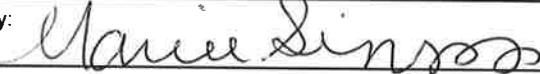
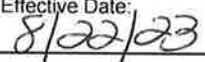


**ADMINISTRATIVE PROCEDURE  
STUDENT-03  
STUDENT DISCIPLINARY PROCEDURES**

Number: <b>STUDENT-3</b>	Name: Student Disciplinary Procedures
Purpose: This administrative procedure sets forth the Procedures and Due Process rights for students who are accused of violating Board of Governors policies GA-1 or SA-1. Revised 8/2023	

Responsible Unit: <b>Student Affairs</b>	
Approved by: 	Effective Date: 

See attached.

MARSHALL UNIVERSITY  
STUDENT DISCIPLINARY PROCEDURES

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# Article I. General Overview

## Section 1.01 Code of Student Rights and Responsibilities

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

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

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

## Section 1.02 Jurisdiction

### A. Conduct

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

### B. Off-Campus Conduct

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

Student conduct that occurs off University property is subject to the Code where it: a) adversely affects the health, safety, or security of any other member of the University community, or the mission of the University; or b) involves academic work or any records or documents of the University. In determining whether to exercise jurisdiction over such conduct, the Office of Student Conduct will consider the seriousness of the alleged offense, the risk of harm involved, whether the victim(s) are

members of the campus community and/or whether the off-campus conduct is part of a series of actions that occurred both on and off University property.

C. Student Organization Conduct

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

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

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

1. In determining whether a Student Organization may be held collectively responsible for the individual actions of its members, guests, contractors, and/or agents, all the available factors and circumstances surrounding the specific incident will be reviewed and evaluated. There is no minimum number of Student Organization members who must be involved in an incident to determine group responsibility. A Student Organization may be subject to discipline for activities not sponsored by the Student Organization where the majority of the persons present or responsible for the activity are members or guests of members of the Student Organization.
2. Misconduct on the part of the Student Organization may be cause for disciplinary action by the University when one or more of the following factors exist:
  - a. Members of the Student Organization (active or inactive), alumni, former members, agents, contractors, or guests act together to violate the Student Code of Conduct;
  - b. A member or guest of an organization is failing to discourage such activity, or tacitly condoning the behavior;
  - c. One or more officers or members of a Student Organization are present, have knowledge of, planned and/or permitted unlawful conduct or conduct in violation of the Student Code of Conduct at a Student Organization sponsored, financed, or otherwise supported activity or event;
  - d. A violation of the Student Code of Conduct occurs on premises and/or in transportation owned, operated, leased, or rented exclusively by the Student Organization;

- e. A pattern of individual violations has occurred and/or continues to occur without adequate control, response, or sanction on the part of the Student Organization;
- f. Student Organization or activities related to the Student Organization provided the context for the violation(s);
- g. The Student Organization leadership chooses to protect one or more individuals in who are members (active or inactive), alumni, former members, agents, contractors, or guests of the Student Organization from official actions; and/or
- h. The acts grow out of or are directly related to the Student Organization's activities, or an environment created by the Student Organization.

#### D. Residence Hall Violations

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

#### E. Criminal Conduct

Alleged violations of the Student Code of Conduct may also constitute violations of municipal, county, state, or federal law. Any individual may report an incident alleging criminal conduct by calling 9-1-1 in an emergency, by contacting the Marshall University Department of Public Safety at 304-696-4357(HELP), or any other local law enforcement agency.

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

F. Sexual Misconduct, Sexual Harassment, and Interpersonal Misconduct

**Please note that the disciplinary procedures regarding allegations related to Sexual Misconduct, Sexual Harassment, and Interpersonal Misconduct as defined in the Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, And Retaliation Policy (BOG GA-1) are located in Appendix B, Sections 1 and 2 of this Administrative Procedure. Further, those procedures supersede these Student Disciplinary Procedures and, to the extent those procedures are differing, they take precedence in those cases related to Sexual Misconduct.**

G. Program Specific Conduct Codes

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

## Section 1.03 Office of Student Conduct

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

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

## Article II. PROCEDURES

### Section 2.01 Definitions

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

- A. Academic Term. For the purpose of these Procedures, an Academic Term is one year.
- B. Activity. All or any operations conducted, sponsored, promoted, operated or otherwise engaged in by Marshall University, including, by way of illustration and not as limitation of the foregoing, classroom and course activities, recreational and cultural programs, committee or other business activity, registration, advising, teaching, research, or service.
- C. Advisor. Any person intended to assist the Respondent/Complainant during the disciplinary process, including, but not limited to, a university Advisor, attorney, or other person. Unless otherwise indicated by the Respondent/Complainant, in writing, the Advisor shall be provided a copy of all materials provided to the Respondent/Complainant. Advisors may not be witnesses or provide testimony.
- D. Advocate. The official software used by the University for reporting incidents and sending communication through the University Email system regarding case action or updates.
- E. Agreed Resolution. A mutual agreement between the Conduct Officer and Respondent determining the outcome of an investigation. In such a case, the agreed upon facts and sanction(s) shall be reduced to writing, dated, and signed by the Respondent.
- F. Business Day. Any weekday when university offices are open for official business.
- G. Complainant. The Individual who brings a complaint alleging that a student has violated the Student Code of Conduct, or the University when there is no formal complaint filed.
- H. Conduct Conference. An informal hearing where the Conduct Officer completes an investigation of a formal or informal complaint or allegation.
- I. Conduct Officer. The professional staff members of the Office of Student Conduct, or their designee(s), shall serve as the Conduct Officers for the University and shall be available to assist any student, student organization, staff member, faculty member, or administrator in understanding and applying the Student Code of Conduct.
- J. Designee. The person designated by the designated Marshall University official in these Procedures to act on their behalf. Provided that, a Designee cannot be anyone who is part of the hearing or appeal process under these Procedures.
- K. Director of Student Conduct (Director). The staff member designated by Marshall University, or

their designee, as responsible for the administration of the Student Code of Conduct. The Director's, or their designee's, duties include, but are not limited to, investigating complaints, charging students with violations, imposing sanctions, and representing the University in hearings. The Director is responsible for making an initial determination of whether a Code violation has occurred. The Director supervises the selection and training of university Advisors.

- L. Educational Sanction. An assignment, requirement, or task educationally related to the violation.
- M. Executive Session. Executive session includes the voting members of the Hearing Board and other non-voting parties at the discretion of the board. Executive Sessions are not a part of the hearing record and shall not be recorded.
- N. Hearing. A formal hearing where Justices complete an investigation of a formal or informal complaint or allegation.
- O. Hearing Officer. Any Marshall University faculty or staff member versed in the student conduct process, appointed to preside over a student conduct hearing. The Hearing Officer's function is to schedule the hearing and to see that it is conducted fairly and in compliance with stated policy. A Hearing Officer provides "technical" advice to the Hearing Board but does not vote or participate in decision-making except where the decision of the Hearing Board is a tie.
- P. Justices. Full-time students, faculty, and staff members who, on a voluntary basis, hear appealed student conduct cases and recommend sanctions for students found in violation of the Student Code of Conduct. Justices must meet established criteria and complete University-supervised training.
- Q. Medical Amnesty. Procedure for Students who seek emergency assistance for themselves, another student, or a friend experiencing an alcohol and/or drug related emergency as well as the individual in distress, to be granted limited immunity to disciplinary action under the Student Code of Conduct. Students may still be referred for assessment, counseling, and treatment.
- R. Notices or Communications. All notices or other communications which are required in these Procedures, including all appendices, shall be in writing and shall be deemed to have been duly given if (a) delivered by hand; (b) sent to the recipient's official University email account with a delivery and read receipt; (c) mailed by certified or registered mail with postage prepaid; (d) mailed by reputable overnight courier; or (e) sent by facsimile transmission, with confirmation that such transmission has been received.
- S. Respondent. A person who is alleged to have violated the Student Code of Conduct.
- T. Conduct Hold. If a student is charged with or found responsible for a violation of the Student Code of Conduct, a Conduct Hold will be placed on the student's account. A Conduct Hold will prevent the student from conducting University business without the approval of the Director as well as prevents a student from registering for academic courses, pending the outcome of the investigation, adjudication, and disposition of the complaint. A student who is under a Conduct Hold is not permitted to withdraw from the University without the approval of the Director. In situations where a student is found responsible and given a Reportable Sanction, a notation will



be placed on the student's transcript.

- U. Student. Any persons taking courses at or from Marshall University, both full-time and part-time, pursuing undergraduate, graduate, or professional studies and those who attend educational institutions other than Marshall University and who reside in Marshall University residence halls or utilize Marshall University facilities or services for the purpose of pursuing studies at those institutions. For the purposes of this policy, persons who have been admitted to Marshall University, but are not officially registered for a particular term, and/or who have a right to, or expectation of, a continuing or future student relationship with Marshall University are considered "students." A person shall be considered a student during any break or holiday period that occurs during a term in which that person is registered or between terms for which that person registers. A person shall be considered a student while suspended from the institution, or while the person is attending or participating in any activity preparatory to the beginning of a term, including, but not limited to, athletic training, orientation, placement testing, and residence hall check-in. A person is considered a student after the awarding of a degree or certificate for the purposes of addressing any conduct alleged to have occurred during any of the times set forth in this definition.
- V. University Advisor. A Marshall University faculty or staff member approved to provide, on a voluntary basis, advice, assistance and representation to students charged with violating the Student Code of Conduct. University advisors must meet established criteria and complete University-sponsored training.
- W. Student Conduct Hearing Board (Hearing Board). A review board that adjudicates cases where the matter cannot be resolved directly with the Director of Student Conduct. The Board will consist of one faculty or staff Justice and two student Justices.
- X. Student Organization. Any group of five (5) or more Students or persons who have complied with formal requirements for provisional or full recognition as a student organization at Marshall University or who are otherwise united around a common interest. Student Organizations include, but are not limited to, social fraternities and sororities, sports clubs, academic clubs, and organizations whose recognition has been suspended.
- Y. University. This term, where used in this document, refers to Marshall University, including all branch campuses and affiliated units and centers.
- Z. University Property. All the land, buildings, facilities, and other property including intellectual and virtual property, owned, used, leased, or controlled by Marshall University, including adjacent streets and sidewalks. This includes all University campuses and facilities. University property also includes computers and network systems owned, maintained or controlled by the University or funded by university budgets or designated by the campus as subject to these policies.
- AA. Witness. A person who has relevant information to share.

## Section 2.02 Conduct Process

### A. Review of Complaints or Allegations of Misconduct

Any member of the University community who believes that a violation of the Student Code of Conduct has occurred may file a complaint with the Office of Student Conduct. Complaints of student misconduct and misconduct of a Student Organization should be submitted to the Office of Student Conduct immediately following the alleged misconduct or the date on which the individual knew or should have known of the misconduct.

The report should be filed through the University's official online reporting system, Advocate. This report form can be found by using the following link: <https://www.marshall.edu/student-conduct/report-an-incident/>

Any faculty member or staff, student, or any other person may meet with the Director to discuss alleged misconduct. If the Complainant wants to file a formal complaint, the Complainant must submit their official Statement of Complaint (Complaint) and all materials supporting the complaint through the Advocate system. Such materials may include, but are not necessarily limited to: witness list, contact information of witnesses if known, detailed statements prepared by factual witness(es), written correspondence shared between the parties, documents, photographs, property receipts, medical reports, and any other information relevant to the Complaint.

The Complainant may not submit more than 50 pages of materials to be included in the case file. Statements should be in legible handwriting or typed using a clear font that is easily readable. The Director has the discretion to permit more than 50 pages of materials with the complaint if circumstances warrant submission of additional materials. These materials will become part of the Official Case File.

After submitting the Complaint and all supporting materials through the Advocate system, the Complainant's official Statement of Complaint is rendered complete. The only additional materials that they will be allowed to submit is information requested by the Conduct Officer or that responds specifically to information submitted by the Respondent that could not have reasonably been anticipated by and addressed in the Complainant's original Statement of Complaint.

Additionally, all employees of Marshall University must report alleged violations involving direct threats of physical harm, any type of physical injury, hazing, drugs and/or alcohol, weapons, or acts of discrimination or harassment, to the Office of Student Conduct or to another University office responsible for examining and upholding standards of conduct.

Regardless of whether a formal complaint is ever filed, allegations of student misconduct, from any credible source, will be reviewed by the Office of Student Conduct, or other appropriate personnel.

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

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

#### **B. Investigation.**

The Director will assign a Conduct Officer to investigate each Complaint or allegation of student misconduct from a credible source. The Conduct Officer may require by written or electronic request any member of the University community for a meeting for the purposes of investigating and/or discussing allegations of prohibited conduct, whether such allegations have been formally submitted or have otherwise been made known to the Conduct Officer. Failure to comply with the investigation may result in a Conduct Hold placed on a student's account.

If, after reviewing the complaint or allegation of student misconduct, the Conduct Officer finds that it is reasonable to believe that the Respondent violated the Student Code of Conduct, then charges will be brought against the student.

If, after reviewing the complaint or allegation of student misconduct, the Conduct Officer does not find that it is reasonable to believe that the student violated the Student Code of Conduct, then the complaint or allegation will be dismissed. In the event the complaint or allegation is dismissed, the University shall indicate the reason for the dismissal and notify the Respondent and Complainant, when applicable, in writing. A dismissed allegation may be reinstated at the discretion of the Director if substantial new information should become available.

#### **Notice of Charge**

If it is reasonable to believe that a violation of the Student Code of Conduct has occurred, then the Conduct Officer shall prepare a formal written charge of alleged prohibited conduct (Charge). The Charge shall be provided to any student suspected of prohibited conduct as soon as possible after the initial review is concluded. The Charge shall be addressed to the student who allegedly violated the Student Code of Conduct (Respondent) and shall include a brief outline of the facts upon which the Charge is based and potential sanctions which may result if the Respondent is found responsible.

The Charge shall be delivered electronically to the Respondent, when applicable, through the University's designated student e-mail system regardless of where the student resides or, if necessary, by any other means reasonably designed to ensure the Respondent receives it. The Charge shall include written notice to the Respondent that prior student code violations may be considered in the determination of sanctions and that the Respondent will be provided an opportunity to address any such information. The Charge shall identify a date and time for the Respondent to meet with the Conduct Officer, or other appropriate personnel, to discuss the Student Code of Conduct, its procedures, and the remedial options available to the Respondent, including whether the Conduct Officer and the Respondent can agree on the facts and, if warranted, identify a mutually-agreeable sanction to be imposed.

If multiple charges are present, the Conduct Officer will evaluate all reported allegations to determine whether the allegation(s) and the alleged Student Code of Conduct violation(s) may be appropriately investigated together without unduly delaying the resolution of the violations. Where the Conduct Officer determines that a single investigation is appropriate, the determination of responsibility for the violation of university policy will be evaluated under the applicable policy (i.e., the Housing and Residence Life Policy, Sexual Misconduct policy or the Student Code of Conduct), but the investigation and resolution will be conducted in accordance with the Student Disciplinary Procedures for violation of the Student Code of Conduct. Program specific violations will be handled separately by the program involved.

