

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 discrimination and harassment to the extent possible and consistent with federal and state law.. 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. This Policy also protects students and employees from discrimination based on pregnancy and related conditions. Students seeking pregnancy- or parenting-related reasonable modifications under Title IX or 34 C.F.R. §106.40 should consult the University’s Pregnancy and Related Conditions Policy for Students for assistance. Employees seeking pregnancy- or parenting-related workplace accommodations should contact Human Resources, which coordinates requests under applicable federal and state law. The University will prominently post and widely disseminate its nondiscrimination statement and Title IX Coordinator contact information as required by 34 C.F.R. §§ 106.8 and 106.9.
- 1.2 Nothing in this Policy expands the definition of ‘sex’ or ‘sexual harassment’ for purposes of Title IX beyond the definitions set forth in 34 C.F.R. § 106.30, as interpreted and governed by applicable federal regulations and controlling law.

Allegations involving gender identity or gender expression that do not fall within Title IX’s jurisdictional or definitional requirements will be addressed, as appropriate, under applicable Non-Title IX University procedures or other applicable University policies adopted pursuant to state or federal law.
- 1.3 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.
- 1.4 Effective Date: July 23, 2026
- 1.5 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, 2023, and 2025. The current changes were passed on June 10, 2026.

- 1.6 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 under applicable federal and stated nondiscrimination laws, including Title VII and Title IX, and are subject to reporting, prevention, and procedural requirements under the Violence Against Women Act, the Campus SaVE Act, and the PolicyClery 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.
- 1.7 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.

The University must dismiss a formal complaint of Title IX sexual harassment with respect to alleged conduct that

- (a) would not meet the Title IX definition of sexual harassment if proved,
- (b) did not occur in the University's education program or activity, or
- (c) did not occur in the United States,

as required by applicable Title IX regulations. Such dismissal does not preclude the University from addressing the conduct under other policies (e.g., Non-Title IX Sexual Misconduct). For purposes of Title IX, "education program or activity" includes locations, events, or circumstances where the University exercises substantial control over both the respondent and the context in which the conduct occurred, including any building owned or controlled by a recognized student organization.

Note: Off-campus conduct may fall outside Title IX unless the "substantial control" test above is met; when it does not, the University may proceed under Non-Title IX procedures.

1.7 Sex Discrimination (Non-Harassment) – Prompt and Equitable Procedures.

- 1.7.1 Scope. Allegations of sex discrimination that do not meet the Title IX definition of "sexual harassment" are addressed under this Policy through prompt and equitable procedures consistent with 34 C.F.R. §106.8(c). Examples include, without limitation, unequal treatment in programs or activities; athletics opportunities or benefits; academic, admissions, or employment decisions; pregnancy and related conditions; parenting accommodations; and other forms of disparate treatment on the basis of sex.

Supportive measures are available regardless of whether a formal complaint is filed.

- 1.7.2 Intake & Notice. Upon receipt of a formal complaint, the TIXO will assess scope and jurisdiction and will either retain the matter or designate the appropriate University office to investigate and/or resolve it. The University will provide the parties with written notice of the allegations and the applicable procedures.
- 1.7.3 Impartiality. Individuals assigned to investigate or resolve the formal complaint will be free from conflicts of interest or bias for or against complainants or respondents and will evaluate the matter impartially based on the information available.
- 1.7.4 Opportunity to Be Heard. Each party will have an equitable opportunity to submit relevant information, identify witnesses, and present documentation for consideration. The University may conduct interviews and gather additional information as needed to ensure a fair review. Live hearings are not required for sex-discrimination complaints resolved under this Section, and the University will instead use a prompt and equitable investigatory process consistent with 34 C.F.R. §106.8(c).
- 1.7.5 Standard of Evidence. The University applies the preponderance of the evidence standard to all complaints resolved under this Section, whether the respondent is a student or an employee.
- 1.7.6 Timeframes. Matters will be resolved within reasonably prompt timeframes, generally targeted at 90 business days from notice of investigation to written final report, absent good cause (e.g., complexity, multiple witnesses, concurrent processes, breaks, or other legitimate reasons). Any extension and the reasons for it will be communicated to the parties in writing.
- 1.7.7 Decision-Maker and Determination Process. Decisions under this Section will be made by a trained and impartial administrative Decision-Maker designated by the University, based on the investigative record and information submitted by the parties.
- 1.7.8 Written Outcome. The University will issue a written determination to the parties explaining the result, the rationale, and, where appropriate, any remedies designed to restore or preserve equal access to the University's education program or activity.
- 1.7.9 Appeal. Either party may appeal on the following grounds: (a) material procedural error that affected the outcome; (b) new evidence that was not reasonably available at the time of the determination and could affect the outcome; or (c) conflict of interest or bias by the Investigator or Decision-Maker that affected the outcome. The appeal process and timelines will be provided in the written outcome.
- 1.7.10 Coordination with Pregnancy/Parenting & ADA/504. Complaints implicating pregnancy or related conditions, disability-related accommodations, or similar issues will be coordinated, as appropriate, with the Office of Student Advocacy & Accountability (OSAA), the Office of Accessibility & Accommodations (OAA), Human Resources, and/or the TIXO to ensure compliance with Title IX, Section 504, and the ADA.
- 1.7.11 Recordkeeping. Records of complaints, outcomes, and any remedies or accommodations provided under this Section will be maintained consistent with University Policy and applicable law.

