STUDENT CONDUCT PROCEDURES
ADMINISTRATIVE PROCEDURE
STUDENT-03
STUDENT DISCIPLINARY PROCEDURES

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Purpose:
This administrative procedure sets forth the Procedures and Due Process rights for students who are accused of violation Board of Governors policies GA-1 or SA-1.

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Approved by: [Signature]
Approval Date: 2/1/21

See attached.
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Article I. General Overview

Section 1.01 Code of Student Rights and Responsibilities

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

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

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

Section 1.02 Jurisdiction

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

B. Off-Campus Conduct
The Director of Student Conduct (Director) is responsible for deciding whether the Student Code of Conduct shall be applied to conduct occurring off-campus, on a case-by-case basis, at his/her sole discretion.

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

C. Student Organization Conduct

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

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

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

1. In determining whether a Student Organization may be held collectively responsible for the individual actions of its members, guests, contractors, and/or agents, all the available factors and circumstances surrounding the specific incident will be reviewed and evaluated. There is no minimum number of Student Organization members who must be involved in an incident to determine group responsibility. A Student Organization may be subject to discipline for activities not sponsored by the Student Organization where the majority of the persons present or responsible for the activity are members or guests of members of the Student Organization.

2. Misconduct on the part of the Student Organization may be cause for disciplinary action by the University when one or more of the following factors exist:

   a. Members of the Student Organization (active or inactive), alumni, former members, agents, contractors, or guests act together to violate the Student Conduct Code;

   b. A member or guest of an organization is failing to discourage such activity, or tacitly condoning the behavior;

   c. One or more officers or members of a Student Organization are present, have knowledge of, planned and/or permitted unlawful conduct or conduct in violation of the University Student Code of Conduct at a Student Organization sponsored, financed, or otherwise supported activity or event;

   d. A violation of the University Student Code of Conduct occurs on premises and/or in transportation owned, operated, leased, or rented exclusively by the Student Organization;
e. A pattern of individual violations has occurred and/or continues to occur without adequate control, response, or sanction on the part of the Student Organization;

f. Student Organization or activities related to the Student Organization provided the context for the violation(s);

g. The Student Organization leadership chooses to protect one or more individuals in who are members (active or inactive), alumni, former members, agents, contractors, or guests of the Student Organization from official actions; and/or

h. The acts grow out of or are directly related to the Student Organization’s activities, or an environment created by the Student Organization.

D. Residence Hall Violations

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

E. Criminal Conduct

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

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

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

G. Program Specific Conduct Codes

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

Section 1.03 Office of Student Conduct

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

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

Article II. PROCEDURES

Section 2.01 Definitions

The definitions set forth in this section apply only to these Student Disciplinary Procedures and are not to be applied to any other University procedure. To the extent definitions in other University policies and procedures differ, the definitions set forth in these procedures control.
A. **Academic Term.** For the purpose of these Procedures, an Academic Term is one year.

B. **Activity.** All or any operations conducted, sponsored, promoted, operated or otherwise engaged in by Marshall University, including, by way of illustration and not as limitation of the foregoing, classroom and course activities, recreational and cultural programs, committee or other business activity, registration, advising, teaching, research, or service.

C. **Advisor.** Any person intended to assist the Respondent during the disciplinary process, including but not limited to, a Student Advisor, faculty member, attorney, or other person. Unless otherwise indicated by the Respondent, in writing, the Advisor shall be provided a copy of all materials provided to the Respondent. Advisors may not be witnesses or provide testimony.

D. **Business Day.** Any weekday when university offices are open for official business.

E. **Complainant.** The Individual who brings a complaint alleging that a student has violated the Student Code of Conduct.

F. **Designee.** The person designated by the designated Marshall University official in these Procedures to act on their behalf. Provided that, a Designee cannot be anyone who is part of the hearing or appeal process under these Procedures.

G. **Director of Student Conduct (Director).** The staff member designated by Marshall University, or his/her designee, as responsible for the administration of the Student Code of Conduct. The Director’s duties include, but are not limited to, investigating complaints, charging students with violations, imposing sanctions, and representing the University in hearings. The Director is responsible for making an initial determination of whether a Code violation has occurred. The Director supervises the selection and training of Student Advisors.

H. **Educational Sanction.** An assignment, requirement, or task educationally related to the violation.

I. **Executive Session.** Executive session includes the voting members of the board and other non-voting parties at the discretion of the board. Executive Sessions are not a part of the hearing record and shall not be recorded.

J. **Hearing Officer.** Any Marshall University faculty or staff member versed in the student conduct process, appointed to preside over a student conduct hearing. The Hearing Officer’s function is to schedule the hearing and to see that it is conducted fairly and in compliance with stated policy. A Hearing Officer provides “technical” advice to the Hearing Board but does not vote or participate in decision-making except where the decision of the Hearing Board is a tie.

K. **Justices.** Full-time students, faculty, and staff members who, on a voluntary basis, hear student conduct cases and recommend sanctions for students found in violation of the Code of Student Conduct. Justices must meet established criteria and complete University-supervised training.

L. **Medical Amnesty.** Procedure for Students who seek emergency assistance for themselves, another student, or a friend experiencing an alcohol and/or drug related emergency as well as
the individual in distress, to be granted limited immunity to disciplinary action under the Student Code of Conduct. Students may still be referred for assessment, counseling, and treatment.

M. **Notices or Communications.** All notices or other communications which are required in these Procedures, including all appendices, shall be in writing and shall be deemed to have been duly given if (a) delivered by hand; (b) sent to the recipient’s official University email account with a delivery and read receipt; (c) mailed by certified or registered mail with postage prepaid; (d) mailed by reputable overnight courier; or (e) sent by facsimile transmission, with confirmation that such transmission has been received.

N. **Respondent.** A person who is alleged to have violated the Student Code of Conduct.

O. **Social Obligation Hold.** If a student is charged with or found responsible for a violation of the Student Code of Conduct, a Social Obligation Hold will be placed on the student’s account. A Social Obligation Hold will prevent the student from conducting University business without the approval of the Director as well as prevents a student from registering for academic courses pending the outcome of the investigation, adjudication, and disposition of the complaint. A student who is under a Social Obligation Hold is not permitted to withdraw from the University without the approval of the Director. In situations where a student is found responsible and given a Reportable Sanction, a notation will be placed on the student’s transcript.

P. **Student.** Any persons taking courses at or from Marshall University, both full-time and part-time, pursuing undergraduate, graduate, or professional studies and those who attend educational institutions other than Marshall University and who reside in Marshall University residence halls or utilize Marshall University facilities or services for the purpose of pursuing studies at those institutions. For the purposes of this policy, persons who have been admitted to Marshall University, but are not officially registered for a particular term, and/or who have a right to, or expectation of, a continuing or future student relationship with Marshall University are considered “students.” A person shall be considered a student during any break or holiday period that occurs during a term in which that person is registered or between terms for which that person registers. A person shall be considered a student while suspended from the institution, or while the person is attending or participating in any activity preparatory to the beginning of a term, including, but not limited to, athletic training, orientation, placement testing, and residence hall check-in. A person is considered a student after the awarding of a degree or certificate for the purposes of addressing any conduct alleged to have occurred during any of the times set forth in this definition.

Q. **Student Advisor.** A full-time student approved to provide, on a voluntary basis, advice, assistance and representation to students charged with violating the Student Code of Conduct. Full-time student advisors must meet established criteria and complete University-sponsored training.

R. **Student Conduct Hearing Board (Hearing Board).** A review board that adjudicates cases where the matter cannot be resolved directly with the Director of Student Conduct. The Board will consist of one faculty or staff Justice and two student Justices.

S. **Student Organization.** Any group of five (5) or more Students or persons who have complied with formal requirements for provisionary or full recognition as a student organization at Marshall University or who are otherwise united around a common interest. Student Organizations
include, but are not limited to, social fraternities and sororities, sports clubs, academic clubs, and organizations whose recognition has been suspended.

T. **University.** This term, where used in this document, refers to Marshall University, including all branch campuses and affiliated units and centers.

U. **University Property.** All the land, buildings, facilities, and other property including intellectual and virtual property, owned, used, leased, or controlled by Marshall University, including adjacent streets and sidewalks. This includes all University campuses and facilities. University property also includes computers and network systems owned, maintained or controlled by the University or funded by university budgets or designated by the campus as subject to these policies.

V. **Witness.** A person who has relevant information to share.

## Section 2.02  Intake and Review Procedures

A. **Filing a Complaint.** Any faculty member or staff, student, or any other person may meet with the Director to discuss alleged misconduct. If the Complainant wants to file a formal complaint, the Complainant must submit to the Director his/her official Statement of Complaint (Complaint) and all materials supporting the complaint within seven (7) days of the meeting. Such materials may include, but are not necessarily limited to: Witness List, contact information of witnesses if known, detailed statements prepared by factual witness(es), written correspondence shared between the parties, documents, photographs, property receipts, medical reports, and any other information relevant to the Complaint.

The Complainant may not submit more than 50 pages of materials to be included in the case file. Statements should be in legible handwriting or typed using a clear font that is easily readable. The Office of Student Conduct recommends Calibri or Times New Roman. Typed statements should be double-spaced on standard-sized paper (8.5” x 11”) with 1” margins on all sides.

These materials will become part of the Official Case File.

At the conclusion of the seven (7) calendar day deadline for submission of the Complaint and all supporting materials, the Complainant’s official Statement of Complaint is rendered complete. The only additional materials that he/she will be allowed to submit is information that responds specifically to information submitted by the Respondent that could not have reasonably been anticipated by and addressed in the Complainant’s original Statement of Complaint.

B. **Anonymous Complaints.** Although anonymous complaints will be reviewed, because the Respondent is entitled to certain due process including but not limited to the right to confront his/her accuser, the University’s ability to address alleged misconduct reported by anonymous sources is significantly limited.

C. **Review.** The Director will review the Complaint, interview the Complainant, and may interview any witnesses named in the Complaint to determine whether there is sufficient information and/or evidence to support the allegations of misconduct. As part of the interview, the
Director will advise the Complainant and/or witnesses of their potential role in the Code of Student Conduct adjudicatory process. If the Director determines the allegations set forth in the complaint, if proven, would not constitute a violation of the Code of Student Conduct, or that insufficient evidence/information exists to support the allegations in the Complaint, the Director will notify the Complainant via United States Mail or the University email system that charges against the responding student will not be pursued. A dropped charge may be reinstated at the discretion of the Director if substantial new information should become available. If a charge is reinstated, the Respondent will be sent a notice of the charge. If a charge is dropped, the student will have no disciplinary history related to it. If the Director determines that the allegations, if proven would constitute a violation of the Code of Student Conduct and that sufficient evidence/information exists to support the allegations in the Complaint, the Director will issue the Respondent a Charge Letter.

D. **Interim Measures.** Interim measures may be initiated by the Director to protect the safety and well-being of persons involved in an incident and/or the campus community pending the outcome of the investigative and adjudicative processes. Interim measures may include the following to the extent reasonably available and appropriate.

1. **Interim suspension.** Immediate separation of a Student from the University and/or housing by the Director (or designee) pending an investigation or adjudication. Through the duration of the interim suspension, the Student may be restricted from university property and may be required to provide prior notice and receive approval from the Director for the purpose of conducting University business. Interim suspension will be imposed only in exceptional circumstances to ensure the health, safety, or welfare of members of the University or University property or to ensure the Student’s own safety and welfare. Interim Suspension/Emergency Suspension procedures are set forth more fully in Section 2.03.

2. **No Contact Directive.** A no contact directive is an official University directive that serves as notice to an individual(s) that they must not have physical contact with or proximity to, or direct verbal, electronic, written, and/or indirect third-party communications with another individual.

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

4. **Academic accommodations.** This may include assistance in transferring to another section of a course, in requesting withdrawal or an incomplete grade in a particular course, leaves of absence or withdrawal from the University, or requesting alternate methods of completing coursework.

5. **Housing accommodations.** This may include requiring a Student to relocate housing pending the outcome of a conduct investigation or proceeding. This may also include facilitating changes in on-campus housing location to alternate housing.

6. **Employment accommodations.** This may include arranging for alternate University employment for Students employed by the University.

7. **Other accommodations.** Any other measure that may be arranged by the University (to the extent reasonably available) to ensure the safety and well-being of a Student and/or the University community. This may include the use of alternate dispute resolution services such as mediation or restorative practices when appropriate.
8. **Deferral of the degree.** The Student Conduct Hearing Board, or the Vice President of Student Affairs may withhold the conferral of the degree until the disciplinary action has been resolved. Deferral of a degree is an interim measure that is NOT dependent upon the health, safety or welfare of the campus but is imposed in cases where the disciplinary proceedings may not be resolved prior to Commencement.

E. **Multiple Charges.** If a report of a violation also implicates any other violation(s) of the University's Code of Student Conduct, the Director in consultation with other appropriate University personnel will evaluate all reported allegations to determine whether the allegation(s) and the alleged Code of Student Conduct violation(s) may be appropriately investigated together without unduly delaying the resolution of the violations. Where the Director determines that a single investigation is appropriate, the determination of responsibility for the violation of university policy will be evaluated under the applicable policy (i.e., the Housing and Residence Life Policy, Sexual Misconduct policy or the Student Code of Conduct), but the investigation and resolution will be conducted in accordance with the Student Disciplinary Procedures for violation of the Student Code of Conduct. Program specific violations will be handled separately by the program involved.

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

F. **Charge Letter.** If the Director determines that there is sufficient information/evidence to support the allegation(s) of misconduct set forth in the complaint, the Director will issue Respondent a Charge Letter directing the student to meet with the Director to discuss the allegations. The Charge Letter should include:
   a. the University Policy, campus regulation(s) and/or sections of the Student Code of Conduct the Respondent is alleged to have violated;
   b. a summary of the Complaint including the specific conduct;
   c. whenever possible, the date, time, and location of the alleged offense;
   d. a statement of the sanction(s) that may be imposed, if applicable;
   e. a statement that if the student is found responsible for the misconduct; the student’s prior disciplinary record may be considered when imposing sanctions
   f. notice of any interim measures that have been imposed in accordance with Section 2.03;
   g. notice of the student’s right to be accompanied by an Advisor at any stage of the proceedings at the student’s own expense;
   h. notice of the student’s right to a hearing (Formal Resolution)
   i. in cases where suspension and/or expulsion from the University or University program are not possible outcomes, the right to engage in Voluntary Resolution
   j. notice to the student of his/her right to request a copy of the student’s own conduct file;
   k. directions on how to obtain a copy of the Student Code of Conduct and these procedures.

The Charge Letter will also inform the Respondent that a Social Obligation Hold will be placed upon the Respondent’s record pending the outcome of the Disciplinary Process. A Social Obligation Hold prevents a student from registering for academic courses. When appropriate, the Director may place a student on interim suspension by issuing a Notice of Interim Suspension (see Interim Suspension, Section 2.03).
G. **Respondent Meeting with Director.** The purpose of the meeting is to provide the Respondent with an opportunity to discuss and respond to the charges set forth in the Charge Letter as well as to provide the Respondent with an opportunity to choose a course of action. During the meeting, the Respondent is presented with a copy of the Complainant’s Statement of Complaint and the supporting materials. The University’s student adjudication process is explained, and the Respondent’s questions are answered. The Respondent is provided an opportunity to present his/her perspective of the allegations.

1. **Voluntary Resolution:** During the meeting or at any time prior to a Hearing, the Respondent may choose to engage in Voluntary Resolution of the complaint by accepting responsibility for the conduct set forth in the Charge Letter. By accepting responsibility for the conduct set forth in the Charge Letter and accepting Voluntary Resolution of the Complaint, the Respondent student waives all rights to a hearing and/or any other due process rights the student may be entitled to receive under this process or any other State or Federal law. Investigation of the Complaint ends, and the Respondent and the Director will discuss and agree upon sanctions and enter into a Voluntary Resolution Agreement. If the Director and the student cannot reach a mutually acceptable agreement regarding sanctions, then the charges will be sent to the Hearing Board for a decision to be made on the sanction alone. The Director will notify the Complainant of the Voluntary Resolution of the Complaint via United States Postal Service or the University’s email system. The Director will not provide the Complainant with any sanction information unless the sanctions directly involve the Complainant.

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

3. **Medical Amnesty.** To promote a living and learning environment Marshall University encourages students to seek medical attention in life-threatening situations that result from alcohol and/or drug use. Therefore, Students who have received medical attention for alcohol and/or drug use and/or who have helped other students obtain medical attention who want to apply for medical amnesty are required to follow the procedures outlined in Section 4.01 of this policy. Medical Amnesty will provide the student with limited immunity to disciplinary action under the Marshall Student Code of Conduct.

4. **Formal Resolution.** If the Respondent does not accept responsibility, the Director will continue to investigate the Complaint for the purpose of deciding on responsibility and applicable sanctions. The Respondent is given seven (7) calendar days from the date of the meeting with the Director to submit, in writing, his/her official Statement of Response and all supporting materials. Such materials may include, but are not
necessarily limited to: Witness List, detailed statements prepared by witness(es), written correspondence shared between the parties, photographs, property receipts, medical reports, etc. The Director will review the documents to ensure their inclusion meets established policies and procedures. These materials will become part of the Official Case File.

The Respondent may not submit more than 50 pages of materials to be included in the case file. Statements should be legibly handwritten or typed and double-spaced on standard-sized paper (8.5” x 11”) with 1” margins on all sides. The Office of Student Conduct recommends Calibri or Times New Roman.

The Complainant will receive a copy of the Respondent’s materials from the Director and will have two (2) business days to respond to material submitted by the Respondent which could not have been anticipated by and addressed in the Complainant’s original Statement of Complaint. If the Complainant submits any additional material, the Director will review the materials to ensure their inclusion meets process’-established policies and procedures. The Complainant cannot submit more than 10 pages of materials in response to the Respondent’s materials.

5. **No Response.** If the Respondent fails to attend the meeting with the Director and/or fails to provide a written response without requesting an extension of time and/or notifying the Director, the Director is authorized to decide on responsibility and to issue sanctions based upon the information provided by the Complainant.

H. **Decision.** Within a reasonable time after receipt of all information from the Complainant and the Respondent, the Director will issue a decision on responsibility and sanctions if applicable. The Director will use the preponderance of the evidence standard to determine responsibility, that is, the Director will determine whether it is more likely true than not true that the Respondent is responsible for violating the Student Code of Conduct. The Director will notify the Respondent and the Complainant of his/her final decision in the same manner that Notice is to be provided under these procedures. The Director will not provide the Complainant with any sanction information unless the sanctions directly involve the Complainant.

This Decision is part of the Official Case File.

I. **Request for Hearing.** Within four (4) business days of receipt of the Director’s decision, the Respondent may submit to the Director a written request for a hearing before the Hearing Board. Email requests must be time stamped on or before the close of business on the fourth (4th) day after receipt. Requests sent by any postal service must be postmarked on or before the fourth (4th) business day after receipt. Once a request for hearing is made, the Director’s decision will be stayed or held in abeyance (temporarily delayed), unless the Director determines that the health, safety, and welfare of the University community would be placed in jeopardy.

If the Respondent does not request a hearing in accordance with the timeframe set forth in this section, the Director’s Decision will become final, and sanctions will be implemented on the fourth business day after the expiration of the appeal timeframe.
Section 2.03  Interim/Emergency Suspension

A. If, in the opinion of the Vice President of Student Affairs (or his/her designee), in consultation with the Student Affairs Assessment Team, the presence of a Respondent constitutes a continuing danger to persons or property or is an ongoing threat of disrupting the academic process and/or administrative operations at the University, the Vice President of Student Affairs (or his/her designee) or the Director (or his/her designee) may immediately suspend the Respondent for up to ten business days. The Student Affairs Assessment Team shall include, at a minimum: (1) a representative from the office of the Vice President of Student Affairs, (2) a representative of the University Police Department (the “MUPD Representative”), and (3) a representative from the Office of Student Conduct. The Student Affairs Assessment Team may also consult with such other members of the University community it deems necessary to complete its evaluation.

Health And Safety Assessment

1. Risk Factors. Provided that MUPD did not receive the initial report, the Student Affairs Assessment Team will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the Complainant or to any other member of the University community. The Student Affairs Assessment Team will make this determination based upon a review of the totality of the known circumstances, and will be guided by a consideration of the following factors (the “Risk Factors”):

   1) Whether Respondent has prior arrests, is the subject of prior reports and/or complaints related to any form of student misconduct, or has any history of violent behavior;
   2) Whether the Respondent has a history of failing to comply with any University No-Contact Directive, other University protective measures, and/or any judicial protective order;
   3) Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
   4) Whether the alleged misconduct involved multiple Respondents;
   5) Whether the alleged misconduct involved physical violence. “Physical violence” means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon;
   6) Whether the report reveals a pattern of Student Code of Conduct violations (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location); and
   7) Whether any other aggravating circumstances or signs of predatory behavior are present.

