

# **MARSHALL UNIVERSITY BOARD OF GOVERNORS**

## **Rule No. GA-3**

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

#### **Section 1: General.**

- 1.1 Scope & Purpose: Marshall University (“University”) does not discriminate on the basis of race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression in the administration of any of its educational programs, activities, or with respect to admission or employment. Marshall is committed to providing a workplace, educational environment, and programs and activities free from sexual harassment and other sexual misconduct. To affirm its commitment to fairness and ensure compliance with federal and state laws and regulations, Marshall has developed this policy and related procedures to inform members of the University community about prohibited behavior and provide supportive measures designed to remediate the effects of sexual harassment and other sexual misconduct; and provide a prompt, fair, and impartial process to address alleged violations of this Policy. This Policy sets forth how discrimination, harassment, sexual harassment, sexual and domestic misconduct, certain consensual relationships, stalking, and retaliation will be addressed by Marshall University.
- 1.2 Authority: W. Va. Code §§ 18B-1-6, 18B-2A-4; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681; the West Virginia Human Rights Act, W. Va. Code §§ 5-11-1 to -20; the Campus Sexual Violence Elimination Act (“Clery Act”), 20 U.S.C. §1092, and the Violence Against Women Act (“VAWA”) of 1994, 42 U.S.C. §13925.
- 1.3 Effective Date: August 1, 2025
- 1.4 Revision History: Originally replaced Board of Trustees Series No. 9, which was transferred by the Higher Education Policy Commission to the institutional boards of governors. This policy was previously numbered as MUBOG Policy No. 5,” amended again on April 27, 2016, and title changed to “Policy Regarding Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation,” which was amended effective February 22, 2017. Due to changes in the federal guidelines, this policy originally became effective on August 14, 2020, by Marshall University Executive Order of the President. Thereafter, it was passed at the August 27, 2020, meeting of the MUBOG and became effective on November 18, 2020. Additional changes were made in 2021, 2022, and 2023. The current changes were passed on April 9, 2025.
- 1.5 Basis for Policy: For purposes of this policy, "sexual harassment and other sexual misconduct" includes sexual harassment and sexual assault, domestic violence and dating violence, stalking, and retaliation. These behaviors are prohibited as unlawful discriminatory conduct under Title VII of the Civil Rights Act of 1964 (as amended), Title IX of the Education Amendments of 1972, the Violence Against Women Act Reauthorization Act of 2022 (VAWA), the Campus Sexual Violence Elimination Act (Campus SaVE Act), and/or the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). "Sexual harassment and other sexual misconduct," for purposes of this policy, also includes sexual exploitation. Additionally, this policy contains a statement regarding consensual relationships in which one party retains a direct supervisory or evaluative role over the other party.

- 1.6 Applicable Scope and Jurisdiction of Policy: The expectations for conduct contained within this policy apply to all aspects of Marshall University's operations, locations, and programs and activities, including, but not limited to, regional campuses, property owned or controlled by the university; online programs; university-sponsored events, activities, and travel; and in buildings owned or controlled by student organizations recognized by Marshall University.

These expectations apply to all members of the Marshall University community, which includes but is not limited to students, student organizations and student groups, faculty, administrators, staff, trustees and officers, and third parties such as agents, vendors, guests, visitors, volunteers, and campers.

Any person may submit reports of prohibited behavior. Further, this policy encourages, and in some cases requires, reports of sexual harassment and other sexual misconduct regardless of where the incident occurred.

A violation of this policy by a student, student organization, or student group would also violate the student code of conduct. The Marshall University student code of conduct applies to all students, student organizations, and student groups whether the prohibited behavior occurred on or off campus; therefore, this policy applies to prohibited behavior by students, student organizations, and student groups whether it occurs on campus or off campus. Further, allegations of other conduct prohibited by the student code of conduct may be investigated and adjudicated in conjunction with violations of this policy.

Reports of prohibited behavior by faculty, administrators, staff, trustees, and officers will be assessed by the Title IX Coordinator to determine if the alleged behavior occurred within Marshall University's operations, locations, and programs, as described above, or if the alleged behavior, if true, may have effectively denied the Complainant equal access to education or employment at Marshall university.

If the Respondent in a reported violation of this policy is a student, student organization or group, faculty member, administrator, staff member, trustee, or officer, the grievance process described in this policy may be utilized regardless of the status of the Complainant. Reports of prohibited behavior on the part of third parties such as agents, vendors, guests, visitors, volunteers, and campers will be assessed by the Title IX Coordinator to determine the best means to stop the behavior, remediate the impact on the Complainant, and prevent further prohibited behavior, such as barring individuals from university property or events, among other possible actions. If the Respondent is unknown or is not a member of the university community, the university will not be able to utilize the grievance process; however, resources and other supportive measures will be offered to the Complainant by the Title IX Coordinator.

Marshall University will respond to reports of sexual harassment or other sexual misconduct irrespective of when the alleged incident occurred, including during semester breaks, leaves of absence, or periods of dismissal. There is no time limit on making a report or submitting a formal complaint to the Title IX Coordinator; however, if the Respondent is no longer a student or employee and/or if significant time has passed, the ability to investigate, respond, and provide remedies may be limited or not possible.

Acting on reports or formal complaints significantly impacted by the passage of time is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal action as appropriate. Marshall University will typically apply the policy in place at the time of the alleged misconduct and the process in place at the time a formal complaint is submitted by the Complainant or signed by the Title IX Coordinator.

The measures described in this policy and related processes may be initiated when a Respondent is charged with behavior that potentially violates both civil/criminal law and university policy, without

regard to pending litigation in court or criminal arrest and prosecution. The investigation into violations of this policy may be carried out prior to, simultaneously with, or following criminal proceedings off campus. Determinations made, and sanctions imposed under this policy will not be subject to change because criminal charges arising out of the same facts were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

If this policy directly contradicts any other university policy or procedures related to protected status discrimination, harassment, or retaliation, this policy takes precedence. An initial choice to use any particular policy does not preclude a later or simultaneous decision to use one or more of the others, or to use the criminal justice system.

