legally recognized privilege, unless the holder of the privilege has voluntarily waived it in writing. Within the boundaries stated above, the Review Panel can consider relevant character evidence.

Prior disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanctioning stage of the process if there is a determination of responsibility.

As stated above, the parties may each submit a written impact and mitigation statements, including any sanctioning requests should the Respondent be found responsible, to the Title IX Coordinator prior to the hearing. The impact statement(s) will be held by the Title IX Coordinator and only provided to the Review Panel if the Respondent is determined to be in violation, and the Review Panel is making a sanctioning determination. When there is a finding of responsibility on one or more of the charges, the Review Panel will request any written impact and mitigation statements previously submitted by the parties and Respondent's previous disciplinary history, if any, from the Title IX Coordinator. If the impact and mitigation statements are provided to the Review Panel, the parties and their advisors of choice will be given access to view them during the appeal period described below. The Review Panel may, at their discretion, consider the impact and mitigation statements. The Review Panel will review the statements and Respondent's conduct history, if any, and will determine the appropriate sanctions for Respondent and remedies for Complainant, in consultation with appropriate University officials, as required.

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 by the Investigator 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. The Investigator(s) shall set a timeframe for how long the reopening of the investigation shall cover, and such shall be provided to the parties and their advisors in writing. Any extension of that timeframe shall require written notice to the parties.

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 by the Investigator or reject the Investigator's recommended finding(s) and make alternative finding(s). The Investigator(s) shall set a timeframe for how long the reopening of the investigation shall cover, and such shall be provided to the parties and their advisors in writing. Any extension of that timeframe shall require written notice to the parties.

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 Director may nevertheless ensure that supportive measures remain in effect to support a Complainant.

The Review Panel will issue a written Final Outcome Letter. No decision will be communicated orally.

Within ten (10) business days, the Review Panel will issue an independent Final Outcome Letter which must include:

- i. Identification of the allegations potentially constituting sexual harassment;
- ii. Findings of fact supporting the determination;
- iii. Conclusions about whether the alleged conduct occurred; regarding the application of the recipient's code of conduct and policies to the facts;
- iv. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether any remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the Complainant; and
- v. The procedures and permissible bases for the Complainant and Respondent to appeal.

The Final Outcome Letter will be shared with the parties simultaneously. The Final Outcome Letter will typically be emailed to the parties; however, any of the following methods may be used, in person, mailed to the local or permanent address of the parties as indicated in Marshall University records, or emailed to the parties' Marshall University email or otherwise provided and approved email address. Once emailed, mailed, and/or received in person, notice will be presumptively delivered.

i. Sanctions. Where a finding of responsibility is made, the Review Panel may impose one or more sanctions.

Possible sanctions may include one or more of the following: informal and formal counseling, progressive disciplinary action, No-Contact Order, transfer of position, removal of administrative appointment, demotion, suspension, and termination of employment.

The Policy prohibits a broad range of conduct, all of which is serious in nature. The propriety of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the decision-makers have a wide latitude in the imposition of sanctions tailored to the facts and circumstances of the Prohibited Conduct, the impact of the conduct on the Complainant and University community, and accountability for the Respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and legal obligations. Sanctions

may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved or so deleterious to the educational process that it requires severe sanctions, including suspension or termination of employment from the University.

In determining the appropriate sanction(s), the decision-maker(s) will be guided by several 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 circumstances surrounding the Prohibited Conduct;
- iv. The impact of the Prohibited Conduct on the Complainant;
- v. The impact or implications of the Prohibited Conduct within the University community;
- vi. Prior misconduct by the Respondent, including the Respondent's prior disciplinary history, at the University or elsewhere, and any criminal convictions;
- vii. Whether the Respondent has accepted responsibility for the Prohibited Conduct;
- viii. The maintenance of a safe, nondiscriminatory, and respectful environment conducive to learning;
- ix. The need for a sanction to end the impact of the sexual harassment and/or other sexual misconduct, to prevent its future recurrence, and/or to remedy its effects on Complainant and/or the community; and
- x. Any other mitigating, aggravating, or compelling factors.