2. Disclosure(s) of Information to Law Enforcement. Provided that law enforcement is not already involve, the Student Affairs Assessment Team is required to disclose information about alleged Prohibited Conduct to law enforcement in the following circumstances:

   1) If the Student Affairs Assessment Team (or, in the absence of consensus within the Student Affairs Assessment Team, the MUPD Representative) concludes that there is a significant and articulable threat to the health or safety of the Complainant or to any other member of the University community and that disclosure of available information (including the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident) is
necessary to protect the health or safety of the Complainant or other individuals, the MUPD Representative will immediately disclose the information to the law enforcement agency that would be responsible for investigating the alleged act of criminal misconduct.

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

B. University Process for Emergency Suspensions

1) A Hearing on the interim suspension shall be scheduled within three (3) business days of the suspension unless the Respondent requests a continuance.

2) Written notification of the time and place of the Hearing will be delivered to the Respondent or his/her Advisor on behalf of the Respondent at least one day prior to the Hearing date.

3) Written notice of the charges against him/her and an explanation of the evidence the University has shall be given to the Respondent.

4) The Hearing will be conducted in accordance with Section 2.04 of these Procedures.

5) The Director’s decision will not be stayed or held in abeyance (temporarily delayed) pending the Hearing.

Section 2.04 Student Conduct Hearing Board Procedures

A. Respondent’s Rights. Respondent will be provided the following rights:

1. An opportunity to present any evidence on his/her behalf including but not limited to papers, letters, photographs, cards, tapes, medical reports and/or recordings that are relevant to the misconduct alleged in the complaint.

2. An opportunity to present witnesses on his/her behalf and the opportunity to question any other witnesses either in person or via alternate methods such as video conferencing.

3. An opportunity to challenge the Hearing Board members for bias.

4. Opportunity to have legal counsel present at his/her own expense.

5. Adequate time to prepare for the hearing.
B. **File Review.** The Hearing Officer will review the Official Case File to determine if anything is missing from the file. If anything is missing from the file, the Hearing Officer will request the Director to provide the information. If anything is added to the file, the Complainant and the Respondent will be provided with copies within a reasonable time prior to the hearing.

C. **Process**

1. **Pre-hearing Information.**

   The Hearing Officer will provide written notice of the hearing to the Respondent and Complainant. The notice must include:
   
   i. The approximate date, place, and nature of the alleged violations.
   ii. The date, place, and time of the scheduled hearing.
   iii. The code violations the Student Conduct Hearing Board will address.
   iv. The web location of the procedures for the hearing.
   v. A statement concerning the Respondent’s right to review the case file prior to the hearing.
   vi. A statement concerning the Respondent’s right to have an Advisor present during the hearing.
   vii. A statement that the hearing may go forward if the student fails to appear.
   viii. The names of the individuals who will be on the Hearing Board, with direction that all communications are to be directed to the Hearing Officer and that neither the Respondent, Complainant nor person acting on their behalf are to contact the Board Members directly.
   ix. Procedure for requesting a continuance.
   x. Notice that any information in the case file will be considered by the Hearing Board to decide, that the case file is part of the record and anything in the case file does not need to be resubmitted at the hearing.
   xi. Names of the Hearing Board members and the procedure for challenging the members for bias.

2. **Pre-Hearing Procedures.**

   i. The Student Advisor may meet with the student prior to the hearing to assist him/her in preparation.
   
   ii. A hearing may proceed regardless of the failure of a Respondent to appear if the Respondent has been properly notified of the hearing at least five business days prior to the hearing.
   
   iii. Hearings will be closed. The Hearing Officer may exclude or remove from the hearing room any person who may interfere with the orderly process of the hearing. Provided that the Complainant and his/her Advisor are allowed to be present for all parts of the hearing at which a Respondent may be present, with the exception of any discussion of the Respondent’s disciplinary history. Witnesses (other than the Complainant) may be present only while presenting evidence or testimony.
iv. The Director is responsible for presenting the charge and any evidence supporting the charge to the Hearing Board.

v. **Witness List**: The Director and Respondent must provide the Hearing Officer and each other with the name of each fact witness four business days prior to the hearing.

The Hearing Officer will issue a notice of appearance to witnesses. Either party may request that the Hearing Officer issue a notice of appearance **no later than noon two (2) business days** before the hearing. Only Marshall University students may be required to attend a hearing. Witness notices will include the procedure for requesting that testimony be taken by alternate means.

The Hearing Officer may also at his/her discretion consider the participation of witnesses whose names were not submitted by the deadline.

Character witnesses will only be allowed to present written statements that may be read by the Hearing Board in the sanctioning phase.

Testimony must be truthful. Individuals may be subject to disciplinary action if they provide false information in the hearing process.

The Hearing Officer may arrange for testimony to be taken at an alternate time at which time there will be an opportunity for oral or written questioning by both parties and the Hearing Board members, with the consent of the parties.

vi. The hearing will be electronically recorded by the Hearing Board. The Respondent, upon request shall be provided with a copy of the recording. The original recording will remain the property of the University and will be considered the “official” record of the proceedings. Provided that, upon the prior approval of the Hearing Officer, the Respondent may utilize the services of a Certified Court Reporter at their own expense. If a Certified Court Reporter is utilized the Respondent shall provide the University with the original transcript at no charge to the University. The original transcript will then become the official record of the proceedings.

3. **Hearing Board Procedures**

The Hearing Officer will ensure that:

i. The Hearing Board consists of one faculty and/or staff member Justice and two Students Justices.

ii. The Respondent, Complainant, and their respective Advisors are introduced.

iii. The members of the Student Conduct Hearing Board, the Director, and other authorized personnel are introduced.

iv. The Respondent and the Complainant may challenge the objectivity of any voting member of the Hearing Board. Such a challenge must be based on a prior relationship.
that may result in substantial bias. Justices shall have the obligation to disclose any potential conflict of interest prior to the hearing.

a) In the event of such a challenge, the Hearing Board will meet in Executive Session without the challenged member to determine whether the challenged member may continue to serve on the committee. Following this determination, the hearing will proceed with the remaining members present.

v. The record is identified.

vi. Documentary evidence, statements, and memoranda included in the hearing file are presented.

vii. Additional information is received or identified. The Hearing Officer will determine whether any new information is to be added to the hearing file and, if so, whether this addition requires a continuance.

viii. The hearing proceeds in an orderly fashion, as follows:

The complaint, charges, and any pre-hearing investigation are summarized by the Director.

a) Any person, including the Director, Complainant or Respondent who will be giving testimony will be sworn. Advisors may not act as witnesses and therefore, should not be sworn.

b) The Director will provide a narrative or verbal description of the alleged incident.

c) The Hearing Officer will ask the Respondent whether he/she is responsible or not responsible for the alleged charges. If the Respondent agrees that he/she is responsible, the Hearing Board may move immediately to sanctioning.

d) Both the Director and Respondent will be allowed to make Opening Statements to the Hearing Board limited to five (5) minutes. The Director will offer his/her statement first. This statement should not be a presentation of the case, but instead should offer a brief overview or outline of what their case will be, and what witnesses or evidence will demonstrate to the Hearing Board. As this is not an actual presentation of the details of the case, these statements are NOT subject to immediate questioning.

e) The Hearing Board initiates questioning of parties and other witnesses. Parties may ask questions of each other and witnesses in the order determined by the Hearing Officer.
f) Witnesses are escorted into the room one at a time to make statements. Witnesses will be administered an oath or affirmation. All questions are asked appropriately, in the following manner:

(i.) All witnesses are questioned first by the Hearing Board.

(ii.) The Respondent and Director are invited to ask questions. Provided that, to allow for the orderly presentation of evidence and to avoid any intimidation, all questions asked by the Respondent, or the Director must be directed through the Hearing Officer rather than posed directly to the other party or the Complainant. Other witnesses may be questioned directly by the party at the discretion of the Hearing Officer.

(iii.) No student witness may be compelled to incriminate him/herself. The Respondent may remain silent and his/her silence should not be taken as inference of culpability.

(iv.) Any party wishing to have a witness testify telephonically must contact the Hearing Officer to decide for the same. Whether a witness will be permitted to testify telephonically will be determined the Hearing Officer.

g) If further information is deemed necessary by the Hearing Officer, the Hearing Board will suspend its hearing to pursue such inquiries and request the Director or the Respondent attempt to secure additional information.

h) Both the Director and Respondent will be allowed to make Closing Statements to the Hearing Board limited to ten (10) minutes. The Director will offer his/her statement first.

i) The Respondent is invited to make a final written or verbal comment.

j) The Director may present evidence regarding an appropriate sanction, considering the nature of the violation admitted or found to have occurred, aggravating, or mitigating circumstances, and University policies and practices regarding sanctions imposed in similar cases.

k) After the Director and Respondent have concluded their Closing Statements, the Hearing Board will adjourn the hearing for deliberations on responsibility and if applicable sanctions. The Hearing Board will decide whether the student is responsible or not responsible for violating the Code of Student Conduct. The decision of the Student Conduct Hearing Board will be by a simple majority vote. The Hearing Board may consider the prior disciplinary record of the Respondent when determining sanctions. Deliberations are not recorded.

l) The decision of the Hearing Board will not be communicated orally but will be delivered in accordance with Section 2.04.C.4, below.
ix. Formal rules of evidence and court procedures are not used and do not apply. Student conduct hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures, requirements for pleadings, and the hearsay rule do not apply in student disciplinary hearings.

x. The Respondent and the Complainant each can testify but may not be required to testify.

xi. The Respondent and Director may present witnesses and other evidence regarding the facts of the suspected violation and whether a violation occurred.

xii. Eyewitness testimony and circumstantial evidence in any form (e.g., documents, pictures, electronic, and/or physical evidence) may be presented to the Hearing Board.

xiii. One person's report of another's statements (hearsay) may be received by the Hearing Board. The Hearing Board may discount hearsay evidence in part or in whole as appropriate.

xiv. A criminal plea, trial, and/or conviction, including a court order, opinion, transcript of sworn testimony, or other official record may be received as evidence.

xv. The Student Conduct Hearing Board may weigh credibility and make findings based on the testimony of one witness against another or against other evidence.

xvi. The Hearing Officer may exclude irrelevant or unduly repetitious evidence.

xvii. The Respondent may be represented by the person/Advisor of their choosing, including an attorney. Provided that, if the Respondent is being represented, they must advise the Hearing Officer at least forty-eight hours prior to the scheduled hearing.

xviii. The Director/University reserves the right to be represented by Counsel at any proceeding.

xix. All Advisors are required to adhere to the above procedures.


i. The Respondent will be notified, in writing, by hand delivery, email or certified mail, within three (3) business days of the hearing of the Student Conduct Hearing Board’s decision. If a
sanction is imposed, this letter will include a statement of the Respondent’s right to appeal to the Vice President of Student Affairs within five business days from the date that Respondent receives the decision.

ii. The Complainant will be notified of the Hearing Board’s decision on responsibility but will not be notified of any sanctions if applicable unless the sanctions relate directly to the Complainant. If a student is found to have violated a specific act set forth in the Student Code of Conduct and that act constitutes a crime of violence or non-forcible sex offense, as defined by 34 C.F.R. § 99.39 (2015), then, pursuant to 34 C.F.R. § 99.31(a)(14)(i) (2015) and the University’s Family Educational Rights and Privacy Act notification, the University may disclose the results of the proceedings to anyone. For purposes of this disclosure, “final results” means the name of the student, the basic nature of the violation the student was found to have committed, and a description and duration of any sanction imposed against the student.

iii. If the Complainant is deceased because of such crime or offense, the administrator or executor of such victim’s estate shall be treated as the Complainant for purposes of this paragraph. If the Complainant does not have an administrator or executor, then the next of kin shall be notified.

Section 2.05 Sanctions

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

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

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

2. Conduct Probation. Conduct Probation is a strong communication that a student is no longer in good disciplinary standing with the academic community. Any subsequent violations of the Student Code of Conduct will be evaluated in the context of the student’s probationary status. The Office of Student Conduct will notify the dean of the student’s college and a Social Obligation Hold will be placed on the student’s record. The Social Obligation Hold will remain on the student’s record until the obligation is fulfilled. The record of Conduct Probation is maintained in the Student Conduct office for seven years. Conduct Probation may include one or more of the following:

i. Loss of Participation: The student may not represent the University in any extracurricular activities such as, but not limited to, intercollegiate athletics, debate teams, University Theater, band, or other similar activities however, the student may participate in informal activities of a recreational nature sponsored by the University.

ii. Self-Improvement: A program of self-development will be planned in conjunction with a faculty or staff person assigned to assist in a counseling/guidance capacity. Numerous resources may be used to assist the student in identifying and clarifying experiences, goals, educational and career choices, and other personal objectives.
iii. Surrender of Student Activity Privileges: A student required under this section to relinquish Student Activity privileges may not participate in, or attend, events that provide a discount or privilege for students through payment of their tuition and fees. Exceptions may be granted by the Student Conduct Office in those instances where attendance at such events is required by academic courses or programs.

iv. Loss of Privilege of Participation in Advanced Registration: The student will relinquish their advanced registration privileges during their sanction obligation. During this time, the student will register by filling out a scheduled adjustment form instead of the online process. Exceptions may be granted by the Office of Student Conduct.

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

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

2. Suspension. Suspension shall be imposed upon a student when it is determined by the Director that the student's relationship with the university must be suspended from the university for a definite period. A suspended student may apply for re-admission to the University through the Office of Student Conduct and the Office of Admissions at the end of the suspension period specified by the conduct action. Suspension records are maintained indefinitely. Any suspension imposed shall be recorded on the student’s transcript during the suspension period and until the student matriculates for the following academic term. Should a student remain out of the university during an academic term following a suspension, he/she must apply for readmission as would a student who had withdrawn from the university. The Office of Student Conduct may deny readmission in those instances where the suspended student fails to demonstrate a positive change in behavior which indicates that the suspended student is prepared to again become a responsible member of the University community. Numerous resources may be used to assist the student in identifying and clarifying experiences, goals, educational and career choices, and other personal objectives. At the end of a suspension period, the student is placed on Conduct Probation until graduation, unless mitigating circumstances warrant a different sanction.

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

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

C. Other Conditions or Restrictions
   1. Deferral of the degree. The Student Conduct Hearing Board, or the Vice President of Student Affairs may withhold the conferral of the degree until the disciplinary process has been resolved.
   2. Withholding of the degree. In cases in which a student has not been awarded the degree but has completed all requirements for the degree, the Student Conduct Hearing Board or the Vice President of Student Affairs may direct that the degree be withheld for a period not to exceed one year from the date the condition or restriction is imposed.
   3. A degree awarded by the institution may be revoked for fraud, misrepresentation, or other violation of the university standards in obtaining a degree.
   4. The Vice President of Student Affairs may authorize any other sanctions he/she deems to be just and appropriate.

D. Minimum sanctions for first offenses, without aggravating circumstances
   1. Suspension
      i. Fighting
      ii. Operating a motor vehicle under the influence of alcohol or drugs
      iii. Negligent Bodily Harm
      iv. Throwing objects from or causing objects to fall form University buildings, where no bodily harm or death is caused
      v. Unauthorized possession or use of narcotics
      vi. Unauthorized possession or use of alcoholic beverages or beer
vii. Disruptive or disorderly behavior attributable to the use of alcohol and other controlled substance(s), including public intoxication
viii. Misbehavior at Sports Events, Concerts, Social/Cultural Events, or other University Events
ix. Failure to comply with the lawful direction of university or other law enforcement officers, or University officials in the proper performance of their duties
x. Negligent Destruction or Impairment of Property or Services
xi. Misuse of University Keys
xii. Gambling, including but not limited to, unauthorized raffles or lotteries
xiii. Scalping Tickets
xiv. Passing worthless checks or failing to promptly redeem a worthless check submitted to the University

2. Probationary Suspension
   i. Obstructing the free flow of vehicular or pedestrian traffic on university premises
   ii. Attempted theft or unauthorized possession or use of, or misuse of, or interference with property or services provided by or for other persons, groups, or organizations
   iii. Negligent Risk of Destruction or Impairment of Property or Services
   iv. Unauthorized presence or improper use of university building or facilities or trespassing at the University
   v. Using the Marshall University telephone system in an improper manner.
   vi. Failure to follow the policies or procedures for demonstrations and mass gatherings
   vii. Misuse of the internet
   viii. Violation of or failure to follow the policies or procedures for university fundraising, sales and/or solicitation

3. Conduct Probation
   i. Violation of University policies regarding smoking and tobacco use on university property
   ii. Behavior that evidences underage consumption of alcohol
   iii. Unauthorized animals on campus or other violation of the University Animals on Campus policy
   iv. Disruptive or disorderly conduct, disturbing the peace through noise, rowdiness, or pranks
   v. Violation of the Housing and Residence Life policies
   vi. Failure to report change of address to the Registrar
E. Sanctioning Guidelines for Violating COVID-19 Polices or Guidelines

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

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

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

d. If the Student(s) wish to return to Marshall after their Suspension Period. The student(s) must meet with the Office of Student Conduct.

e. Provided that, nothing herein shall require the Director to strictly adhere to the progressive guidelines outlined above. Sanctions shall be determined on a case-by-case bases considering the totality and severity of the circumstances.

F. **Transcript Notations.** A notation of non-academic disciplinary action will be made on an academic transcript whenever Reportable Sanctions are imposed. Notations will not include the substance of the charges but will only note the disciplinary action taken. Students may submit a written petition for the removal of non-academic disciplinary transcript notations to the Vice President of Student Affairs.

The Vice President of Student Affairs has the discretion to grant or deny petitions. The Vice President will consider the current demeanor of the student, the student’s conduct after the violation, and the nature of the violation, including the damage, injury, or harm.

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

Section 3.01 Appeals to the Vice President of Student Affairs

A. Jurisdiction. The Vice President of Student Affairs accepts appeals from the Student Conduct Hearing Board decisions.

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

1. The hearing was not conducted fairly or in conformity with prescribed university procedures. The appellant must show that any alleged bias or deviation from these Student Disciplinary Procedures is likely to have adversely affected the outcome of the original hearing.

2. Sanctions imposed by the hearing body were substantially disproportionate to the violation(s) for which the student was found responsible.

3. New, substantive information, sufficient to alter the decision, exists and was clearly not known at the time of the original hearing.

C. Who May Appeal? The Respondent may appeal a decision of the Student Conduct Hearing Board.

D. Statement of Appeal. The Respondent may appeal the Hearing Board’s final decision, in writing, within five business days of receipt of the decision by submitting a Statement of Appeal to the Vice President of Student Affairs within five business days of receipt of the Hearing Board’s decision. The Statement of Appeal must contain the following: (1) specific grounds for appeal; (2) specific relief requested; and (3) appellant's reasons in support of the relief requested. If new evidence is the grounds for appeal, the Statement of Appeal must include a summary of the new evidence and its potential impact on the original finding. Appeals must be signed by the appealing party, may not be submitted to the University's email system, and must be postmarked or hand delivered on or before five business days after receipt of the Hearing Board’s decision, to the Office of the Vice President for Student Affairs. The Vice President of Student Affairs may request the non-appealing party to make a written response to the Statement of Appeal.

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

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

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

G. **Notice and Record of Decision.** Within ten business days of receipt of the Statement of Appeal, the Vice President of Student Affairs will notify the parties in writing of the decision via by hand delivery, University email or certified mail, return receipt.

H. **Final Decision.** The decision of the Vice President of Student Affairs or his designee shall be final.

**Article IV. MISCELLANEOUS**

**Section 4.01 Medical Amnesty Process**

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

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

a. Any student who, in good faith and in a timely manner, seeks emergency medical assistance for a person who reasonably appears to be experiencing an overdose from alcohol or drugs may not be held responsible for a violation of prohibited alcohol or drug related conduct only, as defined in the Code, if the student does all the following:

i. Remains with the person who reasonably appears to be in need of emergency medical assistance due to an overdose until such assistance is provided;
ii. Identifies himself or herself, if requested by emergency medical assistance personnel, law-enforcement officers, or University officials;
iii. Cooperates with and provides any relevant information requested by emergency medical assistance personnel, law-enforcement officers, or University officials needed to treat the person reasonably believed to be experiencing an overdose; and
iv. If the person who reasonably appears to be experiencing an overdose from alcohol or drugs is also a student, he or she will not be held responsible for a violation of prohibited alcohol or drug related conduct, as defined in this Code, but may be required to complete additional conditions imposed by the Director to receive amnesty.

Medical Amnesty only applies to the Marshall University Student Code of Conduct policies. This policy does not prohibit or preclude law enforcement agencies from enforcing any applicable laws including the filing of criminal charges against the student(s) involved.
1. Medical Amnesty Guidelines: Students seeking Medical Amnesty will be required to meet with the Director. For the first request, the Director will evaluate the situation to determine they qualify for Medical Amnesty.

2. The Director may also refer the student to a substance abuse specialist or campus counselor for assessment, counseling, and treatment if needed.

3. Students who are referred but fail to meet and comply with the recommendations may be subject to discipline under the Student Code of Conduct.

4. Even if the disciplinary sanction is waived, the Office of Student Conduct may still notify parents of the event.

5. A record of the incident will be filled in the Office of Student Conduct and will only be used as a prior record if a subsequent alcohol or drug violation occurs.