Section 2: General Definitions.

- 2.1 "Actual Knowledge" means notice of sexual harassment or other prohibited conduct to the University's Title IX Coordinator or any official of the University who has been formally designated by the University to institute corrective measures on behalf of the University ("Official with Authority or

“OWA”). Actual knowledge is not established through imputed knowledge, vicarious liability, or constructive notice, and is not met when the only individual with such knowledge is the Respondent. The ability or obligation to report sexual harassment, to inform a student about how to make a report, or training to do so does not, by itself, confer authority to institute corrective measures on behalf of the University.

- 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 chosen by or appointed for a party (the Complainant or Respondent) to accompany the party to meetings related to an investigation or related proceedings under this Policy, and to advise the party during those processes. If a hearing is required under the applicable grievance process, the Advisor may question the other party and witnesses at the hearing. If a party does not have an Advisor for questioning at a required hearing, the University will appoint one for that limited purpose.
- 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, however, 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, Peer Recovery Specialist and/or Program Coordinator of the Collegiate Recovery Peer Support team, Office of International Student Services, Global Education Office Staff, ACE (Access, Connections, & Engagement) Center, Department of Community Services and Family Programs and Office of the Ombuds. All on-campus confidential resources will undergo annual training through the TIXO to ensure they receive annual training regarding confidential reporting, recordkeeping requirements, and Clery 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 Marshall University's definition of consent, as follows:

Consent is knowing, voluntary, and clear permission to engage in sexual activity, communicated through mutually understandable words or actions. ; Silence, passivity, or lack of resistance alone, without words or actions demonstrating permission, does not constitute consent. In the absence of clear, mutually understandable communication, it is the responsibility of the initiator, that is, the person seeking to engage in the specific sexual activity, to ensure that consent has been obtained. Relying solely on non-verbal communication may lead to miscommunication, and assumptions should not be made. If

confusion or ambiguity arises at any time during a sexual interaction, the initiator must stop and clarify the other person's willingness to continue.

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

Past consent does not imply ongoing or future consent, and a current or previous intimate relationship does not, by itself, constitute consent. Consent may be withdrawn at any time through words or actions that clearly communicate an unwillingness to continue sexual activity. Once consent is withdrawn, the sexual activity must cease immediately. Consent is valid only for a reasonable period of time, depending on the circumstances.

Consent cannot be obtained from a person who is asleep, unconscious, physically helpless, or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or another condition. Incapacitation occurs when a person lacks the capacity to appreciate the nature of giving consent to participate in sexual activity. An individual may not engage in sexual activity with another person when they know or should reasonably have known that the other person is incapacitated. 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, an individual must be of legal age.

The existence of consent is evaluated based on the totality of the circumstances, from the perspective of a reasonable person in similar circumstances, including the context of the interaction and any relevant patterns of behavior.

Consent cannot be implied by attire, appearance, or expenditures, such as buying meals or providing gifts.

Any person who engages in sexual activity when they know or should know that consent has not been given violates this Policy. It is not an excuse that the Respondent was intoxicated and did not realize that the Complainant did not give consent.