**The procedures for addressing Sexual Misconduct, Sexual Harassment, & Interpersonal Misconduct as defined in the Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, And Retaliation Policy- Including Title IX (BOG GA-1) are located in Appendix B, Sections 1 and 2 of this Administrative Procedure.**

**Agreed Resolution.**

In all situations, including where suspension or expulsion is an available sanction, the Conduct Officer and the Respondent may agree on the facts and, if warranted, identify a mutually agreeable sanction(s) to be imposed. In such a case, the agreed upon facts and sanction(s) shall be reduced to writing, dated, and signed by the Respondent (Agreed Resolution).

An Agreed Resolution shall be final and not subject to any subsequent proceedings, unless the Respondent submits a written objection to cancel the Agreed Resolution to the Conduct Officer within one (1) calendar day of the date it was signed. If the Respondent objects to the Agreed Resolution and no further agreement can be reached, the matter shall proceed to Conduct Conference or Conduct Hearing.

In situations where the Conduct Officer and the Respondent cannot agree on the facts and the sanction(s) to be imposed and neither expulsion nor suspension is sought as a sanction, the case shall continue to a Conduct Conference.

In situations where the Conduct Officer and the Respondent cannot agree on the facts and the sanction(s) to be imposed, and expulsion or suspension is sought as a sanction, the case shall be referred to a Hearing for formal review.

The Conduct Officer will seek input from the Complainant regarding the terms of the Agreed Resolution, when applicable.

**Conduct Conference.**

The administrative disposition of complaints not seeking suspension or expulsion shall be handled by an informal hearing between the Respondent and the Conduct Officer (Conduct Conference). The Conduct Conference will be used for determining responsibility and a sanction for matters or situations in which the alleged actions, if true, would not justify a suspension or an expulsion. The Complainant will be provided an opportunity to meet with the Conduct Officer and provide any evidence, when applicable.

During a Conduct Conference, a Respondent will be given an opportunity to present evidence to the Conduct Officer to determine whether the Respondent is responsible for violating the Student Code of Conduct as accused. The Conduct Officer has the discretion to ask clarifying questions of the parties/witnesses to obtain clearer factual information about the Complaint and has the discretion to conduct interviews in person, virtually, or in writing. As part of the interview, the Conduct Officer will advise the Complainant and/or witnesses of their potential role in the Code of Student Conduct adjudicatory process. After consideration of the evidence, the student is entitled to written notification of the outcome of the Conduct Conference (Outcome Letter). The Conduct Officer's determination of responsibility shall be based on a preponderance of the evidence. Each Outcome Letter shall plainly state the decision and shall plainly state the rationale for the decision; in the event that the student is found responsible for any part of the Charge, the Outcome Letter will include a brief statement of the facts relied upon by the Conduct Officer, the assigned sanction, and an explanation of appeal rights. This Decision is part of the Official Case File.

If the Conduct Officer determines the allegations set forth in the complaint, if proven, would not constitute a violation of the Student Code of Conduct, or that insufficient evidence/information exists to support the allegations in the Complaint, the Conduct Officer will notify the Respondent via Advocate and the University email system that charges against the responding student will not be pursued. If a charge is reinstated, the Respondent will be sent a notice of the charge. If a charge is dropped, the student will have no disciplinary history related to it.

If the Respondent fails to attend the meeting with the Conduct Officer and/or fails to provide a written response without requesting an extension of time and/or notifying the Conduct Officer, the Conduct Officer is authorized to decide on responsibility and to issue sanctions based upon the information provided by the Complainant.

### **C. Appeals**

#### **Of a Conduct Conference Decision.**

Within four (4) business days of receipt of the Outcome Letter resulting from a Conduct Conference, the Respondent may submit an appeal through the Advocate system for their case to be reviewed by the Director. Once an appeal is submitted, the Conduct Officer's decision will be stayed or held in abeyance (temporarily delayed), unless the Director determines that the health, safety, and welfare of the University community would be placed in jeopardy.

If the Respondent does not submit an appeal in accordance with the timeframe set forth in this section, the Conduct Officer's Decision will become final, and sanctions will be implemented on the fourth business day after the expiration of the appeal timeframe.

An appellate review is an examination of a decision reached by a Conduct Officer for the purpose of determining whether there is cause to believe that the outcome of the hearing was reached without appropriate process. Any disciplinary decision, other than where the Respondent has waived their right to appeal or a formal warning has been issued, may be appealed. Only the student who has been found responsible for a Code violation may appeal.

Appeals are not new Conduct Conferences. Rather, the appellate review will be limited to a record of the original Conduct Conference and supporting documents. Respondents may appeal based ONLY on one or more of the grounds below:

1. The Conduct Conference was not conducted fairly or in conformity with prescribed university procedures. The appellant must show that any alleged bias or deviation from these Student Disciplinary Procedures is likely to have adversely affected the outcome of the original Conduct Conference.
2. Sanctions imposed by the Conduct Officer were substantially disproportionate to the violation(s) for which the student was found responsible.
3. New, substantive information, sufficient to alter the decision, exists and was clearly not known at the time of the original Conduct Conference.

The Director will review the record and supporting documents to consider only the following:

1. To determine whether jurisdiction was properly asserted under the Student Code of Conduct;
2. To determine whether the underlying proceeding was conducted fairly in light of the charges and evidence presented, and in conformity with prescribed procedures, such that no significant prejudice to a student or the University resulted;
3. To determine whether the decision reached was clearly unreasonable based on the information presented; and
4. To determine whether the sanction(s) imposed were appropriate.

The Director shall consider the appeal and deliver a decision within thirty (30) calendar days of receipt of such appeal, except where adherence to such time period would be impracticable, in which case such time period shall be extended as warranted by the particular circumstances. The Director may decide to uphold, modify, or overturn the original decision. The Director's Decision will become final.

*In any case in which the assigned Conduct Officer is the Director, the next level of appeal automatically moves to the Vice President of Intercultural and Student Affairs.*

**D. Pre-Hearing Procedures for Charges Seeking Suspension or Expulsion**

When necessary, a hearing shall be scheduled by the Hearing Officer not fewer than ten (10) calendar days following the attempt to reach an Agreed Resolution. Maximum time limits for scheduling of hearings may be extended at the discretion of the Hearing Officer.

The Hearing Officer shall prepare a written notice of hearing (Hearing Notice) that sets forth the date, time, location of the scheduled hearing. The Hearing Notice shall be delivered electronically using the University's designated student e-mail system to the Respondent and any other student-witnesses or, if necessary, by any other means reasonably designed to ensure the appropriate individuals receive notice.

For matters involving more than one Respondent the students may request separate hearings; such requests shall be granted by the Hearing Officer unless such arrangements cannot be accommodated for good cause.

The Hearing Officer will review the Official Case File to determine if anything is missing from the

file. If anything is missing from the file, the Hearing Officer will request the Director to provide the information. If anything is added to the file, the Complainant and the Respondent will be provided with copies within a reasonable time prior to the hearing. At least ten (10) calendar days prior to the scheduled hearing, the Respondent shall submit to the Hearing Officer and the Hearing Officer shall submit to the Respondent all documentary evidence (pertinent records, information, and written statements) that is to be considered by the Hearing Board.

At least ten (10) calendar days prior to the scheduled hearing, the Respondent shall submit to the Hearing Officer and the Hearing Officer shall send to the Respondent the names, applicable contact information, and purpose of any witnesses that they intend to rely on at the hearing. Identification of witnesses by the Hearing Officer is not a guarantee or assurance that such witnesses will appear or be called at the hearing. The Hearing Officer will issue a notice of appearance to witnesses. Only Marshall University students and Marshall University employees may be required to attend a hearing. Character witnesses will only be allowed to present written statements that may be read by the Hearing Board in the sanctioning phase. Testimony must be truthful. Individuals may be subject to disciplinary action if they provide false information in the hearing process. Witness notices will include the procedure for requesting that testimony be taken by alternate means. The Hearing Officer may arrange for testimony to be taken at an alternate time at which time there will be an opportunity for oral or written questioning by both parties and the Hearing Board members, with the consent of the parties.

Advisors may meet with the Complainant and Respondent prior to the hearing to assist them in preparation.

#### **E. Hearing Procedures for Charges Seeking Suspension or Expulsion**

The Hearing will consist of one faculty/staff member Justice and two Student Justices. Should the Complainant fail to appear at the hearing, the Hearing Board may go forward with the hearing, postpone the hearing, or dismiss the case. Parties will be given fifteen (15) minutes after the start of the hearing, as identified in the notice, to appear before the Hearing Board will proceed. If the hearing is held in the absence of a party, a decision will be rendered based on evidence presented.

Hearings will be closed. The Hearing Officer may exclude or remove from the hearing room any person who may interfere with the orderly process of the hearing. Both the Complainant, Respondent, and their Advisors can be present during the hearing, but the Complainant and their Advisor are not allowed to be present for any discussion of the Respondent's disciplinary history. Witnesses (other than the Complainant) may be present only while presenting evidence or testimony.

Prospective witnesses, other than the Complainant(s) or other Respondent, may be sequestered from the hearing during other witnesses' testimony. Cell phones and other electronic devices may be secured by reasonable means determined by the Hearing Officer prior to hearing in order to eliminate texting or e-mailing information about the hearing to other witnesses. The devices will be returned to each witness after they have been excused from the hearing.

Formal rules of evidence and court procedures are not used and do not apply. Student conduct hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery

procedures, requirements for pleadings, and the hearsay rule do not apply in student disciplinary hearings.

The Respondent and the Complainant each can testify but may not be required to testify. Eyewitness testimony and circumstantial evidence in any form (e.g., documents, pictures, electronic, and/or physical evidence) may be presented to the Hearing Board. One person's report of another's statements (hearsay) may be received by the Hearing Board. The Hearing Board may discount hearsay evidence in part or in whole as appropriate. A criminal plea, trial, and/or conviction, including a court order, opinion, transcript of sworn testimony, or other official record may be received as evidence. The Student Conduct Hearing Board may weigh credibility and make findings based on the testimony of one witness against another or against other evidence. The Hearing Officer may exclude irrelevant or unduly repetitious evidence.

The Respondent may be represented by the person/Advisor of their choosing, including an attorney. Provided that, if the Respondent is being represented, they must advise the Hearing Officer at least forty-eight (48) hours prior to the scheduled hearing. The Director/University reserves the right to be represented by Counsel at any proceeding. All Advisors are required to adhere to the Hearing procedures.

The Director is responsible for presenting the charge and any evidence supporting the charge to the Hearing Board.

**Respondent's Rights.** Respondent will be provided the following rights:

1. An opportunity to present any evidence on their behalf including, but not limited to, papers, letters, photographs, cards, tapes, medical reports and/or recordings that are relevant to the misconduct alleged in the complaint.
2. An opportunity to present witnesses on their behalf and the opportunity to question any other witnesses, including the Complainant, either in person or via alternate methods such as video conferencing.
3. An opportunity to challenge the Hearing Board members for bias.
4. Opportunity to have legal counsel present at their own expense.
5. Adequate time to prepare for the hearing.

#### **Hearing Format**

- A. The Hearing Officer will introduce the Hearing Board, the Respondent, the Complainant, and their respective Advisors.
- B. The Respondent and the Complainant may challenge the objectivity of any voting member of the Hearing Board. Such a challenge must be based on a prior relationship that may result in substantial bias. Justices shall have the obligation to disclose any potential conflict of interest prior to the hearing.
  - a. In the event of such a challenge, the Hearing Board will meet in Executive Session without the challenged member to determine whether the challenged member may continue to serve on the committee. Following this determination, the hearing will proceed with the remaining members present.
- C. Any person, including the Director, Complainant, or Respondent who will be giving testimony will be sworn. Advisors may not act as witnesses and therefore, should not be sworn.



- D. The record is identified and documentary evidence, statements, and memoranda included in the hearing file are presented.
- E. Additional information is received or identified. The Hearing Officer will determine whether any new information is to be added to the hearing file and, if so, whether this addition requires a continuance. New information is substantive information sufficient to alter the Director's Recommendation and was clearly not known at the time of the Conduct Conference, as determined by the Hearing Officer.
- F. The complaint, charges, and any pre-hearing investigation are summarized by the Director.
- G. The Hearing Officer will ask the Respondent whether they are responsible or not responsible for the alleged charges. If the Respondent agrees that they are responsible, the Hearing Board may move immediately to sanctioning.
- H. Both the Director and Respondent will be allowed to make Opening Statements to the Hearing Board limited to five (5) minutes. The Director will offer their statement first. This statement should not be a presentation of the case, but instead should offer a brief overview or outline of what their case will be, and what witnesses or evidence will demonstrate to the Hearing Board. As this is not an actual presentation of the details of the case, these statements are NOT subject to immediate questioning.
- I. The Hearing Board initiates questioning of parties and other witnesses. Parties may ask questions of each other and witnesses in the order determined by the Hearing Officer.
- J. Witnesses are escorted into the room one at a time to make statements. Witnesses will be administered an oath or affirmation. All questions are asked appropriately, in the following manner:
  - a. All witnesses are questioned first by the Hearing Board.
  - b. The Parties and Director are invited to ask questions. Provided that, to allow for the orderly presentation of evidence and to avoid any intimidation, all questions asked by the Parties or the Conduct Officer must be directed through the Hearing Officer rather than posed directly to the other party. Other witnesses may be questioned directly by the party at the discretion of the Hearing Officer.
  - c. No student witness may be compelled to incriminate themselves. The Respondent may remain silent, and their silence should not be taken as inference of culpability.
  - d. Any party wishing to have a witness testify telephonically or virtually must contact the Hearing Officer ahead of the hearing to receive approval. Whether a witness will be permitted to testify telephonically or virtually will be determined the Hearing Officer.
- K. If further information is deemed necessary by the Hearing Officer, the Hearing Board will suspend its hearing to pursue such inquiries and request the Conduct Officer or the Respondent attempt to secure additional information.
- L. Both the Director and Respondent will be allowed to make Closing Statements to the Hearing Board limited to ten (10) minutes. The Director will offer their statement first.
- M. The Respondent is invited to make a final written or verbal comment.
- N. The Director may present evidence regarding an appropriate sanction, considering the nature of the violation admitted or found to have occurred, aggravating, or mitigating circumstances, and University policies and practices regarding sanctions imposed in similar cases.
- O. After the Director and Respondent have concluded their Closing Statements, the Hearing Board will adjourn the hearing for deliberations on responsibility and if

applicable sanctions. The Hearing Board will decide whether the student is responsible or not responsible for violating the Student Code of Conduct. The decision of the Student Conduct Hearing Board will be by a simple majority vote. The Hearing Board may consider the prior disciplinary record of the Respondent when determining sanctions. Deliberations are not recorded.