Jurisdiction for Title IX reports does not apply if:

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

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

## **Section 2: General Definitions.**

- 2.1 "Actual Knowledge" means notice of sexual harassment or other prohibited conduct or allegations of sexual harassment or other prohibited conduct to the University's Title IX Coordinator or any official of the University who has the authority to institute corrective measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the Respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has the authority to institute corrective measures on behalf of the University. "Notice" as used in this paragraph includes but is not limited to a report of sexual harassment to the Title IX Coordinator.
- 2.2 "Administratively separate unit" means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.
- 2.3 "Admission" means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.
- 2.4 "Advisor" means a person for a party (the Complainant or Respondent) to accompany the party to meetings related to an investigation and related proceedings under this policy, to advise the party on that investigation and related proceedings, and to question the other party and witnesses at the hearing, if any. If a party does not have an advisor to question the other party and witnesses at the hearing, the

university will appoint one to do so.

- 2.5 “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment, other sexual misconduct, or retaliation under this policy. Provided that, 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 any other part.
- 2.6 “Confidential resource” means an employee who is not a mandatory reporter and is not obligated by this 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. Marshall also designated the following offices as additional confidential resources: Student Support Services TRIO Program, Women’s and Gender Center, Violence Prevention & Response Office, and Office of the Ombuds. All on campus confidential resources will undergo annual training through the Title IX Office to ensure they obtain training regarding the requirement of record keeping regarding confidential reports, including Clery reporting obligations and any other needed training regarding reporting obligations.
- 2.7 “Coercion” means the use of intimidation, threats of harm, or extortion to compel another individual to initiate or continue sexual activity against the individual's will or the use of these means for the purpose of retaliation as defined by this policy.
- 2.8 “Consent” means the following Marshall University's definition of consent:

Consent is knowing, voluntary, and clear permission to engage in sexual activity given by word or action. Reasonable reciprocation can be implied consent; however, silence, passivity or lack of active resistance alone, without words or actions demonstrating permission, cannot be assumed to show consent. In the absence of mutually understandable words or actions, it is the responsibility of the initiator, that is, the person who wants to engage in the specific sexual activity, to make sure that they have consent from their partner(s). Relying solely upon non-verbal communication can lead to miscommunication. It is important not to make assumptions. If confusion or ambiguity on the issue of consent arises at any time during the sexual interaction, it is important that the initiator stops and verbally clarifies the other individual’s willingness to continue.

Consent to some sexual acts does not imply consent to others.

Past consent to a given act does not imply ongoing or future consent. A current or previous intimate relationship is not sufficient to constitute consent. Once given, consent can be withdrawn at any time through understandable words or actions that clearly convey that a party is no longer willing to engage in sexual activity. If and/or once consent is withdrawn, that sexual activity must cease immediately. Consent can expire as it lasts for a reasonable time, depending on the circumstances.

Consent cannot be obtained from someone who is asleep, unconscious, physically helpless, or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or some other condition. Incapacitation means being in a state where a person lacks the capacity to appreciate the nature of giving consent to participate in sexual activity. One may not engage in sexual activity with another whom one knows, or should reasonably have known, is incapacitated as a result of alcohol or other drugs. The use of alcohol or other drugs can have unintended consequences. Alcohol or other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and effectively given. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of the use of alcohol or drugs on another’s ability to give consent. Being intoxicated or high does not diminish one’s responsibility to obtain consent and is never an excuse for sexual

misconduct.

Consent cannot be obtained by deception, fraud, threat, coercion, or force. Agreement given under such conditions does not constitute consent.

To give consent, one must be of legal age.

Consent within relationships must be considered in context. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar patterns that may be evidenced.

Consent cannot be implied or inferred by attire or from purchases made, such as buying dinner or spending money on a date.

Any individual who engages in sexual activity when the individual knows or should know that the other person has not given consent is in violation of this policy. It is not an excuse that the Respondent was intoxicated and did not realize the Complainant did not give consent.

- 2.9 “Education program or activity” means locations, events, or circumstances conduct that includes, but is not limited to, conduct that occurs in a building owned or controlled by a student organization that is officially recognized by Marshall University.
- 2.10 “Employee” means a person who performs work for the University and is paid for that work. For purposes of this Policy, employees include paid faculty, administrators, staff, graduate research and teaching assistants, and all student employees.
- 2.11 “Force” means the use of physical violence or constraint to gain sexual access to another person.
- 2.12 “Formal complaint” means a document submitted by a Complainant or signed by the Title IX Coordinator alleging behavior prohibited by this Policy (sexual harassment, other sexual misconduct, or retaliation) against a Respondent and requesting the University investigate the allegation.
- 2.13 “Grievance process” means the method of resolution utilized to address allegations of sexual harassment, other sexual misconduct, and retaliation as defined by this policy.
- 2.14 “Incapacitation” means a person who lacks the ability to make informed decisions is incapacitated and, therefore, cannot consent to sexual activity.

A person is incapacitated and cannot give consent if they are unable to understand what is happening or are helpless, asleep, or unconscious for any reason, including due to consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

Merely consuming or being under the influence of alcohol or other drugs does not constitute incapacitation. Incapacitation is not the same as intoxication, being drunk, or the inability to remember decisions made or actions taken while "blacked out." Incapacitation is determined by considering all relevant indicators of an individual's condition and actions at the time of sexual activity.