- 2.9 "Education program or activity" means locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the conduct occurs, and includes any building owned or controlled by a student organization officially recognized by the 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 state in which a person lacks the ability to make informed decisions 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 the 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, by itself, 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, based on the totality of the circumstances.

An individual who engages in sexual activity when that individual knows or should reasonably known that the other person is incapacitated is in violation of this Policy. It is not an excuse that the respondent was intoxicated and 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, including but not limited to: the Title IX Coordinator and TIXO staff, the 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 and circumstances 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 “Sex Discrimination” means treating a person differently or denying or limiting participation in or benefits of the University’s education program or activity, on the basis of sex. Examples include unequal treatment in admissions, academics, employment, or athletics; discrimination based on pregnancy or related conditions; differential access to opportunities or benefits; and retaliation for reporting or participating in a process regarding sex-based discrimination.
- 2.30 “Sexual coercion” means a form of coercion as defined in § 2.7 and includes unwanted sexual activity that happens when someone is pressured, tricked, threatened, or forced in a non-physical way. Coerced sexual behavior occurs more frequently than forcible sexual assault and typically involves repeated begging for sex or pressuring someone who is resisting sexual activity until they give in, often to end the coercion or to preserve the relationship.
- 2.31 “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.
- 2.32 “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).

- 2.33 “Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to the Complainant or Respondent, before or after the filing of a formal complaint, or when 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 any 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.

- 2.34 “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.
- 2.35 “Title IX Team” means the following, but not limited to: Title IX Coordinator, the TIXO staff members, Advisors, members of the Review Panel, and Appeal Officers.
- 2.36 “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.

- 3.0.1 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.
- 3.0.2 Applicability & Definitions Framework. 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 includes students, employees, and other participants in University programs and activities. 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 or other personal characteristics of the individuals involved.
- 3.0.3 Definitions Source. The offenses defined below include conduct 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, which incorporate Federal Bureau of Investigation Crime Reporting definitions. The offenses below also include additional behaviors prohibited by Marshall University. All listed offenses are violations of this Policy.
- 3.0.4 Title IX vs. University Policy Coverage. Conduct meeting Title IX sexual harassment (see § 3.1) will be addressed as Title IX sexual harassment only when all applicable jurisdictional requirements are met. Specifically, the conduct must: occur within Marshall University’s education program or activity, occur within the United States, and involve a Complainant who was participating in or attempting to participate in the University’s education program or activity at the time a formal complaint is filed. “Education program or activity” includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context, including any building owned or controlled by a recognized student organization

3.0.5 Non-Title IX Coverage. Under all other circumstances described in § 1.6, the offenses identified in §§ 3.2(A)-(B) constitute Sexual Misconduct under University Policy (Non-Title IX) and will be addressed using the applicable University grievance procedures. Sexual Exploitation (§ 3.2(B)) constitutes Sexual Misconduct under University Policy in all circumstances described in § 1.6 and is not subject to resolution under the Title IX resolution process.

3.1 Title IX Sexual Harassment

For purposes of Title IX jurisdiction, Marshall University applies the definition of “sexual harassment” set forth in 34 C.F.R. §106.30. When jurisdictional requirements described in § 3.0.4 are met, conduct constituting sexual harassment under that definition will be addressed through the Title IX grievance process.

A. Hostile Environment Sexual Harassment

Hostile environment sexual harassment consists of unwelcome conduct that a reasonable person would determine is severe, pervasive, and objectively offensive, such that the conduct effectively denies a person equal access to Marshall University’s education program or activity.

To constitute a hostile environment, the conduct must satisfy all three elements:

- (i) the conduct is severe;
- (ii) the conduct is pervasive; and
- (iii) the conduct is objectively offensive from the standpoint of a reasonable person.

B. Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment occurs when a Marshall University employee conditions the provision of a Marshall University aid, benefit, or service on a person’s participation in unwelcome sexual conduct.

This form of sexual harassment requires proof of each of the following elements:

- (i) the Respondent is a Marshall University employee;
- (ii) the employee conditions the provision of an institutional aid, benefit, or service; and
- (iii) the condition is based on the individual’s participation in unwelcome sexual conduct.