- P. The decision of the Hearing Board will not be communicated orally.
  - a. The Respondent will be notified, in writing, by hand delivery, email or certified mail, within three (3) business days of the hearing of the Hearing Board's decision. If a sanction is imposed, this letter will include a statement of the Respondent's right to appeal to the Vice President of Intercultural and Student Affairs within five (5) business days from the date that Respondent receives the decision.
  - b. The Complainant will be notified of the Hearing Board's decision on responsibility but will not be notified of any sanctions if applicable unless the sanctions relate directly to the Complainant. If a student is found to have violated a specific act set forth in the Student Code of Conduct and that act constitutes a crime of violence or non-forcible sex offense, as defined by 34 C.F.R. § 99.39 (2015), then, pursuant to 34 C.F.R. § 99.31(a)(14)(i) (2015) and the University's Family Educational Rights and Privacy Act notification, the University may disclose the results of the proceedings to anyone. For purposes of this disclosure, "final results" means the name of the student, the basic nature of the violation the student was found to have committed, and a description and duration of any sanction imposed against the student.
  - c. If the Complainant is deceased because of such crime or offense, the administrator or executor of such victim's estate shall be treated as the Complainant for purposes of this paragraph. If the Complainant does not have an administrator or executor, then the next of kin shall be notified.

#### **F. Appeals of Hearing Board Decisions**

The Respondent may appeal a decision of the Student Conduct Hearing Board to the Vice President of Intercultural and Student Affairs.

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

1. The hearing was not conducted fairly or in conformity with prescribed university procedures. The appellant must show that any alleged bias or deviation from these Student Disciplinary Procedures is likely to have adversely affected the outcome of the original hearing.
2. Sanctions imposed by the Hearing Board were substantially disproportionate to the violation(s) for which the student was found responsible.
3. New, substantive information, sufficient to alter the decision, exists and was clearly not known at the time of the original hearing.

The Respondent may appeal the Hearing Board's final decision, in writing, within five (5) business days of receipt of the decision by submitting a Statement of Appeal to the Vice President of Intercultural and Student Affairs. The Statement of Appeal must contain the following: (1) specific grounds for appeal; (2) specific relief requested; and (3) appellant's reasons in support of the relief

requested. If new evidence is the grounds for appeal, the Statement of Appeal must include a summary of the new evidence and its potential impact on the original finding. Appeals must be signed by the appealing party, may not be submitted to the University's email system, and must be postmarked or hand delivered on or before five business days after receipt of the Hearing Board's decision, to the Office of the Vice President of Intercultural and Student Affairs. The Vice President of Intercultural and Student Affairs may request the non-appealing party to make a written response to the Statement of Appeal.

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

After reviewing the record below, the Vice President of Intercultural and Student Affairs may:

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

Within ten (10) business days of the receipt of the Statement of Appeal, the Vice President of Intercultural and Student Affairs will notify the parties in writing of the decision via by hand delivery, University email, or certified mail return receipt.

The decision of the Vice President of the Vice President of Intercultural and Student Affairs shall be final.

## Section 2.03 Interim Measures

### A. Interim/Emergency Suspension

- 1) If, in the opinion of the Vice President of Intercultural and Student Affairs (VPISA), in consultation with the Student Affairs Assessment Team (SAAT), the presence of a Respondent constitutes a continuing danger to persons or property or is an ongoing threat of disrupting the academic process and/or administrative operations at the University, the VPISA or the Director may immediately suspend the Respondent for up to ten (10) business days. The SAAT shall include, at a minimum: (1) a representative from the Office of the VPISA, (2) a representative of the Marshall University Police Department (the MUPD Representative), and (3) a representative from the Office of Student Conduct. The SAAT may also consult with such other members of the University community it deems necessary to complete its evaluation. An interim/emergency suspension does not need to be based on information received in a formal complaint.
- 2) Health and Safety Assessment

**Risk Factors.** Provided that MUPD did not conduct its own health and safety assessment, the SAAT will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the Complainant or to any other member of the University community. MUPD and the SAAT will share health and safety assessments with each other. The SAAT will make this determination based upon a review of the totality of the known circumstances, and will be guided by a consideration of the following factors (the “Risk Factors”)

1. Whether Respondent has prior arrests excluding misdemeanor arrests that did not result in conviction, is the subject or prior reports and/or complaints related to any form of student misconduct, or has any history of violent behavior;
2. Whether the Respondent has a history of failing to comply with University No Contact Orders, other University protective measures, and/or any judicial protective order;
3. Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
4. Whether the alleged misconduct involved multiple Respondents;
5. Whether the alleged misconduct involved physical violence. Physical violence means exerting control over another person through the use of physical force. Examples of physical violence include, but are not limited to, hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon;
6. Whether the report reveals a pattern of Student Code of Conduct violations (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location); and
7. Whether any other aggravating circumstances or signs of predatory behavior are present.

**Disclosure(s) of Information to Law Enforcement.** Provided that law enforcement is not already involved, the SAAT is required to disclose information about alleged Prohibited Conduct to law enforcement in the following circumstances.

1. If the SAAT (or, in the absence of consensus within the SAAT, the MUPD Representative) concludes that there is a significant and articulable threat to the health and safety of the Complainant or to any other member of the University community and that disclosure of available information (including the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties knowledge of the reported incident) is necessary to protect the health and safety of the Complainant or other individuals, the MUPD representative will immediately disclose the information to the law enforcement agency that would be responsible for investigating the alleged act of criminal misconduct.
2. If the alleged act of criminal misconduct constitutes a felony violation of the West Virginia Code, the MUPD Representative will so inform the other members of the

SAAT and will, within 24 hours, (i) consult with the appropriate Prosecuting Attorney or other prosecutor who would be responsible for prosecuting the alleged act of criminal misconduct (the “Prosecuting Attorney”), and (ii) disclose to the Prosecuting Attorney the information then known to the SAAT. Such disclosure will exclude the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident (the “Identifying Information”), unless the Identifying Information was disclosed to law enforcement under the health and safety exception described in paragraph (a), above, in which case the Identifying Information also will be disclosed to the Prosecuting Attorney.

#### **University Process for Emergency Suspensions.**

1. A Hearing on the interim suspension shall be scheduled within three (3) business days of the suspension unless the Respondent requests a continuance.
2. Written notification of the time and place of the Hearing will be delivered to the Respondent or their Advisor on behalf of the Respondent at least one (1) business day prior to the Hearing date.
3. Written notice of the charges against the Respondent and an explanation of the evidence the University has shall be given to the Respondent.
4. The Hearing will be conducted in accordance with Section 2.02 of these Procedures.
5. The Director’s decision will not be stayed or held in abeyance (temporarily delayed) pending the Hearing.

#### **B. No Contact Order**

A 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.

#### **C. Cease and Desist Directive**

During the pendency of any investigation undertaken pursuant to these procedures, the Vice President of Intercultural and Student Affairs or designee may impose a cease-and-desist notice on a student or Student Organization.

#### **D. Accommodations**

##### **1) 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.

##### **2) 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.

3) **Employment Accommodations**

This may include arranging for alternate University employment for Students employed by the University.

4) **Other Accommodations**

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

E. **Deferral of the Degree**

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

## Section 2.04 Sanctions

A. **Disciplinary Action Sanctions**

The following sanctions may be imposed upon students because of disciplinary actions by the University:

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

A. **Formal Warning**

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

B. **Conduct Probation.**

Conduct Probation is a strong communication that a student is no longer in good disciplinary standing with the academic community. Any subsequent violations of the Student Code of Conduct will be evaluated in the context of the student's probationary status. The Office of Student Conduct will notify the dean of the student's college and a Conduct Hold will be placed on the student's record. A Conduct Hold requires the student to see an official from the Office of Student Conduct and is placed on the student's record to prevent the student from registering for classes for the following semester and must be resolved before the student will be able to register. The Conduct Hold will remain on the student's record until the obligation is fulfilled. The record of Conduct Probation is maintained in the Student Conduct office for seven years. Conduct Probation may include one or more of the following:

- **Loss of Participation:** The student may not represent the University in any extracurricular activities such as, but not limited to, intercollegiate athletics, debate teams, University Theater, band, or other similar

activities however, the student may participate in informal activities of a recreational nature sponsored by the University.

- **Self-Improvement:** A program of self-development will be planned in conjunction with a faculty or staff person assigned to assist in a counseling/guidance capacity. Numerous resources may be used to assist the student in identifying and clarifying experiences, goals, educational and career choices, and other personal objectives.
- **Surrender of Student Activity Privileges:** A student required under this section to relinquish Student Activity privileges may not participate in, or attend, events that provide a discount or privilege for students through payment of their tuition and fees. Exceptions may be granted by the Student Conduct Office in those instances where attendance at such events is required by academic courses or programs.
- **Loss of Privilege of Participation in Advanced Registration:** The student will relinquish their advanced registration privileges during their sanction obligation. During this time, the student will register by filling out a scheduled adjustment form instead of the online process. Exceptions may be granted by the Office of Student Conduct.

**C. Community Service**

Community Service is a disciplinary sanction that requires a student to perform unpaid work of benefit to the community, providing an opportunity for students to make a positive contribution. Student Conduct must approve community service activities and meet certain criteria.

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

**A. Probationary Suspension**

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

**B. Suspension**

Suspension shall be imposed upon a student when it is determined by the Director that the student's relationship with the university must be suspended from the university for a definite period. A suspended student may apply for re-admission to the University through the Office of Student Conduct and the Office of Admissions at the end of the suspension period specified by the conduct action. Suspension records are maintained indefinitely. Any suspension imposed shall be recorded on the student's transcript during the suspension period and until the student matriculates for the following academic term. Should a student remain out of the university during an academic term following a suspension, they must apply for readmission as would a student who had withdrawn from the university. The Office of Student Conduct may deny readmission in those instances where the suspended student fails to demonstrate a positive change in behavior which

indicates that the suspended student is prepared to again become a responsible member of the University community. Numerous resources may be used to assist the student in identifying and clarifying experiences, goals, educational and career choices, and other personal objectives. At the end of a suspension period, the student is placed on Conduct Probation until graduation, unless mitigating circumstances warrant a different sanction.

**C. Deferred Suspension**

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

**D. Expulsion**

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

**3) Other Conditions or Restrictions**

**A. Deferral of the Degree**

The Student Conduct Hearing Board, or the Vice President of Intercultural and Student Affairs may withhold the conferral of the degree until the disciplinary



process has been resolved.

**B. Withholding of the Degree.**

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

**C. Revocation of the Degree.**

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

**D. The Vice President of Intercultural and Student Affairs may authorize any other sanctions they deem to be just and appropriate.**

**4) Sanctioning Guidelines for Violating COVID-19 Policies or Guidelines**

**A. First referral for non-compliance**

If non-compliance is found, the student(s) will receive a Formal Warning and must meet with the Office of Student Conduct before they can return to the classroom. If they are non-compliant outside the classroom the student(s) shall also be given a Formal Warning and meet with the Office of Student Conduct. In both incidents, Student(s) will sign the "Keep Marshall Safe Pledge."

**B. Second referral for non-compliance**

If non-compliance is found, the student(s) will be placed on Conduct Probation until the end of the semester and a hold will be placed on the student's account until the end of the semester. The student(s) will also have to complete a training program on Health, Wellness and Safety on Blackboard and score 85 % or higher within five (5) days of the Notice of Non-compliance. They will also receive a call or email from MU Wellness as a reminder to complete the class and to discuss the Marshall protocols as well as state and local guidelines. If the Student(s) fail to complete the training Student Wellness will refer them back to Student Conduct for further action including the possibility of additional disciplinary sanctions or suspension.

**C. Third referral for non-compliance**

The student(s) will be suspended from participating in face-to face classes for the University for the remainder of the semester (Suspension Period). Provided that the class is available online, the student(s) will be permitted to transfer to online learning from an off-campus location until the end of the semester. The student(s) will not be permitted on Marshall's campus without the authorization of either the Office of Student Conduct or MUPD. If the Student(s) are found on Marshall's campus, in violation of this directive, the student(s) may be charged with trespassing, which will subject them to further disciplinary action. If the Student(s) wish to return to Marshall after their Suspension Period, the student(s) must meet with the Director.

**D. Provided that, nothing herein shall require the Director to strictly adhere to the**

progressive guidelines outline above, sanctions shall be determined on a case-by-case bases considering the totality and severity of the circumstances.

**5) Transcript Notations**

A notation of non-academic disciplinary action will be made on an academic transcript whenever Reportable Sanctions are imposed. Notations will not include the substance of the charges but will only note the disciplinary action taken. Students may submit a written petition for the removal of non-academic disciplinary transcript notations to the Vice President of Intercultural and Student Affairs. The Vice President of Intercultural and Student Affairs has the discretion to grant or deny petitions. The Vice President of Intercultural and Student Affairs will consider the current demeanor of the student, the student's conduct after the violation, and the nature of the violation, including the damage, injury, or harm.

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

## Article III. MISCELLANEOUS

### Section 3.01 Amnesty Process

#### **Medical Amnesty**

Marshall University considers the safety and personal well-being of the student body a priority. The University recognizes that there may be alcohol or other drug-related medical emergencies in which the potential for disciplinary action could act as a barrier to students who want to seek medical assistance for themselves or others.

The Medical Amnesty Process is designed to enable students and their guests to seek professional medical treatment in an alcohol or other drug-related emergency by reducing the possible barrier of disciplinary consequences.

- a. Any student who, in good faith and in a timely manner, seeks emergency medical assistance for a person who reasonably appears to be experiencing an overdose from alcohol or drugs may not be held responsible for a violation of prohibited alcohol or drug related conduct only, as defined in the Code, if the student does all the following:
  - i. Remains with the person who reasonably appears to be in need of emergency medical assistance due to an overdose until such assistance is provided;
  - ii. Identifies himself or herself, if requested by emergency medical assistance personnel, law-enforcement officers, or University officials;
  - iii. Cooperates with and provides any relevant information requested by emergency medical assistance personnel, law-enforcement officers, or University officials needed to treat the person reasonably believed to be experiencing an overdose; and

- iv. If the person who reasonably appears to be experiencing an overdose from alcohol or drugs is also a student, he or she will not be held responsible for a violation of prohibited alcohol or drug related conduct, as defined in this Code, but may be required to complete additional conditions imposed by the Director to receive amnesty.

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

**Medical Amnesty Guidelines:**

1. Students seeking Medical Amnesty will be required to meet with the Director. For the first request, the Director will evaluate the situation to determine they qualify for Medical Amnesty.
2. The Director may also refer the student to a substance abuse specialist or campus counselor for assessment, counseling, and treatment if needed.
3. Students who are referred, but fail to meet and comply, with the recommendations may be subject to discipline under the Student Code of Conduct.
4. Even if the disciplinary sanction is waived, the Office of Student Conduct may still notify parents of the event.
5. A record of the incident will be filled in the Office of Student Conduct and will only be used as a prior record if a subsequent alcohol or drug violation occurs.
6. The sanction will not be reflected on the student's transcript and will be destroyed after seven years per federal guidelines if a subsequent alcohol or drug violation does not occur.
7. Students that are involved in any subsequent alcohol and/or drug use incidents will meet with the Director and may be referred to the Hearing Board to determine if the student qualifies for Medical Amnesty. Those that do not qualify for Medical Amnesty will be subject to disciplinary action under these Disciplinary Procedures.
8. The availability of medical amnesty for students will be determined on a case-by-case basis using the following information:
  - a. Medical Amnesty applies to Students who have initiated and sought assistance and/or medical treatment on behalf of themselves, another student, or a friend experiencing a medical emergency from alcohol and/or drug use.
  - b. If a representative of an MU student organization hosting an event calls for medical assistance, this act of responsibility might mitigate potential University sanctions that could arise against the organization. Marshall Student organizations involved in an alcohol and/or drug related incident must agree to take recommended steps to address concerns from campus administration.