An individual who engages in sexual activity when that individual knows or should know that the other person is incapacitated is in violation of this policy. It is not an excuse that the respondent was intoxicated and, therefore, did not realize the complainant's incapacitation

- 2.15 “Investigator” means the person or persons charged with gathering information about an alleged violation of this Policy and compiling this information into an investigation report and file of evidence.
- 2.16 “Mandatory reporter” means an employee obligated by this Policy to share knowledge and reports of sexual harassment, other sexual misconduct, or retaliation with the Title IX Coordinator. Employees listed as confidential resources are not obligated to report to the Title IX Coordinator.
- 2.17 “Member of the University Community,” for purposes of this Policy only, means an individual engaged in any University activity or program, whether on or off campus, or any individual lawfully on University property, including, but not limited to, any person who is a student, staff, faculty member, other University official, or a visitor.
- 2.18 “Notice” means when an employee, student, or third party informs the Title IX Coordinator or any other official with authority of an alleged incident of sexual harassment, other sexual misconduct, or retaliation.
- 2.19 “Official with Authority (“OWA”)” means an employee of the University with the authority to implement corrective measures for sexual harassment, other sexual misconduct, and retaliation on behalf of Marshall University. Notice to any OWA constitutes actual knowledge under this Policy. For purposes of this Policy, the following employees are designated OWAs: Title IX Coordinator and Title IX Office staff, President, Provost, Vice Presidents, Athletic Director, Dean of Students, and Chief Human Resources Officer.
- 2.20 “Party” means the Complainant or Respondent. Also, parties mean Complainant(s) or Respondent(s) in a matter, collectively.
- 2.21 “Reasonable Person” means a reasonable person under similar circumstances and with similar identities to the Complainant.
- 2.22 “Remedies” means post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University’s educational program or activities, including employment.
- 2.23 “Report” means information provided to the Title IX Coordinator indicating that sexual harassment, other sexual misconduct, or retaliation may have occurred.
- 2.24 “Reporter” means, for purposes of this Policy, any individual that makes or files a report about prohibited conduct under this Policy. The Reporter may be the Complainant, any other person, or the University.
- 2.25 “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 this policy. Student organizations or groups may also be Respondents in the grievance process. It is presumed that a respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process
- 2.26 “Retaliation” means intimidation, threats, coercion, or discrimination against any person by Marshall University, a student, or an employee or other person authorized by Marshall University to provide aid, benefit, or service under Marshall University’s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution, in

grievance procedures, and in any other actions taken by Marshall University. Nothing in this definition or this part precludes Marshall University from requiring an employee or other person authorized by Marshall University to provide aid, benefit, or service under Marshall University's education program or activity to participate as a witness in or otherwise assist with an investigation, proceeding, or hearing under this part.

- 2.27 “Review Panel” means those with decision-making and sanctioning authority when allegations proceed to a hearing within an investigation or related proceedings. It also means those who can review other appealable issues as listed in procedures.
- 2.28 Sanction” means a consequence imposed by the University on a Respondent who is found to have violated this Policy.
- 2.29 “Student” means a person who has gained admission. This includes, but is not limited to, new students at orientation, persons not currently enrolled but who are still seeking a degree from Marshall University, persons currently under suspension, and any other person enrolled in a credit earning course offered by Marshall University and subject to the Marshall University Board of Governors Policy SA-3, The Code of Student Rights and Responsibilities.
- 2.30 “Student with a disability” means a student who is an individual with a disability defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).
- 2.31 “Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.  
  
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.
- 2.32 “Title IX Coordinator” means the official designated and authorized by Marshall University to coordinate Marshall University’s efforts to comply with its responsibilities under Title IX and this policy. References to the Title IX Coordinator throughout this policy or other procedures may also encompass a designee of the Coordinator for specific tasks.
- 2.33 “Title IX Team” means the following but not limited to: Title IX Coordinator, the Title IX Office staff members, Advisors, members of the Review Panel, and Appeal Officers.
- 2.34 “Witness” means a person who is requested to participate in the grievance process because they may have relevant information about the alleged violation. The investigators may identify potential witnesses, or their names may be supplied by the Complainant, Respondent, or others with knowledge of the matter.

### **Section 3: Defining and Recognizing Prohibited Conduct.**

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

- 3.2. Marshall University has adopted the following definitions of sexual harassment, other sexual misconduct, and sex discrimination to address the unique environment of our academic community, which consists not only of employer and employees, but of students as well. All definitions encompass actual offenses and may also encompass attempts to commit the offense.

Acts of sexual harassment and other sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation, gender identity, or gender expression of those involved.

The offenses below include behaviors prohibited by the Title IX regulations published in the Federal Register by the U.S. Department of Education, Office for Civil Rights on May 19, 2020. These regulations prescribe definitions based on the uniform crime reporting program of the Federal Bureau of Investigations. The offenses below also include additional behaviors prohibited by Marshall University. All of the listed offenses are violations of this policy.

Offenses listed in Section 3.3 below are considered to be Sexual Harassment, as defined by Title IX regulations, if the behavior occurred within Marshall University's education programs or activities and in the United States and if the Complainant was participating in or attempting to participate in the education program or activity of Marshall University at the time of filing a formal complaint. Marshall University's education programs or activities include locations, events, or circumstances, including employment, where the university exercises substantial control over both the respondent and the context in which sexual harassment occurs and includes any building owned or controlled by a student organization that is officially recognized by the university.

Under all other circumstances detailed in Section 1.6, offenses listed in sections 3.3.2 through 3.3.7 below constitute Sexual Misconduct under university policy.

The offense 3.3.8 (sexual exploitation) constitutes Sexual Misconduct under university policy in all circumstances detailed in Section 1.6 of this policy.

This policy prohibits conduct on the basis of sex that satisfies one or more of the following. If a charge is placed for the purposes of the Procedures, the portion of each definition will be used as the charge in that process.

3.3. Sexual Harassment under Title IX:

3.3.1. Conduct that is:

- 3.3.1.1.1. Unwelcome conduct,
- 3.3.1.1.2. determined by a reasonable person,
- 3.3.1.1.3. to be so severe, and
- 3.3.1.1.4. pervasive, and,
- 3.3.1.1.5. objectively offensive,
- 3.3.1.1.6. that it effectively denies a person equal access to Marshall University's education program or activity.