C. Sexual Assault

Sexual assault includes any sex offense defined under the Federal Bureau of Investigation Uniform Crime Reporting (UCR) program when committed without consent or when the Complainant is incapable of giving consent. Sexual assault includes the following offenses:

- (i) Forcible Rape – Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Complainant’s consent.
- (ii) Forcible Sodomy – Oral or anal sexual intercourse with another person forcibly and/or against that person’s will (non-consensually), or without force where the Complainant is incapable of giving consent due to age, or temporary or permanent mental or physical incapacity.
- (iii) Sexual assault with an object – Use of an object or instrument to penetrate, however slightly, the genital or anal opening of another person forcibly and/or against that person’s will (non-consensually), or without force where the Complainant is incapable of giving consent due to age or temporary or permanent mental or physical incapacity.
- (iv) Forcible Fondling – Touching of the private body parts (buttocks, genitals, or breasts) of another person for the purpose sexual gratification, forcibly and/or against that person’s will (non-consensually), or without force where the Complainant is incapable of giving consent due to age or temporary or permanent mental or physical incapacity.
- (v) Non-forcible Sex Offenses, including:
 - a. Incest – Non-forcible sexual intercourse between persons who are related to each other within the degrees of relationship in which marriage is prohibited by West Virginia law; and
 - b. Statutory Rape – Non-forcible sexual intercourse with a person who is under the statutory age

of consent.

D. Dating Violence

Dating violence is violence or the threat of violence committed by a person who is in, or has been in, a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship is determined primarily based on the Complainant's statement, with consideration of the length of the relationship, type of relationship, and frequency of interaction between the individuals involved. Dating violence does not include behaviors that meet the definition of domestic violence.

E. Domestic Violence

Domestic violence includes conduct that would constitute a felony or misdemeanor crime of violence committed by: a current or former spouse or intimate partner of the Complainant; a person similarly situated to a spouse under West Virginia family or domestic violence laws; a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; a person who shares a child in common with the Complainant; or a person who commits acts against a youth or adult Complainant who is protected under West Virginia family or domestic violence laws. Domestic violence does not include acts that fall within the definition of dating violence.

F. Stalking (on the basis of sex)

Stalking on the basis of sex is a course of conduct directed at a specific person that would cause a reasonable person to fear for their own safety or the safety of others, or to suffer substantial emotional distress. A "course of conduct" means two or more acts, including acts in which the Respondent directly, indirectly, or through third parties, and by any action, method, device, or means, follows, monitors, observes, surveils, threatens, communicates to or about a person, or interferes with a person's property. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

3.2 Sexual Misconduct Under University Policy (Non-Title IX)

The conduct below is prohibited regardless of whether Title IX jurisdictional requirements are met (see §§ 3.0 and 1.6) and will be addressed using the University's Non-Title IX grievance procedures.

A. Sexual Harassment (Non-Title IX)

Sexual harassment under University Policy consists of unwelcome physical or verbal conduct of a sexual nature that is sufficiently severe or pervasive, from both a subjective (Complainant's) and objective (reasonable person's) perspective, such that the conduct unreasonably interferes with a person's work or academic performance, or creates an intimidating, hostile, or offensive environment for working, learning, or living on campus.

In determining whether a hostile environment exists, the University considers the totality of circumstances, including but not limited to:

- (i) the frequency of the conduct,
- (ii) the nature and severity of the conduct,
- (iii) the relationship between the Complainant and Respondent;
- (iv) the location and context in which the conduct occurs,
- (v) whether the conduct was physically threatening,
- (vi) whether the conduct was humiliating, and
- (vii) whether the conduct arose in the context of other discriminatory conduct.

B. Sexual Exploitation

Sexual exploitation is knowingly or recklessly taking non-consensual or abusive sexual advantage of another person for one's own benefit or for the benefit of anyone other than the person being exploited, through conduct that does not otherwise constitute a separate violation of this Policy. Examples of sexual

exploitation include, but are not limited to: prostituting another person; non-consensual video- or audio-recording or photographing of sexual activity; exceeding the boundaries of consent (such as permitting others to observe consensual sexual activity without the partner's knowledge); voyeurism; public indecency (including exposing genitals without consent); knowingly exposing another person to a Sexually Transmitted Infection (STI) or Human Immunodeficiency Virus (HIV) without prior knowledge and consent; causing or attempting to cause incapacitation through alcohol, drugs, or any other means to compromise a person's ability to consent; or using contact-free means, such as threats of violence, to coerce participation in sexual activity against a person's 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.
- 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. Marshall University will keep confidential the identities of the parties and witnesses except as permitted by FERPA, as required by law, or as necessary to carry out Title IX (e.g., investigations, hearings). Charging a party with a code of conduct violation for making a materially false statement in bad faith during a Title IX proceeding does not constitute retaliation; however, a responsibility finding alone is insufficient to conclude a party made a false statement.