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

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

<http://www.wvlegislature.gov/wvcode/Code.cfm?chap=16&art=47#47>

## **Amnesty Relating to Sexual Misconduct**

To encourage reporting of alleged violations of sexual misconduct and to support candid communication of information, students participating in the grievance process (Complainants, Respondents, and Witnesses) will not be charged with alcohol or drug-related violations if they engaged in unlawful or prohibited personal use of alcohol or drugs during the incident when the alleged violation occurred. Amnesty applies only to the personal use of alcohol or drugs during the incident in question and does not extend to other potential violations. Amnesty does not apply to the Respondent if drugs or alcohol were allegedly used to facilitate a violation of this policy.

## **Section 3.02     Hearing Board Justice Selection and Removal**

- A. **Goal.** To staff the Student Conduct Hearing Board, students, faculty, and staff are encouraged to apply for this opportunity. Information concerning the application process will be available in the Office of Student Affairs. In addition, this information should be distributed to the Student Government Association, Faculty Senate, Classified Staff Council, and other campus offices requesting that they encourage interested students, faculty, and staff to serve.
- B. **Minimum qualifications of Student Justices.** Minimum qualifications of Student Justices are:
  - 1) A student enrolled full-time at Marshall University.
  - 2) Must have completed one full semester toward their degree.
  - 3) Maintain at a least a 2.5 grade point average.
  - 4) Be in good academic and disciplinary standing.
- C. **Minimum qualifications of Faculty Justices.** Minimum qualifications of Faculty Justices are:
  - 1) A faculty member with a full-time faculty appointment.
  - 2) Experience in teaching, advising and/or student development.
  - 3) Not currently subject to disciplinary action, on probation and/or subject to an improvement plan.
  - 4) Approved by College Dean.
- D. **Minimum qualifications of Staff Justices.** Minimum qualifications of Staff Justices are:
  - 1) A full time (.53 FTE or higher) staff member.
  - 2) Experience with student related issues.
  - 3) Not currently subject to disciplinary action, on probation and/or subject to an improvement plan.
  - 4) Approved by Supervisor.
- E. **Selection Process.**
  - 1) All applications will be submitted to the Student Affairs office.
  - 2) Applications will be reviewed by the Assistant Director of Student Conduct (Assistant Director).
  - 3) The Assistant Director will make their recommendations to the Director, who will give final approval on applicants to serve as members of the Hearing Board.
  - 4) The Hearing Officer will be selected by the Director, and is responsible for scheduling the Justices for a particular hearing. If the original hearing is continued the same Justices will serve until the matter is completed. Provided that, if a Justice becomes unable to serve another Justice can be substituted in their place.
- F. **Appointment.** Appointments will be effective on the first day of classes of the succeeding fall

semester or spring semester. The appointment term is for one (1) year. Appointment for an additional term may occur upon approval of the Director.

- G. **Emergency Appointments.** Emergency, one-time appointments to the Student Conduct Hearing Board may be made by the Director if that appointee has been previously trained on the disciplinary procedures.
- H. **Hearing Officer.** The Student Conduct Hearing Board Hearing Officer must be a full-time employee of the University who is selected by the Director.
- I. **Training.** Each Justice will receive training through the Office of Student Conduct.
- J. **Removal.** A Student Conduct Hearing Board member may voluntarily terminate their appointment at any time. A member may be involuntarily removed from service for cause. Examples of removal for cause are:
  - 1. Failure to attend two (2) hearings without prior notice;
  - 2. Breach of confidentiality;
  - 3. Poor performance;
  - 4. Disruptive behavior during the proceedings;
  - 5. Becoming the subject of a disciplinary action; and/or
  - 6. Acting in a manner that is not in the best interest of the University.
- K. **Removal Process.** Requests to involuntarily remove a member for cause shall be brought to the attention of the Director, who shall have ultimate authority to consider or refuse to consider a request for removal.

## Section 3.03 Student Petitions

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

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

Individuals who have been expelled from the University may seek clemency under the following circumstances and conditions:

- 1. The individual must wait a minimum of four (4) calendar years after the original expulsion before initiating a request for clemency.
- 2. The request for clemency must be made in writing to Vice President of Intercultural and Student Affairs. The written request should include a description of the conduct for which the sanction was assigned, appropriate documentation concerning the individual's status during the intervening years since the expulsion, any additional mitigating circumstances with appropriate documentation, and any additional information about character or change of behavior that may be appropriate. This documentation may

include records pertaining to mental health status, employment, criminal or probation records, educational records, social service records, and letters of recommendation. NOTE: A victim impact statement will be allowable if relevant. The Vice President should arrange for its inclusion in the assembled documents.

3. Upon receipt of the request for clemency, the Vice-President may consult with whomever he or she wishes and may empanel an advisory panel to advise her/him. The Vice- President or advisory panel will review the request for clemency, and may conduct a personal interview with the individual, and/or conduct other forms of inquiry as needed. If an advisory panel is empaneled, the panel will make a recommendation to the Vice-President.
4. The final decision will be made by the Vice-President. The Vice-President will notify the student via United States Mail, return receipt requested of his or her final decision. The Vice-President's decision will include any specific terms and conditions. Failure to adhere to the specific terms and conditions and/or any other violations of university rules regulations and policies could result in additional disciplinary action up to and including expulsion.
5. The decision of the Vice President is final.
6. The Vice President of Intercultural and Student Affairs' decision to grant the petitioner the right to pursue the readmission process does not abrogate the right of any college or program to deny readmission based on scholarship and/or failure to meet program specific admissions requirements.
7. If clemency is granted, the individual may reapply to the University and to the school, program, or successor unit from which he or she was expelled or to a different academic unit within the University. The student must follow all current application procedures and must meet all admissions requirements, including, but not limited to, any program specific admission requirements, in place at the time of the application submission. The individual must meet whatever graduation requirements are in place at the time of readmission. The student will remain on disciplinary probation which will be noted on the students' academic transcript, until any degree is completed, at which time it will be removed as will the notation regarding the original expulsion.

A record of the expulsion will remain in the student's disciplinary records maintained by the Office of Student Conduct and is not subject to expunction.

**B. Petition for Transcript Notation Removal.** For sanctions other than expulsion, students may submit the Vice President of Intercultural and Student Affairs a written petition for removal of notation from their academic transcript for any non-academic disciplinary action.

1. Petitions to the Vice-President should include a notation a description of the conduct for which the sanction was assigned; a description of all the sanctions the student was required to complete and the degree to which he/she completed them; a description of the remedial actions the student has taken since the incident(s); description of completed sanction(s); and the student's anticipated graduation date and the career and/or additional education plans he/she has following graduation.
2. Upon receipt of the Petition, the Vice-President may consult with whomever he or she wishes and may empanel an advisory panel to advise her/him. The Vice-President or advisory panel will review the request for removal of notation from their academic transcript for any non-academic disciplinary action, and may conduct a personal interview with the individual, and/or conduct other forms of inquiry as needed. If an advisory panel is empaneled, the panel will make a recommendation to the Vice-President.

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

## Section 3.04 Access to Records and Record Retention

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

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

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

A student may request a copy of their disciplinary record or request that the record, including information related to pending charges, be provided to a third party by completing a release authorization form. The completed form should be completed on the Office of Student Conduct website at <https://www.marshall.edu/student-conduct/student-records/>

## **APPENDIX A**

### **POSSIBLE FINDINGS AND SANCTIONS RELATED TO STUDENT ORGANIZATIONAL DISCIPLINE**

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

- a) **Finding of No Violation.** This action can occur at any stage of the procedure. If a finding of no violation occurs, the organization has no disciplinary history for this event. This information will not be considered in future proceedings.
- b) **Charge(s) Dropped.** This action shall be taken when the Director or the hearing body determines that the organization cannot be found in violation of the University's regulations governing student conduct. For example, the behavior may have been unrelated to the rules of conduct, or evidence may be unobtainable or insufficient. A dropped charge may be reinstated at the discretion of the Director if substantial new information should become available. If a charge is reinstated, the Respondent will be sent a charge notice. If a charge is dropped, the student will have no disciplinary history related to it.
- c) **Finding of Violation.** This action occurs when the Student Conduct Hearing Board has established that a policy of the Student Code of Conduct has been violated based on a preponderance of the information.
- d) **Continuance.** The Hearing Officer may continue the proceedings when he/she determines it is in the best interest of the University community. Respondent may appeal a continuance decision of longer than thirty business days to the Vice President of Intercultural and Student Affairs.

2) **Sanction Options:**

- a) **Formal Warning.** A Formal Warning is an official communication that an organization's behavior is inappropriate as a member of the University community. A Formal Warning is maintained in the organization's file and would serve as a basis for further sanctioning should subsequent violations occur.
- b) **Conduct Probation.** Conduct Probation is a strong communication that an organization is no longer in good disciplinary standing with the University community. Any subsequent violations of the Student Code of Conduct will be evaluated in the context of the organization's probationary status. Conduct Probation may include one or more of the following:
  - 1. **Loss of Participation:** The organization may not represent the University in any extracurricular activities such as, but not limited to, intercollegiate athletics, debate teams, University Theater, band, or other similar activities however, the student may participate in informal activities of a recreational nature sponsored by the University.
  - 2. **Improvement Plan:** A program of development will be planned in conjunction with a faculty or staff person assigned to assist in a counseling/guidance capacity.



3. Surrender of Organization Activity Privileges: An organization required under this section to relinquish its privileges may not participate in campus events.
- c) **Probationary Suspension.** Suspension is withheld pending careful evaluation of an organization's behavior during a probationary period not to exceed one year. If the organization is involved in any further offense, or if otherwise warranted, this suspension of disciplinary action may be revoked by the Vice President of Intercultural and Student Affairs or their designee and the full sanction of suspension enforced subject to appeal to the Hearing Board.
  - d) **Suspension.** Suspension shall be imposed upon an organization when it is determined by the Director that the organization's relationship with the university must be suspended from the university for a definite period of time.
  - e) **Revocation.** Revocation of registered organization status shall be imposed upon an organization when the hearing body determines that the organization's relationship with the university must be terminated. When revocation is imposed upon an organization, the organization may petition the hearing body for recognition by the university after the specified time. Revocation records are maintained indefinitely. When an organization successfully achieves recognition by the university, the organization is placed on Conduct Probation for four years, unless mitigating circumstances warrant a different sanction.
  - f) **Formal Sanction Held in Abeyance (temporarily delayed).** In rare cases, the Student Conduct Hearing Board, or Director may determine that a certain sanction is the appropriate formal sanction for an organization, but strong mitigating circumstances warrant holding the formal sanction in abeyance (temporarily delayed). The organization will continue to be recognized under restrictions and conditions. An organization found to have violated the conditions or restrictions of a formal sanction held in abeyance (temporarily delayed) will minimally have formal sanction imposed. Formal sanctions held in abeyance (temporarily delayed) for organizations must include an expiration date.
- 3) **Sanction Guideline for Non-Compliance with COVID-19 Policies or Guidelines.**
- a. First Referral for non-compliance. The organization will receive a formal warning and the executive committee will meet with the Office of Student Conduct. Every member of the organization will be asked to sign the Keep Marshall Safe Pledge. If the violation happens on campus the student organization will lose campus meeting privileges for two weeks.
  - b. Second Referral for non-compliance. The organization will be placed on Conduct Probation until the end of the semester. Every member of the organization will be required to complete the Health, Wellness and Safety training in blackboard with every member scoring 85% or higher. The training must be completed by all members within 5 days of receiving the notice of non-compliance. The President/Vice-President and Advisor of the organization will be contacted by email or phone call as a reminder for to complete the training and a discussion of Marshall protocol as well as state and local

guidelines. If any member fails to complete their test, they will be referred to the Conduct Office with the potential for removal from the organization and/or suspended.

- c. Third referral for non-compliance. The organization will be suspended from the University for a semester with loss of recognition as a university organization. If the organization is suspended and meetings are continued, they will be subject to greater disciplinary actions. If the organization wishes to return to Marshall after their Suspension Period, they must meet with the Office of Student Conduct and the Office of Student Involvement and Leadership and demonstrate a readiness to return to the institution and compliance with all related guidelines, before being allowed to return.
- d. Provided that, nothing herein shall require the Director to strictly adhere to the progressive guidelines outlined above. Sanctions shall be determined on a case-by-case basis considering the totality and severity of the circumstances.
- e. The Hearing Board may authorize any other sanctions it deems to be just and appropriate.

Appendix B  
SECTION 1

# MARSHALL UNIVERSITY

## TITLE IX GRIEVANCE PROCEDURES FOR STUDENTS

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

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## I. INTRODUCTION

Marshall University ("University") is committed to providing a safe, non-discriminatory environment for all members of the University community. The University prohibits Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in this Policy by or against any member of the University community (together, "Prohibited Conduct"). These forms of Prohibited Conduct are defined in the Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation Policy and Title IX (BOG GA-1) ("Policy"). This Appendix identifies the Grievance Procedures ("Procedures") the University follows when it receives a report alleging Prohibited Conduct under the jurisdiction of Title IX and its definitions for sexual harassment by a Student. The University uses these Procedures to investigate and adjudicate any such allegations and to impose disciplinary sanctions against Students found responsible for violating the Policy.

These Procedures supersede the Student Disciplinary Procedures, and to the extent these Procedures are differing, they take precedence. These Procedures should be read in conjunction with the Policy. Capitalized terms used and not otherwise defined in these Procedures are defined in the Policy. For purposes of these Procedures, the "Title IX Coordinator" means the Title IX Coordinator, any Deputy Title IX Coordinator, and/or any of their respective trained designees.