3.3.2. Quid pro quo harassment:

- 3.3.2.1. An employee of Marshall University,
- 3.3.2.2. Conditioning the provision of an aid, benefit, or service of Marshall University,
- 3.3.2.3. on a person's participation in unwelcome sexual conduct

3.3.3. Sexual Assault

- 3.3.3.1. The Sex Offenses, Forcible:
  - 3.3.3.1.1. Any sexual act directed against another person,

- 3.3.3.1.2. without the consent of the Complainant,
  - 3.3.3.1.3. including instances in which the Complainant is incapable of giving consent.
    - 3.3.3.1.3.1. Federal regulations more specifically define a “sexual act” to include one or more of the following:
      - 3.3.3.1.3.1.1. Forcible Rape:
        - 3.3.3.1.3.1.1.1. Penetration
        - 3.3.3.1.3.1.1.2. no matter how slight,
        - 3.3.3.1.3.1.1.3. of the vagina or anus with any body part or object, or
        - 3.3.3.1.3.1.1.4. oral penetration by a sex organ of another person
        - 3.3.3.1.3.1.1.5. without the consent of the Complainant
      - 3.3.3.1.3.1.2. Forcible Sodomy:
        - 3.3.3.1.3.1.2.1. Oral or anal sexual intercourse with another person
        - 3.3.3.1.3.1.2.2. forcibly,
        - 3.3.3.1.3.1.2.3. and/or against that person's will (non-consensually), or
        - 3.3.3.1.3.1.2.4. not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
      - 3.3.3.1.3.1.3. Sexual Assault with an Object:
        - 3.3.3.1.3.1.3.1. The use of an object or instrument to penetrate,
        - 3.3.3.1.3.1.3.2. however slightly,
        - 3.3.3.1.3.1.3.3. the genital or anal opening of the body of another person,
        - 3.3.3.1.3.1.3.4. forcibly,
        - 3.3.3.1.3.1.3.5. and/or against that person's will (non-consensually),
        - 3.3.3.1.3.1.3.6. or not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
      - 3.3.3.1.3.1.4. Forcible Fondling:
        - 3.3.3.1.3.1.4.1. The touching of the private body parts of another person (buttocks, genitals, breasts),
        - 3.3.3.1.3.1.4.2. for the purpose of sexual gratification,
        - 3.3.3.1.3.1.4.3. forcibly,
        - 3.3.3.1.3.1.4.4. and/or against that person's will (non-consensually),
        - 3.3.3.1.3.1.4.5. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
    - 3.3.3.1.4. Sex Offenses, Non-forcible:
      - 3.3.3.1.2.1. Incest:
        - 3.3.3.1.2.1.1. Non-forcible sexual intercourse,
        - 3.3.3.1.2.1.2. between persons who are related to each other,
        - 3.3.3.1.2.1.3. within the degrees wherein marriage is prohibited by West Virginia law.
      - 3.3.3.1.2.2. Statutory Rape:
        - 3.3.3.1.2.2.1. Non-forcible sexual intercourse,
        - 3.3.3.1.2.2.2. with a person who is under the statutory age of consent.
- 3.3.4. Dating violence:
  - 3.3.4.1. Violence or threat of violence,
  - 3.3.4.2. committed by a person,
  - 3.3.4.3. who is in or has been in a social relationship of a romantic or intimate nature with the

Complainant.

3.3.4.3.2. For the purposes of this definition:

3.3.4.3.2.1. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

3.3.4.3.2.2. Violence means physical violence.

3.3.4.3.2.3. Dating violence does not include acts covered under the definition of domestic violence.

3.3.5. Domestic Violence:

3.3.5.1. Conduct that would meet the definition of a felony or misdemeanor crime committed by a person who,

3.3.5.2. is a current or former spouse or intimate partner of the Complainant, or a person similarly situated to a spouse of the Complainant under the family or domestic violence laws of West Virginia;

3.3.5.3. is cohabitating, or has cohabitated, with the complainant as a spouse or intimate partner;

3.3.5.4. shares a child in common with the Complainant, or

3.3.5.5. commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of West Virginia.

3.3.5.5.2. For purposes of this definition:

3.3.5.5.2.1. Domestic violence does not include acts covered under the definition of dating violence.

3.3.6. Stalking:

3.3.6.1. Engaging in a course of conduct,

3.3.6.2. on the basis of sex,

3.3.6.3. directed at a specific person, that

3.3.6.3.2. would cause a reasonable person to fear for their own safety, or

3.3.6.3.3. the safety of others, or

3.3.6.3.4. suffer substantial emotional distress.

3.3.6.3.4.1. For the purposes of this definition:

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

3.3.6.3.4.1.2. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

3.3.7. Sexual Harassment under University Policy:

3.3.7.1. Physical or verbal conduct,

3.3.7.2. of a sexual nature,

3.3.7.3. that is unwelcome, and

3.3.7.4. sufficiently severe, or

3.3.7.5. pervasive,

3.3.7.6. from both a subjective (the Complainant's), and

3.3.7.7. an objective (reasonable person's) viewpoint, where:

3.3.7.8. such conduct has the purpose or effect of unreasonably interfering with a person's work or academic performance,

3.3.7.9. or creating an intimidating, hostile, or offensive environment for working, learning, or living on campus.

3.3.7.9.2. For the purposes of this definition:

3.3.7.9.2.1. The determination of whether an environment is "hostile" is often contextual and

must be based on the circumstances. These circumstances could include:

- 3.3.7.9.2.1.1. The frequency of the conduct;
- 3.3.7.9.2.1.2. The nature and severity of the conduct;
- 3.3.7.9.2.1.3. The relationship between the Complainant and the Respondent;
- 3.3.7.9.2.1.4. The location and context in which the alleged conduct occurs;
- 3.3.7.9.2.1.5. Whether the conduct was physically threatening;
- 3.3.7.9.2.1.6. Whether the conduct was humiliating; or
- 3.3.7.9.2.1.7. Whether the conduct arose in the context of other discriminatory conduct.