All written communications issued under this Policy, including intake notices, supportive measure letters, investigation notices, hearing notices, determinations, and appeals, may include a prominent reminder that retaliation is prohibited and provide a link to report retaliation.

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 the University's consensual relationship and conflict of interest provisions. Such relationships may, depending on the facts, also implicate the Sexual Harassment and Sexual Misconduct Policy. Furthermore, the possibility of a future amorous relationship may distort a current instructional or advising relationship. Although consensual relationships are generally within the realm of individual privacy, relationships between persons in inherently unequal or closely related positions at the University, including employees within the same reporting line (such as supervisors and supervisees), may give rise to circumstances that result in harassment, sexual misconduct, or domestic misconduct.
- 5.2 Accordingly, individuals 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 or other appropriate administrator. This will likely require removal of the employee from any supervisory, evaluative, grading, or academic advising role. In some instances, if no reasonably feasible means exists to eliminate or mitigate the conflict, one or both individuals may be subject to employment action consistent with applicable University policies and employment procedures.
- 5.3 Staff Members, Faculty Members, Instructors, Coaches, Trainers, and other employees are prohibited from engaging in a consensual romantic or sexual relationship with a student over whom the employee exercises instructional, evaluative, supervisory, advising, coaching, or similar authority.
- 5.4 Where a pre-existing consensual relationship exists, the staff member, faculty member, instructor, coach,

or trainer shall promptly notify their immediate supervisor or other appropriate administrator. The supervisor or administrator is responsible for making arrangements to eliminate or mitigate any conflict, the consequences of which might otherwise be detrimental to the University or to either party.

- 5.5 Although Marshall University cannot prohibit consensual relationships between employees and students where no supervisory, evaluative, instructional, advising, coaching, or similar authority exists, the University strongly discourages such relationships. Nothing in this Policy precludes either party from filing a complaint. It is important to note that consensual relationships may nonetheless result in a hostile or offensive environment affecting other employees or students, including perceptions of preferential treatment in employment or educational decisions. Marshall University does not intrude upon private choices regarding personal relationships unless those relationships violate University Policy or create or increase the risk of harm to the safety and well-being of members of the campus community.
- 5.6 If no other conduct prohibited by the sexual harassment and sexual misconduct Policy is alleged, the matter will not be processed under the Title IX grievance procedures. Alleged violations of the consensual relationships provision or other University policies regarding prohibited relationships may instead be investigated by an Investigator designated by the University. Following interviews of the parties involved, any witnesses, and a review of relevant evidence, the Investigator will prepare a memorandum of findings, including a summary of the information gathered and a determination, based on the preponderance of the evidence, as to whether the consensual relationship provision was violated. The memorandum will be provided to the parties and to the relevant supervisor(s), department chair(s), or director(s) for consideration and any appropriate action.

Section 6: Title IX Coordinator

- 6.1 The President or the President's designee shall appoint an administrator to serve as the University's Coordinator for reports of prohibited conduct under this Policy. This individual shall also serve as the University's Title IX Coordinator. The Coordinator is responsible for the overall coordination, oversight, and administration of reports and complaints under this Policy; identifying and addressing any patterns or systemic concerns; and coordinating training, education, communication, and implementation of complaint procedures for faculty, staff, students, and other members of the University community. The Coordinator may appoint one or more deputy Title IX coordinators to assist in carrying out these responsibilities Policy.
- 6.2 The Title IX Coordinator ensures the University's compliance with Title IX and oversees the implementation of this Policy. The Title IX Coordinator has primary responsibility for coordinating intake of reports, implementation of supportive measures, investigation and resolution of formal complaints, and other actions designed to stop, remediate, and prevent conduct prohibited by this Policy. References to the Title IX Coordinator throughout this Policy may also include a designee for specific tasks.
- 6.3 The Title IX Coordinator manages the Title IX Team and exercises independent authority free from conflicts of interest or bias. The Title IX Coordinator oversees all applicable processes under this Policy and ensures that members of the Title IX Team are appropriately vetted and trained to act impartially and without bias for or against any party or group.
- 6.4 Inquiries regarding this Policy and related procedures may be directed to:

Title IX Coordinator
Jessica H. Donahue Rhodes, Esq.
Marshall University
Old Main, First Floor, Room 107
Huntington, WV 25755

304-696-2934 (phone)
titleix@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 Upon receipt of actual knowledge of Title IX sexual harassment, the University will respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.
- 7.3 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 is aware of available options, including reporting to law enforcement and filing a formal complaint, if applicable and desired. Supportive measures are available with or without the filing of a formal complaint; *see* Section 19 for additional details.
- 7.4 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, as determined by the University based on the known circumstances. While West Virginia law requires reporting certain felony conduct to law enforcement, Complainants are not required to speak with law enforcement officers, even when such a report must be made by the Title IX Coordinator.
- 7.4.1 Reports may be submitted online using the Sexual Harassment and Other Sexual Misconduct Reporting Form by selecting "Submit a Report" at https://marshall-advocatesymplicity.com/public_report/index.php/pid204186?. Online reports are promptly routed to the Title IX Coordinator and is the preferred method to submit a report.
- 7.4.2 Reports may be made directly to the Title IX Coordinator by mail, phone, or email at any time, including outside of normal business hours, using the contact information below. Reports may also be made in person at the TIXO during business hours when staff are 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
- 7.4.3 Reports alleging prohibited conduct by the Title IX Coordinator, or concerns regarding bias or a conflict of interest involving the Title IX Coordinator, should be directed to the Office of Student Advocacy and Accountability. .
- 7.4.4 Reports alleging prohibited conduct Policy by any other Title IX Team member, or concerns regarding bias or a conflict of interest involving those individuals, should be directed to the Title IX Coordinator.
- 7.4.5 Individuals may also file complaints externally with the U.S. Department of Education, Office for Civil Rights:

Office for Civil Rights – Atlanta Office
U.S. Department of Education
61 Forsyth St. S.W., Suite 19T10
Atlanta, GA 30303-8927
Telephone: 404-974-9406
FAX: 404-974-9471; TDD: 800-877-8339
Email: OCR.Atlanta@ed.gov

- 7.4.6 Inquiries or complaints involving employees may also be filed with the Equal Employment Opportunity Commission (EEOC):)

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 a 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 considered a Complainant or party to the matter.
- 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 6. The complaint must contain the Complainant's physical or digital signature or otherwise indicate that the Complainant is requesting an investigation through the applicable grievance procedures.
- 8.3 Upon receipt of a formal complaint, the University will provide the Complainant and Respondent with prompt written notice of the allegations consistent with 34 C.F.R. § 106.45(b)(2), including the identities of the parties (if known), the conduct alleged, the date and location (if known), the presumption of non-responsibility, the right to an Advisor of choice, and notice that knowingly making false statements is prohibited.
- 8.4 Informal Resolution. At any time prior to a determination regarding responsibility, the University may offer informal resolution where appropriate and with the voluntary, written consent of all parties. Informal resolution is not permitted where a University employee is alleged to have engaged in sexual harassment against a student.
- 8.5 A Complainant may submit a formal complaint at any time, with or without prior contact with the TIXO. Complainants are encouraged, though not required, to meet with TIXO staff to learn about supportive measures and procedural options before filing 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 well-being 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, advance, event-specific exemptions to mandatory reporting may be requested 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 response options may be made available.
- 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) (or dial 911 in an emergency). Incidents occurring off campus or at a regional campus should be reported to the appropriate local law enforcement agency.

Section 10: Officials with Authority (OWAs)

- 10.1 OWAs 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, including but not limited to: the Title IX Coordinator and TIXO staff members, the President, Provost, Vice Presidents, Athletic Director, Dean of Students, and Chief Human Resources Officer.