## II. 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 both 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 anyone<sup>1</sup> who experiences or becomes aware of an incident of Prohibited Sexual Harassment Conduct to **immediately** report the incident to the University through the following reporting options:

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

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

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<sup>1</sup> Certain University employees, called "Campus Security Authority," are required to report to the Title IX Coordinator all information disclosed to them about an incident of Prohibited Conduct. "

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

**Anonymous Complaints:** Anonymous complaints will be reviewed; however, because the Respondent is entitled to certain due process rights, including, but not limited to, the right to confront their 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 a resolution under these Procedures and may also choose to make a report to law enforcement. A Complainant may pursue either or both of these options at the same time. A Complainant who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should contact their local law enforcement directly:

**Marshall University Police** ((304-696-HELP [4357])) (for both emergencies and non-emergencies)  
**911** (for emergencies)  
**City of Huntington, WV Police Department** (304-696-5510; for non-emergencies)  
**South Charleston Police** (304-744-6903)  
**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, or the Code of Student Conduct. The administration of complaints filed in accordance with these Procedures may be carried out prior to, simultaneously with, or following civil or criminal investigations and/or proceedings. The University will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus or that affects the University community. Such cooperation may require the institution to temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while the law enforcement agency is in the process of gathering information. 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 act 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 University also offers access to resources for individuals who are unsure about whether to report Prohibited Conduct or are seeking counseling or other emotional support in addition to (or without) making a report to the University. Specifically, individuals may contact:

### **1. Resources**

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

- b. Marshall University Women's & Gender Center**  
Old Main 115, One John Marshall Drive Huntington, WV 25755  
Phone: 304 696-3338  
Email: [wcenter@marshall.edu](mailto:wcenter@marshall.edu)
- c. Marshall Behavioral Health Center**  
GO1 Gullickson Hall – 18<sup>th</sup> Street & 3<sup>rd</sup> Avenue  
Huntington, WV 25755  
Phone: 304 696-3751  
(this resource may have costs associated with it)
- d. Marshall Campus Psychology Clinic**  
Room 335-A, Harris Hall  
Huntington, WV 25755  
Phone: 304 696-2772  
(this resource may have costs associated with it)
- e. 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](mailto:vprprogram@marshall.edu)
- f. 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)
- g. REACH Family Counseling Connection**  
Phone: (304) 292-5100  
<http://www.tccwv.org/Our-Programs/REACH.aspx>  
(Serving Kanawha, Jackson, and Putnam Counties)
- h. BRANCHES Domestic Violence Shelter**  
P.O. Box 403, Huntington, WV 25708  
24-hour crisis phone: 304-529-2382  
Email: [info@branchesdvs.org](mailto:info@branchesdvs.org)  
<https://www.branchesdvs.org/>
- i. Legal Aid of West Virginia**  
418 8<sup>th</sup> Street  
Huntington, WV 25701  
Phone: (304) 697-2070
- j. The Office of Advocacy and Support (for excused absences)**  
Kat Smith, Student Advocate  
Memorial Student Center, 2W32  
[file1@marshall.edu](mailto:file1@marshall.edu)
- k. Office of the Ombuds**  
University Ombuds Le'Kesha Taylor  
MSC BW14

ombuds@marshall.edu  
Phone: (304) 696-2438

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

Marshall University Counseling Center Staff  
Marshall University Women's & Gender Center Staff  
Marshall University Psychology Clinic Staff  
Marshall University Student Health  
Marshall University Violence Prevention and Response Program

## 2. Medical Resources

- a. **Cabell Huntington Hospital**  
Emergency Department  
304-526-2200  
<http://cabellhuntington.org/services/emergency-trauma/>
- b. **Cabell Huntington Health Department**  
703 7<sup>th</sup> Avenue  
Huntington, WV 25701  
304-523-6483  
<https://www.cabellhealth.org/>
- c. **St. Mary's Medical Center**  
Emergency Services  
304-526-1111  
<https://www.st-marys.org/centers-services/emergency-services/>
- d. **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's 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 University's website for online reporting (which allows for anonymous reporting) is located at <https://www.marshall.edu/eeoaa/complaint-form/>.

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

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](mailto:OCR.Philadelphia@ed.gov)  
<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

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

## **B. RESOURCES FOR RESPONDENT**

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

- 1. Marshall University Counseling Center (for Students)**  
1st Floor Prichard Hall, One John Marshall Drive  
Huntington, WV 25755  
Phone: 304 696-3111
- 2. Marshall Behavioral Health Center**  
GO1 Gullickson Hall – 18<sup>th</sup> Street & 3<sup>rd</sup> Avenue  
Huntington, WV 25755  
Phone: 304 696-3751  
(this resource may have costs associated with it)
- 3. Marshall Campus Psychology Clinic**  
Room 335-A, Harris Hall  
Huntington, WV 25755  
Phone: 304 696-2772  
(this resource may have costs associated with it)
- 4. Marshall University Office of Student Affairs**  
Marshall Student Center 2W38  
Marshall University  
Huntington, WV 25755  
304-696-6422
- 5. Marshall University Violence Prevention and Response Program**  
1205 Wellness Center, Rec Center, One John Marshall Drive  
Huntington, WV 25755  
Phone: 304 696-5701  
Email: [vrprogram@marshall.edu](mailto:vrprogram@marshall.edu)
- 6. The Office of Advocacy and Support (for excused absences)**  
Kat Smith, Student Advocate  
Memorial Student Center, 2W32  
[file1@marshall.edu](mailto:file1@marshall.edu)



**7. Office of the Ombuds**

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

## **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 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 opportunity to articulate concerns or issues about proceedings under the Policy or these Procedures;
- G.** The responsibility to provide truthful information in connection with any report, investigation, or resolution of Prohibited Conduct under the Policy or these Procedures;
- H.** The opportunity to articulate concerns or issues about proceedings under the Policy or these Procedures;
- I.** Timely notice of any meeting or proceeding at which the party’s presence is outlined in these Procedures;
- J.** The opportunity to choose an Advisor, including the right to have that Advisor attend any meeting or proceeding at which the party’s presence as contemplated by these Procedures;
- K.** Written notice of an investigation, including notice of potential Policy violations and the nature of the alleged Prohibited Conduct;
- L.** 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 any Decision-maker for bias or conflict of interest;
- M.** The opportunity to offer information, present evidence, and identify witnesses during an investigation;
- N.** 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;
- O.** The opportunity to be heard, orally and/or in writing, as to the determination of a Policy violation and the imposition of any sanction(s) as outlined in these Procedures;
- P.** Timely and equal access to any information that will be used during Informal or Formal Resolution proceedings and related meetings;

- Q. Reasonable time to prepare any response as contemplated by these Procedures;
- R. Written notice of any temporary delay or limited extension of timeframes for a good cause;
- S. 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
- T. An opportunity to appeal the findings of the Review Panel/Decision-makers.

## **V. DEFINITIONS**

The forms of Prohibited Conduct which fall within the jurisdiction of Title IX are defined in the Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation Policy and Title IX (BOG GA-1) (the “Policy”).

- A. **Actual Knowledge.** Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a University’s Title IX Coordinator or any official of the University who has authority to institute corrective or supportive measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the Respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective or supportive measures on behalf of the University. “Notice” as used in this paragraph includes but is not limited to a report of sexual harassment to the Title IX Coordinator.
- B. **Advisor.** Any person intended to assist the Complainant or Respondent student during the disciplinary process, including, but not limited to, a University-appointed Advisor, faculty member, attorney, or other person. Unless otherwise indicated by the Complainant or Respondent in writing, the Advisor shall be provided a copy of all materials provided to the Complainant or Respondent. An Advisor 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.** 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 the 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.** 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

extracurricular 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.** This means 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.** A mutually acceptable romantic, dating, or sexual relationship between individuals.
- J. Decision-maker.** 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 a determination of responsibility after an independent review of the Investigation Report, appeals, or other filings.
- K. Evaluation Panel.** The group of individuals identified in Section VII.A. who will conduct the Health and Safety Threat Assessment where law enforcement is not involved in the initial course of action.
- L. 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 University 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 University with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, through an online portal provided for this purpose by the University, or by electronic mail, by using the contact information 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 paper document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) 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.

- M. Grievance Process.** A method of resolution utilized to address allegations of sexual harassment, other sexual misconduct, and retaliation as defined by BOG GA-1 policy.
- N. Informal Resolution Facilitator.** An individual appointed by the Title IX Coordinator to facilitate voluntary Informal Resolutions between the parties. Informal Resolution 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(s).** University position responsible for the University’s Title IX investigations and other investigations involving sexual harassment, sexual misconduct, or other forms of interpersonal violence, who is trained on the definition of sexual harassment, the scope of the University’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 prejudgment of the facts at issue, conflicts of interest, and bias. Investigations may be done by the University Title IX Investigator or other trained individual they designate or assign to a 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.** For purposes of this Policy only, this 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.** 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.** - Should a student 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 student 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.** The Complainant(s) and Respondent(s) in a matter, collectively.
- U. Privacy within the Grievance Process.** 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.** Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in Board of Governors Policy GA-1.
- W. Reasonable Person.** A reasonable person under similar circumstances and with similar identities to the Complainant.
- X. Report.** Information provided to the Title IX Office indicating that sexual harassment, other sexual misconduct, or retaliation may have occurred.
- Y. Reporter.** For purposes of this the Policy, any individual that makes or files a complaint about prohibited conduct under this Policy. The Reporter may be the Complainant, any other person, or the University.
- Z. Respondent.** Respondent means 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.** 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.** A consequence imposed by the University on a Respondent who is found to have violated BOG GA-1.
- CC. Social Obligation Hold.** A Hold will be placed on the student's account if a student is charged with or found responsible for Prohibited Conduct. A Social Obligation Hold will prevent the student from conducting University business without the approval of the Title IX Coordinator as well as prevents a student from registering for academic courses pending the outcome of the investigation, adjudication, and disposition of the complaint. A student who is under a Social Obligation Hold is not permitted to withdraw from the University without the approval of the Title IX Coordinator. In situations where a student is found responsible and given a Reportable Sanction, a notation will be placed on the Student's transcript.
- DD. Standard of Proof.** The University will use 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."

- EE. Student.** For purposes of these Procedures, an individual subject to the Marshall University Board of Governors Policy SA-1, The Code of Student Rights and Responsibilities.
- FF. Support Person.** 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.
- GG. Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or 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.
- HH. Third Party.** An individual who is not a University student, faculty, or staff member. Third parties may be a participant in any University related program or activity, for example, visitors, guests, independent contractors, and vendors.
- II. Title IX Coordinator.** 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.
- JJ. Title IX Team.** The Title IX Coordinator, Title IX Investigator, Title IX Case Manager, and the members of the grievance process pool.
- KK. Witness.** 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. Initial 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. MUPD will be responsible for completing the necessary Threat Assessment, independent of the Title IX Coordinator.
3. Upon request, the University will temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while the MUPD or other law enforcement agency is in the process of gathering information. Suspensions of investigations typically last 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.
4. 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 a student reveals information that they may wish to keep confidential, a Campus Security Authority should make every effort to ensure that the student understands:
  - a. the employee's obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator,
  - b. the student's option to request that the school maintain their confidentiality, which the University (e.g., Title IX Coordinator) will consider, and
  - c. the student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual assault-related services (e.g., sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers).
2. 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 student or another person has shared, and that the University will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location.

## C. Report received by Title IX Coordinator

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

1. Assess the Complainant's safety and well-being and offer the University's immediate supportive measures and assistance;
2. Inform the Complainant of the right to seek medical treatment and explain the importance of obtaining and preserving forensic and other evidence;
3. Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
4. Inform the Complainant about University and community resources, the right to seek appropriate and available remedial, protective, or supportive measures, and how to request those resources and measures;
5. 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;
6. Explain the University's prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation;
7. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness,

and/or any other third party with knowledge of the reported incident;

8. Ascertain the ages of the Complainant and the Respondent, if known, and if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and
9. Communicate with the Marshall University Office of Public Safety (MUPD) and other appropriate University officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

When a decision is reached to initiate an investigation or to take any other action under these Procedures that impacts a Respondent (including the imposition of 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**

### **A. EVALUATION PANEL SAFETY AND RISK ASSESSMENT**

Under specific circumstances, Marshall University may remove a student Respondent from the University's education program or activity, in part or entirely, on an emergency basis. Before an emergency removal is enacted, the Evaluation Panel conducts an individualized safety and risk analysis. The Evaluation Panel must determine that an immediate threat to the physical health and safety of any student or other individual arising from the allegations of sexual harassment or other sexual misconduct justifies removal and provide the Respondent with notice of the emergency removal and an opportunity to challenge the decision immediately following the removal. FOR EMPLOYEE PROCEDURES - If deemed appropriate, Marshall University may place a non-student employee Respondent on administrative leave during the completion of the grievance process. The Evaluation Panel shall include, at a minimum: (1) the Title IX Coordinator, (2) a representative of the University Police Department (the "MUPD Representative"), (3) a representative from the Office of Student Conduct, and (4) a representative of the Marshall University Counseling Center<sup>2</sup>. In addition, the Evaluation Panel may include other representatives from the University Community, including, but not limited to, Housing and Residence Life, Human Resources Office, or the Office of the Provost, depending on the circumstances of the reported incident and the status of the Complainant and the Respondent. This risk analysis will determine if there is an immediate threat to the physical health and safety of any student or other individual arising from the allegations of sexual harassment or other sexual misconduct and if that immediate threat justifies the emergency removal of the Respondent from the University's education program or activity.

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

### **B. HEALTH AND SAFETY RISK ASSESSMENT**

1. **Risk Factors.** The Evaluation Panel will determine whether the reported information and any other

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



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

- a. Whether Respondent has prior arrests, is the subject of prior reports, complaints related to any form of Prohibited Conduct, or has any history of violent behavior;
  - b. Whether the Respondent has a history of failing to comply with any University No Contact Order, other University protective or supportive measures, and/or any judicial protective order;
  - c. Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
  - d. Whether the Prohibited Conduct involved multiple Respondents;
  - e. Whether the Prohibited Conduct involved physical violence. “Physical violence” means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon;
  - f. Whether the report reveals a pattern of Prohibited Conduct (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
  - g. Whether the Prohibited Conduct was facilitated through the use of “date/acquaintance-rape” drug or similar drugs or intoxicants;
  - h. Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless, or unaware that the Prohibited Conduct was occurring;
  - i. Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18); and/or
  - j. Whether any other aggravating circumstances or signs of predatory behavior are present.
2. Under specific circumstances, Marshall University may remove a student Respondent from the University’s education program or activity, in part or entirely, on an emergency basis. Before an emergency removal is enacted, the Evaluation Panel conducts an individualized safety and risk analysis. The Evaluation Panel 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 Evaluation Panel 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 (including class attendance), removal from University housing, restriction of access to particular areas of campus, and suspension of participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate athletics.

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 Evaluation Panel, 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.

3. **Disclosure(s) of Information to Law Enforcement.** The Evaluation Panel is *required* to disclose information about alleged Prohibited Conduct to law enforcement in the following circumstances:
  - a. If the Evaluation Panel (or, in the absence of consensus within the Evaluation Panel, the MUPD Representative) concludes that there is a significant and articulable threat to the health or safety of the Complainant or to any other member of the University community and that disclosure of available information (including the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident) is necessary to protect the health or safety of the Complainant or other individuals; the MUPD Representative will immediately disclose the information to the law enforcement agency that would be responsible for investigating the alleged act of Prohibited Conduct. The Evaluation Panel will make this determination based upon a review of the totality of the known circumstances and consideration of the list of Risk Factors, as described in Section VII.B.1 of these Procedures. The Title IX Coordinator will promptly notify the Complainant whenever such disclosure has been made.
  - b. If the alleged act of Prohibited Conduct constitutes a felony violation of the West Virginia Code, the MUPD Representative will so inform the other members of the Evaluation Panel and will, within twenty-four (24) hours: (i) consult with the appropriate Prosecuting Attorney or other prosecutor who would be responsible for prosecuting the alleged act of Prohibited Conduct (the "Prosecuting Attorney") and (ii) disclose to the Prosecuting Attorney the information then known to the Evaluation Panel. Such disclosure will exclude the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident (the "Identifying Information") unless the Identifying Information was disclosed to law enforcement under the health and safety exception described in paragraph (a), above, in which case the Identifying Information also will be disclosed to the Prosecuting Attorney.
4. **Supportive Measures.** Supportive 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. Supportive measures may include the following to the extent reasonably available and appropriate.
  - a. **Interim suspension.** Immediate separation of a Student from the University and/or housing pending an investigation or adjudication. Through the duration of the interim suspension, the Student may be restricted from University property and may be required to provide prior notice and receive approval from the 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 Student's own safety and welfare. Interim Suspension/Emergency Suspension procedures are set forth more fully in Section 2.03 of the Student Disciplinary Procedures.