6. The sanction will not be reflected on the student’s transcript and will be destroyed after seven years per federal guidelines if a subsequent alcohol or drug violation does not occur.

7. Students that are involved any subsequent alcohol and/or drug use incidents will meet with the Director and may be referred to the Hearing Board to determine if the student qualifies for Medical Amnesty. Those that do not qualify for Medical Amnesty will be subject to disciplinary action under the Student Conduct Office.

8. The availability of medical amnesty for students will be determined on a case-by-case basis using the following information:
   a. Medical Amnesty applies to Students who have initiated and sought assistance and/or medical treatment on behalf of themselves, another student, or a friend experiencing a medical emergency from alcohol and/or drug use.
   b. If a representative of an MU student organization hosting an event calls for medical assistance, this act of responsibility might mitigate potential University sanctions that could arise against the organization. Marshall Student organizations involved in an alcohol and/or drug related incident must agree to take recommended steps to address concerns from campus administration.

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

Additional resources for alcohol and drug education, can be found here:

Student Health Education Programs
MU Rec Center Wellness Suite
Huntington, WV 25755
304-696-4800
shep@marshall.edu

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

http://www.wvlegislature.gov/wvcode/Code.cfm?chap=16&art=47#47
Section 4.02    Student Conduct Hearing Board Justice Selection and Removal

A. **Goal.** To staff the Student Conduct Hearing Board, students, faculty, and staff are encouraged to apply for this opportunity. Information concerning the application process will be available in the Office of Student Affairs. In addition, this information should be distributed to the Student Government Association, Faculty Senate, Classified Staff Council, and other campus offices requesting that they encourage interested students, faculty, and staff to serve.

B. **Minimum qualifications of Student Justices.** Minimum qualifications of Student Justices are:
   1) A student enrolled full-time at Marshall University.
   2) Must have completed one full semester toward their degree.
   3) Maintain at least a 2.5 grade point average.
   4) Be in good academic and disciplinary standing.

C. **Minimum qualifications of Faculty Justices.** Minimum qualifications of Faculty Justices are:
   1) A faculty member with a full-time faculty appointment.
   2) Experience in teaching, advising and/or student development.
   3) Not currently subject to disciplinary action, on probation and/or subject to an improvement plan.
   4) Approved by College Dean.

D. **Minimum qualifications of Staff Justices.** Minimum qualifications of Staff Justices are:
   1) A full time (.53 FTE or higher) staff member.
   2) Experience with student related issues.
   3) Not currently subject to disciplinary action, on probation and/or subject to an improvement plan.
   4) Approved by Supervisor.

E. **Selection Process.**
   1) All applications will be submitted to the Student Affairs office.
   2) Applications will be reviewed by the Director and a representative from the Student Government Association (Selection Committee).
   3) The Selection Committee will make their recommendations to the Vice President of Student Affairs who will select applicants to serve as members of the Hearing Board.
   4) The Hearing Officer will be selected by the Vice President of Student Affairs.
   5) The Hearing Officer will be responsible for scheduling the Justices for a particular hearing. If the original hearing is continued the same Justices will serve until the matter is completed. Provided that, if a Justice becomes unable to serve another Justice can be substituted in their place.

F. **Appointment.** Appointments will be effective on the first day of classes of the succeeding fall semester or spring semester. The appointment term is for one (1) year. Appointment for an additional term may occur upon approval of the Vice President of Student Affairs.
G. Emergency Appointments. Emergency, one-time appointments to the Student Conduct Hearing Board may be made by the Vice President of Student Affairs if that appointee has been previously trained on the disciplinary procedures.

H. Hearing Officer. The Student Conduct Hearing Board Hearing Officer must be a full-time employee of the University who is selected by the Vice President of Student Affairs.

I. Training. Each Justice will receive training in the following areas:

1. The Code of Student Conduct
2. Possible Violations
3. Our Process and Procedures
4. Hearing Process
5. Types of Evidence and Weighing of Information
6. Fact Finding and Determining Responsibility
7. Sanctioning
8. Conflicts of Interest

J. Removal. A Student Conduct Hearing Board member may voluntarily terminate his/her appointment at any time. A member may be involuntarily removed from service for cause. Examples of removal for cause are:

1. Failure to attend two (2) hearings without prior notice;
2. Breach of confidentiality;
3. Poor performance;
4. Disruptive behavior during the proceedings;
5. Becoming the subject of a disciplinary action; and/or
6. Acting in a manner that is not in the best interest of the University.

K. Removal Process. Requests to involuntarily remove a member for cause shall be brought to the attention of the Vice President of Student Affairs, who shall have ultimate authority to consider or refuse to consider a request for removal.

Section 4.03 Student Petitions

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

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

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

1. The individual must wait a minimum of four (4) calendar years after the original expulsion before initiating a request for clemency.

2. The request for clemency must be made in writing to Vice President of Student Affairs. The written request should include a description of the conduct for which the sanction was assigned, appropriate documentation concerning the individual’s status during the intervening years since the expulsion, any additional mitigating circumstances with appropriate documentation, and any additional information about character or change of behavior that may be appropriate. This documentation may include records pertaining to mental health status, employment, criminal or probation records, educational records, social service records, and letters of recommendation. NOTE: A victim impact statement will be allowable if relevant. The Vice President should arrange for its inclusion in the assembled documents.

3. Upon receipt of the request for clemency, the Vice-President may consult with whomever he or she wishes and may empanel an advisory panel to advise her/him. The Vice-President or advisory panel will review the request for clemency, and may conduct a personal interview with the individual, and/or conduct other forms of inquiry as needed. If an advisory panel is empaneled, the panel will make a recommendation to the Vice-President.

5. The final decision will be made by the Vice-President. The Vice-President will notify the student via United States Mail, return receipt requested of his or her final decision. The Vice-President’s decision will include any specific terms and conditions. Failure to adhere to the specific terms and conditions and/or any other violations of university rules regulations and policies could result in additional disciplinary action up to and including expulsion.

6. The decision of the Vice-President is final.

7. The Vice President of Student Affairs’ decision to grant the petitioner the right to pursue the readmission process does not abrogate the right of any college or program to deny readmission based on scholarship and/or failure to meet program specific admissions requirements.

8. If clemency is granted, the individual may reapply to the University and to the school, program, or successor unit from which he or she was expelled or to a different academic unit within the University. The student must follow all current application procedures and must meet all admissions requirements, including but not limited to any program specific admission requirements, in place at the time of the application submission. The individual must meet whatever graduation requirements are in place at the time of readmission. The student will remain on disciplinary probation which will be noted on the students’ academic transcript, until any degree is completed, at which time it will be removed as will the notation regarding the original expulsion.
A record of the expulsion will remain in the student’s disciplinary records maintained by the Office of Student Conduct and is not subject to expunction.

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

1. Petitions to the Vice-President should include a notation a description of the conduct for which the sanction was assigned; a description of all the sanctions the student was required to complete and the degree to which he/she completed them; a description of the remedial actions the student has taken since the incident(s); description of completed sanction(s); and the student’s anticipated graduation date and the career and/or additional education plans he/she has following graduation.

2. Upon receipt of the Petition, the Vice-President may consult with whomever he or she wishes and may empanel an advisory panel to advise her/him. The Vice-President or advisory panel will review the request for removal of notation from their academic transcript for any non-academic disciplinary action, and may conduct a personal interview with the individual, and/or conduct other forms of inquiry as needed. If an advisory panel is empaneled, the panel will make a recommendation to the Vice-President.

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

4. The decision of the Vice-President is final.

Section 4.04 Access to Records and Record Retention

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

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

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

A student may request a copy of his or her disciplinary record or request that the record, including information related to pending charges, be provided to a third party by completing a release authorization form. The completed form should be provided to the Director.
APPENDIX A

POSSIBLE FINDINGS AND SANCTIONS RELATED TO STUDENT ORGANIZATIONAL DISCIPLINE

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

   a) **Finding of No Violation.** This action can occur at any stage of the procedure. If a finding of no violation occurs, the organization has no disciplinary history for this event. This information will not be considered in future proceedings.

   b) **Charge(s) Dropped.** This action shall be taken when the Director or the hearing body determines that the organization cannot be found in violation of the University's regulations governing student conduct. For example, the behavior may have been unrelated to the rules of conduct, or evidence may be unobtainable or insufficient. A dropped charge may be reinstated at the discretion of the Director if substantial new information should become available. If a charge is reinstated, the Respondent will be sent a charge notice. If a charge is dropped, the student will have no disciplinary history related to it.

   c) **Finding of Violation.** This action occurs when the Student Conduct Hearing Board has established that a policy of the Student Code of Conduct has been violated based on a preponderance of the information.

   d) **Continuance.** The Hearing Officer may continue the proceedings when he/she determines it is in the best interest of the University community. Respondent may appeal a continuance decision of longer than thirty business days to the Vice President of Student Affairs.

2) **Sanction Options:**

   a) **Formal Warning.** A Formal Warning is an official communication that an organization’s behavior is inappropriate as a member of the University community. A Formal Warning is maintained in the organization’s file and would serve as a basis for further sanctioning should subsequent violations occur.

   b) **Conduct Probation.** Conduct Probation is a strong communication that an organization is no longer in good disciplinary standing with the University community. Any subsequent violations of the Student Code of Conduct will be evaluated in the context of the organization’s probationary status. Conduct Probation may include one or more of the following:

      1. Loss of Participation: The organization may not represent the University in any extracurricular activities such as, but not limited to, intercollegiate athletics, debate teams, University Theater, band, or other similar activities however, the student may participate in informal activities of a recreational nature sponsored by the University.

      2. Improvement Plan: A program of development will be planned in conjunction with a faculty or staff person assigned to assist in a counseling/guidance capacity.

   ...
3. **Surrender of Organization Activity Privileges:** An organization required under this section to relinquish its privileges may not participate in campus events.

c) **Probationary Suspension.** Suspension is withheld pending careful evaluation of an organization’s behavior during a probationary period not to exceed one year. If the organization is involved in any further offense, or if otherwise warranted, this suspension of disciplinary action may be revoked by the Vice President of Student Affairs or his/her designee and the full sanction of suspension enforced subject to appeal to the Hearing Board.

d) **Suspension.** Suspension shall be imposed upon an organization when it is determined by the Director that the organization’s relationship with the university must be suspended from the university for a definite period of time.

e) **Revocation.** Revocation of registered organization status shall be imposed upon an organization when the hearing body determines that the organization’s relationship with the university must be terminated. When revocation is imposed upon an organization, the organization may petition the hearing body for recognition by the university after the specified time. Revocation records are maintained indefinitely. When an organization successfully achieves recognition by the university, the organization is placed on Conduct Probation for four years, unless mitigating circumstances warrant a different sanction.

f) **Formal Sanction Held in Abeyance (temporarily delayed).** In rare cases, the Student Conduct Hearing Board, or Director may determine that a certain sanction is the appropriate formal sanction for an organization, but strong mitigating circumstances warrant holding the formal sanction in abeyance (temporarily delayed). The organization will continue to be recognized under restrictions and conditions. An organization found to have violated the conditions or restrictions of a formal sanction held in abeyance (temporarily delayed) will minimally have formal sanction imposed. Formal sanctions held in abeyance (temporarily delayed) for organizations must include an expiration date.

g) **Sanction Guideline for Non-Compliance with COVID-19 Policies or Guidelines.**

a. First Referral for non-compliance. The organization will receive a formal warning and the executive committee will meet with the Office of Student Conduct. Every member of the organization will be asked to sign the Keep Marshall Safe Pledge. If the violation happens on campus the student organization will lose campus meeting privileges for two weeks.

b. Second Referral for non-compliance. The organization will be placed on Conduct Probation until the end of the semester. Every member of the organization will be required to complete the Health, Wellness and Safety training in blackboard with every member scoring 85% or higher. The training must be completed by all members within 5 days of receiving the notice of non-compliance. The President/Vice-President and Advisor of the organization will be contacted by email or phone call as a reminder for to complete the training and a discussion of Marshall protocol as well as state and local
guidelines. If any member fails to complete their test, they will be referred to the Conduct Office with the potential for removal from the organization and/or suspended.

c. Third referral for non-compliance. The organization will be suspended from the University for a semester with lose of recognition as a university organization. If the organization is suspended and meetings are continued, they will be subject to greater disciplinary actions.

d. If the organization wishes to return to Marshall after their Suspension Period, they must meet with the Office of Student Conduct and the Office of Student Involvement and Leadership and demonstrate a readiness to return to the institution and compliance with all related guidelines, before being allowed to return.

e. Provided that, nothing herein shall require the Director to strictly adhere to the progressive guidelines outlined above. Sanctions shall be determined on a case-by-case bases considering the totality and severity of the circumstances.

h) The Hearing Board may authorize any other sanctions it deems to be just and appropriate.
Appendix B
SECTION 1

MARSHALL UNIVERSITY

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

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I. INTRODUCTION

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

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

II. GENERAL RESPONSE TO SEXUAL HARASSMENT

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

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

III. REPORTING

The University encourages anyone¹ who experiences or becomes aware of an incident of Prohibited Sexual Harassment Conduct to immediately report the incident to the University through the following reporting options:

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

Debra Hart, Director/ Title IX Coordinator
Old Main Room 324
Hart70@marshall.edu or TitleIX@marshall.edu
304-696-2597

¹ Pursuant to Title IX, certain University employees, called “Campus Security Authority,” are required to report to the Title IX Coordinator all information disclosed to them about an incident of Prohibited Conduct.”
The University’s website for online reporting (which allows for anonymous reporting) is located at https://www.marshall.edu/eeoaa/complaint-form/.

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

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

Marshall University Police ((304-696-HELP [4357]) (for both emergencies and non-emergencies)
911 (for emergencies)
City of Huntington, WV Police Department (304-696-5510; for non-emergencies)
South Charleston Police (304-744-6903)
Cabell County Sheriff’s Department (304-743-1594; for non-emergencies)
Mason County Sheriff’s Department (304-675-3838; for non-emergencies)

The administrative investigation of complaints filed in accordance with these Procedures is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation is separate and will not take the place of an investigation, adjudication, or disposition of a complaint filed in accordance with these Procedures. The results of a law enforcement investigation, adjudication, or disposition are not determinative of and do not determine whether an individual is responsible for violating University rules, regulations, policies, or the Code of Student Conduct. The administration of complaints filed in accordance with these Procedures may be carried out prior to, simultaneously with, or following civil or criminal investigations and/or proceedings. The University will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus or that affects the University community. Such cooperation may require the institution to temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while the law enforcement agency is in the process of gathering information. Suspensions of investigations typically last from three (3) to ten (10) days but may be extended depending upon the circumstances of each case and/or as dictated by other provisions of this Procedure. The University will promptly resume its administrative investigation/proceedings as soon as notified by the law enforcement agency that it has completed the evidence gathering process.

The University’s ability to act against third parties may be limited and is determined by the context of the prohibited conduct and the nature of the relationship of the parties to the University. The Evaluation Panel will determine the appropriate manner of resolution, which may include referral to area law enforcement, restriction of access to campus or University activities, or referral to the home school of the third party.

A. RESOURCES FOR COMPLAINANT

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

1. Resources

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

   b. Marshall University Women’s & Gender Center
      Old Main 115, One John Marshall Drive

Procedures for Reports Against Students – Revised effective August 14, 2020
c. Marshall University Violence Prevention and Response Program
1205 Wellness Center, Rec Center, One John Marshall Drive
Huntington, WV 25755
Phone: 304 696-5701
Email: vprprogram@marshall.edu

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

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

f. BRANCHES Domestic Violence Shelter
P.O. Box 403, Huntington, WV 25708
24-hour crisis phone: 304-529-2382
Email: info@branchesdvs.org
https://www.branchesdvs.org/

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

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

2. Medical Resources

a. Cabell Huntington Hospital
Emergency Department
304-526-2200
http://cabellhuntington.org/services/emergency-trauma/

b. Cabell Huntington Health Department
703 7th Avenue
Huntington, WV 25701
304-523-6483
https://www.cabellhealth.org/

c. St. Mary’s Medical Center
Emergency Services
304-526-1111
https://www.st-marys.org/centers-services/emergency-services/

d. Charleston Area Medical Center (CAMC) – General
Complainants are entitled to receive information, assistance and a broad range of support and remedial measures regardless of whether they choose to pursue criminal and/or University disciplinary resolution of Prohibited Conduct.

Although Third Parties do not have the same standing in the University internal process as members of the University community, they may report prohibited conduct to:

Debra Hart, Director/ Title IX Coordinator
Old Main Room 324
Hart70@marshall.edu or TitleIX@marshall.edu
304-696-2597

The University’s website for online reporting (which allows for anonymous reporting) is located at https://www.marshall.edu/eeoaa/complaint-form/.

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

Philadelphia Office
Office for Civil Rights, U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323

Telephone: 215-656-8541
FAX: 215-656-8605; TDD: 800-877-8339
Email: OCR.Philadelphia@ed.gov
http://www2.ed.gov/about/offices/list/ocr/complaintintro.html

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

B. RESOURCES FOR RESPONDENT

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

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

2. **Marshall University Office of Student Affairs**
   Marshall Student Center 2W38
   Marshall University
   Huntington, WV 25755
   304-696-6422

3. **Marshall University Violence Prevention and Response Program**
   1205 Wellness Center, Rec Center, One John Marshall Drive
IV. EXPECTATIONS OF COMPLAINANTS AND RESPONDENTS

Pursuant to these Procedures, Complainants and Respondents can expect:

A. Reasonably prompt and equitable resolution of allegations of Prohibited Conduct;

B. Privacy in accordance with the Policy and any legal requirements;

C. Reasonably available supportive measures, as described in these Procedures;

D. Freedom from Retaliation for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy or these Procedures;

E. The responsibility to refrain from Retaliation directed against any person for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy or these Procedures;

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

G. The opportunity to articulate concerns or issues about proceedings under the Policy or these Procedures;

H. Timely notice of any meeting or proceeding at which the party’s presence is outlined in these Procedures;

I. The opportunity to choose an Advisor, including the right to have that Advisor attend any meeting or proceeding at which the party’s presence as contemplated by these Procedures;

J. Written notice of an investigation, including notice of potential Policy violations and the nature of the alleged Prohibited Conduct;

K. Trained Title IX Coordinator(s), Investigator(s), Decision-Maker(s), Review Panel Member(s), or Informal Resolution Facilitator(s), who do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent and the opportunity to challenge any Decision-maker for bias or conflict of interest;

L. The opportunity to offer information, present evidence, and identify witnesses during an investigation;

M. An objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations which may not be based on a person’s status as a Complainant, Respondent, or witness;

N. The opportunity to be heard, orally and/or in writing, as to the determination of a Policy violation and the imposition of any sanction(s) as outlined in these Procedures;

O. Timely and equal access to any information that will be used during Informal or Formal Resolution proceedings and related meetings;

P. Reasonable time to prepare any response as contemplated by these Procedures;
Q. Written notice of any temporary delay or limited extension of timeframes for good cause;

R. Written notice of the outcome of any Formal Resolution proceedings, including the determination of a Policy violation, imposition of any sanction(s), and the rationale for each; and

S. An opportunity to appeal the findings of the Review Panel/Decision-makers.

V. DEFINITIONS

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

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

B. Advisor. Any person intended to assist the Complainant or Respondent student during the disciplinary process, including but not limited to, a University appointed Advisor, faculty member, attorney, or other person. Unless otherwise indicated by the Complainant or Respondent, in writing, the Advisor shall be provided a copy of all materials provided to the Complainant or Respondent. An Advisor may be called as a witness to provide testimony.

C. Burden of Proof. While protecting every party’s right to consent to the use of the party’s own medical, psychological, and similar treatment records, the burden of proof and burden of gathering evidence rests on the University.

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

E. Complainant. Means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

F. Consensual Relationship. A mutually acceptable romantic, dating, or sexual relationship between individuals.

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

H. Evaluation Panel. The group of individuals identified in Section VII.A, who will conduct the Health and Safety Threat Assessment where law enforcement is not involved and the initial course of action.

I. Formal Complaint. A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, through an online portal provided for this purpose by the University or by electronic mail, by using the contact information for the Title IX Coordinator and by any additional method designated by the University.

a. As used in this paragraph, the phrase “document filed by a complainant” means a paper document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

b. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under these Grievance Procedures.

J. Informal Resolution Facilitator. An individual appointed by the Title IX Coordinator to facilitate voluntary Informal Resolutions between the parties. Informal Resolution Facilitators cannot be a witness or provide testimony.

K. Interpersonal Violence. Occurs when one person uses power and control over another through physical, sexual, or emotional threats or actions, economic control, isolation, or other kinds of coercive behavior.

L. Investigator(s). University position responsible for the University’s Title IX investigations and other investigations involving sexual harassment, sexual misconduct, or other forms of interpersonal violence, who is trained on the definition of sexual harassment, the scope of the University’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Investigations may be done by the University Title IX Investigator or such other trained individual they designate or assign to a matter. Provided that, in the absence of a Title IX Investigator, the Title IX Coordinator may investigate or assign cases to other trained Investigators or external resources.