Section 11: Confidential Resources

- 11.1 Certain campus and local resources may maintain confidentiality when acting within the scope of their licensure, professional ethics, and/or professional credentials, except in circumstances involving an immediate threat or danger, abuse of protected populations (e.g., minors), or when disclosure is required by law or court order. These confidential resources may provide support, information, and options without an obligation to notify a University official or law enforcement.
- 11.2 Marshall University's confidential resources include:
 - 11.2.1 Licensed professionals and staff at Counseling Center and Psychology Clinic,
 - 11.2.2 Licensed professionals and supervised trainees 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 Center,
 - 11.2.7 Violence Prevention & Response Office,
 - 11.2.8 Peer Recovery Specialist and/or Program Coordinator of the Collegiate Recovery Peer Support team,
 - 11.2.9 Office of International Student Services,
 - 11.2.10 Global Education Office Staff,
 - 11.2.11 ACE (Access, Connections, & Engagement) Center,
 - 11.2.12 Department of Community Services and Family Programs and
 - 11.2.13 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 advocacy organizations,
 - 11.3.4 Local or state assistance agencies,
 - 11.3.5 Clergy or 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. If a report contains information indicating conduct that could constitute a violation of this Policy, the TIXO will attempt to review and address the concerns raised; however, the ability to investigate or resolve anonymous reports may be limited. Supportive measures may still be offered when possible, though anonymity may restrict follow-up or individual assistance.

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 law enforcement 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 appropriate local law enforcement agency. TIXO staff, advocates, counselors, and other University employees are available to assist complainants who wish 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 within Clery-defined offenses and pose a serious or continuing threat to campus community. If possible, the University will avoid disclosing a Complainant's identity while providing sufficient information for community members to make informed safety decisions.
- 16.2 Personally identifiable information obtained in the course of complying with 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 Policy and may result in disciplinary action. This provision does not apply to reports made in good faith that are ultimately unsubstantiated or do not result in a Policy violation.
- 17.2 Witnesses and parties who knowingly provide false information, tamper with or destroy evidence, or deliberately mislead officials may be subject to discipline Policy. The TIXO will refer evidence of intentional false reporting to the appropriate University authority

Section 18: Privacy

- 18.1 Marshall University will make reasonable efforts to preserve the privacy of reports and participant identities. Information will be shared only as necessary to carry out Title IX obligations under 34 C.F.R. Part 106, as required by law, or as permitted by FERPA.
- 18.2 Information will be shared only with University officials who have a legitimate educational interest or need to know in order to respond appropriately.
- 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 with 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 which 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 doing so does not impair the provision of 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 parties¹
- 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 Coordination with Clery Act timely warning requirements, as applicable
- 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 so both offices can assist, as appropriate, 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 arising from allegations of Title IX sexual harassment, after an individualized safety and risk analysis determines an imminent and serious threat to the health or safety of any person. If so, the Respondent will be provided notice of the emergency removal and an opportunity to immediately challenge the decision. A full description of the emergency removal process

¹ Violations of Mutual No Contact Orders will be referred to the appropriate student or employee conduct process for enforcement.

may be found in the Title IX Grievance Procedures and Non-Title IX Grievance Procedures. Emergency removal is not a determination regarding responsibility.

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. Every effort is made to complete the process within 90 business days from notice of allegations to a written determination, absent good cause. These timeframes are not jurisdictional requirements and may be adjusted for good cause, including the complexity of the allegations, availability of parties or witnesses, concurrent processes, academic breaks, or other legitimate circumstances. Any extension and the reasons for it will be communicated to the parties in writing.

21.2 All reports are responded to promptly upon receipt by the Title IX Coordinator. The grievance process begins when the Respondent is sent notice of the allegations. Business days for the purposes of this Policy are weekdays (Monday-Friday) when Marshall University offices are open for normal operations. While certain circumstances may result in extensions, the University will avoid all undue delays within its control. If the projected timeframes will be exceeded, the TIXO will provide written notice to the parties explaining the cause of the delay and the estimated additional time required.

21.3 For formal complaints of Title IX sexual harassment involving student Respondents, the University will conduct a live hearing using real-time audio or audiovisual technology that enables the parties to see and hear each other. Each party's Advisor, and not the party personally, will conduct questioning of the other party and any witnesses directly, orally, and in real time. Only relevant questions may be asked, as determined by the Decision-Maker, who will explain any exclusion of questions as not relevant at the time the determination is made, either before or during the hearing.