**b. Mutual No Contact Order.** A mutual no contact order is an official University order that serves as notice to individuals (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, requesting a 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 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 a Student and/or the University community. This may include the use of alternate dispute resolution services such as mediation or restorative practices when appropriate.

**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.

**5. 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.

**6. 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 Sections III and III.A. for contact information for services, or they can be found at [www.marshall.edu/titleix](http://www.marshall.edu/titleix). These are also referred to as supportive measures.

## **C. UNIVERSITY ACTIONS FOLLOWING HEALTH AND SAFETY THREAT ASSESSMENT**

Upon completion of the health and safety threat assessment by either MUPD or the Evaluation Panel, as set forth above in these Procedures, then the Title IX Coordinator 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 Title IX Coordinator will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, the health and safety threat assessment, and the determinations of the Evaluation Panel will be documented and retained by the University in accordance with applicable law.

1. **Where the Complainant Wishes to Pursue Formal Resolution.** In every case in which the Complainant reports Prohibited Conduct and requests an investigation and disciplinary action, the Title IX Coordinator will promptly initiate Formal Resolution under these Procedures.
2. **Where the Complainant Requests Anonymity, that an Investigation Not Be Pursued, and/or that No Disciplinary Action Be Taken.** A Complainant may 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 discrimination or harassment, including, but not limited to, sexual misconduct, will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the institution's legal obligation to ensure a working and learning environment that is free from discrimination or sexual misconduct and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation and to ensure that the institution meets its obligations under Title IX. The institution may be limited in its response and investigation if confidentiality is requested.

If a Complainant requests that no investigation be pursued and/or that no disciplinary action be taken, the report will be reviewed under discretionary Title IX Dismissal. The Title IX Coordinator will consider the following factors in evaluating request(s): (1) the totality of the known circumstances; (2) the presence of any Risk Factors, as described in Section VII.B.1 of these Procedures; (3) the potential impact of such action(s) on the Complainant; (4) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct; (5) the existence of any independent information or evidence regarding the Prohibited Conduct; and (6) any other available and relevant information. The University will seek to honor the Complainant's request(s) if it is possible to do so while also protecting the health and safety of the Complainant and the University community.

- a. **Determination that a Complainant's Request(s) Can be Honored.** Where the 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 Complainant 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.<sup>3</sup>

If another report of sexual harassment or other sexual misconduct is received regarding the same Respondent, the Title IX Coordinator will reassess the situation and may choose to sign a formal complaint in the original case in the interest of the safety of the campus community. In this instance, the Title IX Coordinator will attempt to contact the original complainant to discuss the need to move forward with the grievance process. If the complainant is unable to be reached or does not respond after two attempts, the Title IX Coordinator will notify the complainant in writing regarding the change of circumstances before proceeding to use the complainant's name in a formal complaint signed by the Title IX Coordinator.

- 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) causing the Title IX Coordinator to impose a Mutual No-Contact Order or an Interim Disciplinary Suspension on the Respondent; (ii) causing the Title IX Coordinator to place a "social obligation hold" on the Respondent's University record; (iii) initiating an investigation and Formal Resolution under these Procedures; and/or (iv) arranging, imposing, or extending any other appropriate remedial, 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 admission or otherwise accepted responsibility for the Prohibited Conduct). In the absence of such other evidence, however, the University will only be able to respond to the report in limited and general ways (i.e., through the provision of remedial measures, targeted training or prevention programs, or other remedies tailored to the circumstances).

## **D. NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY**

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<sup>3</sup> Although a report may be re-opened at any time, the University will only be able to pursue disciplinary resolution and sanctions where the Respondent continues to be a University "Student" (i.e., continues to be registered or enrolled for credit or non-credit-bearing coursework at the University).

## 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 or protective measures) that will directly affect the Respondent and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator retains the discretion to impose and/or modify any supportive or protective measures based on all available information. Supportive measures shall include, but not be limited to, those outlined in Section 2.02.D Interim Measures of the Student Disciplinary Procedures. Supportive measures will remain in effect until the resolution of the report by the Review Panel, unless new circumstances arise that warrant reconsideration of the 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 appealing to the Review Panel.

### E. NOTICE OF POTENTIAL UNIVERSITY ACTIONS AGAINST STUDENT GROUPS OR ORGANIZATIONS

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

## 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 University's education program or activity, or (c) did not occur against a person in the United States, then the University's Title IX Coordinator 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 Student Code of Conduct.
2. **Discretionary Dismissal:** The Title IX Coordinator 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 Title IX Coordinator must promptly send written notice of the dismissal via a Dismissal Letter and the reason(s) thereof simultaneously to the parties. Both parties have an equal opportunity to file an Appeal, as detailed below, to challenge the dismissal of any Title IX Formal Complaint. The Title IX

Coordinator may refer cases which are dismissed under Title IX jurisdiction to the Director of Student Conduct for review. A dismissal under these sections does not preclude action under another provision of the University's policies or Code of Conduct.

## **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 (as described in Section IX.A.2 of these Procedures), and
2. Informal Resolution (as described in Section IX.B of these Procedures), which includes a variety of informal options for resolving reports.

### **A. FORMAL RESOLUTION**

Formal Resolution is commenced when:

- i. A Complainant reports that a Student has engaged in one or more instances of Prohibited Conduct and requests, at any time, an investigation and disciplinary action; or
  - ii. 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.B of these Procedures, the Title IX Coordinator has determined, based upon a review of the totality of the circumstances and guided by a consideration of the Risk Factors, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the Complainant's request that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.
1. **Investigation.** Whenever Formal Resolution is commenced, the Title IX Coordinator will refer the matter to the University Title IX Investigator, who will designate themselves 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 copy of 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) the inform the parties of any

provision in the University'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. **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.
- d. **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.
- e. **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.
- f. **Other Forms of Discriminatory and/or Harassing Conduct and/or Violations of the Student Conduct Code.** If a report of Prohibited Conduct, as defined in and governed by the Policy GA-1, also implicates any other violation(s) of the University's Code of Student Conduct and/or Housing and Residence Life's policies, the Title IX Coordinator will evaluate all reported allegations to determine whether the alleged Prohibited Conduct and the alleged Code of Student Conduct violation(s) and/or Housing and Residence Life's policies may be appropriately investigated together without unduly delaying the resolution of the report of Prohibited Conduct. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of responsibility for the violation of University policy will be evaluated under the applicable policy (i.e., the Policy or the Student Code of Conduct and/or Housing and Residence Life's policies), but the investigation and resolution will be done in accordance with the applicable section of Appendix B of the Student Disciplinary Procedures.
- 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, Decision-makers, and/or Review Panel conclude that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Policy. Neither party is required to participate in the investigation nor with any form of resolution under these Procedures, and the Investigator, Decision-makers, and/or Review Panel 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 the commencement of an investigation through the Final Investigation Report will not exceed an estimated ninety (90) business days.<sup>44</sup> 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 a 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 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 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

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<sup>4</sup> This is an estimated timeframe which may vary on a case-by-case basis.

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. The Advisor may be any person, including an attorney, paid for by the Student. The parties may be accompanied by their respective Advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. Although the Advisors may provide support and advice to the party they represent at any meeting and/or proceeding, they may not, in any manner, disrupt such meetings and/or proceedings. 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 the relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. Such prior or subsequent conduct may also constitute a violation of the Code of Student Conduct, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information, and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.
- m. **Prior Sexual History.** 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. someone other than the Respondent committed the conduct alleged by the Complainant, or
  - ii. questions and evidence concerning 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 in order 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 Investigation 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.

An investigator will then provide each party's responses to the Draft Investigation Report to the other party. Parties 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 Investigation Report after receipt and consideration of any additional comments, questions, and/or information submitted by the parties during the designated review and response period, the Investigator(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 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 (and, where applicable, the Code of Student Conduct).

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 Investigative 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 Final Investigation Report.** Upon receipt of the Final Investigation Report, the Title IX Coordinator will distribute the Final Investigative Report to each party and each party's Advisor. The parties will have ten (10) business days to review the Final Investigation Report and submit a written response.

If the parties provide new evidence after the Final Investigation Report is distributed, the Title IX Coordinator may delay the hearing so that the investigation may be reopened to consider that evidence. 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.

- u. **Title IX Coordinator's Role After Distribution of Final Investigation Report.** Upon reviewing the Final 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. If the Title IX Coordinator determines that the matter should not be dismissed, the Title IX Coordinator will 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 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; and who will make a determination of responsibility after an independent review of the Investigation Report.<sup>5</sup> The Title IX Coordinator will select three (3) members from this pool to serve on the Review Panel. The Review Panel shall elect one member as Chair.<sup>6</sup> 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. 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 any concerns stated by either 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.

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<sup>5</sup> 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.

<sup>6</sup> The Hearing Officer and the Chair of the Review Panel are not the same individual.

- b. **Notice and Timing of Hearing and Pre-Hearing Conference.** Typically, a Live Hearing will be held within thirty (30) business days from the referral to the Review Panel for Live Hearing, subject to extension for good cause. Hearings that cannot be held before the end of a term will typically be held immediately after the end of the term or during the summer, as needed. 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.

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 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 an individual must be replaced.
- d. **Postponement of Hearing.** Permission to postpone a Hearing may be granted provided that the request to do so is based on a compelling emergency and communicated to the Hearing Officer prior to the time of the Hearing. The Title IX Coordinator may also request a continuation for good cause.
- e. **Live Hearing Required.** 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 Investigative Report, supplemental statements submitted in response to the Final Investigative 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 witnesses 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,
        - Advisor 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.
- 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. Student conduct hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures, requirements for pleadings, and the hearsay rule do not apply in student disciplinary hearings.
- 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 official record of the proceedings. 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 does 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 Live 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 fail 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. The Advisor may provide support and advice to a party at the Hearing. During the Hearing, an Advisor may conduct direct examination of the party and witnesses in addition to cross-examination. An Advisor may present an opening or closing statement on behalf of the 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. a party's Advisor is also a witness; the party may have an alternative advisor temporarily step in to question the advisor/witness.
  - b. 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 written Final Outcome Letter and determination regarding responsibility. To reach this determination, the University must apply the preponderance of the standard of evidence. The Review Panel will deliberate in closed session.

Any evidence that the Review Panel determines is relevant and credible may be 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.

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

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation *and* affirms a recommended finding of no responsibility, the matter will be considered resolved, and the investigation will be closed. The Title IX Coordinator may nevertheless ensure that 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 University'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;
- v. Any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- vi. 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 there is a finding of responsibility, the Review Panel may impose one or more sanctions. Sanctions may include any of the sanctions that are available for violations of the University's Code of Student Conduct as set forth in Section 2.05 Sanctions of the Student Disciplinary Procedures.

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

- i. The severity, persistence, or pervasiveness of the Prohibited Conduct;
- ii. The nature or violence (if applicable) of the Prohibited Conduct;
- iii. The 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 relevant 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, non-discriminatory, 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.

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

In addition to other sanctions, the Review Panel may direct the Title IX Coordinator to impose or extend a Mutual No-Contact Order and impose or extend academic, University housing and/or University employment modifications, as may be appropriate; impose or extend increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; arrange for conducting targeted or broad-based educational programming or training for relevant persons or groups; impose one or more restorative remedies to encourage a Respondent to develop insight about the Prohibited Conduct, learn about the impact of that Prohibited Conduct on the Complainant and the University community, and identify how to prevent that Prohibited Conduct in the future (including community service and mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); and/or impose any other remedial, 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. **Transcript Notations.** If the Review Panel imposes a Reportable Sanction, the Title IX Coordinator will notify the University Registrar to place a prominent notation on the Respondent's transcript, as provided in Section 2.05 Sanctions of the Student Disciplinary Procedures.
3. **Appeals of the Final Outcome Letter or Dismissal Letter.** Appeals are not new hearings. Rather, the review will be limited to a record of the original hearing and supporting documents. Appeals must be in writing. Verbal appeals will not be 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. Other 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. Title IX Coordinator, investigator(s), or Review Panel members 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 (5) business days of 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 issue 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 if filed by the close of the business day on the fifth business day 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 a Statement of Appeal is filed, provide the other party a copy of the written submission, and provide the other party notice of any extensions to appeal timeframes.
  - a. 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 that reached a determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator.
  - iii. Ensure that the final decision-maker(s) for the appeal complies with the applicable procedures.

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 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 Appeal Officer 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 a trained Appeal Officer to decide the appeal. The Appeal Officer is independent of the previous process, including any dismissal appeal that may have been heard earlier in the process.
  - ii. Provide the identity and contact information of 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 contains 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:
  - i. Complaint 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 all 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 in any sanctions imposed based on information presented during the appeal process, with a rationale supporting the modification.
- i. **Timing of Final Decision.** Within ten (10) business days of receipt of the Statement of Appeal, the Appeal Officer's decision will be communicated to all parties in writing.
- j. **Extension of Issuing a Decision.** The time period for the Final Decision-maker'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.

- k. **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.
  - l. **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.
4. **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:
- a. Referral to counseling and health services,
  - b. Referral to the Employee Assistance Program,
  - c. Education to the individual and/or the community,
  - d. Permanent alteration of housing assignments,
  - e. Permanent alteration of work arrangements for employees,
  - f. Climate surveys,
  - g. Policy modification and/or training,
  - h. Implementation of long-term mutual contact limitations between the parties, and
  - i. Implementation of adjustments to academic deadlines, course schedules, etc.

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.

5. **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.
6. **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 student's written permission.

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

A student may request a copy of 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.

7. **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.

## **B. INFORMAL RESOLUTION**

Both parties may voluntarily seek an Informal Resolution in place of an investigation and Formal Resolution. Informal Resolution is available at any time within the process 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, or to refer a report for Formal Resolution at any time. In addition, Informal Resolution may not be available where the Evaluation Panel has determined that one or more of the Risk Factors listed in Section VII.B.1 of these Procedures is present. 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 cases involving Sexual Assault and Interpersonal violence allegations.**

Participation in 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 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. The Advisor may be any person, including an attorney. The parties may be accompanied by their respective Advisors at any meeting or proceeding held as part of Informal Resolution. While the Advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in or in any manner disrupt such meetings and/or proceedings.

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

1. **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 third-party assistance or other help. This form of Informal Resolution may not be used where the allegation involves Sexual Assault.
2. **Resolution with the Assistance of a Third Party by Mediation or Arbitration.** A Complainant may seek assistance in informally resolving a report of Prohibited Conduct from the Title IX Coordinator, who can arrange to have a trained Informal Resolution Facilitator facilitate a meeting or meetings between 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 where the allegation involves Sexual Assault.
3. **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 of Informal Resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through 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) business days.