**3.3.8. Sexual Exploitation:**

- 3.3.8.1. A person, knowingly or recklessly,
- 3.3.8.2. taking non-consensual or abusive sexual advantage of another,
- 3.3.8.3. for the person's own advantage or benefit,
- 3.3.8.4. or to benefit or advantage anyone other than the one being exploited,
- 3.3.8.5. through behavior that does not otherwise constitute a violation of this policy.
- 3.3.8.5.2. Examples of sexual exploitation include, but are not limited to:
  - 3.3.8.5.2.1. Prostituting another person;
  - 3.3.8.5.2.2. Non-consensual video- or audio-recording or photographing of sexual activity;
  - 3.3.8.5.2.3. Going beyond the boundaries of consent (such as permitting others to observe you having consensual sex with someone who is not aware of the observation);
  - 3.3.8.5.2.4. Voyeurism;
  - 3.3.8.5.2.5. Public indecency (such as exposing your genitals to others without consent);
  - 3.3.8.5.2.6. Knowingly exposing another person to a sexually transmitted infection ("STI") or Human Immunodeficiency Virus ("HIV") without prior knowledge and consent of the person to be exposed to STI or HIV;
  - 3.3.8.5.2.7. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) to compromise that person's ability to give consent to sexual activity, or make that person vulnerable to non-consensual sexual activity; or
  - 3.3.8.5.2.8. Using contact-free means (e.g., by threat of violence) to coerce a person to participate in sexual behavior against their will.

**Section 4: Retaliation.**

- 4.1. No person may intimidate, threaten, coerce, or discriminate against any individual,
- 4.2. for the purpose of interfering with any right or privilege secured by Title IX or this policy, or
- 4.3. because the individual has made a report or complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding, or hearing, or
- 4.4. The exercise of rights under the First Amendment does not constitute retaliation prohibited under this section.

Allegations of retaliation will be addressed under the Title IX Grievances Procedures.

**Section 5: Consensual Relationships.**

- 5.1 Consensual romantic or sexual relationships in which one party retains a direct supervisory or evaluative role over the other party are unethical, create a risk for real or perceived coercion, and are expressly a violation of this policy. Furthermore, the possibility of a future amorous relationship may distort the present instructional or advising relationship. Although consensual relationships are within the purview of individual privacy, those engaging in such relationships that occur between persons in inherently unequal and closely related positions at the University or employees within the same reporting line, including those between supervisors and supervisees, must remain aware that such relationships could lead to circumstances that result in harassment or sexual or domestic misconduct.

- 5.2 Therefore, persons with direct supervisory, evaluative, grading, or academic advising responsibilities who

are involved in such relationships must bring those relationships to the attention of their supervisor. This will likely result in the necessity to remove the employee from the supervisory, evaluative, grading, or academic advising responsibilities. In some instances, if no suitable way to eliminate or mitigate the conflict is reasonably feasible, one or both individuals may be separated from employment at the University.

- 5.3 Staff Members, Faculty Members, Instructors, Coaches, Trainers or other employees are prohibited from engaging in a consensual relationship with a student whom one may instruct, evaluate, supervise, instruct, advise, coach or otherwise serve in a position over the student.
- 5.4 Where there is a pre-existing consensual relationship, the staff, faculty, instructor, coach or trainer shall forthwith notify one's immediate supervisor or other appropriate administrator. The supervisor or other appropriate administrator shall be responsible for making arrangements to eliminate or to mitigate any conflict, the consequences of which might prove detrimental to the University or to either party in the relationship.
- 5.5 Although Marshall University cannot prohibit consensual relationships between employees and students, whom they do not instruct, evaluate, supervise, advise, coach or train, the University strongly discourages such relationships. In addition, nothing contained in this Policy would otherwise prohibit a complaint from being made by either. It is important to note that these types of consensual relationships also may result in a hostile or offensive environment affecting other employees or students. For example, others may perceive a person involved in the consensual relationship as receiving favorable treatment in employment or educational decisions and actions. Marshall University does not intrude upon private choices regarding personal relationships when these relationships do not violate the university's policies or cause or increase the risk of harm to the safety and well-being of campus community members.
- 5.6 If no other behaviors prohibited by the sexual harassment and other sexual misconduct policy are alleged, investigations of alleged violations of the consensual relationships provision or other University policies or procedures regarding prohibited relationships may be conducted by an investigator chosen by the University. After interviewing the involved parties and any witnesses and reviewing relevant evidence, the investigator will compile a memorandum of finding, including a summary of information gathered during the investigation and a determination as to whether, by the preponderance of the evidence, the consensual relationship provision was violated. The memorandum of finding will be provided to the parties, and the supervisor(s)/department chair(s)/director(s) of the party or parties who are employees of the university for their consideration and appropriate action.

## **Section 6: Title IX Coordinator**

- 6.1 The President or the President's designee shall appoint an administrator to act as the University's Coordinator to handle all reports of prohibited conduct and complaints under this Policy, including acting as the University's Title IX Coordinator. The Coordinator will oversee all complaints filed under this Policy generally and identify and address any patterns or systemic problems that arise during the review of such complaints. The Coordinator is further responsible for the coordination of training, education, communications, and administration of complaint procedures for faculty, staff, students, and other members of the University community. The Coordinator may also appoint deputy coordinators to assist the University in furthering this policy.
- 6.2 Title IX Coordinator ensures compliance with Title IX and oversees the implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating Marshall University's efforts related to the intake of reports, implementation of supportive measures, investigation and resolution of formal complaints, and other activities designed to stop, remediate, and prevent behaviors prohibited by this policy. References to the Title IX Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

6.3 The Title IX Coordinator manages the Title IX Team and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator oversees all processes under this policy. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against complainants or respondents, generally.

6.4 Inquiries regarding this policy and its related processes may be made to:

Title IX Coordinator  
Jessica H. Donahue Rhodes, Esq.  
Marshall University  
Old Main, First Floor, Room 107  
Huntington, WV 25755  
304-696-2934 (phone)  
tilteix@marshall.edu or jessica.rhodes@marshall.edu

## **Section 7: Reporting Violations of this Policy**

7.1 Reports of sexual harassment, other sexual misconduct, or retaliation may be made using any of the options below. The Complainant may submit a report, or a third party may file a report on behalf of a person they believe has been adversely affected by conduct prohibited by this policy.

7.2 If a Complainant is identified in the report, the Title IX Coordinator will attempt to contact the Complainant to offer supportive measures and to ensure the Complainant knows all of the options available to them, including making a police report and submitting a formal complaint, if applicable and desired.