M. 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.

N. Prohibited Conduct. Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in Board of Governors Policy GA-1.

O. Reporter. For purposes of this the Policy, any individual that makes or files a complaint about prohibited conduct under this Policy. The Reporter may be the Complainant, any other person, or the University.

P. Respondent. Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
Q. **Review Panel.** Decision-makers from a standing pool of members of the University community or external professionals who are trained decision-makers appointed by the Title IX Coordinator to adjudicate allegations of Prohibited Conduct on campus, pursuant to these Procedures.

R. **Social Obligation Hold.** A Hold will be placed on the student’s account if a student is charged with or found responsible for Prohibited Conduct. A Social Obligation Hold will prevent the student from conducting University business without the approval of the Title IX Coordinator as well as prevents a student from registering for academic courses pending the outcome of the investigation, adjudication and disposition of the complaint. A student who is under a Social Obligation Hold is not permitted to withdraw from the University without the approval of the Title IX Coordinator. In situations where a student is found responsible and given a Reportable Sanction a notation will be placed on the Student’s transcript.

S. **Standard of Proof.** The University will use a Preponderance of the Evidence standard (i.e., the evidence demonstrates that it is more likely than not that the conduct occurred) often referred to as “50 percent plus a feather.”

T. **Student.** For purposes of these Procedures, an individual subject to the Marshall University Board of Governors Policy SA-1, The Code of Student Rights and Responsibilities.

U. **Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

V. **Third Party.** An individual who is not a University student, faculty, or staff member. Third parties may be a participant in any University related program or activity, for example, visitors, guests, independent contractors, and vendors.

VI. **INITIAL ASSESSMENT**

A. Initial Complaint received by Law Enforcement/Office of Public Safety

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

B. Complaint received by Campus Security Authority

1. Before a student reveals information that he or she may wish to keep confidential, a Campus Security Authority should make every effort to ensure that the student understands:

   a. the employee’s obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator,
b. the student's option to request that the school maintain their confidentiality, which the University (e.g., Title IX coordinator) will consider, and
c. the student’s ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (e.g., sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers).

2. A Campus Security Authority must report to the Title IX Coordinator, within two (2) days, all relevant details about the alleged Prohibited Conduct that the student or another person has shared and that the University will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location.

C. Complaint received by Title IX Coordinator

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

1. Assess the Complainant’s safety and well-being and offer the University’s immediate supportive measures and assistance;

2. Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;

3. Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;

4. Inform the Complainant about University and community resources, the right to seek appropriate and available remedial and protective measures, and how to request those resources and measures;

5. Inform the Complainant of the right to seek Informal Resolution (where available) or Formal Resolution under these Procedures; ascertain the Complainant’s expressed preference (if the Complainant has, at the time of the initial assessment, expressed a preference) for pursuing Informal Resolution, Formal Resolution, or neither; and discuss with the Complainant any concerns or barriers to participating in any University investigation and resolution under these Procedures;

6. Explain the University’s prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation;

7. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;

8. Ascertaining the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and

9. Communicate with the Marshall University Office of Public Safety (MUPD) and other appropriate University officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.
When a decision is reached to initiate an investigation or to take any other action under these Procedures that impacts a Respondent (including the imposition of supportive measures), the Title IX Coordinator will ensure that the Respondent is notified, receives a written explanation of all available resources and options, and is offered the opportunity to meet to discuss those resources and options.

**VII. THREAT ASSESSMENT**

Provided that MUPD did not receive the initial report, following the initial assessment, the Title IX Coordinator will promptly forward to an Evaluation Panel all information then known about the reported incident of Prohibited Conduct. Such information includes, if known, the names and/or any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident.

**A. EVALUATION PANEL**

An Evaluation Panel will evaluate every report of Prohibited Conduct. The Evaluation Panel will convene (in person, by telephone, and/or by videoconference) within seventy-two (72) hours after receiving information from the Title IX Coordinator, as described above, and will convene again, as necessary, to review new information as it becomes available. The Evaluation Panel shall include, at a minimum: (1) the Title IX Coordinator, (2) a representative of the University Police Department (the “MUPD Representative”), (3) a representative from the Office of Student Conduct, and (4) a representative of the Marshall University Counseling Center. In addition, the Evaluation Panel may include other representative from the University Community including, but not limited, Housing and Residence Life, Human Resources Office or the Office of the Provost, depending on the circumstances of the reported incident and the status of the Complainant and the Respondent.

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

**B. HEALTH AND SAFETY THREAT ASSESSMENT**

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

   a. Whether Respondent has prior arrests, is the subject of prior reports, complaints related to any form of Prohibited Conduct, or has any history of violent behavior;
   b. Whether the Respondent has a history of failing to comply with any University No Contact Directive, other University protective measures, and/or any judicial protective order;
   c. Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
   d. Whether the Prohibited Conduct involved multiple Respondents;
   e. Whether the Prohibited Conduct involved physical violence. “Physical violence” means exerting control over another person through the use of physical force. Examples of physical

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2 The representative of the Marshall University Counseling Center may not have counseled or be assigned to counsel either the Complainant or Respondent involved in the allegations of Prohibited Conduct.
violence include hitting, punching, slapping, kicking, restraining, choking and brandishing or using any weapon;
f. Whether the report reveals a pattern of Prohibited Conduct (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
g. Whether the Prohibited Conduct was facilitated through the use of “date/acquaintance-rape” drug or similar drugs or intoxicants;
h. Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring;
i. Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18); and/or
j. Whether any other aggravating circumstances or signs of predatory behavior are present.

2. Disclosure(s) of Information to Law Enforcement. The Evaluation Panel is required to disclose information about alleged Prohibited Conduct to law enforcement in the following circumstances:

a. If the Evaluation Panel (or, in the absence of consensus within the Evaluation Panel, the MUPD Representative) concludes that there is a significant and articulable threat to the health or safety of the Complainant or to any other member of the University community and that disclosure of available information (including the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident) is necessary to protect the health or safety of the Complainant or other individuals, the MUPD Representative will immediately disclose the information to the law enforcement agency that would be responsible for investigating the alleged act of Prohibited Conduct. The Evaluation Panel will make this determination based upon a review of the totality of the known circumstances and consideration of the list of Risk Factors, as described in Section VII.B.1 of these Procedures. The Title IX Coordinator will promptly notify the Complainant whenever such disclosure has been made.

b. If the alleged act of Prohibited Conduct constitutes a felony violation of the West Virginia Code, the MUPD Representative will so inform the other members of the Evaluation Panel and will, within twenty-four (24) hours: (i) consult with the appropriate Prosecuting Attorney or other prosecutor who would be responsible for prosecuting the alleged act of Prohibited Conduct (the “Prosecuting Attorney”) and (ii) disclose to the Prosecuting Attorney the information then known to the Evaluation Panel. Such disclosure will exclude the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident (the “Identifying Information”), unless the Identifying Information was disclosed to law enforcement under the health and safety exception described in paragraph (a), above, in which case the Identifying Information also will be disclosed to the Prosecuting Attorney.

3. Interim Measures. Interim measures may be initiated by the Title IX Coordinator to protect the safety and well-being of persons involved in an incident and/or the campus community pending the outcome of the investigative and adjudicative processes. Interim measures may include the following to the extent reasonably available and appropriate.

a. Interim suspension. Immediate separation of a Student from the University and/or housing pending an investigation or adjudication. Through the duration of the interim suspension, the Student may be restricted from University property and may be required to provide prior notice and receive approval from the Title IX Coordinator for the purpose of conducting University business. Interim suspension will be imposed only in exceptional circumstances to ensure the health, safety or welfare of members of the University or University property or to ensure the Student’s own safety and welfare. Interim Suspension/Emergency Suspension procedures are set forth more fully in Section 2.03.
b. **No Contact Directive.** A no contact directive is an official University directive that serves as notice to an individual(s) that they must not have physical contact with or proximity to, or direct verbal, electronic, written, and/or indirect third-party communications with another individual.

c. **Academic accommodations.** This may include assistance in transferring to another section of a course, in requesting withdrawal or an incomplete grade in a particular course, leaves of absence or withdrawal from the University, or requesting alternate methods of completing coursework.

d. **Housing accommodations.** This may include requiring a Student to relocate housing pending the outcome of a conduct investigation or proceeding. This may also include facilitating changes in on-campus housing location to alternate housing.

e. **Employment accommodations.** This may include arranging for alternate University employment for Students employed by the University.

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

g. **Appeals of Interim Measures.** The Complainant or Respondent may appeal the Title IX Coordinator’s decision regarding any Interim Measures to the Hearing Board as outlined in these procedures.

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

Upon completion of the health and safety threat assessment, by either MUPD or the Evaluation Panel, as set forth above in these Procedures, then the Evaluation Panel will determine the course of action under these Procedures, which may include, without limitation, Formal Resolution and/or Informal Resolution (if available). Where the Complainant requests that personally identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the Evaluation Panel will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, the health and safety threat assessment, and the determinations of the Evaluation Panel will be documented and retained by the University in accordance with applicable law.

1. **Where the Complainant Wishes to Pursue Formal Resolution.** In *every* case in which the Complainant reports Prohibited Conduct and requests an investigation and disciplinary action, the Title IX Coordinator will promptly initiate Formal Resolution under these Procedures.

2. **Where the Complainant Requests Anonymity, that an Investigation Not Be Pursued, and/or that No Disciplinary Action Be Taken.** A Complainant may not request that personally identifying information not be shared with the Respondent if the Complainant desires to initiate grievance procedures. A Complainant may request that no investigation be pursued and/or that no disciplinary action be taken.

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

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

a. **Determination that a Complainant’s Request(s) Can Be Honored.** Where the Evaluation Panel determines that a Complainant’s request(s) (that no investigation be pursued, and/or that no disciplinary action be taken can be honored, the University may nevertheless take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances as a form of Informal Resolution.

At any time, the Complainant may choose to pursue Informal Resolution (if available) or Formal Resolution under these Procedures. The Title IX Coordinator also may request that a report be re-opened and pursued under these Procedures if any new or additional information becomes available.³

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

Where the Evaluation Panel has determined that the University must proceed with an investigation despite a Complainant’s request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, actions that may be required as part of the University’s investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant’s identity may have to be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that the University intends to proceed with an investigation, but

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

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that the Complainant is not required to participate in the investigation or in any other actions undertaken by the University.

c. **When a Complainant Declines to Participate.** Where a Complainant declines to participate in an investigation, the University’s ability to meaningfully investigate and respond to a report may be limited and such matter may discretionarily be dismissed. In such cases, the Title IX Coordinator may pursue the report if it is possible to do so without the Complainant’s participation in the investigation or resolution (e.g., where there is other relevant evidence of the Prohibited Conduct, such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct). In the absence of such other evidence, however, the University will only be able to respond to the report in limited and general ways (i.e., through the provision of remedial measures, targeted training or prevention programs, or other remedies tailored to the circumstances).

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

The Title IX Coordinator will promptly inform the Complainant of any action(s) undertaken by the University to respond to a health or safety threat to the Complainant or the University community, including the decision to proceed with an investigation. The Title IX Coordinator also will promptly inform the Respondent of any action(s), (including any supportive protective measures) that will directly affect the Respondent, and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator retains the discretion to impose and/or modify any supportive protective measures based on all available information. Supportive measures shall include, but not be limited to those, outlined in Section 2.02.D Interim Measures of the Student Disciplinary Procedures. Supportive measures will remain in effect until the resolution of the report by the Review Panel, unless new circumstances arise which that warrant reconsideration of the supportive measures prior to the hearing and determination by the Review Panel. A Complainant or Respondent may challenge supportive measures or other actions, or failure to impose supportive measures or take other actions, by contacting the Title IX Coordinator to address any concerns. Provided that, if the Respondent is given an Interim Suspension, they will be entitled to a hearing on the suspension within three (3) business days before the Review Panel.

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

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

**VIII. GROUNDS FOR DISMISSAL OF TITLE IX FORMAL COMPLAINT**
Grounds for mandatory or discretionary dismissals:

1. **Mandatory Dismissal:** If the conduct alleged in the formal complaint (a) would not constitute sexual harassment as defined in Policy GA-1 even if proved, (b) did not occur in the University’s education program or activity, or (c) did not occur against a person in the United States, then the University’s Title IX Coordinator must dismiss the formal complaint with regard to that conduct for the purposes of sexual harassment under Title IX or this part; such dismissal does not preclude action under another provision of the Student Code of Conduct.

2. **Discretionary Dismissal:** The Title IX Coordinator may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing; (a) a complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; (b) the Respondent is no longer enrolled or employed by the University; or (c) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal required or permitted, the Title IX Coordinator must promptly send written notice of the dismissal via a Dismissal Letter, and reason(s) thereof, simultaneously to the parties. Both parties have an equal opportunity to file an Appeal, as detailed below, to challenge the dismissal of any Title IX Formal Complaint. The Title IX Coordinator may refer cases which are dismissed under Title IX jurisdiction to the Director of Student Conduct for review. A dismissal under these sections does not preclude action under another provision of the University’s policies or Code of Conduct.

IX. **UNIVERSITY RESOLUTION**

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

1. Formal Resolution, which involves an investigation, and review and sanction (if applicable) by a Review Panel (as described in Section IX.A.2 of these Procedures), and

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

A. **FORMAL RESOLUTION**

Formal Resolution is commenced when:

i. A Complainant reports that a Student has engaged in one or more instances of Prohibited Conduct and requests, at any time, an investigation and disciplinary action; or

ii. Informal Resolution does not resolve a reported incident of Prohibited Conduct and, in the Title IX Coordinator’s discretion, an investigation of the report of Prohibited Conduct is required; or

iii. At the conclusion of the threat assessment process described in Section VII.B of these Procedures, the Evaluation Panel has determined, based upon a review of the totality of the circumstances and guided by a consideration of the Risk Factors, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the Complainant’s request that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

1. **Investigation.** Whenever Formal Resolution is commenced, the Title IX Coordinator will refer the matter to the University Title IX Investigator who will designate himself/herself or one or more Investigators and/or an experienced external investigator to conduct a prompt, thorough, fair,
and impartial investigation. Provided that, in the absence of the Title IX Investigator, the Title IX Coordinator may assign cases to other investigators or external investigators. All Investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, relationship violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and the University community while promoting accountability.

a. **Notice of Investigation.** The Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation. Such notice will (1) identify the Complainant and the Respondent; (2) specify the date, time (if known), location, and nature of the alleged Prohibited Conduct; (3) identify potential Policy violation(s); (4) identify the Investigator; (5) include information about the parties’ respective expectations under the Policy and these Procedures; (6) explain the prohibition against Retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the Investigator on the basis of bias or a conflict of interest; (9) provide a copy of the Policy and these Procedures; (10) include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; (11) inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review both incriminatory and exculpatory evidence; and (12) the inform the parties of any provision in the University’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

b. **Ongoing Notice Requirement.** The Title IX Coordinator will send an Amended Notice(s) of Investigation to each party should the investigation reveal additional allegations of misconduct to be investigated.

c. **Consolidation of formal complaints.** The University may consolidate formal complaints as to allegations of prohibited conduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where the University resolution involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

d. **Other Forms of Discriminatory and/or Harassing Conduct and/or Violations of the Student Conduct Code.** If a report of Prohibited Conduct, as defined in and governed by the Policy GA-1 also implicates any other violation(s) of the University’s Code of Student Conduct and/or Housing and Residence Life’s policies, the Title IX Coordinator, in conjunction with the Director and other appropriate University officials, will evaluate all reported allegations to determine whether the alleged Prohibited Conduct and the alleged Code of Student Conduct violation(s) and/or Housing and Residence Life’s policies may be appropriately investigated together without unduly delaying the resolution of the report of Prohibited Conduct. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of responsibility for the violation of University policy will be evaluated under the applicable policy (i.e., the Policy or the Student Code of Conduct and/or Housing and Residence Life’s policies), but the investigation and resolution will be done in accordance with the applicable section of Appendix B of the Student Disciplinary Procedures.

e. **Presumption of Non-Responsibility and Participation by the Parties.** The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator, Decision-makers and/or
Review Panel conclude that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Policy. Neither party is required to participate in the investigation, nor with any form of resolution under these Procedures, and the Investigator, Decision-makers, and/or Review Panel will not draw any adverse inference from a decision by either of the parties not to participate.

f. **Reasonably Prompt Timeframe for Completion of Investigation; Extension for Good Cause.** Typically, the period from commencement of an investigation through Final Investigation Report will not exceed an estimated sixty (60) calendar days.\(^4\) This timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons.

The Investigator or the Title IX Coordinator will notify the parties in writing of any temporary delays or the limited extension of this timeframe and the reason for such actions. Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

g. **Overview of Investigation.** During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party).

h. **Advisors.** Throughout the investigation and resolution process, each party has the right to choose and consult with an Advisor. The Advisor may be any person, including an attorney paid for by the Student. The parties may be accompanied by their respective Advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. Although, the Advisors may provide support and advice to the party they represent at any meeting and/or proceeding, they may not, in any manner, disrupt such meetings and/or proceedings. If a party is being represented by an attorney, or an Advisor not provided by the University, they must advise the Title IX Coordinator at least forty-eight (48) hours prior to the scheduled meeting or hearing and a University assigned Advisor will no longer be provided.

i. **Prior or Subsequent Conduct.** Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of

\(^4\) This is an estimated timeframe which may vary on a case-by-case basis.

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similar Prohibited Conduct. Such prior or subsequent conduct may also constitute a violation of the Code of Student Conduct, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

j. **Prior Sexual History.** Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove:
   i. That someone other than the Respondent committed the conduct alleged by the Complainant, or
   ii. If the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent are offered to prove consent.

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

k. **Relevance.** The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party’s general reputation for any character trait. Investigator may decline to interview witnesses unlikely to yield relevant information. The Investigator will decline to interview character witnesses if they have no relevant information about the incident.

l. **Site Visit(s).** The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.

m. **Expert Consultation(s).** The Investigator may consult medical, forensic, technological or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

n. **Coordination with Law Enforcement.** The Investigator may contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the request of law enforcement, the Investigator may delay the University investigation temporarily while an external law enforcement agency is gathering evidence. The Investigator will promptly resume the University investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

o. **Right to Inspect, Review, and Respond to the Investigative File.** At the conclusion of the Investigation, the Investigator will provide both parties an equal opportunity to inspect and review the entire Investigative File which will include all evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. Investigator may redact personally identifiable information or protected information from the evidence obtained during the investigation.

The parties will have ten (10) business days to review the Investigative File and submit a written response, to be included as an addendum to the “Investigative File,” which the investigator will consider prior to completion of the “Investigative Report.” The parties will have an opportunity to review the Investigative File; meet with the Investigator; submit
additional comments and information to the Investigator; identify any additional witnesses or evidence for the Investigator to pursue; and submit any further questions that they believe should be directed by the Investigator to the other party or to any witness.

Investigator will then provide each party’s responses to the “Investigative File” to the other party. Parties have three (3) business days to respond to the other party’s response.

p. **Investigation Report.** Unless there are significant additional investigative steps requested by the parties or identified by the Investigator after the review of the Investigative Report, within five (5) business days after receipt and consideration of any additional comments, questions and/or information submitted by the parties during the designated review and response period, the Investigator will prepare a Final Investigation Report which will:

i. Fairly summarize and analyze the **relevant** information and evidence gathered;
ii. Outline the contested and uncontested information;
iii. Outline the corroborated and uncorroborated information;
iv. Include a credibility assessment; however, the credibility assessment must not be a determination regarding responsibility; and
v. Include a recommendation as to whether there is sufficient evidence, by a Preponderance of the Evidence, which could support a finding of responsibility for a violation of the Policy (and, where applicable, the Code of Student Conduct).

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

The Investigator will deliver the Investigation Report to the Title IX Coordinator.

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

r. **Title IX Coordinator’s Role After Distribution of Investigation Report.** Upon reviewing the Investigative Report and any written responses thereto, the Title IX Coordinator will:

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

s. **Impact and Mitigation Statements.** Where the matter has been referred to the Review Panel for Live Hearing, both parties may submit a statement to the Title IX Coordinator for consideration by the Review Panel in determining an appropriate sanction as specified by the Title IX Coordinator. The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanction(s) imposed. The Title IX Coordinator will ensure that each of the parties has an opportunity to review any statement submitted by
the other party. The Title IX Coordinator will provide any statement(s) with the Investigation Report and the parties’ other written submissions to the Review Panel. Impact and mitigation statements must be received within five (5) business days after the referral to the Review Panel.