The Review Panel may consult with: (i) the Respondent's supervisor; (ii) the Office of the Provost (Faculty); (iii) the Vice President of Operations/Chief of Staff (Staff); (iv) Director of Human Resources; (v) any other necessary or appropriate University officials or administrator(s) and/or (vi) the Title IX Coordinator prior to issuing sanctions to ensure that any disciplinary action is appropriate for the violation and consistent with the disciplinary procedures for the Employee type and prior University action for similar policy violations. The decision-maker(s) will also determine any other appropriate actions, which may include: (1) imposing or extending a Mutual No-Contact Order; (2) imposing or extending University employment modifications; (3) other restorative remedies for the Respondent, such as formal referral for formal or informal counseling; (4) imposing or extending increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; (5) arranging for conducting targeted or broad-based education programming or training for relevant persons or groups; and/or (6) imposing any other remedial, protective, or supportive measures that are tailored to achieve the goals of the Policy.

Nothing provided for herein does not prevent other sanctions as deemed appropriate by the Review Panel.

j. Appeals of the Final Outcome Letter or Dismissal Letter. Appeals are not new hearings. Rather, review will be limited to a record of the original hearing and supporting documents. Appeals must be in writing. Verbal appeals are not accepted.

a) Who May Appeal? The Complainant and/or the Respondent may appeal: (1) a decision of the Review Panel and (2) any mandatory or discretionary dismissal, in part or in full, of a Title IX Formal Complaint. 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) Bases for Appeal and Content of Appeal Statements. The Appellant must base the appeal exclusively on one or more of the following grounds:
- i. Procedural irregularity that affected the outcome of the matter;
 1. Relevance determinations made by either the Investigator or the Review Panel may be appealed;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
 - iii. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. If an appeal claims a conflict of interest or bias on part of the Title IX Coordinator, the Student Conduct Director will manage the administration of the appeal process.
- c) Statement of Appeal. The Appellant must submit a Statement of Appeal to the Title IX Coordinator within five business days of receipt of the Final Outcome Letter, Dismissal Letter, or appealable issue. The Statement of Appeal regarding a Dismissal or Final Outcome Letter must contain the bases for appeal that the appealing party is relying on and are listed above and contain arguments supporting the appeal. The Statement of Appeal on other appealable issues must contain the argument regarding the matter. Upon showing of good cause, an extension may be requested to file the Statement of Appeal in writing to the Title IX Coordinator and may be granted by the Title IX Coordinator.
- d) Notification of Appeal. Upon receipt of a Statement of Appeal, the Title IX Coordinator must:
- i. Notify the other party in writing when an appeal is filed, provide the other party a copy of the written submission, and provide the other party notice of any extension to appeal time frames;
 1. After the appealing party files the Statement of Appeal, the non-appealing party will have five (5) business days to submit a rebuttal to the Statement of Appeal to the Title IX Coordinator. The non-appealing party's rebuttal will be provided to the appealing party.
 - ii. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) from the Review Panel which reached a determination regarding responsibility or sanction, the Investigator(s), or the Title IX Coordinator.
 - iii. Ensure that the final decision-maker(s) for the appeal complies with the University Procedures.
 - iv. If the grounds for appeal include a claim of procedural irregularity or conflict of interest or bias, the Title IX Coordinator, investigators, and/or hearing panelists, as appropriate based on the content of the appeal, will be provided access to the appeal and be given five (5) business days to submit a response to the portion of the appeal that involves them.
- e) Sanction Held in Abeyance Pending Appeal. The effective date of any sanction, not already imposed, will be held in abeyance (temporarily delayed) automatically during the period in which an Intent to File Appeal may be filed and until the Appeal Officer 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 Mutual “no contact” orders.

- f) Appeal Must be Timely Filed. If no appeal is filed, or an appeal is not timely, the original finding will stand, effective on the date the appeal period expires. The Title IX Coordinator will determine if the appeal is timely.

If the appeal is timely, the Title IX Coordinator will:

- i. Appoint an Appeal Officer to decide the appeal. The Appeal Officer is independent of the previous process, including from any dismissal appeal that may have been heard earlier in the process.
 - ii. Provide the identity and contact information for the Appeal Officer to the parties.
 - iii. If both parties submit appeals the same Appeal Officer will decide both appeals individually, but contemporaneously. The same Appeal Officer will decide any appeals arising from the same facts and circumstances.
- g) Assignment to Appeal Officer. When the Title IX Coordinator receives a Statement of Appeal which complies with the bases for appeals as found in these procedures, the Title IX Coordinator will assign the matter to an Appeal Officer to make a final decision for the matter. The Title IX Coordinator will make available the following items to the Appeal Officer including, but not limited to the:
- i. Complainant and any supporting documents;
 - ii. Final Investigative Report,
 - iii. Review Panel’s Live Hearing recordings and all documents reviewed and received by the Review Panel for the Live Hearing,
 - iv. Impact and Mitigation Statements,
 - v. Final Outcome Letter from the Review Panel,
 - vi. Dismissal Letter from Title IX Coordinator,
 - vii. Statement of Appeal, and
 - viii. Non-Appealing Party’s Rebuttal to the Statement of Appeal.
- h) **Guidance for Appeal Officer.** The following will guide the appeal officer during the review and consideration of the appeal and related materials:
- i. Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is a clear error and to the sanction and/or conditions of sanction only if there is a compelling justification to do so.
 - ii. Appeals are not intended to provide for a full re-hearing of the allegation(s). Appeals are confined to a review of the written documentation and case file of the original hearing and pertinent documentation regarding the specific grounds for appeal. The appeal officer may listen to part or all of the hearing recording, as needed to consider the specific grounds for appeal.
 - iii. An appeal is not an opportunity for the appeal officer to substitute their judgment for that of the original hearing panel merely because they disagree with the finding and/or sanction.
 - iv. The appeal officer may consult with the Title IX Coordinator on questions of procedure or rationale for clarification, as needed.
 - v. Appeals granted based on new evidence will normally be remanded to the original investigators for necessary investigation and to the original Review Panel for reconsideration.

- vi. Appeals granted on the basis of a procedural irregularity will typically be remanded to the original Review Panel for reconsideration, or if deemed appropriate by the appeal officer, a new hearing may be ordered with a new Review Panel.
 - vii. Actions taken if an appeal is granted on the basis of a conflict of interest or bias will vary based on the role of the individual(s) identified as having the conflict of interest or demonstrating bias.
- i) Authority of the Appeal Officer. Upon receipt of the appeal documents, the Appeal Officer will issue a written decision to both parties simultaneously and describing the result of the appeal and the rationale for the result which may:
- i. Dismiss the appeal for failure to meet the grounds of appeal, upholding the initial outcome and sanction(s), if applicable.
 - ii. Affirm the action, at which time the matter will be considered final and binding upon all involved.
 - iii. Reverse the action taken by the Review Panel and dismiss the case. A case will be dismissed only in rare and extreme circumstances.
 - iv. Remand the case to the Review Panel or Investigator based upon new evidence or procedural irregularities, with specific instructions on the remanded issue(s)
 - v. Recommend an increase or decrease any sanctions imposed based on information presented during the appeal process, with a rationale supporting the modification.
- j) Timing of Final Decision. Within ten (10) business days of receipt of the Statement of Appeal, the final decision will be communicated to all parties in writing.
- k) Extension of Issuing a Decision. The time period for the Appeal Officer's decision may be extended by agreement of the parties. An extension may also be made by the Appeal Officer or the Title IX Coordinator. The Appeal Officer or the Title IX Coordinator will inform the parties in writing of any extension of the time period to make a decision.
- l) Notice of Appeal Outcome. Typically, the Appeal Officer's decision will be emailed to the parties; however, any of the following methods may be used, in person, mailed to the local or permanent address of the parties as indicated in Marshall University records, or emailed to the parties' Marshall University email or otherwise provided and approved email address. Once emailed, mailed, and/or received in person, notice will be presumptively delivered.
- m) Decision of the Appeal Officer is Final. The decision of the Appeal Officer is final. Further appeals are not permitted unless a case is remanded to the original Review Panel, or a new hearing is ordered. The finding and sanction (if any) that result from the remand or new hearing may be appealed on the grounds listed above and in accordance with the appeal process.
- n) Long-Term Remedies and Other Actions. Following the conclusion of the grievance process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment or other sexual misconduct, remedy the effects, and prevent reoccurrence. These remedies/actions may include, but are not limited to:

1. Referral to counseling and health services,
2. Referral to the Employee Assistance Program,
3. Education to the individual and/or the community,
4. Permanent alteration of work arrangements for employees,
5. Climate surveys,
6. Policy modification and/or training, and
7. Implementation of long-term mutual contact limitations between the parties.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties, even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will identify any remedies needed to ensure no effective denial of educational access for Respondent. As permitted in accordance with applicable law, Marshall University will maintain the privacy of any long-term remedies and supportive measures, provided privacy does not impair the University's ability to provide these services.