7.3 Reporting carries no obligation for Complainants to submit a formal complaint, and Marshall University respects Complainants' wishes regarding formal action unless there is a compelling threat to health or safety. While West Virginia law requires any person who has knowledge of a felony to make a report to law enforcement, the Complainant is not required to speak with law enforcement officers, even if the Title IX Coordinator must make such a report.

7.3.1 Report online using the Sexual Harassment and Other Sexual Misconduct Reporting Form by clicking on Submit a Report at [https://marshall-advocate.symlicity.com/public\\_report/index.php/pid204186?](https://marshall-advocate.symlicity.com/public_report/index.php/pid204186?). Reports submitted on-line are routed promptly to the Title IX Coordinator.

7.3.2 File a report with the Title IX Coordinator by mail, phone, or email. A report may be submitted at any time (including during non-business hours) using the contact information below. Reports may also be made in person at the Title IX Office (TIXO) on business days when a TIXO staff member is available.

Title IX Office  
Marshall University  
Old Main, First Floor, Room 107  
Huntington, WV 25755  
(304)696-2934 (Phone)  
titleix@marshall.edu or jessica.rhodes@marshall.edu

7.3.3 Reports of sexual harassment, other sexual misconduct, or retaliation by the Title IX Coordinator should be made to the Office of Student Advocacy and Accountability. Concerns of bias or potential conflict of interest by the Title IX Coordinator should also be raised with the Office of Student Advocacy and Accountability.

7.3.4 Reports of behavior prohibited by this policy by any other Title IX Team member should be reported to the Title IX Coordinator. Likewise, concerns of bias or potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

7.3.5 Inquiries and complaints may be made externally to:

Philadelphia Office  
Office of 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@ed.gov](mailto:OCR@ed.gov)  
Web: <http://ed.gov/ocr>

7.3.6 Inquiries and complaints involving employees may be made externally to:

Equal Employment Opportunity Commission (EEOC)  
Pittsburgh Field Office  
William S. Moorhead Federal Building  
1000 Liberty Avenue, Suite 1112  
Pittsburgh, PA 15222  
Phone: 1-800-669-4000  
Fax: 412-395-5749  
TTY: 1-800-669-6820  
ASL Video Phone: 844-234-5122

## **Section 8: Formal Complaint**

- 8.1 A formal complaint is a document submitted by the Complainant or signed by the Title IX Coordinator alleging a violation of this policy by a Respondent and requesting that Marshall University investigate the allegation(s). When the Title IX Coordinator signs a formal complaint, they are not a Complainant or other party in any resulting investigation.
- 8.2 A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail using the contact information in Section 5. It must contain the Complainant's physical or digital signature or otherwise indicate that the Complainant is the person filing the complaint and requesting that the allegations be investigated through the Title IX Grievance Procedures.
- 8.3 When a formal complaint is submitted, the Respondent is notified of the allegations in the complaint, including the Complainant's identity. While a formal complaint may be submitted at any time and without any prior contact with a TIXO staff member, Complainants may want to consider submitting a report and meeting with TIXO staff to learn about supportive measures available to them and options for proceeding before deciding to submit a formal complaint.

## **Section 9: Mandatory Reporters**

- 9.1 All Marshall University faculty, administrators, and staff (except those identified as confidential resources in Section 11) have a duty to immediately report violations of this policy to the Title IX Coordinator if they receive a complaint of a violation or observe or learn of conduct that is reasonably believed to violate this policy.

- 9.2 Graduate assistants and student employees have a duty to report violations of this policy if they become aware of the violations in the course of their duties and those duties include responsibility for the safety and wellbeing of other members of the campus community or if they have supervisory, evaluative, grading, or advisory responsibility over other members of the campus community.
- 9.3 In certain limited circumstances, exemptions to mandatory reporting may be requested in advance from the Title IX Coordinator (e.g., Take Back the Night).
- 9.4 Complainants should consider if they want to share information regarding behaviors under this policy with non-confidential mandatory reporters, as all details of potential violations must be promptly reported to the Title IX Coordinator so that supportive measures and options may be made available to Complainants.
- 9.5 If any person suspects or has knowledge of criminal activity occurring on university property, they should call the Marshall University Police Department ("MUPD") at 304-696-HELP (4357) (in an emergency, dial 911 immediately). Incidents that occur off campus or at a regional campus should be reported to local law enforcement.

#### **Section 10: Officials with Authority (OWAs)Mandatory Reporters**

- 10.1OWAs are university employees with the authority to implement corrective measures for sexual harassment, other sexual misconduct, and retaliation on behalf of Marshall University. Notice to any OWA constitutes actual knowledge under this policy. For purposes of this policy, the following employees are designated as OWAs: Title IX Coordinator and TIXO staff members, President, Provost, Vice Presidents, Athletic Director, Dean of Students, and Chief Human Resources Officer

#### **Section 11: Confidential Resources**

- 11.1Certain campus and local resources may maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in 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. Other resources are available as a confidential resource. These resources may offer options and resources without any obligation to inform a campus official or law enforcement authorities.
- 11.2Marshall University's confidential resources include:
- 11.2.1 Licensed professionals and staff at Counseling Center and Psychology Clinic,
  - 11.2.2 Licensed professionals and students registered for practice under a licensed psychologist at the Psychology and Social Work Clinic,
  - 11.2.3 Health care providers and staff at Student Health,
  - 11.2.4 Licensed professional counselors available through the Employee Assistance Program,
  - 11.2.5 Student Support Services TRIO Program,
  - 11.2.6 Women's and Gender Center,
  - 11.2.7 Violence Prevention & Response Office, and
  - 11.2.8 Office of the Ombuds
- 11.3 Off-campus confidential resources include:
- 11.3.1 Licensed professional counselors and other medical providers,
  - 11.3.2 Local rape crisis counselors,
  - 11.3.3 Domestic violence resources,
  - 11.3.4 Local or state assistance agencies,
  - 11.3.5 Clergy/Chaplains, and
  - 11.3.6 Attorneys.

- 11.4 Information regarding support resources, many of which are confidential, may be found on the Resources page on the TIXO website.