2. **Review Panel Hearing.** The Title IX Coordinator will appoint a standing pool of members of the University or external professionals who are trained on the definition of sexual harassment; the scope of the University’s education program or activity; these Procedures; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and who will make determination of responsibility after an independent review of the Investigation Report. The Title IX Coordinator will select three (3) members from this pool to serve on the Review Panel. The Review Panel shall elect one member as Chair. In addition, the Hearing Officer shall serve as a non-voting member. The Review Panel will review the Investigator’s recommended finding(s) and, if applicable, determine any appropriate sanction(s) under these Procedures. All persons serving on any Review Panel (or as the Hearing Officer) must be impartial and free from actual bias or conflict of interest. The Review Panel members cannot be the same person(s) as the Title IX Coordinator or the Investigator(s) assigned to the matter.

   a. **Standard of Review.** If either of the parties contests the Investigator’s recommended finding(s) of responsibility (or no responsibility) for an alleged violation of the Policy, the Review Panel will hold a Hearing to determine: (1) whether the concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation; and, if not, (2) whether there is sufficient evidence to support the Investigator’s recommended finding(s) by a Preponderance of the Evidence.

   b. **Notice and Timing of Hearing.** Typically, a Live Hearing will be held within thirty (30) calendar days from the referral to the Review Panel for Live Hearing, subject to extension for good cause. The Title IX Coordinator or Hearing Officer will notify the parties in writing of the date, time, and location of the Hearing; the names of the Review Panel members and the Hearing Officer; and how to challenge participation by any member of the Review Panel or the Hearing Officer for bias or conflict of interest. Said notice will be issued at least ten (10) calendar days prior to the Live Hearing date. Any extension, including the reason for the extension, will be shared with the parties in writing.

   c. **Challenge Due to Conflict of Interest.** If either party believes that any member of the Review Panel or Hearing Officer has a conflict of interest, their written challenge must be sent to the Title IX Coordinator. The challenge must state which individual(s) are the subject of the challenge and the basis for the challenge. Upon receipt of the challenge the Hearing Officer shall forward the same to the Review Panel for consideration and a decision as to whether to grant the challenge. The Title IX Coordinator shall make a decision within twenty-four (24) hours of receipt of the challenge and provide a written decision to the parties concerning the same. A challenge for Conflict of Interest will be considered good cause to continue or postpone the hearing, if a decision cannot be reached before the scheduled hearing of if an individual must be replaced.

   d. **Postponement of Hearing.** Permission to postpone a Hearing may be granted provided that the request to do so is based on a compelling emergency and communicated to the Hearing Officer prior to the time of the Hearing.

   e. **Live Hearing Required.** Live hearings may be conducted with all the parties physically present in the same geographic location or, at the University’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the Review Panel and all participants simultaneously to see and hear each other. All participants must be both seen and heard. In addition, all participants appearing virtually, must identify if there are any other individuals present with them at their
location. Individuals who are not a part of the process or who will testify later, may be required to leave the location during the hearing.

f. **Live Hearing Format.** The Live Hearing is an opportunity for the parties to address the Review Panel, in person and to provide information relevant to the issue(s) to be decided by the Review Panel.

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

ii. Each party has the opportunity to be heard, to identify witnesses for the Review Panel’s consideration, and to respond to any questions of the Review Panel.

iii. Cross Examination.
   a. The parties may not directly question each other.
   b. Each party’s Advisor is permitted to ask the other party and any witnesses relevant questions and relevant follow-up questions, including those challenging credibility.
   c. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Review Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
   d. Although not required, to aid in the efficiency of the Hearing, it is highly recommended that the parties have questions prepared prior to the Hearing.
   e. Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
   f. No harassing or abusive questioning allowed during cross-examination.
      i. Examples of questioning that may be harassing or abusive:
         • Advisor yells or screams at the other party/witness,
         • Advisors stands and physically leans into the party/witness’ personal space, or
         • Advisor asks questions in a manner designed to promote rape myths or sex-based stereotypes.
   iv. Advisors may directly question any witness that is not a party to this Complaint or similar complaint involving either party.
   v. A typical hearing may include brief opening remarks by the Complainant and/or Respondent, with follow-up questions posed by the Review Panel; information presented by the Investigator or witnesses deemed relevant by the Review Panel, with follow-up questions by the Review Panel of the Investigator or witnesses; and brief concluding remarks by the Complainant and/or Respondent. The Hearing Officer has the discretion to determine the specific Hearing format.
   vi. Formal rules of evidence and court procedures are not used and do not apply unless specified herein. Student conduct hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures, requirements for pleadings, and the hearsay rule do not apply in student disciplinary hearings.
   vii. The Live Hearing will be electronically recorded. The Parties, upon request, shall be provided with a copy of the recording. The original recording will remain the property of the University and will be considered the official record of the proceedings. Upon the prior approval of the Hearing Officer, the Respondent
and/or the Complainant may utilize the services of a Certified Court Reporter at their own expense. If a Certified Court Reporter is utilized the party utilizing the Certified Court Reporter shall provide the University with the original transcript at no charge to the University. The original transcript will then become the official record of the proceedings. If both parties are requesting to use a Certified Court Reporter, only one Certified Court Reporter will be permitted, and the Respondent and Complainant shall share the costs.

g. Participation in Hearing.
   i. Parties. Both the Complainant and the Respondent have a right to be present at the Live Hearing. Either party may request alternative methods for participating in the Hearing that do not require physical proximity to the other party, including participating through electronic means. This request should be submitted to the Hearing Officer at least two (2) business days prior to the Live Hearing. Any or all parties, witnesses, and other participants may appear at the Live Hearing virtually, with technology enabling participants simultaneously to see and hear each other.

   ii. Party’s Failure to Attend. If, despite being notified of the date, time, and location of the Hearing, either party is not in attendance, the Hearing may proceed, and applicable sanctions may be imposed. Neither party is required to participate in the hearing for the Hearing to proceed.

   iii. Investigator or other witnesses. The Review Panel will request the presence of the Investigator or any other witness it deems necessary to its determination. The parties may also request the presence of any witness they deem relevant to the determination by the Review Panel. Proposed witness lists shall be provided to the Hearing Officer at least four (4) business days prior to the Hearing and said lists shall contain a brief statement of the need or relevancy of the proposed witness’s presence at the Hearing. The Review Panel has absolute discretion to determine which witnesses are relevant to its determination and may decline to hear from witnesses where it concludes that the information is not necessary for its review.

      a. It is the responsibility of each of the parties to arrange for the attendance of any proposed witness who is not affiliated with the University.
      b. The University does not have subpoena power to compel the attendance of witnesses who are not affiliated with the University.
      c. Witnesses will not be present for or hear the testimony of the parties or other witnesses.
      d. If a party or witness does not submit to cross-examination at the Live Hearing, the Review Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Review Panel cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the Live Hearing or refusal to answer cross-examination or other questions.

   iv. Advisors. Both the Complainant and the Respondent must be accompanied to the Hearing by one (1) Advisor, unless required by law, of their choosing, who may or may not be an attorney. If the parties are consulting with more than one (1) Advisor, they must designate their “Advisor” for purposes of these proceedings. The Advisor may provide support and advice to a party at the Hearing. During the Hearing, an Advisor may conduct direct examination of the party and witnesses in addition to cross-examination. An Advisor may present an opening or closing statement on behalf of the party. The University reserves the right to remove any individual whose actions are disruptive to the proceedings. If an advisor is removed for failure to abide by the
hearing rules, the hearing will continue after a new advisor is appointed by the University, who may or may not be an attorney.

a. If a party's Advisor is also a witness, the party may have an alternative advisor temporarily step-in to question the advisor/witness.

b. If a party does not choose an Advisor or the chosen advisor becomes unavailable, the University will appoint an advisor for the party, who may or may not be an attorney.

h. **Determination by the Review Panel.** At the conclusion of the Live Hearing, the Review Panel must, by majority vote issue a written Final Outcome Letter and determination regarding responsibility. To reach this determination, the University must apply the preponderance of the standard of evidence.

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

i. Identification of the allegations potentially constituting sexual harassment;

ii. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

iii. Findings of fact supporting the determination;

iv. Conclusions regarding the application of the University’s code of conduct and policies to the facts;

v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to the Complainant; and

vi. The procedures and permissible bases for the Complainant and Respondent to appeal.

No decision will be communicated orally.

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

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

i. The severity, persistence or pervasiveness of the Prohibited Conduct;

ii. The nature or violence (if applicable) of the Prohibited Conduct;

iii. The impact of the Prohibited Conduct on the Complainant;

iv. The impact or implications of the Prohibited Conduct within the University community;

v. Prior misconduct by the Respondent, including the Respondent’s relevant prior disciplinary history, at the University or elsewhere, and any criminal convictions;

vi. Whether the Respondent has accepted responsibility for the Prohibited Conduct;

vii. The maintenance of a safe, nondiscriminatory, and respectful environment conducive to learning; and

viii. Any other mitigating, aggravating, or compelling factors.
Unless the safety or security of the Complainant or the University community are of concern, the Sanction will become effective as provided in the Final Outcome Letter.

In addition to other sanctions, the Review Panel may direct the Title IX Coordinator to impose or extend a No-Contact Directive and impose or extend academic, University housing and/or University employment modifications, as may be appropriate; impose or extend increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; arrange for conducting targeted or broad-based educational programming or training for relevant persons or groups; impose one or more restorative remedies to encourage a Respondent to develop insight about the Prohibited Conduct, learn about the impact of that Prohibited Conduct on the Complainant and the University community, and identify how to prevent that Prohibited Conduct in the future (including community service and mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); and/or impose any other remedial or protective measures that are tailored to achieve the goals of the Policy.

j. Transcript Notations. If the Review Panel imposes a Reportable Sanction, the Title IX Coordinator will notify the University Registrar to place a prominent notation on the Respondent’s transcript, as provided in Section 2.05 Sanctions of the Student Disciplinary Procedures.

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

a. Who May Appeal. The Complainant and/or the Respondent may appeal (1) a decision of the Review Panel and (2) any mandatory or discretionary dismissal, in part or in full, of a Title IX Formal Complaint. The individual appealing is referred to as the appellant. In situations where more than one party appeals, they will be designated as Complainant/Appellant, Respondent/Appellant and/or Director Appellant as appropriate.

b. Bases for Appeal and Content of Appeal Statements. The Appellant must base the appeal exclusively on one or more of the following grounds:
   i. Procedural irregularity that affected the outcome of the matter;
      1. Relevance determinations made by either the Investigator or the Review Panel may be appealed;
   ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
   iii. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

c. Statement of Appeal. The Appellant must submit a Statement of Appeal to the Title IX Coordinator within five (5) business days of receipt of the Final Outcome Letter or Dismissal Letter. Upon showing of good cause, an extension may be requested in writing and may be granted by the Title IX Coordinator.

d. Notification of Appeal. Upon receipt of a Statement of Appeal, The Title IX Coordinator must:
i. Notify the other party in writing when an appeal is filed and must implement appeal procedures equally for both parties;

ii. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) from the Review Panel that reached a determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator.

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

iv. Give both parties an opportunity to submit a written statement in support of or challenging the Statement of Appeal. The Title IX Coordinator will submit the Statement of Appeals to the non-appealing party to make a written response to the Statement of Appeal.

1. The responses from a non-appealing party must be submitted to the Title IX Coordinator within five (5) business days.

e. **Sanction Held in Abeyance Pending Appeal.** The effective date of any sanction will be held in abeyance (temporarily delayed) automatically during the period in which an appeal may be filed and until the Title IX Coordinator reaches a decision on any appeal filed; however, the Title IX Coordinator has the right to retain certain conditions or restrictions, particularly those related to life-safety issues and “no contact” directives.

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

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

i. Appoint a trained Appeal Officer to decide the appeal. The Appeal Officer is independent of the previous process, including from any dismissal appeal that may have been heard earlier in the process.

ii. Provide the identity and contact information for the Appeal Officer to the parties.

iii. If both parties submit appeals, the same Appeal Officer will decide both appeals individually, but contemporaneously. The same Appeal Officer will decide any appeals arising from the same facts and circumstances.

g. **Assignment to Appeal Officer.** When the Title IX Coordinator receives a Statement of Appeals which complies with the bases for appeals as found in these Procedures, the Title IX Coordinator will assign the matter to an Appeal Officer to make a final decision for the matter. The Title IX Coordinator will make available the following items to the Appeal Officer:

i. Complaint and any supporting documents,

ii. Investigative Report,

iii. Review Panel’s Live Hearing recordings and all documents reviewed and received at the Live Hearing,

iv. Impact and Mitigation Statements,

v. Final Outcome Letter from the Review Panel,

vi. Dismissal Letter from Title IX Coordinator,

vii. Statement of Appeal, and

h. **Authority of the Appeal Officer.** Upon receipt of all the appeal documents, the Appeal Officer will issue a written decision describing the result of the appeal and the rationale for the result which may:

i. Dismiss the appeal for failure to meet the grounds of appeal, upholding the initial outcome and sanction(s), if applicable.

ii. Affirm the action, at which time the matter will be considered final and binding upon all involved.

iii. Reverse the action taken by the Review Board and dismiss the case. A case will be dismissed only in rare and extreme circumstances.

iv. Remand the case to the Review Board or Investigator based upon new evidence or procedural irregularities, with specific instructions on the remanded issue(s).

v. Recommend an increase or decrease any sanctions imposed based on information presented during the appeal process, with a rationale supporting the modification.

i. **Timing of Final Decision.** Within ten (10) business days of receipt of the Statement of Appeal, the Appeal Officer’s decision will be communicated to all parties in writing.

j. **Extension of Issuing a Decision.** The time period for the Final Decision-maker’s decision may be extended upon agreement of the Respondent and Complainant.

k. **Decision of the Appeal Officer is Final.** The decision of the Appeal Officer is final.

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

The Title IX Coordinator maintains a record of Title IX investigations.

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

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

A student may request a copy of his or her Title IX investigation record or request that the record, including information related to pending charges, be provided to a third party by completing a release authorization form. The completed form should be provided to:

**Debra Hart, Director/ Title IX Coordinator**
Old Main Room 324
Marshall University
One John Marshall Drive
Huntington, WV 25755

Requests for records may be redacted if required by University policy, practice, state or federal law, or if a Complainant requested confidentiality or as required by law.
5. Prevention. The University will take steps to prevent recurrence of any Title IX violation including sexual violence and remedy discriminatory effects on the Complainant and others, if appropriate.

B. INFORMAL RESOLUTION

Both parties may voluntarily seek an Informal Resolution in place of an investigation and Formal Resolution. Informal Resolution is available at any time within the process prior to any determination in a matter. The University, however, has the discretion to determine whether the nature of the reported conduct is appropriate for Informal Resolution, to determine the type of Informal Resolution that may be appropriate in a specific case or to refer a report for Formal Resolution at any time. In addition, Informal Resolution may not be available where the Evaluation Panel has determined that one or more of the Risk Factors listed in Section VII.B.1 of these Procedures is present. **Forms of Informal Resolution that involve face-to-face meetings between the Complainant and the Respondent, such as mediation, are not available in cases involving Sexual Assault and Interpersonal violence allegations.**

Participation in Informal Resolution is voluntary. The University will not compel a Complainant or Respondent to engage in Informal Resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from an Informal Resolution for any reason within forty-five (45) days of signing the Informal Resolution. Any party wishing to withdraw an Informal Resolution after forty-five (45) days of signing the Informal Resolution must show good cause reason for the withdrawal and good cause reason that the Informal Resolution was not working appropriately. The University may decline the request for Informal Resolution in any case and may terminate an ongoing Informal Resolution process at any time. Pursuing Informal Resolution does not preclude later use of Formal Resolution if the Informal Resolution fails to achieve a resolution acceptable to the parties and the University. Where the Complainant or the Respondent withdraws from Informal Resolution or Informal Resolution is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the Informal Resolution may be considered in a subsequent investigation and Formal Resolution.

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

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

1. **One-on-One Communication:** If a Complainant wishes to address a situation with a Respondent without the direct involvement of a third party, the Complainant may communicate directly with the Respondent. This form of Informal Resolution is appropriate only if the Complainant does not feel threatened, there is no risk of physical harm, and the Complainant reasonably believes the Respondent will be receptive to the communication. Complainants are NOT required to engage in one-on-one communication before seeking the third-party assistance or other help. This form of Informal Resolution may not be used where the allegation involves Sexual Assault.

2. **Resolution with the Assistance of a Third Party by Mediation or Arbitration.** A Complainant may seek assistance in informally resolving a report of Prohibited Conduct from the Title IX Coordinator, who can arrange to have a trained Informal Resolution Facilitator facilitate a meeting or meetings between the parties. The availability of this form of Informal Resolution, and any resolution reached through such form of Informal Resolution, is subject to the agreement of the Title IX Coordinator, the
Complainant and the Respondent. This form of Informal Resolution may not be used where the allegation involves Sexual Assault.

3. **Interventions and Remedies.** Informal Resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant’s access to educational, extracurricular, and/or University employment activities; increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or University housing modifications for Student Complainants; workplace modifications for Employee Complainants; one or more of the restorative remedies or other sanctions described in these Procedures; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the Policy.

Any form of Informal Resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the terms of the agreement are implemented, and the matter is resolved and closed. If an agreement is not reached, and the Title IX Coordinator determines that further action is necessary, or if a Respondent fails to comply with the terms of the Informal Resolution, the matter may be referred for an investigation and Formal Resolution under these Procedures.

The Title IX Coordinator will maintain records of all reports and conduct referred for Informal Resolution, which typically will be completed within thirty (30) business days.

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

**C. RECORDS RETENTION**

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

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

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

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

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

The University’s ability to act against third-parties may be limited and is determined by the context of the prohibited conduct and the nature of the relationship of the parties to the University.

III. EXPECTATIONS OF COMPLAINANTS AND RESPONDENTS

Pursuant to these Procedures, Complainants and Respondents can expect:

A. Reasonably prompt and equitable resolution of allegations of Prohibited Conduct;

B. Privacy in accordance with the Policy and any legal requirements;

C. Reasonably available interim supportive measures, as described in these Procedures;

D. Freedom from Retaliation for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy or these Procedures;

E. The responsibility to refrain from Retaliation directed against any person for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy;

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

G. The opportunity to articulate concerns or issues about proceedings under the Policy and these Procedures;

H. Timely notice of any meeting or proceeding at which the party’s presence is outlined in these Procedures;

I. The opportunity to choose an Advisor, including the right to have that Advisor attend any meeting or proceeding at which the party’s presence as contemplated by these Procedures;

J. Written notice of an investigation, including notice of potential Policy violations and the nature of the alleged Prohibited Conduct;

K. Trained Investigator(s), Decision-Maker(s), Review Panel Member(s), or Informal Resolution Facilitator(s), who do not have a conflict of interest or bias for or against Complainants or Respondents generally or an
Complainant or Respondent and the opportunity to challenge the Investigator or any member of the Review Panel for bias or conflict of interest;

L. The opportunity to offer information, present evidence, and identify witnesses during an investigation;

M. An objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations which may not be based on a person’s status as a Complainant, Respondent, or witness

N. The opportunity to be heard, orally and/or in writing, as to the determination of a Policy violation and the imposition of any sanction(s) as outlined in these Procedures;

O. Timely and equal access to any information that will be used during Informal or Formal Resolution proceedings and related meetings;

P. Reasonable time to prepare any response as contemplated by these Procedures;

Q. Written notice of any temporary delay or limited extension of timeframes for good cause;

R. Written notice of the outcome of any Formal Resolution proceedings, including the determination of a Policy violation, imposition of any sanction(s), and the rationale for each; and

S. An opportunity to appeal the findings of the Review Panel.

IV. DEFINITIONS

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

V. INITIAL ASSESSMENT BY DIRECTOR OF STUDENT CONDUCT

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

When a decision is reached to initiate an investigation or to take any other action under these Procedures that impacts a Respondent (including the imposition of interim supportive measures), the Director will ensure that the Respondent is notified, receives a written explanation of all available resources and options, and is offered the opportunity to meet to discuss those resources and options.

VI. SUPPORTIVE MEASURES

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

1. Interim suspension. Immediate separation of a Student from the University and/or housing by the Director (or designee) pending an investigation or adjudication. Through the duration of the interim suspension, the Student may be restricted from University property and may be required to provide prior notice and receive approval from the Director for the purpose of conducting University business. Interim
suspension will be imposed only in exceptional circumstances to ensure the health, safety or welfare of members of the University or University property or to ensure the Student’s own safety and welfare. Interim Suspension/Emergency Suspension procedures are set forth more fully in Section 2.03.

2. **No Contact Directive.** A no contact directive is an official University directive that serves as notice to an individual(s) that they must not have physical contact with or proximity to, or direct verbal, electronic, written, and/or indirect third party communications with another individual.

3. **Academic accommodations.** This may include assistance in transferring to another section of a course, assistance in requesting withdrawal or an incomplete grade in a particular course, leaves of absence or withdrawal from the University, or assistance requesting alternate methods of completing coursework.

4. **Housing accommodations.** This may include requiring a Student to relocate housing pending the outcome of a conduct investigation or proceeding. This may also include facilitating changes in on-campus housing location to alternate housing.

5. **Employment accommodations.** This may include arranging for alternate University employment for Students employed by the University.