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

## C. 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.



# MARSHALL UNIVERSITY

## STUDENT PROCEDURES FOR REPORTS OF NON-TITLE IX SEXUAL AND GENDER-BASED HARASSMENT, SEXUAL MISCONDUCT, AND OTHER FORMS OF INTERPERSONAL VIOLENCE

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## **I. INTRODUCTION**

Marshall University ("University") is committed to providing a safe and non-discriminatory environment for all members of the University community. The University prohibits Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in this Policy by or against any member of the University community (together, "Prohibited Conduct"). These forms of Prohibited Conduct are defined in the Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation Policy – Including Title IX (BOG GA-1)("Policy"). This Appendix identifies the grievance procedures (Procedures) the University follows when it receives a report alleging Prohibited Conduct by a Student which falls outside of the jurisdiction of the Title IX grievance procedures, Appendix B, Section 1 of the Student Conduct Procedures. The University uses these Procedures to investigate and adjudicate any such allegations and to impose disciplinary sanctions against Students found responsible for violating the Policy.

These Procedures supersede the Student Disciplinary Procedures and to the extent these procedures are differing they take precedence. These Procedures should be read in conjunction with the Policy.

## **II. REPORTING**

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

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

The administrative investigation of complaints filed in accordance with these Procedures is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation is separate and will not take the place of an investigation, adjudication, or disposition of a complaint filed in accordance with these Procedures. The results of a law enforcement investigation, adjudication, or disposition are not determinative of and do not determine whether an individual is responsible for violating University rules, regulations, policies, or the Code of Student Conduct.

The University's ability to act 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.

## **III. 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;
- F. The responsibility to provide truthful information in connection with any report, investigation, or resolution of Prohibited Conduct under the Policy or these Procedures;

- G. The opportunity to articulate concerns or issues about proceedings under the Policy and these Procedures;
- H. Timely notice of any meeting or proceeding at which the party's presence is outlined in these Procedures;
- I. The opportunity to choose an Advisor, including the right to have that Advisor attend any meeting or proceeding at which the party's presence as 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 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 a Complainant or Respondent and the opportunity to challenge the Investigator or any member of the Review Panel for bias or conflict of interest;
- L. The opportunity to offer information, present evidence, and identify witnesses during an investigation;
- M. 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) as outlined in these Procedures;
- 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 as contemplated by these Procedures;
- Q. Written notice of any temporary delay or limited extension of timeframes for 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 Review Panel.

#### **IV. DEFINITIONS**

See "Definitions" used in Student Conduct Procedures SA-3, Appendix B, Section 1.

#### **V. INITIAL ASSESSMENT BY DIRECTOR OF STUDENT CONDUCT**

If a matter has been deemed outside of the jurisdiction of Title IX, the matter may be referred to Student Conduct for review. Upon receipt of a report of Prohibited Conduct committed by a Student, the Director of Student Conduct ("Director") will review the complaint and may make initial contact with the parties listed in order to make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report.

When a decision is reached to initiate an investigation or to take any other action under these Procedures that impacts a Respondent (including the imposition of interim supportive measures), the Director 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.

Under specific circumstances, Marshall University may remove a student Respondent from the University's education program or activity, in part or entirely, on an emergency basis. Before an emergency removal is enacted, the Director conducts an individualized safety and risk analysis. The Director must determine that an immediate threat to the physical health and safety of any student or other individual arising from the allegations of sexual harassment or other sexual misconduct justifies removal and provide the Respondent with notice of the emergency removal and an opportunity to challenge the decision immediately following the removal. This risk analysis will determine if there is an immediate threat to the physical health and safety of any student or other individual arising from the allegations of sexual harassment or other sexual misconduct and if that immediate threat justifies the emergency removal of the Respondent from the University's education program or activity.

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

Under specific circumstances, Marshall University may remove a student Respondent from the University's education program or activity, in part or entirely, on an emergency basis. Before an emergency removal is enacted, the Director conducts an individualized safety and risk analysis. The Director 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 Director 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 (including class attendance), removal from University housing, restriction of access to particular areas of campus, and suspension of participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate athletics.

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 Director, 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 Director where the Respondent may show cause why the removal should not be implemented or should be modified. Requests for a review meeting with the Director 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 Director 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 Director determines it is equitable to do so. At the review meeting with the Director, 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 Director will prepare a written determination/response to the review meeting within two (2) business days of the meeting taking place. The Director 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.



## VI. SUPPORTIVE MEASURES

Supportive measures may be initiated by the Office of Student Conduct to protect the safety and well-being of the persons involved in an incident and/or the campus community pending the outcome of the investigative and adjudicative processes. Interim measures may include, but are not limited to the following, to the extent reasonably available:

1. **Interim suspension.** Immediate separation of a Student from the University and/or housing by the Director (or designee) pending an investigation or adjudication. Through the duration of the interim suspension, the Student may be restricted from University property and may be required to provide prior notice and receive approval from the Director for the purpose of conducting University business. Interim suspension will be imposed only in exceptional circumstances to ensure the health, safety or welfare of members of the University or University property or to ensure the Student's own safety and welfare. Interim Suspension/Emergency Suspension procedures are set forth more fully in Section 2.03 of Student Disciplinary Procedures.
2. **No Contact Order.** A 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.
3. **Academic accommodations.** This may include assistance in transferring to another section of a course, assistance in requesting withdrawal or an incomplete grade in a particular course, leaves of absence or withdrawal from the University, or assistance requesting alternate methods of completing coursework.
4. **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.
5. **Employment accommodations.** This may include arranging for alternate University employment for Students employed by the University.
6. **Other accommodations.** Any other measure that may be arranged by the University (to the extent reasonably available) to ensure the safety and well-being of a Student and/or the University community. This may include the use of alternate dispute resolution services such as mediation or restorative practices when appropriate.
7. **Deferral of the degree.** The Student Conduct Hearing Board, or the Vice President of Student Affairs may withhold the conferral of the degree until the disciplinary action has been resolved. Deferral of a degree is an interim measure that is NOT dependent upon the health, safety or welfare of the campus but is imposed in cases where the disciplinary proceedings may not be resolved prior to Commencement.
8. **Appeals of Supportive Measures.** The Complainant or Respondent may appeal the Director's decision regarding any Interim Measures to the Review Panel as outlined in these procedures.
9. **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 Director, 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.
10. **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. of the Title IX Grievance Procedures for Students for contact information for services or they can be found at [www.marshall.edu/eoaa/resources/](http://www.marshall.edu/eoaa/resources/). These are also referred to as supportive measures.

## **A. UNIVERSITY ACTIONS FOLLOWING DIRECTOR'S ASSESSMENT**

Upon completion of the Director's initial assessment, the Office of Student Conduct 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 Office of Student Conduct will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, supportive measures, and the determinations of the Office of Student Conduct 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 Director will promptly initiate Formal Resolution under these Procedures.
2. **Where the Complainant Requests Anonymity, that an Investigation Not Be Pursued, and/or that No Disciplinary Action Be Taken.** A Complainant may request that personally identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

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

If a Complainant requests anonymity, the Director will consider the following factors in evaluating request(s) for anonymity: (1) the totality of the known circumstances; (2) the presence of any Risk Factors listed in Title IX Procedures, VII.B.1.; (3) the potential impact of such action(s) on the Complainant; (4) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct; (5) the existence of any independent information or evidence regarding the Prohibited Conduct; and (6) any other available and relevant information. The University will seek to honor the Complainant's request(s) if it is possible to do so while also protecting the health and safety of the Complainant and the University community.

- a. **Determination that a Complainant's Request(s) Can be Honored.** Where it is 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) 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 Complainant may choose to pursue Informal Resolution (if available) or Formal Resolution under these Procedures, keeping 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 Director may request that a report be re-opened and pursued under

these Procedures if any new or additional information becomes available.<sup>71</sup>

If another report of sexual harassment or other sexual misconduct is received regarding the same Respondent, the Director will reassess the situation and may choose to sign a formal complaint in the original case in the interest of the safety of the campus community. In this instance, the Director will attempt to contact the original complainant to discuss the need to move forward with the grievance process. If the complainant is unable to be reached or does not respond after two attempts, the Director will notify the complainant in writing regarding the change of circumstances before proceeding to use the complainant's name in a formal complaint signed by the Director.

- b. **Determination that a Complainant's Request(s) Cannot be Honored.** Where it is 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, the Director may take any appropriate University actions, which may include, without limitation, (i) causing the Director to impose a No-Contact Order or an Interim Disciplinary Suspension on the Respondent; (ii) causing the Director to place a "social obligation hold" on the Respondent's University record; (iii) initiating an investigation and Formal Resolution under these Procedures; and/or (iv) arranging, imposing, or extending any other appropriate remedial, protective, or supportive measures.

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

## **B. NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY ACTIONS**

The Director 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 Director will also promptly inform the Respondent of any action(s), (including any interim protective or supportive measures) that will directly affect the

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<sup>7</sup> Although a report may be re-opened at any time, the University will only be able to pursue disciplinary resolution and sanctions where the Respondent continues to be a University "Student" (i.e., continues to be registered or enrolled for credit or non-credit-bearing coursework at the University).

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

### **C. NOTICE OF POTENTIAL UNIVERSITY ACTIONS AGAINST STUDENT GROUPS OR ORGANIZATIONS.**

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

## **VII. GROUNDS FOR DISMISSAL OF FORMAL COMPLAINT**

The Director may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

1. A Complainant notifies the Director in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
2. The Respondent is no longer enrolled or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon discretionary dismissal, the University must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties. A dismissal under these sections does not preclude action under another provision of the University's policies or code of conduct.

## **VIII. UNIVERSITY RESOLUTION**

These Procedures offer two (2) forms of resolution of reports of Prohibited Conduct:

- A. Formal Resolution – which involves an investigation, and review and sanction (if applicable) by a Review Panel, and
- B. 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 a Student 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 Director's discretion, an investigation of the report of Prohibited Conduct is required; or
  - iii. Where it is concluded, based upon a review of the totality of the circumstances and guided by a consideration of the risk factors, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the Complainant's request that personally- identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.
1. **Investigation.** Whenever Formal Resolution is commenced, the Director will refer the matter to an Investigator who will designate himself/herself or one or more Investigators and/or an experienced external investigator to conduct a prompt, thorough, fair, and impartial investigation. Provided that, in the absence of the University Investigator, the Director may assign cases to other investigators or external investigators. All Investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, relationship violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and the University community while promoting accountability.
- a. **Notice of Investigation.** The Director 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 copy of 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 University'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 Director, 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 Director, 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 Director may determine that the investigation for each Respondent should be conducted separately.
  - c. **Ongoing Notice Requirement.** The Director will send an Amended Notice(s) of Investigation to each party should the Investigation reveal additional allegations of misconduct to be investigated.
  - d. **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.

- e. **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 Director.
- f. **Other Forms of Discriminatory and/or Harassing Conduct and/or Violations of the Student Conduct Code.** If a report of Prohibited Conduct, as defined in and governed by the University’s Policy GA-1 also implicates any other violation(s) of the University’s Code of Student Conduct and/or Housing and Residence Life’s policies, the Director, in conjunction with other appropriate University officials, will evaluate all reported allegations to determine whether the alleged Prohibited Conduct and the alleged Code of Student Conduct violation(s) and/or Housing and Residence Life’s policies may be appropriately investigated together without unduly delaying the resolution of the report of Prohibited Conduct. Where it is determined that a single investigation is appropriate, the determination of responsibility for the violation of University policy will be evaluated under the applicable policy (i.e., the Policy or the Student Code of Conduct and/or Housing and Residence Life’s policies), but the investigation and resolution will be done in accordance with these Procedures.
- 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, Decision-makers, and/or Review Panel conclude that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Policy. Neither party is required to participate in the investigation, nor with any form of resolution under these Procedures, and the Investigator, Decision-makers, and/or Review Panel 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 Director;
  - 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 an estimated ninety (90) business days.<sup>8</sup> 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 the Director will notify the parties in writing of any delay or the limited extension of this timeframe and the reason for such actions. actions along with providing parties with status updates, if necessary. The investigation will promptly resume as soon as feasible. 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. Any extension for Informal Resolution will not be shared with the parties in writing.

- 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 of their choosing. The Advisor may be any person, including an attorney paid for by the student, who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their respective Advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. Although the Advisors may provide support and advice to the party they represent at any meeting and/or proceeding, they may not, in any manner, disrupt such meetings and/or proceedings. Provided that if a party is being represented by an attorney

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<sup>8</sup> This is an estimated timeframe which may vary on a case-by-case basis.

or an Advisor not provided by the University, they must advise the Office of Student Conduct at least forty-eight (48) hours prior to the scheduled meeting or hearing. If requested, a University Advisor may be assigned to a Student.

- 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 the Code of Student Conduct, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.
- m. **Prior Sexual History.** 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. Investigator 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 in order 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 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 Report, after receipt and consideration of any additional comments, questions and/or information submitted by the parties during the designated review and response period, the Investigator(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 findings 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 (and, where applicable, the Code of Student Conduct).

The Investigator will deliver the Final Investigation Report to the Director. 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.

If the parties provide new evidence after the Final Investigation Report is distributed, the Director may delay the hearing so that the investigation may be reopened to consider that evidence. 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.

- t. **Distribution of Final Investigation Report.** Upon receipt of the Final Investigation Report, the Director will distribute the Final Investigation Report to each party and each party's advisor. The parties will have ten (10) business days prior to review the Final Investigative Report and submit a written response.
- u. **Recommended Finding(s) Determination of Responsibility.** When the Investigator determines that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility on one or more of the allegations, the Respondent may accept or contest such recommended finding(s) by so notifying the Director, in writing within five (5) business days of receiving the Final Report. If the Respondent accepts the recommended finding(s) of responsibility, the Director will refer the case to the Review Panel solely on the issue of sanctions. The sanctions to be imposed are outlined in Section VIII.A.3(h) of these Procedures. If the Respondent contests one or more of the recommended finding(s), the Respondent may submit a written statement within ten (10) business days explaining why the Respondent contests such finding(s). The Director will ensure that the Complainant has an opportunity to review and respond in writing to any such statement. Complainant's response is due within three (3) business days after receipt of Respondent's written contest statement. The Director will provide the Final Investigation Report, together with any statements by the parties, to the Review Panel for further proceedings as outlined in Section VIII.A.3 of these Procedures.
- v. **Recommended Finding(s) of No Responsibility.** When the Investigator determines that there is insufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility on one or more of the allegations, the Complainant may accept or contest the recommended finding(s) by so notifying the Director, in writing within five (5) business days of receiving the Final Report. If the Complainant accepts the recommended finding(s) of no responsibility, the investigation will be closed and documented in accordance with applicable University policies. If the Complainant contests one or more of the recommended finding(s), the Complainant may submit to the Director a written statement within ten (10) business days explaining why the Complainant contests such finding(s) as specified by the Director. The Director will ensure that the Respondent has an opportunity to review and respond in writing to any such statement. Respondent's response is due within three (3) business days after receipt of Complainant's written contest statement. The Director will provide the Final Investigation Report, together with any statements by the parties, to the Review Panel for further proceedings as outlined in

these Procedures.

w. **Director of Student Conduct's Role After Distribution of Final Investigation Report.** Upon reviewing the "Investigative Report" and any written responses thereto, the Director will:

- i. Determine whether the investigation reveals facts requiring or permitting dismissal of the formal complaint. If dismissal is warranted, the Director will inform the parties, in writing, of the dismissal decision, the reason therefore, and an opportunity to appeal the dismissal.
- ii. If the Director determines that the matter should not be dismissed, the Director will send a Notice of Referral for a Review Panel Hearing contemporaneously to the parties and the Review Panel Hearing Officer. The Director of Student Conduct 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.

x. **Impact and Mitigation Statements.** Where there is a finding of responsibility on one or more of the allegations or the matter has been referred to the Review Panel for Live Hearing, both parties may submit a statement to the Director 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 Director 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 Director 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 prejudgment 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.<sup>9</sup> The Director will select three (3) members from this pool to serve on the Review Panel. The Review Panel shall elect one member as Chair.<sup>10</sup> 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. 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 Director'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 Director 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 Director as soon as possible. The Review Panel members cannot be the same person(s) as the Director, or the investigator(s) assigned to the matter.

a. **Standard of Review.** If either of the parties contests the Investigator's recommended finding(s) of responsibility or no responsibility for an alleged violation of the Policy, the Review Panel will hold a Hearing to determine: (1) whether the concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or

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<sup>9</sup> 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.