The University may request proposed questions in advance to facilitate orderly administration of the hearing; submission of questions in advance is optional and does not limit a party's ability to ask relevant questions during the hearing.

Each party may be accompanied by an Advisor of their choice, who may be, but is not required to be, an attorney. If a party does not have an Advisor at the live hearing, the University will provide one, without fee or charge, for the limited purpose of conducting questioning.

Advisors conduct questioning on behalf of the party in consultation with the party. Parties are not permitted to question each other or witnesses directly.

A party or witness is not required to attend or participate in the live hearing. The Decision-Maker will not draw an adverse inference regarding responsibility based solely from a party's or witness's absence or refusal to answer questions. The Decision-Maker will evaluate the available relevant evidence consistent with applicable law.²

21.4 For formal complaints involving Employee Respondents, the University may, but is not required to, conduct a live hearing. The University will determine whether a live hearing is necessary based on the nature of any disputed facts, the availability of corroborating evidence, and whether credibility determinations require real-time questioning. When a live hearing is not necessary to ensure a fair and equitable process, the University may resolve the matter through written questioning with appropriate

² Title IX grievance process permits Decision-Makers to consider relevant statements made by parties or witnesses even if they do not participate in cross-examination at a live hearing. Decision-Makers may not automatically exclude such statements or draw adverse inferences based solely on a person's absence or refusal to answer questions..

follow-up, subject to relevant determinations by the Decision-Maker.

Employee Respondents and Complainants may be accompanied by an Advisor of their choice during interviews, meetings, and any hearing or questioning conducted under this process. When a matter is resolved without a live hearing, responsibility will be determined by a trained and impartial administrative Decision-Maker designated by the University, based on the investigative record and any written questioning permitted under this Policy.

- 21.5 The standard of evidence applied to determine responsibility Policy is the preponderance of the evidence standard, meaning the evidence shows it is more likely than not that the Respondent violated this Policy. The same standard applies to all formal complaints, regardless of the Respondent's status as a student or employee.

21.6 When a Respondent is found responsible for a Policy violation 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.

21.7 Where a determination of responsibility has been made, the University will provide remedies to the Complainant designed to restore or preserve equal access to the University's education program or activity. Remedies may include the same individualized services as supportive measures but may be disciplinary or punitive and may burden the Respondent. A Complainant is not entitled to any specific sanction.

Section 22: Consideration of Classroom and Instructional Settings

- 22.1 The classroom or other instructional setting (e.g., studio, laboratory, office hours) presents special considerations because academic freedom protects the expression of ideas, even where such expression is perceived as mature, controversial, explicit, graphic, or offensive. Nevertheless, conduct that would otherwise violate this Policy is not exempt merely because it occurs in an instructional setting. Rather, the investigation will consider the legitimate pedagogical context and discipline-specific professional standards.

- 22.2 Accordingly, deference is afforded where conduct occurs within a legitimate pedagogical context. The presentation or discussion of sexual topics for legitimate educational purposes will not constitute sexual harassment solely because the material is subjectively offensive to some individuals.

Section 23: Reasonable Accommodations for Persons with Disabilities

- 23.1 Any persons with a disability who is involved in the Sexual Harassment and Other Sexual Misconduct Grievance Process has the right to request reasonable accommodations or auxiliary aids and services to ensure full and equal participation. Requests should be made to the Office of Accessibility and Accommodations (OAA). A party is not required to disclose information about the underlying complaint

or charge to request an accommodation, except to the extent necessary to determine appropriate accommodations. Accommodations are determined on an individualized basis by OAA and implemented in consultation with the case Investigator(s) or Decision-Maker(s), as appropriate. Examples of reasonable accommodations include, but are not limited to, sign language interpretation, real-time communication access, large print or accessible documents, extended time to review materials, or assistance with transcribing questions during interviews or hearings.

Section 24: Disability Complaint Procedures

- 24.1 Marshall University does not discriminate on the basis of disability in admissions, employment, housing, services, or in the educational programs or activities it operates. The Vice President of Student Affairs serves as the Section 504 Coordinator for students. The Chief Human Resources Officer serves as the Section 504 Coordinator for employees. These coordinators oversee compliance with 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 maintains records relating to disability complaints handled under this Policy and related 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