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

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

### A. UNIVERSITY ACTIONS FOLLOWING DIRECTOR’S ASSESSMENT

Upon completion of the Director’s initial assessment, the Office of Student Conduct will determine the course of action under these Procedures, which may include, without limitation, Formal Resolution and/or Informal Resolution (if available). Where the Complainant requests that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the Office of Student Conduct will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, supportive measures, and the determinations of the Office of Student Conduct will be documented and retained by the University in accordance with applicable law.

1. **Where the Complainant Wishes to Pursue Formal Resolution.** In *every* case in which the Complainant reports Prohibited Conduct and requests an investigation and disciplinary action, the Director will promptly initiate Formal Resolution under these Procedures.

2. **Where the Complainant Requests Anonymity, that an Investigation Not Be Pursued, and/or that No Disciplinary Action Be Taken.** A Complainant may request that personally identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

The University attempts to balance the needs of the parties for privacy with the institutional responsibility of ensuring a safe educational environment and workplace. Confidentiality is an aspiration but is not always possible or appropriate. An individual's requests regarding the confidentiality of reports of discrimination, or harassment, including but not limited to sexual misconduct, will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the institution’s legal obligation to ensure a working and learning environment that is free from discrimination or sexual misconduct and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation and to ensure that the institution meets its obligations under the Policy. The institution may be limited in its response and investigation if confidentiality is requested.
If a Complainant requests anonymity, the Director will consider the following factors in evaluating request(s) for anonymity: (1) the totality of the known circumstances; (2) the presence of any Risk Factors; (3) the potential impact of such action(s) on the Complainant; (4) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct; (5) the existence of any independent information or evidence regarding the Prohibited Conduct; and (6) any other available and relevant information. The University will seek to honor the Complainant’s request(s) if it is possible to do so while also protecting the health and safety of the Complainant and the University community.

a. **Determination that a Complainant’s Request(s) Can be Honored.** Where it is determined that a Complainant’s request(s) (that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken) can be honored, the University may nevertheless take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances as a form of Informal Resolution.

At any time, the Complainant may choose to pursue Informal Resolution (if available) or Formal Resolution under these Procedures. The Director may request that a report be re-opened and pursued under these Procedures if any new or additional information becomes available.¹

b. **Determination that a Complainant’s Request(s) Cannot be Honored.** Where it is determined that a Complainant’s request(s) (that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken) cannot be honored, the Director may take any appropriate University actions, which may include, without limitation, (i) causing the Director to impose a No-Contact Directive or an Interim Disciplinary Suspension on the Respondent; (ii) causing the Director to place a “social obligation hold” on the Respondent’s University record; (iii) initiating an investigation and Formal Resolution under these Procedures; and/or (iv) arranging, imposing, or extending any other appropriate remedial and/or protective measures.

Where it is determined that the University must proceed with an investigation despite a Complainant’s request to the contrary, the University will make reasonable efforts to protect the privacy of the Complainant. However, actions that may be required as part of the University’s investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant’s identity may have to be disclosed. In such cases, the Director will notify the Complainant that the University intends to proceed with an investigation, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by the University.

c. **When a Complainant Declines to Participate.** Where a Complainant declines to participate in an investigation, the University’s ability to meaningfully investigate and respond to a report may be limited and such matter may discretionarily be dismissed. In such cases, the Director may pursue the report if it is possible to do so without the Complainant’s participation in the investigation or resolution (e.g., where there is other relevant evidence of the Prohibited Conduct, such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing

¹ Although a report may be re-opened at any time, the University will only be able to pursue disciplinary resolution and sanctions where the Respondent continues to be a University “Student” (i.e., continues to be registered or enrolled for credit or non-credit-bearing coursework at the University).
that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct). In the absence of such other evidence, however, the University will only be able to respond to the report in limited and general ways (i.e., through the provision of remedial measures, targeted training or prevention programs, or other remedies tailored to the circumstances).

B. NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY ACTIONS

The Director will promptly inform the Complainant of any action(s) undertaken by the University to respond to a health or safety threat to the Complainant or the University community, including the decision to proceed with an investigation. The Director will also promptly inform the Respondent of any action(s), (including any interim protective measures) that will directly affect the Respondent, and provide an opportunity for the Respondent to respond to such action(s). The Office of Student Conduct retains the discretion to impose and/or modify any supportive measures based on all available information. Supportive measures will remain in effect until the resolution of the report by the Review Panel, unless new circumstances arise which that warrant reconsideration of the protective measures prior to the hearing and determination by the Review Panel. A Complainant or Respondent may challenge interim protective measures or other actions, or failure to impose interim protective measures or take other actions, by contacting the Director to address any concerns. Provided that, if the Respondent is given an Interim Suspension, they will be entitled to a hearing on the suspension within three (3) business days before the Review Panel.

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

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

VII. GROUNDS FOR DISMISSAL OF FORMAL COMPLAINT

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

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

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

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

A. **Formal Resolution** – which involves an investigation, and review and sanction (if applicable) by a Review Panel, and

B. **Informal Resolution** – which includes a variety of informal options for resolving reports.

A. **FORMAL RESOLUTION**

Formal Resolution is commenced when:

i. A Complainant reports that a Student has engaged in one or more instances of Prohibited Conduct and requests, at any time, an investigation and disciplinary action; or

ii. Informal Resolution does not resolve a reported incident of Prohibited Conduct and, in the Director’s discretion, an investigation of the report of Prohibited Conduct is required; or

iii. Where it is concluded, based upon a review of the totality of the circumstances and guided by a consideration of the risk factors, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the Complainant’s request that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

1. **Investigation.** Whenever Formal Resolution is commenced, the Director will refer the matter to an Investigator who will designate himself/herself or one or more Investigators and/or an experienced external investigator to conduct a prompt, thorough, fair, and impartial investigation. Provided that, in the absence of the University Investigator, the Director may assign cases to other investigators or external investigators. All Investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, relationship violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and the University community while promoting accountability.

   a. **Notice of Investigation.** The Director will notify the Complainant and the Respondent, in writing, of the commencement of an investigation. Such notice will (1) identify the Complainant and the Respondent; (2) specify the date, time (if known), location, and nature of the alleged Prohibited Conduct; (3) identify potential Policy violation(s); (4) identify the Investigator; (5) include information about the parties’ respective expectations under the Policy and these Procedures; (6) explain the prohibition against Retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the Investigator on the basis of bias or a conflict of interest; (9) provide a copy of the Policy and these Procedures, (10) include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; (11) inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review both inculpatory and exculpatory evidence; and (12) inform the parties of any provision in the University’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

b. **Ongoing Notice Requirement.** The Director will send an Amended Notice(s) of Investigation to each party should the Investigation reveal additional allegations of misconduct to be investigated.
c. **Consolidation of formal complaints.** The University may consolidate formal complaints as to allegations of prohibited conduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where the University resolution involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

d. **Other Forms of Discriminatory and/or Harassing Conduct and/or Violations of the Student Conduct Code.** If a report of Prohibited Conduct, as defined in and governed by the University’s Policy GA-1 also implicates any other violation(s) of the University’s Code of Student Conduct and/or Housing and Residence Life’s policies, the Title IX Coordinator, in conjunction with the Director and other appropriate University officials, will evaluate all reported allegations to determine whether the alleged Prohibited Conduct and the alleged Code of Student Conduct violation(s) and/or Housing and Residence Life’s policies may be appropriately investigated together without unduly delaying the resolution of the report of Prohibited Conduct. Where it is determined that a single investigation is appropriate, the determination of responsibility for the violation of University policy will be evaluated under the applicable policy (i.e., the Policy or the Student Code of Conduct and/or Housing and Residence Life’s policies), but the investigation and resolution will be done in accordance with these Procedures.

e. **Presumption of Non-Responsibility and Participation by the Parties.** The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator, Decision-makers, and/or Review Panel conclude that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Policy. Neither party is required to participate in the investigation, nor with any form of resolution under these Procedures, and the Investigator, Decision-makers, and/or Review Panel will not draw any adverse inference from a decision by either of the parties not to participate.

f. **Reasonably Prompt Timeframe for Completion of Investigation; Extension for Good Cause.** Typically, the period from commencement of an investigation through Final Investigation Report will not an estimated exceed sixty (60) calendar days. This timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons.

The Investigator or the Director will notify the parties in writing of any temporary delays or the limited extension of this timeframe and the reason for such actions. Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

g. **Overview of Investigation.** During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather other relevant and available evidence and

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\[^{2}\text{This is an estimated timeframe which may vary on a case-by-case basis.}\]
information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party).

h. **Advisors.** Throughout the investigation and resolution process, each party has the right to choose and consult with an Advisor of their choosing. The Advisor may be any person, including an attorney paid for by the student, who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their respective Advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. Although, the Advisors may provide support and advice to the party they represent at any meeting and/or proceeding, they may not, in any manner, disrupt such meetings and/or proceedings. Provided that, if a party is being represented by an attorney or an Advisor not provided by the University, they must advise the Office of Student Conduct at least forty-eight (48) hours prior to the scheduled meeting or hearing. If requested, a University Advisor may be assigned to a Student.

i. **Prior or Subsequent Conduct.** Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. Such prior or subsequent conduct may also constitute a violation of the Code of Student Conduct, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

j. **Prior Sexual History.** Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove:

   i. That someone other than the Respondent committed the conduct alleged by the Complainant, or
   ii. If the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent are offered to prove consent.

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

k. **Relevance.** The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party’s general reputation for any character trait. Investigator may decline to interview witnesses unlikely to yield relevant information. The Investigator will decline to interview character witnesses if they have no relevant information about the incident.

l. **Site Visit(s).** The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.
m. **Expert Consultation(s).** The Investigator may consult medical, forensic, technological or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

n. **Coordination with Law Enforcement.** The Investigator may contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the request of law enforcement, the Investigator may delay the University investigation temporarily while an external law enforcement agency is gathering evidence. The Investigator will promptly resume the University investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

o. **Right to Inspect, Review, and Respond to the Investigative File.** At the conclusion of the Investigation, the Investigator will provide both parties an equal opportunity to inspect and review the entire Investigative File which will include all evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. Investigator may redact personally identifiable information or protected information from the evidence obtained during the investigation.

The parties will have ten (10) business days to review the Investigative File and submit a written response, to be included as an addendum to the “Investigative File,” which the investigator will consider prior to completion of the “Investigative Report.” The parties will have an opportunity to review the Investigative File; meet with the Investigator; submit additional comments and information to the Investigator; identify any additional witnesses or evidence for the Investigator to pursue; and submit any further questions that they believe should be directed by the Investigator to the other party or to any witness.

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

p. **Final Investigation Report.** Unless there are significant additional investigative steps requested by the parties or identified by the Investigator, after the review of the Investigative Report, within five (5) business days after receipt and consideration of any additional comments, questions and/or information submitted by the parties during the designated review and response period, the Investigator will prepare a Final Investigation Report, which will:

i. Fairly summarize and analyze the relevant information and relevant evidence gathered;

ii. Outline the contested and uncontested information;

iii. Outline the corroborated and uncorroborated information;

iv. Include a credibility assessment; however, the credibility assessment must not be a determination regarding responsibility; and

v. Include findings as to whether there is sufficient evidence, by a Preponderance of the Evidence, which could support a finding of responsibility for a violation of the Policy (and, where applicable, the Code of Student Conduct).

The Investigator will deliver the Final Investigation Report to the Director.
q. **Distribution of Investigation Report.** Upon receipt of the Final Investigation Report, the Director will distribute the Final Investigation Report to each party and each party’s advisor. The parties will have ten (10) business days prior to review the Final Investigative Report and submit a written response.

r. **Recommended Finding(s) Determination of Responsibility.** When the Investigator determines that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility on one or more of the allegations, the Respondent may accept or contest such recommended finding(s) by so notifying the Director, in writing within five (5) days of receiving the Final Report. If the Respondent accepts the recommended finding(s) of responsibility, the Director will refer the case to the Review Panel solely on the issue of sanctions. The sanctions to be imposed are outlined in Section VIII.A.3(h) of these Procedures. If the Respondent contests one or more of the recommended finding(s), the Respondent may submit a written statement explaining why the Respondent contests such finding(s). The Director will ensure that the Complainant has an opportunity to review and respond in writing to any such statement. The Director will provide the Final Investigation Report, together with any statements by the parties, to the Review Panel for further proceedings as outlined in Section VIII.A.3 of these Procedures.

s. **Recommended Finding(s) of No Responsibility.** When the Investigator determines that there is insufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility on one or more of the allegations, the Complainant may accept or contest the recommended finding(s) by so notifying the Director, in writing within five (5) days of receiving the Final Report. If the Complainant accepts the recommended finding(s) of no responsibility, the investigation will be closed and documented in accordance with applicable University policies. If the Complainant contests one or more of the recommended finding(s), the Complainant may submit to the Director a written statement explaining why the Complainant contests such finding(s) as specified by the Director. The Director will ensure that the Respondent has an opportunity to review and respond in writing to any such statement. The Director will provide the Final Investigation Report, together with any statements by the parties, to the Review Panel for further proceedings as outlined in these Procedures.

t. **Director of Student Conduct’s Role After Distribution of Investigation Report.** Upon reviewing the “Investigative Report” and any written responses thereto, the Director will:

i. Determine whether the investigation reveals facts requiring or permitting dismissal of the formal complaint. If dismissal is warranted, the Director will inform the parties, in writing, of the dismissal decision, the reason therefore, and an opportunity to appeal the dismissal.

ii. If the Director determines that the matter should not be dismissed, the Director will send a Notice of Referral for a Review Panel Hearing contemporaneously to the parties and the Review Panel Hearing Officer.

u. **Impact and Mitigation Statements.** Where there is a finding of responsibility on one or more of the allegations or the matter has been referred to the Review Panel for Live Hearing, both parties may submit a statement to the Director for consideration by the Review Panel in determining an appropriate sanction. The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The Director will ensure that each of the parties has an opportunity to review any statement submitted by the other party. The Director will provide any statement(s) with the Final
Investigation Report and the parties’ other written submissions to the Review Panel. Impact and mitigation statements must be received within five (5) business days.

v. **Timing of Investigation.** The investigation typically will be completed within forty-five (45) business days. This period may be extended to account for a previous attempt, if any, at Informal Resolution, or for other good cause, as described Section VIII.B. of these Procedures. Any extension, other than for Informal Resolution, and the reason for the extension, will be shared with the parties in writing.

2. **Acceptance of Responsibility by Respondent or No Contest of Final Investigation Report.** The Respondent may, at any time, elect to resolve the process by accepting responsibility for the Prohibited Conduct, in which case the Director may consult with the Vice President of Student Affairs and others within the Office of Student Conduct to determine the appropriate sanction(s). By accepting responsibility for the Prohibited Conduct, the Respondent waives all rights to a hearing and/or any other due process rights the student may be entitled to receive under this process or any other State or Federal law.

   a. The Director may refer the matter to the Review Panel for Sanctioning.
   b. The Director and Review Panel have the discretion to invite the parties to appear live, in person or virtually by video, prior to issuing sanctions to present impact and mitigation statements.
   c. If one party is invited to attend a pre-sanctioning meeting, all parties will be extended an invitation to attend.
   d. The parties may be asked to address the Review Panel separately, outside the presence of the other party.

3. **Review Panel Hearing.** The Director will appoint a standing pool of members of the University community or external professionals who are trained on the definition of sexual harassment, the scope of the University’s education program or activity, these procedures, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias who will make determination of responsibility after an independent review of the Investigation Report. The Director will select three (3) members from this pool to serve on the Review Panel. The Review Panel shall elect one member as Chair. In addition, the Hearing Officer shall serve as a non-voting member. The Review Panel will review the Investigator’s recommended finding(s) and, if applicable, determine any appropriate sanction(s) under these Procedures. All persons serving on any Review Panel (or as the Hearing Officer) must be impartial and free from actual bias or conflict of interest. The Review Panel members cannot be the same person(s) as the Director or the investigator(s) assigned to the matter.

   a. **Standard of Review.** If either of the parties contests the Investigator’s recommended finding(s) of responsibility (or no responsibility) for an alleged violation of the Policy, the Review Panel will hold a Hearing to determine: (1) whether the concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation; and, if not, (2) whether there is sufficient evidence to support the Investigator’s recommended finding(s) by a Preponderance of the Evidence.

   b. **Notice and Timing of Hearing.** Typically, a Hearing will be held within thirty (30) calendar days from the referral to the Review Panel for Live Hearing or Sanctions, subject to extension for good cause. The Hearing Officer will notify the parties in writing of the date, time, and location of the Hearing; the names of the Review Panel members and the Hearing Officer; and how to challenge participation by any member of the Review Panel or the Hearing Officer for bias or conflict of interest. Any extension, including the reason for the extension, will be shared with the parties in writing.

   c. **Challenge Due to Conflict of Interest.** If either party believes that any member of the Review Panel or Hearing Officer has a conflict of interest, their written challenge must be
sent to the Hearing Officer. The challenge must state which individual(s) are the subject of the challenge and the basis for the challenge. Upon receipt of the challenge the Hearing Officer shall forward the same to the Review Panel for consideration and a decision as to whether or not to grant the challenge. The Review Panel shall make their decision within twenty-four (24) hours of receipt of the challenge and provide a written decision to the parties concerning the same. A challenge for Conflict of Interest will be considered good cause to continue or postpone the hearing, if a decision cannot be reached before the scheduled hearing of if an individual must be replaced.

d. **Postponement of Hearing.** Permission to postpone a Hearing may be granted provided that the request to do so is based on a compelling emergency and communicated to the Hearing Officer prior to the time of the Hearing.

e. **Live Hearing Format.** Live hearings may be in person or virtual live hearings. Live hearings may be conducted with all the parties physically present in the same geographic location, or at the University’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the Review Panel and all participants simultaneously to see and hear each other. All participants must be both seen and heard. In addition, all participants appearing virtually, must identify if there are any other individuals present with them at their location. Individuals who are not a part of the process or who will testify later, may be required to leave the location during the hearing.

The Live Hearing is an opportunity for the parties to address the Review Panel, in person and to provide information relevant to the issue(s) to be decided by the Review Panel.

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

ii. Each party has the opportunity to be heard, to identify witnesses for the Review Panel’s consideration, and to respond to any questions of the Review Panel.

iii. Cross Examination.

a. The parties may not directly question each other.

b. Advisors may directly question a party or other witnesses.

c. Only relevant cross examination and other questions may be asked of a party or witness.

d. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Review Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

e. To aid in the efficiency of the Hearing, it is highly recommended that the parties have questions prepared prior to the Hearing.

f. Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.

iv. A typical Live Hearing may include brief opening remarks by the Complainant and/or Respondent, with follow-up questions posed by the Review Panel; information presented by the Investigator or witnesses deemed relevant by the Review Panel, with follow-up questions by the Review Panel of the Investigator or witnesses; and brief concluding remarks by the Complainant and/or Respondent. The Chair of the Review Panel has the discretion to determine the specific Hearing format.
v. Formal rules of evidence and court procedures are not used and do not apply unless specified herein. Student conduct hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures, requirements for pleadings, and the hearsay rule do not apply in student disciplinary hearings.

vi. The Live Hearing will be electronically recorded. The Respondent and the Complainant, upon request shall be provided with a copy of the recording. The original recording will remain the property of the University and will be considered the official record of the proceedings. Upon the prior approval of the Hearing Officer, the Respondent and/or the Complainant may utilize the services of a Certified Court Reporter at their own expense. If a Certified Court Reporter is utilized the party utilizing the Certified Court Reporter shall provide the University with the original transcript at no charge to the University. The original transcript will then become the official record of the proceedings. If both parties are requesting to use a Certified Court Reporter, only one Certified Court Reporter will be permitted, and the Respondent and Complainant shall share the costs.

f. Participation in Hearing.

i. Parties. Both the Complainant and the Respondent have a right to be present at the Live Hearing. Either party may request alternative methods for participating in the Hearing that do not require physical proximity to the other party, including participating through electronic means. This request should be submitted to the Hearing Officer at least two (2) business days prior to the Live Hearing. Any or all parties, witnesses, and other participants may appear at the Live Hearing virtually, with technology enabling participants simultaneously to see and hear each other.

ii. Party’s Failure to Attend. If, despite being notified of the date, time, and location of the Hearing, either party is not in attendance, the Hearing may proceed, and applicable sanctions may be imposed. Neither party is required to participate in the hearing for the Hearing to proceed.

iii. Investigator or other witnesses. The Review Panel may request the presence of the Investigator or any other witness it deems necessary to its determination. The parties may also request the presence of any witness they deem relevant to the determination by the Review Panel. Proposed witness lists shall be provided to the Hearing Officer at least four (4) business days prior to the Hearing and said lists shall contain a brief statement of the need or relevancy of the proposed witness’s presence at the Hearing. The Review Panel has absolute discretion to determine which witnesses are relevant to its determination and may decline to hear from witnesses where it concludes that the information is not necessary for its review.

   a. It is the responsibility of each of the parties to arrange for the attendance of any proposed witness who is not affiliated with the University.
   b. The University does not have subpoena power to compel the attendance of witnesses who are not affiliated with the University.
   c. The Review Panel may rely on any statement of that party or witness contained within the Investigation Report in reaching a determination regarding responsibility.