- o) Failure to Comply with a Sanction, Conditions of Sanction, or Remedies. Respondents are expected to comply with an assigned sanction, any conditions of sanction, and any remedies that relate to them within the timeframe specified by the review panel and/or appeal officer. Failure to do so, whether by refusal, neglect, or any other reason, may result in additional disciplinary action.
- p) Release of Documents. Under federal privacy laws, the Final Investigative 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 employee's written permission.

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

An employee may request a copy of their 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:

Jessica H. Donahue Rhodes, Esq., Title IX Coordinator
Old Main Room 107
Marshall University
One John Marshall
Drive Huntington,
WV 25755

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.

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

Provided that, nothing in these Procedures abrogates post-adjudication rights as provided by state and federal law (i.e., West Virginia State Grievance Procedure). See W. Va. Code §6C-2 -1, *et. seq.*,

<http://www.pegb.wv.gov/links/Pages/default.aspx>;
the [West Virginia Human Rights Commission](#);
the [Office of Civil Rights](#);
and the [Equal Opportunity Employment Commission](#).

B. INFORMAL RESOLUTION

Except for formal complaints alleging that an Employee sexually harassed a student, the parties may voluntarily seek Informal Resolution in place of an investigation and Formal Resolution prior to any determination in a matter. The University, however, has the discretion to determine whether the nature of the reported conduct is appropriate for Informal Resolution, to determine the type of Informal Resolution that may be appropriate in a specific case, and, pursuant to Section IX.A of these Procedures, to refer a report for Formal Resolution at any time. In addition, Informal Resolution may not be available where the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials has determined that one or more of the following Risk Factors is present. And, again, Informal Resolution will also not be used in matters where an employee is alleged to have sexually harassed a student. **Forms of Informal Resolution that involve face-to-face meetings between the Complainant and the Respondent, such as mediation, are not available in all cases involving Prohibited Conduct.**

Participation in Informal Resolution (including any specific form of Informal Resolution) is voluntary. The University will provide to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. The University will not compel a Complainant or Respondent to engage in Informal Resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from an Informal Resolution for any reason within thirty (30) days of signing the Informal Resolution. Any party wishing to withdraw an Informal Resolution after thirty (30) days of signing the Informal Resolution must show good cause reason for the withdrawal and good cause reason that the Informal Resolution was not working appropriately. The University may decline the request for Informal Resolution in any particular case and may terminate an ongoing Informal Resolution process at any time. Pursuing Informal Resolution does not preclude later use of Formal Resolution if the Informal Resolution fails to achieve a resolution acceptable to the parties and the University. Where the Complainant or the Respondent withdraws from Informal Resolution or Informal Resolution is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the Informal Resolution may be considered

in a subsequent investigation and Formal Resolution.

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

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

- A. One-on-One Communication: If a Complainant wishes to address a situation with a Respondent without the direct involvement of a third party, the Complainant may communicate directly with the Respondent. This form of Informal Resolution is appropriate only if the Complainant does not feel threatened, there is no risk of physical harm, and the Complainant reasonably believes the Respondent will be receptive to the communication. Complainants are NOT required to engage in one-on-one communication before seeking the third-party assistance or other help.
- B. Resolution with the Assistance of an Informal Resolution Facilitator: A Complainant may seek assistance in informally resolving a report of Prohibited Conduct from: (i) Complainant's supervisor, if the Complainant is an Employee; (ii) Respondent's supervisor; (iii) the Human Resources Office; (iv) the Office of the Provost (Faculty); (v) the Office of Equity Programs or the Title IX Coordinator; or (vi) other third party as agreed to by the parties. The availability of this form of Informal Resolution, and any resolution reached through such form of Informal Resolution, is subject to the agreement of the Title IX Coordinator, the Complainant and the Respondent. This form of Informal Resolution may not be used in all allegations of Prohibited Conduct.
- C. Interventions and Remedies: Informal 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, protective, or supportive measures that can be tailored to the involved individuals to achieve the goals of the Policy.

Any form or combination of Informal Resolution and any interventions or remedies may be utilized. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal 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 Informal 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 Informal Resolution, which typically will be completed within thirty (30) calendar days.

Any individual used as an Informal Resolution Facilitator may not serve as a Witness in subsequent Formal Resolution proceedings.

X. RECORDS RETENTION

Marshall University shall retain all records relating to a report of Prohibited Conduct for a period of seven (7) years after the date the report was received, and Marshall shall retain all of such records for a period of seven (7) years in cases in which the Respondent was found responsible for Prohibited Conduct. Cases resulting in expulsion will be maintained indefinitely.