<sup>10</sup> The Hearing Officer and the Chair of the Review Panel are not the same individual.

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 Hearing will be held within thirty (30) business days from the referral to the Review Panel for Live Hearing or Sanctions, subject to extension for good cause. Hearings that cannot be held before the end of a term will typically be held immediately after the end of the term or during the summer, as needed. The 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 Director 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 VIII. A.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.

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 Hearing Officer 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 decision as to whether or not to grant the challenge. The Review Panel shall make their 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 an individual must be replaced.
- d. **Postponement of Hearing.** Permission to postpone a Hearing may be granted provided that the request to do so is based on a compelling emergency and communicated to the Hearing Officer prior to the time of the Hearing. The Director may also request a continuation for good cause.
- e. **Live Hearing Format.** 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.

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. The parties may address any information in the Final Investigation Report, and supplemental statements submitted in response to the Final Investigation Report.

- i. 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.
- ii. Cross Examination.
  - a. The parties may not directly question each other.
  - b. Advisors may directly question a party or other witnesses.
  - c. Only relevant cross examination and other questions may be asked of a party or witness.
  - d. 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.
  - e. Parties will provide proposed questions and proposed areas of questioning prior to the hearing as stated above.
  - f. 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.

Examples of questioning that may be harassing or abusive:

- Advisor yells or screams at the other party/witness,
- Advisor 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.
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- iii. The typical 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 has an opportunity to ask Complainant relevant questions, and Respondent 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 has an opportunity to ask Respondent relevant questions, and Complainant 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 has an opportunity to ask relevant questions of those individual(s) questions, and Respondent 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 has an opportunity to ask relevant questions of those individual(s) questions, and Respondent 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 has an opportunity to ask relevant questions of those individual(s) questions, and Complainant 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.
- iv. 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 any advisors will remain seated during questioning. The Review Panel Chair will determine the relevance of all questions. The party or 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 a party or an advisor to frame why a question is or is not relevant from their perspective but will not entertain arguments from the party or advisor on relevance once the Review Panel Chair has ruled on a question.
- v. Formal rules of evidence and court procedures are not used and do not apply unless specified herein. Student conduct hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures, requirements for pleadings, and the hearsay rule do not apply in student disciplinary hearings.
  - vi. 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 Respondent and the Complainant, upon request, shall be provided with a copy of the recording. The original recording will remain the property of the University and will be considered the official record of the proceedings. 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.

**f. 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 Live 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 fail to show up 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 **may** 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. The Review Panel may consider any statement of that party and/or witness contained within the Investigation Report in reaching a determination regarding responsibility.

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 have the right to be accompanied at the Pre-Hearing Conference and Hearing by one (1) Advisor, unless required by law, of their choosing. The Advisor may be anyone, including an attorney, who is not otherwise a party or witness. If the Complainant or Respondent is consulting with more than one (1) Advisor, they must designate their "Advisor" for purposes of these proceedings. The Advisor may provide support and advice to a party at the Hearing, the Advisor may speak on behalf of their party or otherwise participate in the Hearing. During the Hearing, an Advisor may conduct direct examination of the party and witnesses in addition to cross-examination. An Advisor 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.

- g. **Determination by the Review Panel.** Where either of the parties has contested the recommended finding(s) of responsibility, the members of the Review Panel will, at the conclusion of the Hearing, determine, by a simple majority vote: (1) whether the concern(s) stated by the contesting party raise substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation; and, if not, (2) whether there is sufficient evidence to support the Investigator's recommended finding(s) by a Preponderance of the Evidence. The Review Panel will deliberate in closed session.

Any evidence that the Review Panel determines is relevant and credible may be 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



Director prior to the hearing. The impact statement(s) will be held by the Director 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 Director. 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 Director 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.

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

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation *and* affirms a recommended finding of no responsibility, the matter will be considered resolved and the investigation will be closed. The Director may nevertheless ensure that remedial or 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.

- h. **Final Outcome Letter.** The Review Panel Chair will simultaneously issue a written decision (the "Final Outcome Letter") to both the Complainant and the Respondent, with a copy to the Director, within five (5) business days following the Review Panel Hearing (or such longer time as the Chair may for good cause determine). 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 University'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,
- v. Any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- vi. 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.

No decisions will be communicated orally.

- ii. **Sanctions.** Where there is a finding or acceptance of responsibility, the Review Panel may impose one or more sanctions. Sanctions may include any of the sanctions that are available for violations of the University's Code of Student Conduct as set forth in Section 2.05 of the Student Disciplinary Procedures.

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

- i. The severity, persistence or pervasiveness of the Prohibited Conduct;
- ii. The nature or violence (if applicable) of the Prohibited Conduct;
- iii. The 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 relevant 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 further recurrence, and/or to remedy its effects on Complainant and/or the community; and
- x. Any other mitigating, aggravating, or compelling factors.

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

In addition to other sanctions, the Review Panel may direct the Director to impose or extend a No-Contact Order and impose or extend academic, University housing and/or University employment modifications, as may be appropriate; impose or extend increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; arrange for conducting targeted or broad-based educational programming or training for relevant persons or groups; impose one or more restorative remedies to encourage a Respondent to develop insight about the Prohibited Conduct, learn about the impact of that

Prohibited Conduct on the Complainant and the University community, and identify how to prevent that Prohibited Conduct in the future (including community service and mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); and/or impose any other remedial, 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. **Transcript Notations.** If the Review Panel imposes a Reportable Sanction, the Director will notify the University Registrar to place a prominent notation on the Respondent's transcript, as provided in Section 2.05 of the Student Disciplinary Procedures.
3. **Appeals of the Final Outcome Letter.** Appeals of the Final Outcome Letter will be assigned to the Vice President of Student Affairs for issuance of a Final Decision. 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 a decision of the Review Panel. The individual appealing is referred to as the appellant. In situations where more than one party appeals, they will be designated as Complainant/Appellant, Respondent/Appellant and/or Director Appellant as appropriate.
  - b. **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;
    - 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;
    - iii. Director, 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 Director, the Title IX Coordinator will manage the administration of the appeal process.; and/or
    - iv. Sanctions imposed by the hearing body were substantially disproportionate to the violation(s) for which the student was found responsible.
  - c. **Statement of Appeal.** The Appellant must submit a Statement of Appeal to the Director of Student Conduct within five (5) business days of receipt of the Final Outcome 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 issue 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 Director if filed by the close of the business day on the fifth business day and may be granted by the Director of Student Conduct.
  - d. **Notification of Appeal.** Upon receipt of a Statement of Appeal, the Director 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 extensions to appeal timeframes.
    - ii. 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 Director. The non-appealing party's rebuttal will be provided to the appealing party. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) from the Review Panel that reached a determination regarding responsibility or dismissal, the Investigator(s), or the Director.

- iii. Ensure that the final decision-maker(s) for the appeal complies with the applicable procedures.

If the grounds for appeal include a claim of procedural irregularity or conflict of interest or bias, the Director, 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 will be held in abeyance (temporarily delayed) automatically during the period in which an Intent to File Appeal may be filed and until the Vice President of Student Affairs reaches a decision on any appeal filed; however, the Vice President of Student Affairs has the right to retain certain conditions or restrictions, particularly those related to life-safety issues and "no contact" orders.
- f. **Appeal Must Be Timely Filed.** If no appeal is filed, or an appeal is not timely, the original finding(s) will stand, effective on the date the appeal period expires. The Director of Student Conduct will determine if the appeal is timely.

If the appeal is timely, the Director will refer the matter to the Vice President of Student Affairs for review of the record below.

If both parties submit appeals, the same Vice President of Student Affairs will decide both appeals individually, but contemporaneously. The same Appeal Officer will decide any appeals arising from the same facts and circumstances.

- g. **Guidance for Vice President of Student Affairs.** The following will guide the Vice President of Student Affairs 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 Director 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.

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

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

i. **Timing of Final Decision.** Within ten (10) business days of receipt of the Statement of Appeal, the Vice President of Student Affairs will notify the parties in writing of the decision via by hand delivery, University email or certified mail, return receipt.

j. **Extension of Issuing a Decision.** The time period for the Vice President of Student Affairs' decision may be extended by agreement of the parties. An extension may also be made by the Vice President of Student Affairs or the Director. The Vice President of Student Affairs or the Director will inform the parties in writing of any extension of the time period to make a decision.

k. **Notice of Appeal Outcome.** Typically, the Vice President of Student Affairs' 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.

l. **Final Decision.** The decision of the Vice President of Student Affairs or their designee shall be 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.

4. **Long-Term Remedies and Other Actions.** Following the conclusion of the grievance process, and in addition to any sanctions implemented, the Director 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:

- a. Referral to counseling and health services,
- b. Education to the individual and/or the community,
- c. Permanent alteration of housing assignments,
- d. Climate surveys,
- e. Policy modification and/or training,
- f. Implementation of long-term mutual contact limitations between the

- parties, and
- g. Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Director, 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 Director 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.

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

The Office of Student Conduct maintains a record of prohibited conduct investigations.

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

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

A student may request a copy of their prohibited conduct 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:

**Office of Student Conduct/Director of Student Conduct**  
Memorial Student Center, 2W38  
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.

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

## **B. INFORMAL RESOLUTION**

Both parties may voluntarily seek Informal Resolution in place of an investigation and Formal Resolution. The University, however, has the discretion to determine whether the nature of the reported conduct is appropriate for Informal Resolution, to determine the type of Informal Resolution that may be

appropriate in a specific case to refer a report for Formal Resolution at any time. In addition, Informal Resolution may not be available where it has determined that one or more Risk Factors are present. 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 cases involving Sexual Assault and Interpersonal violence allegations.**

Participation in 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 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. The Advisor may be any person, including an attorney, who is not otherwise a party or witness to the reported incident(s). The parties may be accompanied by their respective Advisors at any meeting or proceeding held as part of Informal Resolution. While the Advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

Informal Resolution may include the following, non-exhaustive, remedies:

1. **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. This form of Informal Resolution may not be used where the allegation involves Sexual Assault.
2. **Resolution with the Assistance of a Third Party by Mediation or Arbitration.** A Complainant may seek assistance in informally resolving a report of Prohibited Conduct from the Director, who can arrange to have a trained representative facilitate a meeting or meetings between 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 Director, the Complainant and the Respondent. This form of Informal Resolution may not be used where the allegation involves Sexual

Assault.

3. **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 of Informal Resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the terms of the agreement are implemented, and the matter is resolved and closed. If an agreement is not reached, and the Director 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 Director 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.

## C. 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.



Appendix C

# MARSHALL UNIVERSITY

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

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

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## **I. INTRODUCTION**

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

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

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

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

## **II. REPORTING**

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

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

Housing and Residence Life  
1 John Marshall Drive  
[housing@marshall.edu](mailto:housing@marshall.edu)  
Ph: 304-696-6766

The administrative investigation of complaints filed in accordance with these Procedures is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation will not take the place of an investigation, adjudication or disposition of a complaint filed in accordance with these procedures and the results of a law enforcement investigation, adjudication or disposition are not determinative of and do not determine whether an individual is responsible for violating University

rules, regulations, policies or the Student Conduct. The administration of complaints filed in accordance with these procedures may be carried out prior to, simultaneously with, or following civil or criminal investigations and/or proceedings. The University will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus or that affects the University community. Such cooperation may require the institution to temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while the law enforcement agency is in the process of gathering information. Suspensions of investigations typically last from three to ten days but may be extended depending upon the circumstances of each case and/or as dictated by other provisions of this Procedure. The University will promptly resume its administrative investigation/proceedings as soon as notified by the law enforcement agency that it has completed the evidence gathering process.

### **III. DEFINITIONS**

1. "Level One Judicial Ban" occurs when a student fails to meet with a member of the Housing and Residence Life staff within three business days of being charged with a conduct violation. The Level One Judicial Ban prohibits the student from signing guests into a residence hall, checking out residence hall equipment and amenity keys.
2. "Level Two Judicial Ban" occurs when a student fails to meet with a member of the Housing and Residence Life staff within five business days of a Level One Judicial Ban being placed on the student. The Level Two Judicial Ban prohibits the student from being signed in as a guest in any residence hall, signing guests into a residence hall, checking out residence hall equipment and amenity keys.
3. "Student" means, for purposes of this Policy, an individual subject to the Marshall University Board of Governors Policy SA-1, The Code of Student Rights and Responsibilities.

### **IV. PROCEDURES**

#### Housing and Residence Life Adjudication Process

1. Upon receipt of a report of an alleged violation, the Area Coordinator/Assistant Area Coordinator will notify the student(s) involved by sending a charge letter within two (2) business days.
2. The student(s) are required to set up an appointment with their Area Coordinator/Assistant Area Coordinator within three (3) business days of receiving notification of alleged violations.
  - a. Student will receive an email confirming the day and time they are scheduled to meet with the Area Coordinator/Assistant Area Coordinator .
  - b. If a meeting is not scheduled within the required time a level one judicial ban will be placed on the student until a meeting is held.
  - c. If no meeting is scheduled within five (5) business days of the Level One judicial ban being placed, the student will be sanctioned in absentia with failure to comply and will receive a level two judicial ban until a meeting is held with the Office of Student Conduct.
3. Student(s) who meet with their Area Coordinator/Assistant Area Coordinator will receive written notification by email of the meeting outcome including any sanction information.
4. Sanctions that are not completed or adhered to within the required time frame will result in a level two judicial ban being placed on the student until a meeting is held with the Office of Student Conduct.

## V. SANCTIONS

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

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

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

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

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

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

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

## VI. APPEALS

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

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