The Review Panel cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.
iv. **Advisors.** Both the Complainant and the Respondent have the right to be accompanied at the Hearing by one (1) Advisor, unless required by law, of their choosing. The Advisor may be anyone, including an attorney, who is not otherwise a party or witness. If the Complainant or Respondent is consulting with more than one (1) Advisor, they must designate their “Advisor” for purposes of these proceedings. The Advisor may provide support and advice to a party at the Hearing, the Advisor may speak on behalf of the party or otherwise participate in, the Hearing. During the Hearing, an Advisor may conduct direct examination of the party and witnesses in addition to cross-examination. An Advisor may present an opening or closing statement on behalf of the party. The University reserves the right to remove any individual whose actions are disruptive to the proceedings.

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

If the Review Panel finds that concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation, it will remand the matter to the Director with instructions for further investigation or other action. The instructions may include guidance regarding the scope of information to be further investigated and any appropriate stipulations, including the appointment of a new Investigator.

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation, but determines there is insufficient evidence to support the Investigator’s recommended finding, it may remand the matter for further investigation, or reject the Investigator’s recommended finding(s) and make alternative finding(s).

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

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

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

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

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

i. The severity, persistence or pervasiveness of the Prohibited Conduct;
ii. The nature or violence (if applicable) of the Prohibited Conduct;
iii. The impact of the Prohibited Conduct on the Complainant;
iv. The impact or implications of the Prohibited Conduct within the University community;
v. Prior misconduct by the Respondent, including the Respondent’s relevant prior disciplinary history, at the University or elsewhere, and any criminal convictions;
vii. Whether the Respondent has accepted responsibility for the Prohibited Conduct;
viii. The maintenance of a safe, nondiscriminatory, and respectful environment conducive to learning; and
ix. Any other mitigating, aggravating, or compelling factors.

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

In addition to other sanctions, the Review Panel may direct the Director to impose or extend a No-Contact Directive and impose or extend academic, University housing and/or University employment modifications, as may be appropriate; impose or extend increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; arrange for conducting targeted or broad-based educational programming or training for relevant persons or groups; impose one or more restorative remedies to encourage a Respondent to develop insight about the Prohibited Conduct, learn about the impact of that Prohibited Conduct on the Complainant and the University community, and identify how to prevent that Prohibited Conduct in the future (including community service and mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); and/or impose any other remedial or protective measures that are tailored to achieve the goals of the Policy.

i. Transcript Notations. If the Review Panel imposes a Reportable Sanction, the Director will notify the University Registrar to place a prominent notation on the Respondent’s transcript, as provided in Section 2.05 of the Student Disciplinary Procedures.

j. Final Outcome Letter. The Review Panel Chair will simultaneously issue a written decision (the “Final Outcome Letter”) to both the Complainant and the Respondent, with a copy to the Director, within five (5) business days following the Review Panel Hearing (or such longer time as the Chair may for good cause determine). The Review Panel will issue an independent Final Outcome Letter which must include:

i. Identification of the allegations potentially constituting sexual harassment;
ii. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
iii. Findings of fact supporting the determination;
iv. Conclusions regarding the application of the University’s code of conduct and policies to the facts;
v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or
preserve equal access to the University’s education program or activity will be provided by the University to the Complainant; and

vi. The procedures and permissible bases for the Complainant and Respondent to appeal.

No decisions will be communicated orally.

4. **Appeals of the Final Outcome Letter.** Appeals of the Final Outcome Letter will be assigned to the Vice President of Student Affairs for issuance of a Final Decision. Appeals are not new hearings. Rather, review will be limited to a record of the original hearing and supporting documents. Appeals must be in writing. Verbal appeals are not accepted.

a. **Who May Appeal.** The Complainant and/or the Respondent may appeal a decision of the Review Panel. The individual appealing is referred to as the appellant. In situations where more than one party appeals, they will be designated as Complainant/Appellant, Respondent/Appellant and/or Director Appellant as appropriate.

b. **Bases for Appeal and Content of Appeal Statements.** The Appellant must base the appeal exclusively on one or more of the following grounds:

   i. Procedural irregularity that affected the outcome of the matter;
   
   ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
   
   iii. The investigator(s) or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; and/or
   
   iv. Sanctions imposed by the hearing body were substantially disproportionate to the violation(s) for which the student was found responsible.

   c. **Statement of Appeal.** The Appellant must submit a Statement of Appeal to the Title IX Coordinator within five (5) business days of receipt of the Final Outcome Letter. Upon showing of good cause, an extension may be requested in writing and may be granted by the Title IX Coordinator.

   d. **Notification of Appeal.** Upon receipt of a Statement of Appeal, the Director must:

      i. Notify the other party in writing when an appeal is filed and must implement appeal procedures equally for both parties;
      
      ii. Give both parties an opportunity to submit a written statement in support of or challenging the Statement of Appeal. The Director will submit the Statement of Appeals to the non-appealing party to make a written response to the Statement of Appeal.

         a. The responses from a non-appealing party must be submitted to the Director within five (5) business days.

   e. **Sanction Held in Abeyance Pending Appeal.** The effective date of any sanction will be held in abeyance (temporarily delayed) automatically during the period in which an appeal may be filed and until the Vice President of Student Affairs reaches a decision on any appeal filed; however, the Vice President of Student Affairs has the right to retain certain conditions or restrictions, particularly those related to life-safety issues and “no contact” directives.
f. **Appeal Must Be Timely Filed.** If no appeal is filed, or an appeal is not timely, the original finding(s) will stand, effective on the date the appeal period expires. The Title IX Coordinator will determine if the appeal is timely.

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

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

g. **Authority of Vice President of Student Affairs.** After reviewing the record below, the Vice President of Student Affairs may:
   i. Affirm the action, at which time the matter will be considered final and binding upon all involved.
   ii. Reverse the action taken by the Hearing Board and dismiss the case. A case will be dismissed only in rare and extreme circumstances.
   iii. Remand the case to the Hearing Board for a new hearing.
   iv. Increase or decrease any sanctions imposed based on information presented during the appeal process.

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

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

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

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

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

The files maintained by the Office of Student Conduct are separate from transcripts, which are maintained by the [University Registrar](#).

A student may request a copy of his or her prohibited conduct investigation record or request that the record, including information related to pending charges, be provided to a third party by completing a release authorization form. The completed form should be provided to:

**Office of Student Conduct/Director of Student Conduct**
Memorial Student Center, 2W38
Marshall University
One John Marshall Drive
Huntington, WV 25755
Requests for records may be redacted if required by University policy, practice, state or federal law or if a Complainant requested confidentiality or as required by law.

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

### B. INFORMAL RESOLUTION

Both parties may voluntarily seek Informal Resolution in place of an investigation and Formal Resolution. The University, however, has the discretion to determine whether the nature of the reported conduct is appropriate for Informal Resolution, to determine the type of Informal Resolution that may be appropriate in a specific case to refer a report for Formal Resolution at any time. In addition, Informal Resolution may not be available where it has determined that one or more Risk Factors is present. **Forms of Informal Resolution that involve face-to-face meetings between the Complainant and the Respondent, such as mediation, are not available in cases involving Sexual Assault and Interpersonal violence allegations.**

Participation in Informal Resolution is voluntary. The University will not compel a Complainant or Respondent to engage in Informal Resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from an Informal Resolution for any reason within forty-five (45) days of signing the Informal Resolution. Any party wishing to withdraw an Informal Resolution after forty-five (45) days of signing the Informal Resolution must show good cause reason for the withdrawal and good cause reason that the Informal Resolution was not working appropriately. The University may decline the request for Informal Resolution in any case and may terminate an ongoing Informal Resolution process at any time. Pursuing Informal Resolution does not preclude later use of Formal Resolution if the Informal Resolution fails to achieve a resolution acceptable to the parties and the University. Where the Complainant or the Respondent withdraws from Informal Resolution or Informal Resolution is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the Informal Resolution may be considered in a subsequent investigation and Formal Resolution.

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

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

1. **One-on-One Communication:** If a Complainant wishes to address a situation with a Respondent without the direct involvement of a third party, the Complainant may communicate directly with the Respondent. This form of Informal Resolution is appropriate only if the Complainant does not feel threatened, there is no risk of physical harm, and the Complainant reasonably believes the Respondent will be receptive to the communication. Complainants are NOT required to engage in one-on-one communication before seeking the third-party assistance or other help. This form of Informal Resolution may not be used where the allegation involves Sexual Assault.

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

3. **Interventions and Remedies.** Informal Resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant's access to educational, extracurricular, and/or University employment activities; increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or University housing modifications for Student Complainants; workplace modifications for Employee Complainants; one or more of the restorative remedies or other sanctions described in these Procedures; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the Policy.

Any form of Informal Resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the terms of the agreement are implemented, and the matter is resolved and closed. If an agreement is not reached, and the Director determines that further action is necessary, or if a Respondent fails to comply with the terms of the Informal Resolution, the matter may be referred for an investigation and Formal Resolution under these Procedures.

The Director will maintain records of all reports and conduct referred for Informal Resolution, which typically will be completed within thirty (30) calendar days.

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

C. **RECORDS RETENTION**

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

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

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1 Although these are referred to a “Grievance Procedures” due to the applicable federal regulation, these Procedures should not be interpreted as amending or affecting the requirements set forth in the West Virginia Public Employees Grievance Board Procedures.
to impose disciplinary sanctions against Employees found responsible for violating the Policy².

II. GENERAL RESPONSE TO SEXUAL HARASSMENT

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

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

III. REPORTING

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

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

Debra Hart, Director/ Title IX Coordinator
Old Main Room 324
Hart70@marshall.edu or TitleIX@marshall.edu
Ph: 304-696-2597

The University’s website for online reporting (which allows for anonymous reporting) is located at https://www.marshall.edu/ecoaa/complaint-form/.

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

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

² These Procedures should be read in conjunction with the Policy. Capitalized terms used and not otherwise defined in these Procedures are defined in the Policy. For purposes of these Procedures, the following definitions apply: (1) the “Title IX Coordinator” means the Title IX Coordinator and/or any of the respective trained designees; (2) “Supervisor” means the individual or individuals to whom an Employee reports in the context of their employment with the University (for academic faculty, that individual may be the Department Chair; Dean or other unity administrator); and (3) “Human Resources” means the University Human Resources and/or the Human Resources professional in an particular school or department.

³ Pursuant to University policy, certain University employees, called “Campus Security Authorities,” are required to report to the Title IX Coordinator all information disclosed to them about an incident of Prohibited Conduct. See “Reporting by University Employees of Disclosures Relating to Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence.”
The administrative investigation of complaints filed in accordance with these Procedures is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation is separate and will not take the place of an investigation, adjudication or disposition of a complaint filed in accordance with these Procedures. The results of a law enforcement investigation, adjudication or disposition are not determinative of and do not determine whether an individual is responsible for violating University rules, regulations, policies. The administration of complaints filed in accordance with these procedures may be carried out prior to, simultaneously with, or following civil or criminal investigations and/or proceedings. The University will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus or that affects the University community. Such cooperation may require the institution to temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while the law enforcement agency is in the process of gathering information. Suspensions of investigations typically last from three (3) to ten (10) days but may be extended depending upon the circumstances of each case and/or as dictated by other provisions of this Procedure. The University will promptly resume its administrative investigation/proceedings as soon as notified by the law enforcement agency that it has completed the evidence gathering process.

The University’s ability to take action against third parties may be limited and is determined by the context of the prohibited conduct and the nature of the relationship of the parties to the University. The Evaluation Panel will determine the appropriate manner of resolution, which may include referral to area law enforcement, restriction of access to campus or University activities, or referral to the home school of the third party.

A. RESOURCES FOR COMPLAINANT

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

**Marshall University Women's & Gender Center**
Old Main 115, One John Marshall Drive
Huntington, WV 25755
Phone: 304 696-3338
Email: wcenter@marshall.edu

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

**Marshall University Violence Prevention and Response Program**
1205 Wellness Center, Rec Center, One John Marshall Drive
Huntington, WV 25755
Phone: 304 696-5701
Email: vprprogram@marshall.edu

**CONTACT Rape Crisis Center**
For a more detailed list of confidential resources available to members of the University community, please see:
Marshall University Counseling Center Staff
Marshall University Women’s & Gender Center Staff
Marshall University Psychology Clinic Staff
Marshall University Violence Prevention and Response Program

Your Primary Care Physician.

**Cabell Huntington Hospital**
Emergency Department
304-526-2200
[https://cabellhuntington.org/services/emergency-trauma/](https://cabellhuntington.org/services/emergency-trauma/)

**St. Mary’s Medical Center**
Emergency Services
304-526-1111
[https://www.st-marys.org/centers-services/emergency-services/](https://www.st-marys.org/centers-services/emergency-services/)

**Charleston Area Medical Center (CAMC) – General**
304-388-7498
[http://www.camc.org/generaler](http://www.camc.org/generaler)

Complainants are entitled to receive information, assistance and a broad range of support and remedial measures regardless of whether they choose to pursue criminal and/or University disciplinary resolution of Prohibited Conduct.

Although Third Parties do not have the same standing in the University internal process as members of the University community, they may report prohibited conduct to:

Debra Hart, Director/ Title IX Coordinator
Old Main Room 324
Hart70@marshall.edu or TitleIX@marshall.edu
304-696-2597

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

Grievance Procedures for Title IX Reports Against Employees (Revised August 2020)
make a report to the OCR at any time by contacting:

Philadelphia Office, Office for Civil Rights, U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541
FAX: 215-656-8605; TDD: 800-877-8339
Email: OCR.Philadelphia@ed.gov
http://www2.ed.gov/about/offices/list/ocr/complaintintro.html

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

**Legal Resources:**
West Virginia Lawyer Referral Service
The West Virginia State Bar
2000 Deitrick Blvd.
Charleston, WV  25311
304-553-7220 or 800-642-3617
https://wvlawyerreferral.org

**B. RESOURCES FOR RESPONDENT**

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

Primary Care Physician
Family Counseling Center
Clergy
Advisor, see below

**Legal Resources:**
West Virginia Lawyer Referral Service
The West Virginia State Bar
2000 Deitrick Blvd.
Charleston, WV  25311
304-553-7220 or 800-642-3617
https://wvlawyerreferral.org

AFT-WV for its members.

**IV. EXPECTATIONS OF COMPLAINANTS AND RESPONDENTS**

Pursuant to these Procedures, Complainants and Respondents can expect:

A. Reasonably prompt and equitable resolution of allegations of Prohibited Conduct;

B. Privacy in accordance with the Policy and any legal requirements;

C. Reasonably available interim supportive measures, as described in these Procedures;
D. Freedom from Retaliation for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy or these Procedures;

E. The responsibility to refrain from Retaliation directed against any person for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy or these Procedures;

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

G. The opportunity to articulate concerns or issues about proceedings under the Policy and these Procedures;

H. Timely notice of any meeting or proceeding at which the party’s presence is contemplated by these Procedures;

I. The opportunity to choose a representative, including the right to have that representative attend any meeting or proceeding at which the party’s presence is contemplated by these Procedures;

J. Written notice of an investigation, including notice of potential Policy violations and the nature of the alleged Prohibited Conduct;

K. Trained Title IX Coordinator(s), Investigator(s), Decision-Maker(s), Review Panel Member(s), or Informal Resolution Facilitator(s), who do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent and the opportunity to challenge the Investigator or any Decision-maker for bias or conflict of interest;

L. The opportunity to offer information, present evidence, and identify witnesses during an investigation;

M. An objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations which may not be based on a person’s status as a Complainant, Respondent, or witness;

N. The opportunity to be heard, orally and/or in writing, as to the determination of a Policy violation and the imposition of any sanction(s);

O. Timely and equal access to any information that will be used during Informal or Formal Resolution proceedings and related meetings;

P. Reasonable time to prepare any response contemplated by these Procedures;

Q. Written notice of any temporary delay or limited extension of timeframes for good cause;

R. Written notice of the outcome of any Formal Resolution proceedings, including the determination of a Policy violation, imposition of any sanction(s), and the rationale for each; and

S. An opportunity to appeal the findings of the Decision-maker(s).
V. DEFINITIONS

The University prohibits Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in this the Policy by or against any member of the University community (together, “Prohibited Conduct”). These forms of Prohibited Conduct which fall within the jurisdiction of Title IX are defined in the (BOG GA-1) (the “Policy”).

A. “Actual Knowledge.” Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

B. “Advisor.” Any person intended to assist the Complainant or Respondent during the disciplinary process, including but not limited to, a University appointed Advisor, faculty member, attorney, or other person. Unless otherwise indicated by the Complainant or Respondent, in writing, the Advisor shall be provided a copy of all materials provided to the Complainant or Respondent.

C. “Burden of Proof” means that while protecting every party’s right to consent to the use of the party’s own medical, psychological, and similar treatment records, the burden of proof and burden of gathering evidence rests on the University.

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

E. “Complainant” means, for purposes of this Procedure, an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

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

G. “Decision-maker” means a standing pool of members of the University community or external professionals who are trained on the definition of sexual harassment, the scope of the University’s education program or activity, these procedures, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias who will make determination of responsibility after an independent review of the Investigation Report.
H. "Employee" means any person hired for permanent employment by Marshall University for a probationary, full- or part-time position.

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

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

K. “Informal Resolution Facilitator” means an individual appointed by the Title IX Coordinator to facilitate voluntary Informal Resolutions between the parties. Informal Resolutions Facilitators cannot be a witness or provide testimony.

L. “Interpersonal Violence” occurs when one person uses power and control over another through physical, sexual, or emotional threats or actions, economic control, isolation, or other kinds of coercive behavior.

M. “Investigator” means a University position responsible for the University’s Title IX investigations who is trained on the definition of sexual harassment, the scope of the recipient’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Investigations may be done by the University Title IX Investigator or such other trained individual he/she designates or assigns to a particular matter. Provided that, in the absence of a Title IX Investigator, the Title IX Coordinator may investigate or assign cases to other trained Investigators or external resources.

N. “Member of the University Community,” means an individual engaged in any University activity or program, whether on or off campus, or any individual lawfully on University property, including, but not limited to, any person who is a student, staff, faculty member, other University official, or a visitor.

O. “Notices or Communications.” All notices or other communications which are required in these Procedures shall be in writing and shall be deemed to have been duly given if: (a) delivered by hand, (b) sent to the recipient’s official University email account with a delivery and read receipt, (c) mailed by certified or registered mail with postage prepaid, (d) mailed by reputable overnight courier, or (e) sent by facsimile transmission, with confirmation that such transmission has been
P. “Prohibited Conduct” means Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in Board of Governors Policy GA-1.

Q. “Reporter” means, for purposes of this the Policy, any individual that makes or files a complaint about prohibited conduct under this Policy. The Reporter may be the Complainant, any other person, or the University.

R. “Respondent” means, for purposes of this Policy, an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

S. “Review Panel” means Decision-makers from a standing pool of members of the University community or external professionals who are trained decision-makers appointed by the Title IX Coordinator to adjudicate allegations of Prohibited Conduct on campus, pursuant to these procedures.

T. “Standard of Proof” means a Preponderance of the Evidence standard (i.e., the evidence demonstrates that it is more likely than not that the conduct occurred) often referred to as “50 percent plus a feather.”

U. “Student” means, for purposes of this Policy, an individual subject to the Marshall University Board of Governors Policy SA-1, The Code of Student Rights and Responsibilities.

V. “Supportive Measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before and after the filing of a formal complaint or where no formal complaint has been filed.

W. “Third Party” means an individual who is not a University student, faculty, or staff member. Third parties may be a participant in any University related program or activity, for example, visitors, guests, independent contractors, and vendors.
VI. INITIAL ASSESSMENT

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

1. The Office of Public Safety, Marshall University Police Department (MUPD) will notify the Title IX Coordinator that a report of Prohibited Conduct has been received.

2. Upon request, the University will temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while MUPD or other law enforcement agency is in the process of gathering information. Suspensions of investigations typically last not more than ten (10) business days but may be extended depending upon the circumstances of each case and/or as dictated by other provisions of this Procedure.

3. MUPD or any other law enforcement agency that has requested the suspension of an investigation, will promptly notify the Title IX Coordinator that they have completed their investigation.

B. COMPLAINT RECEIVED BY CAMPUS SECURITY AUTHORITY

1. Before an individual reveals information that they may wish to keep confidential, a Campus Security Authority should make every effort to ensure that the individual understands:
   a. the employee’s obligation to report the names of the alleged perpetrator and individual involved in the alleged Prohibited Conduct, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator,
   b. the individual’s option to request that the school maintain their confidentiality, which the school (e.g., Title IX coordinator) will consider, and
   c. the individual’s ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (e.g., sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers).

2. A Campus Security Authority must report to the Title IX Coordinator within two (2) days, all relevant details about the alleged Prohibited Conduct that the individual or another person has shared and that the University will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged Prohibited Conduct, other students involved in the alleged Prohibited Conduct, as well as relevant facts, including the date, time, and location.