## **Section 12: Anonymous Reports**

- 12.1 Anonymous reports may be submitted, and if the report contains information about conduct that would constitute a violation of this policy, TIXO staff will attempt to address the reported concerns; however, their ability to investigate or resolve anonymous complaints will likely be limited. Further, TIXO tries to provide supportive measures to all Complainants, which is impossible with an anonymous report.

## **Section 13: Amnesty for Violations of Alcohol and Drug Policies under the Student Code of Conduct**

- 13.1 To encourage reporting of alleged violations of this policy 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. University officials may consider the use of alcohol or drugs involving other disciplinary issues or actions outside this BOG policy and the related grievance process. Amnesty does not apply to the Respondent if drugs or alcohol were allegedly used to facilitate a violation of this policy.

## **Section 14: Reporting to Law Enforcement**

- 14.1 Complainants are encouraged to make a report to law enforcement authorities, even if they decide not to report to the Title IX Coordinator. Making a report to the police does not obligate the Complainant to further participate in the criminal process. Reports of incidents occurring on the Huntington campus may be made to the Marshall University Police Department (304-696-HELP (4357)). Incidents occurring on a regional campus or center, or off campus, may be made to the local law enforcement agency. TIXO staff, advocates, counselors, and other university employees are available to assist complainants who want to make a report to law enforcement authorities.

## **Section 15: Preservation of Evidence**

- 15.1 The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and obtaining restraining orders and is particularly time-sensitive. A medical evidentiary examination provides documentation of the assault, identification of any injury, and forensic evidence collection. It is important for health, safety, and evidence collection to have an exam as soon as possible after a sexual assault.
- 15.2 Additionally, documentary evidence such as emails, texts, social media posts, pictures, videos, etc., may be vital to both a criminal investigation and the university's investigation process. Retention of these items preserves the opportunity to submit them for consideration if an investigation is undertaken by the police and/or the university.

## **Section 16: Federal Timely Warning Obligations**

- 16.1 Under the Clery Act, Marshall University must issue timely warning for reported incidents that fall under the definitions of sexual assault, domestic violence, dating violence, stalking, or hazing and pose a serious or continuing threat of bodily harm or danger to members of the campus community. If possible, Marshall University will not disclose a Complainant's name and other identifying information, while providing enough information for community members to make decisions regarding their safety. Marshall University also collects and shares de-identified statistical information regarding reported incidents as required by the Clery Act.

16.2 Personally identifiable information obtained in the course of complying Title IX regulations will not be disclosed, except in the following circumstances:

- 16.2.1 When Marshall has obtained prior written consent from a person with the legal right to consent to the disclosure;
- 16.2.2 When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- 16.2.3 To carry out the purpose of this part, including action taken to address conduct that reasonably may constitute sexual harassment under Title IX in Marshall's education program or activity;
- 16.2.4 As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
- 16.2.5 To the extent such disclosures are not otherwise in conflict with Title IX regulations, when required by State or local law or when permitted under FERPA or its implementing regulations.

## **Section 17: Making a False Report**

- 17.1 Intentionally making a false complaint or report of sexual harassment, other sexual misconduct, or retaliation is prohibited, violates this policy, constitutes misconduct subject to disciplinary action, and may also be a crime. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a finding of a policy violation.
- 17.2 Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation or hearing may be subject to discipline under Marshall University policy. TIXO will refer evidence of intentional false complaints or reports to the appropriate campus authority

## **Section 18: Privacy**

- 18.1 Every effort is made by Marshall University to preserve the privacy of reports and of the identities of those involved in the grievance process. This information will not be shared except as necessary to carry out the purposes of Title IX regulations (34 CFR Part 106), as required by law, or as permitted by the Family Educational Rights and Privacy Act (FERPA).
- 18.2 Information related to reports will be shared with a limited number of Marshall University employees who "need to know" to respond to the report and/or assist in its assessment, investigation, and resolution. Marshall University reserves the right to determine which officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA.
- 18.3 When a formal complaint is submitted by the Complainant or signed by the Title IX Coordinator, the Complainant's identity and the allegations made in the report must be disclosed to the Respondent. Further, the parties and their advisors will have the opportunity to review all directly related evidence gathered during the grievance process.
- 18.4 When required by the Clery Act, the Marshall University Police Department will be provided information regarding the report so they can maintain the campus crime log and assess if a timely warning should be issued to the campus.
- 18.5 Additionally, if any party involved in alleged sexual misconduct is a minor, Marshall University personnel will notify the appropriate agencies, as required by West Virginia law.

## **Section 19: Supportive Measures**

- 19.1 Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- 19.2 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.
- 19.3 Upon receipt of a report alleging a violation of this policy, the Title IX Coordinator will contact the Complainant to discuss the availability of supportive measures and consider the Complainant's wishes regarding what supportive measures may be implemented. The Title IX Coordinator will also explain the process for filing a formal complaint, including that supportive measures are available with or without the filing of a formal complaint.
- 19.4 Marshall University will act to minimize the academic and/or occupational impact on the parties as much as possible and maintain the privacy of supportive measures to the extent that it does not impair the provision of the supportive measures.
- 19.5 Supportive measures may include, but are not limited to:
- 19.5.1 Referral to campus and community counseling, medical, and/or other health care services, including the employee assistance program, as appropriate
  - 19.5.2 Implementing Mutual No Contact Orders between the parties<sup>1</sup>
  - 19.5.3 Altering campus housing assignment(s)
  - 19.5.4 Altering work arrangements for employees, including student employees
  - 19.5.5 Academic support, extensions of deadlines, or other course/program-related adjustments
  - 19.5.6 Class schedule modifications, withdrawals, or leaves of absence
  - 19.5.7 Providing Campus safety escorts
  - 19.5.8 Timely warnings
  - 19.5.9 Increased security and monitoring of certain areas of campus
  - 19.5.10 Education to the campus community or community subgroup(s)
  - 19.5.11 Any other actions deemed appropriate by the Title IX Coordinator
- 19.6 If a party procures a protective order or similar order from a court, the party is encouraged to notify MUPD and the TIXO of the order so that MUPD and the TIXO can assist, as needed, with enforcement of the order.

## **Section 20: Emergency Removal and Administrative Leave**

- 20.1 Under specific circumstances, Marshall University may remove a student Respondent from the university's education program or activity on an emergency basis. Before an emergency removal is enacted, the university conducts an individualized safety and risk analysis, which must determine that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal. If so, the Respondent is provided notice of the emergency removal and an opportunity to immediately challenge the decision. A full description of the process for emergency removal may be found in the Title IX Grievance Procedures and Non-Title IX Grievance Procedures.
- 20.2 If deemed appropriate, Marshall University may place a non-student employee Respondent on administrative leave from employment responsibilities during the pendency of the grievance process.

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<sup>1</sup> Violations of no-contact orders will be referred to the appropriate student or employee conduct process for enforcement.

## **Section 21: Investigations of Formal Complaints**

21.1 Investigation and adjudication of formal complaints under this policy will be conducted pursuant to the Title IX Grievance Procedures and Non-Title IX Grievance Procedures.

21.1.1 All reports are responded to promptly when received by the Title IX Coordinator. The grievance process begins when the Respondent is sent notice of the allegations. Every effort is made to complete the process within 90 business days. Business days for the purpose of this policy are weekdays (Monday-Friday) when Marshall University offices are open for normal operations. Sometimes, exceptions or extenuating circumstances can cause the grievance process to take longer, but Marshall University will avoid all undue delays within its control.

If the general timeframes for the grievance process outlined in the procedures document will be delayed, the TIXO will provide written notice to the parties of the delay, its cause, and an estimate of the additional time that will be needed as a result of the delay.

21.1.2 The standard of evidence applied to determine responsibility for violating this policy is the preponderance of the evidence standard. The preponderance of the evidence means that the statements and information presented in the matter must indicate to a reasonable person that it is more likely than not that the Respondent committed a violation.

21.1.3 When a Respondent is found to be in violation of this policy, appropriate disciplinary sanctions will be imposed. For a student Respondent, these may include, but are not limited to, formal warning, conduct probation, community service, probationary suspension, suspension, deferred suspension, deferral of the degree, withholding of the degree, revocation of the degree, reprimand, disciplinary probation, suspension, expulsion from the university, or any other sanction deemed to be just and appropriate. These sanctions may also be imposed on a student organization or group. For an employee Respondent, sanctions may include, but are not limited to, formal warning, probation, community service, censure, reprimand, suspension without pay, demotion and/or loss of tenure, dismissal/termination of employment, or any other sanction deemed to be just and appropriate. Sanctions take into account prior disciplinary history, if any.

In conjunction with a sanction, a Respondent found to be in violation of this policy may be assigned conditions of sanction deemed to be just and appropriate, which include but are not limited to, access restriction, revocation of rights and privileges, housing or worksite reassignment, educational activities, etc.

21.1.4 Where a determination of responsibility has been made against the Respondent, the university will provide remedies to the Complainant. Remedies are designed to restore or preserve the complainant's equal access to Marshall University's education program or activity. They may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. A Complainant is not entitled to a particular sanction against the Respondent.

## **Section 22: Consideration of Classroom and Instructional Settings**

22.1 The classroom or other instructional setting (e.g., studio, laboratory, office hours) presents special issues because academic freedom protects the expression of ideas, even where the idea or its expression is perceived to be mature, controversial, explicit, graphic, or offensive. Nevertheless, conduct that would otherwise constitute a violation of this policy will not be exempt merely because it occurs in an instructional setting. Rather, the investigation will consider the legitimate pedagogical context and will take into account discipline-specific guidelines for professional practice as defined by the appropriate educational unit.

22.2 Accordingly, broad deference is given if the conduct that was the basis for the complaint occurred in an instructional context. When there is a legitimate pedagogical basis, the presentation or discussion of sexual topics that are mature, controversial, graphic, or explicit shall not be considered sexual harassment even if some persons find these topics subjectively offensive.

### **Section 23: Reasonable Accommodations for Persons with Disabilities**

23.1 Any persons living with a disability involved in the Sexual Harassment and Other Sexual Misconduct Grievance Process have the right to request reasonable accommodation to ensure their full and equal participation. These requests should be made to the Office of Accessibility and Accommodations (OAA). Parties do not have to disclose information about the complaint or charge to request reasonable accommodation, except to the extent that it may assist in determining reasonable accommodations. Accommodations are determined on an individual basis by OAA and are implemented in consultation with the case investigator(s). Examples of reasonable accommodation include sign language interpretation, real-time communication access during hearings, large print documents, extended time to review documents, or assistance with transcribing questions during interviews or hearings.

### **Section 24: Disability Complaint Procedures**

24.1 Marshall University does not discriminate or permit discrimination on the basis of disability in matters of admissions, employment, housing, or services or in the educational programs or activities it operates. The Vice-President for Intercultural and Student Affairs has been designated as the Section 504 Coordinator for students. The Chief Talent Officer/Human Resources Director has been designated the Section 504 Coordinator for employees. Those serving as the Section 504 Coordinator coordinate compliance with the nondiscrimination requirements of Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and applicable federal and state regulations.

24.2 Marshall University adopts MUBOG Policy No. GA-3 as its ADA/Section 504 complaint procedures to provide prompt, equitable, and impartial resolution of complaints alleging any action prohibited by the ADA or Section 504. This policy applies to complaints of discrimination or harassment on the basis of disability by staff, faculty, students, or applicants for both University employment and academic admission, vendors, contractors, and third parties.

24.3 These rules will be construed to protect the substantive rights of interested persons, meet appropriate due process standards, and assure that Marshall University complies with the ADA, Section 504, and their implementing regulations.

24.4 The Office of Accessibility and Accommodations will maintain the files and records relating to complaints filed under this policy and other procedures.

Marshall University Office of Accessibility and Accommodations  
Stephanie Ballou, Director  
Prichard Hall, Room 117  
Phone: 304-696-2467  
Fax: 304-696-2288  
wyant2@marshall.edu