C. COMPLAINT RECEIVED BY TITLE IX COORDINATOR

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

A. Assess the Complainant’s safety and well-being and offer the University’s immediate supportive measures and assistance;

B. Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;

C. Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
D. Inform the Complainant about University and community resources, the right to seek appropriate and available remedial and protective measures, and how to request those resources and measures;

E. Inform the Complainant of the right to seek Informal Resolution (where available) or Formal Resolution under these Procedures; ascertain the Complainant’s expressed preference (if the Complainant has, at the time of the initial assessment, expressed a preference) for pursuing Informal Resolution, Formal Resolution, or neither; and discuss with the Complainant any concerns or barriers to participating in any University investigation and resolution under these Procedures;

F. Explain the University’s prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation;

G. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;

H. Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and

I. Communicate with the Marshall University Office of Public Safety (MUPD) and other appropriate University officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

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

VII. THREAT ASSESSMENT

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

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

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

Upon completion of the health and safety and threat assessment, the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials will determine the course of action under these Procedures, which may include, without limitation, Formal Resolution and/or Alternative Resolution (if available). Where the Complainant requests that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the University will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, the health and safety threat assessment, and the determinations of the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials will be documented and retained by the University in accordance with applicable law.

1. Where the Complainant Wishes to Pursue Formal Resolution. In every case in which the Complainant reports Prohibited Conduct and requests an investigation and disciplinary action, the Title IX Coordinator will promptly initiate Formal Resolution under these Procedures.

2. Where the Complainant Requests Anonymity, that an Investigation not be Pursued, and/or that No Disciplinary Action Be Taken. A Complainant may not request that personally identifying information not be shared with the Respondent if the Complainant desires to initiate grievance procedures. A Complainant may request that no investigation be pursued and/or that no disciplinary action be taken.

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

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

a) Determination that a Complainant’s Request(s) Can be Honored. Where Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials determines that a Complainant’s request(s) that no investigation be pursued, and/or that no disciplinary action be taken can be honored, the University may nevertheless take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community.
Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances as a form of Informal Resolution.

At any time, the parties may choose to pursue Informal Resolution (if available) or Formal Resolution under these Procedures. The Title IX Coordinator also may request that a report be re-opened and pursued under these Procedures if any new or additional information becomes available.4

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

Where the Title IX Coordinator, in conjunction with the Director of Human Resources, and any other necessary or appropriate University officials has determined that the University must proceed with an investigation despite a Complainant’s request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, actions that may be required as part of the University’s investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant’s identity may have to be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that the University intends to proceed with an investigation, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by the University.

c) When a Complainant Declines to Participate. Where a Complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited and such matter may discretionarily be dismissed. In such cases, the Title IX Coordinator may pursue the report if it is possible to do so without the Complainant’s participation in the investigation or resolution (e.g., where there is other relevant evidence of the Prohibited Conduct, such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct). In the absence of such other evidence, however, the University will only be able to respond to the report in limited and general ways (i.e., through the provision of remedial measures, targeted training or prevention programs, or other remedies tailored to the circumstances).

B. NOTICE TO PARTIES OF UNIVERSITY ACTIONS

The Title IX Coordinator will promptly inform the Complainant of any action(s) undertaken by the University to respond to a health or safety threat to the Complainant or the University community, including the decision to proceed with an investigation. The Title IX Coordinator also will promptly

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

Grievance Procedures for Title IX Reports Against Employees (Revised August 2020)
inform the Respondent of any action(s) (including any supportive measures) that will directly impact the Respondent, and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator retains the discretion to impose and/or modify any supportive measures based on all available information. Interim protective measures will remain in effect until the resolution of the report by the Review Panel, unless new circumstances arise which warrant reconsideration of the protective measures prior to the hearing and determination by the Review Panel. A Complainant or Respondent may challenge supportive measures or other actions, or failure to impose supportive measures or take other actions, by contacting the Title IX Coordinator to address any concerns.

VIII. GROUNDS FOR DISMISSAL OF TITLE IX FORMAL COMPLAINT

Grounds for mandatory or discretionary dismissals:

1. **Mandatory Dismissal:** If the conduct alleged in the formal complaint (a) would not constitute sexual harassment as defined in Policy GA-1 even if proved, (b) did not occur in the recipient’s education program or activity, or (c) did not occur against a person in the United States, then the University must dismiss the formal complaint with regard to that conduct for the purposes of sexual harassment under Title IX or this part; such dismissal does not preclude action under another provision of the University’s code of conduct.

2. **Discretionary Dismissal:** The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing; (a) a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; (b) the respondent is no longer enrolled or employed by the University; or (c) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein

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

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

IX. UNIVERSITY RESOLUTION

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

1. **Formal Resolution**, which involves an investigation, and review and sanction (if applicable) by a Review Panel and

2. **Informal Resolution**, which includes a variety of informal options for resolving reports.

A. FORMAL RESOLUTION

Formal Resolution is commenced when:

i. A Complainant reports that an Employee has engaged in one or more instances of Prohibited Conduct and requests, at any time, an investigation and disciplinary action; or

ii. Informal Resolution does not resolve a reported incident of Prohibited Conduct and, in the Title IX Coordinator’s discretion, an investigation of the report of Prohibited Conduct
is required; or

iii. At the conclusion of the threat assessment process described in Section VII.A of these Procedures, the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials has determined, based upon a review of the totality of the circumstances, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the Complainant’s request that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

1. Investigation. Whenever Formal Resolution is commenced, the Title IX Coordinator will refer the matter to a University Investigator who will designate himself/herself or one or more Investigators and/or an experienced external investigator to conduct a prompt, thorough, fair, and impartial investigation. Provided that, in the absence of the Title IX Investigator, the Title IX Coordinator may assign cases to other investigators or external investigators. All Investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, relationship violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and the University community while promoting accountability.

a) Notice of Investigation. The Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation. Such notice will: (1) identify the Complainant and the Respondent; (2) specify the date, time (if known), location, and nature of the alleged Prohibited Conduct; (3) identify potential Policy violation(s); (4) identify the Investigator; (5) include information about the parties’ respective expectations under the Policy and these Procedures; (6) explain the prohibition against Retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the Investigator on the basis of bias or a conflict of interest; (9) provide a link for the Policy and these Procedures; (10) include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; (11) inform the parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review both inculpatory and exculpatory evidence; and (12) inform the parties of any provision in the recipient’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

b) Notice to Supervisors. The Title IX Coordinator will also notify, in writing, the Respondent’s supervisor, Human Resources and the appropriate administrator(s). Such notice will inform these individuals that (1) the Title IX Coordinator has received a report alleging that the Respondent has engaged in Prohibited Conduct under the Policy; (2) the report will be investigated in accordance with these Procedures; (3) the supervisor and the Human Resources are obliged to monitor the relevant environment, depending on the facts of the case, for Retaliation; and (4) information related to the report is confidential (including the identity of the Complainant) and will only be shared as needed to either obtain information pertinent to the investigation or to facilitate fulfillment of the duty of the supervisor and/or Human Resources to address any concerns regarding safety or Retaliation.

c) Ongoing Notice Requirement. The Title IX Coordinator will send an Amended Grievance Procedures for Title IX Reports Against Employees (Revised August 2020)
Notice(s) of Investigation to each party should the Investigation reveal additional allegations of misconduct to be investigated.

d) **Consolidation of Formal Complaints.** The University may consolidate formal complaints as to allegations of prohibited conduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where the University resolution involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

e) **Presumption of Non-Responsibility and Participation by the Parties.** The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator and/or Review Panel conclude that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Policy. Neither party is required to participate in the investigation nor any form of resolution under these Procedures. Further, the University will not draw any adverse inference from a decision by either of the parties not to participate.

f) **Reasonably Prompt Timeframe for Completion of Investigation; Extension for Good Cause.** Typically, the period from commencement of an investigation through Final Investigation Report will not exceed sixty (60) calendar days.\(^5\) This timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. The Investigator will notify the parties in writing of any extension of this timeframe and the reason for such extension. The Investigator or the Title IX Coordinator will notify the parties in writing of any temporary delays or the limited extension of this timeframe and the reason for such actions. Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

g) **Overview of Investigation.** During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party).

h) **Advisors.** Throughout the investigation and resolution process, each party has the

\(^5\) This is an estimated timeframe which may vary on a case-by-case basis.
right to choose and consult with an Advisor and/or representative, as applicable. The advisor may be any person, including an attorney paid for by the party desiring their services. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. While they may provide support and advice to the parties at any meeting and/or proceeding, they may not in any manner disrupt, such meetings and/or proceedings. If a party is being represented by an attorney, or an Advisor not provided by the University, they must advise the Title IX Coordinator at least forty-eight (48) hours prior to the scheduled meeting or hearing and a University assigned Advisor will no longer be provided.

i) Prior or Subsequent Conduct. Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. Such prior or subsequent conduct may also constitute a violation of University policy, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

j) Prior Sexual History. The sexual history of a Complainant or Respondent will never be used to prove character or reputation. Moreover, Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove:

   i. That someone other than the Respondent committed the conduct alleged by the Complainant, or
   ii. If the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent are offered to prove consent.

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

k) Relevance. The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party’s general reputation for any character trait. Investigator may decline to interview witnesses unlikely to yield relevant information. The investigator will decline to interview character witnesses if they have no relevant information about the incident.

l) Site Visit(s). The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.

m) Expert Consultation(s). The Investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed to achieve a
 fuller understanding of the issues under investigation.

definitions and principles, while also satisfying the needs and rights of the parties involved.

n) Coordination with Law Enforcement. The Investigator may contact any law
enforcement agency that is conducting its own investigation to inform them
that a University investigation is also in progress; to ascertain the
status of the criminal investigation; and to determine the extent to which any
evidence collected by law enforcement may be available to the University in
its investigation. At the request of law enforcement, the Investigator may
delay the University investigation temporarily while an external law enforcement
agency is gathering evidence. The Investigator will promptly resume the
University investigation when notified that law enforcement has completed the
evidence-gathering stage of its criminal investigation.

o) Right to Inspect, Review, and Respond to the Investigative File. At the conclusion
of the Investigation, the Investigator will provide both parties an equal
opportunity to inspect and review the entire Investigative File which will include
all evidence obtained as part of the investigation that is directly related to the
allegations raised in a formal complaint, including evidence upon which the
University does not intend to rely in reaching a determination regarding
responsibility and inculpatory or exculpatory evidence whether obtained from a
party or other source. Investigator may redact personally identifiable information
or protected information from the evidence obtained during the investigation.

The parties will have ten (10) business days to review the Investigative File and
submit a written response, to be included as an addendum to the “Investigative
File,” which the investigator will consider prior to completion of the
“Investigative Report.” The parties will have an opportunity to review the
Investigative File; meet with the Investigator; submit additional comments and
information to the Investigator; identify any additional witnesses or evidence for
the Investigator to pursue; and submit any further questions that they believe
should be directed by the Investigator to the other party or to any witness.

Investigator will then promptly provide each party’s responses to the
“Investigative File” to the other party. Parties will have three (3) days to respond
to the other party’s response.

p) Investigation Report. Unless there are significant additional investigative steps
requested by the parties or identified by the Investigator after the review of the
Investigative File, within five (5) business days after receipt and consideration of
any additional comments, questions and/or information submitted by the parties
during the designated review and response period, the Investigator will prepare a
Investigation Report which will:

i. Fairly summarize and analyze the relevant information and relevant evidence
gathered;
ii. Outline the contested and uncontested information;
iii. Outline the corroborated and uncorroborated information;
iv. Include a credibility assessment; however, the credibility assessment must
not be a determination regarding responsibility; and
v. Include a recommendation as to whether there is sufficient evidence, by a
Preponderance of the Evidence, which could support a finding of
responsibility for a violation of the Policy (and, where applicable, the Code
of Student Conduct).
The Investigator may make a recommendation as to mandatory or discretionary dismissal to the Title IX Coordinator based upon a review of the Title IX jurisdiction on a case-by-case matter.

The Investigator will deliver the Investigation Report to the Title IX Coordinator.

q) Distribution of the Investigation Report. Upon receipt of the Investigation Report, the Title IX Coordinator will distribute the Investigation Report to each party and each party’s advisor. The parties will have ten (10) business days to review the Investigative Report and submit a written response. The Title IX Coordinator will also notify the Director of Human Resources, or his/her designee and the Respondent’s immediate supervisor simultaneously, that the Investigation Report is complete and available for review.

r) Title IX Coordinator’s Role After Distribution of Investigation Report. Upon reviewing the “Investigative Report” and any written responses thereto, the Title IX Coordinator will:

i. Determine whether the investigation reveals facts requiring or permitting dismissal of the formal complaint. If dismissal is warranted, the Title IX Coordinator will inform the parties, in writing, of the dismissal decision, the reason therefore, and an opportunity to appeal the dismissal.

ii. Determine that the matter should not be dismissed and send a Notice of Referral for a Review Panel Hearing contemporaneously to the parties and the Review Panel Hearing Officer.

s) Impact and Mitigation Statements. Where the matter has been referred to the Review Panel for Live Hearing, both parties may submit a statement to the Title IX Coordinator for consideration by the Review Panel in determining an appropriate sanction. The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The Title IX Coordinator will ensure that each of the parties has an opportunity to review any statement submitted by the other party. The Title IX Coordinator will provide any statement(s) with the Investigation Report and the parties’ other written submissions to the Review Panel. Impact and mitigation statements must be received within five (5) business days after referral to Review Panel.

2. Review Panel Hearing. The Title IX Coordinator will appoint a standing pool of members of the University community or external professionals who are trained on the definition of sexual harassment; the scope of the University’s education program or activity; these Procedures; how to serve impartially, including by avoiding prejudegment of the facts at issue, conflicts of interest, and bias; and who will make determination of responsibility after an independent review of the Investigation Report. The Title IX Coordinator will select three (3) members from this pool to serve on the Review Panel. The Review Panel shall elect one (1) member as Chair. In addition, the Hearing Officer shall serve as a non-voting Meeting Chair. Where the Respondent is an academic faculty member, at least two (2) of the voting members of the Review Panel will be appropriately trained, full-time faculty members. The Review Panel will review the Investigator’s recommended finding(s) and, if applicable, determine any appropriate sanction(s) under
these Procedures. All persons serving on any Review Panel (or as the Hearing Officer) must be impartial and free from actual bias or conflict of interest. The Review Panel members cannot be the same person(s) as the Title IX Coordinator or the Investigator(s) assigned to the matter.

a) **Standard of Review.** If either of the parties contests the Investigator’s recommended finding(s) of responsibility (or no responsibility) for an alleged violation of the Policy, the Review Panel will hold a Hearing to determine (1) whether the concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation; and, if not, (2) whether there is sufficient evidence to support the Investigator’s recommended finding(s) by a Preponderance of the Evidence.

b) **Notice and Timing of Hearing.** Typically, a Live Hearing will be held within thirty (30) calendar days from the date of the issuance of the Investigative Report, subject to extension for good cause. The Title IX Coordinator or Hearing Officer will notify the parties in writing of the date, time, and location of the Hearing; the names of the Review Panel members and the Hearing Officer; and how to challenge participation by any member of the Review Panel or the Hearing Officer for bias or conflict of interest. Said notice will be issued at least ten (10) calendar days prior to the Live Hearing date. Any extension, including the reason for the extension, will be shared with the parties in writing.

c) **Challenge Due to Conflict of Interest.** If either party believes that any member of the Review Panel or Hearing Officer has a conflict of interest, their written challenge must be sent to the Title IX Coordinator. The challenge must state which individual(s) are the subject of the challenge and the basis for the challenge. Upon receipt of the challenge the Hearing Officer shall forward the same to the Review Panel for consideration and a decision as to whether to grant the challenge. The Title IX Coordinator shall make a decision within twenty-four (24) hours of receipt of the challenge and provide a written decision to the parties concerning the same. A challenge for Conflict of Interest will be considered good cause to continue or postpone the hearing if a decision cannot be reached before the scheduled hearing or if an Decision-maker must be replaced.

d) **Postponement of Hearing.** Permission to postpone a Hearing may be granted provided that the request to do so is based on a compelling emergency and communicated to the Hearing Officer prior to the time of the Hearing.

e) **Live Hearing Required.** Live hearings may be in person or virtual live hearings. Live hearings may be conducted with all the parties physically present in the same geographic location or, at the University’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the Review Panel and all participants simultaneously to see and hear each other. All participants must be both seen and heard. In addition, all participants appearing virtually, must identify if there are any other individuals present with them at their location. Individuals who are not a part of the process or who will testify later, may be required to leave the location during the hearing.

f) **Live Hearing Format.** The Live Hearing is an opportunity for the parties to address the Review Panel, in person and to provide information relevant to the issue(s) to be decided by the Review Panel.
i. The parties may address any information in the Investigation Report, supplemental statements submitted in response to the Investigation Report, and any impact and mitigation statements.

ii. Each party has the opportunity to be heard, to identify witnesses for the Review Panel’s consideration, and to respond to any questions of the Review Panel.

iii. Cross Examination:
   a. The parties may not directly question each other.
   b. Each party’s Advisor is permitted to ask the other party and any witness relevant questions and relevant follow-up questions, including those challenging credibility.
   c. Before a Complainant, Respondent, or Witness answers a cross-examination or other question, the Review Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
   d. Although not required, to aid in the efficiency of the Hearing, it is highly recommended that the parties have questions prepared prior to the Hearing.
   e. Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
   f. No harassing or abusive questioning allowed during cross-examination.
      i. Examples of questioning that may be harassing or abusive:
         • Advisor yells or screams at the other party/witness,
         • Advisors stands and physically leans into the party/witness’ personal space, or
         • Advisor asks questions in a manner designed to promote rape myths or sex-based stereotypes.
   iv. Advisors may directly question any witness that is not a party to this Complaint or similar complaint involving either party.
   v. A typical hearing may include brief opening remarks by the Complainant and/or Respondent, with follow-up questions posed by the Review Panel; information presented by the Investigator or witnesses deemed relevant by the Review Panel, with follow-up questions by the Review Panel of the Investigator or witnesses; and brief concluding remarks by the Complainant and/or Respondent. The Hearing Officer has the discretion to determine the specific Hearing format.
   vi. Formal rules of evidence and court procedures are not used and do not apply unless specified herein. Employee conduct hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures, requirements for pleadings, and the hearsay rule do not apply in student disciplinary hearings.
   vii. The Live Hearing will be electronically recorded. The Parties, upon request, shall be provided with a copy of the recording. The original recording will remain the property of the University and will be considered the investigation record. Upon the prior approval of the Hearing Officer, the Respondent and/or the Complainant may utilize the services of a Certified Court Reporter at their own expense. If a Certified Court Reporter is utilized the party utilizing the Certified Court Reporter shall provide the University with the original
transcript at no charge to the University. The original transcript will then become the official record of the proceedings. If both parties are requesting to use a Certified Court Reporter, only one Certified Court Reporter will be permitted, and the Respondent and Complainant shall share the costs.

g) Participation in Hearing.

i. **Parties.** Both the Complainant and the Respondent have a right to be present at the Live Hearing. Either party may request alternative methods for participating in the Hearing that do not require physical proximity to the other party, including participating through electronic means. This request should be submitted to the Hearing Officer at least two (2) business days prior to the Hearing. Any or all parties, witnesses, and other participants may appear at the Live Hearing virtually, with technology enabling participants simultaneously to see and hear each other.

ii. **Party’s Failure to Attend.** If, despite being notified of the date, time, and location of the Hearing, either party is not in attendance, the Hearing may proceed, and applicable sanctions may be imposed. Neither party is required to participate in the hearing for the Hearing to proceed.

iii. **Investigator or other witnesses.** The Review Panel will request the presence of the Investigator or any other witness it deems necessary to its determination. The parties may also request the presence of any witness they deem relevant to the determination by the Review Panel. Proposed witness lists shall be provided to the Hearing Officer at least four (4) business days prior to the Hearing and said lists shall contain a brief statement of the need or relevancy of the proposed witness’s presence at the Hearing. The Review Panel has absolute discretion to determine which witnesses are relevant to its determination and may decline to hear from witnesses where it concludes that the information is not necessary for its review. It is the responsibility of each of the parties to arrange for the attendance of any proposed witness who is not affiliated with the University.

   a. It is the responsibility of each of the parties to arrange for the attendance of any proposed witness who is not affiliated with the University.
   b. The University does not have subpoena power to compel the attendance of witnesses who are not affiliated with the University.
   c. Witnesses will not be present for or hear the testimony of the parties or other witnesses
   d. If a party or witness does not submit to cross-examination at the Live Hearing, the Review Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Review Panel cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.

iv. **Advisors.** Both the Complainant and the Respondent must be accompanied to the Hearing by one (1) Advisor, unless required by law, of their choosing, who may or may not be an attorney. If the parties are consulting with more than one (1) Advisor, they must designate their “Advisor” for
purposes of these proceedings. During the Hearing, an Advisor will conduct direct examination of their party and witnesses in addition to cross-examination. Advisors may present an opening or closing statement on behalf of their party. The University reserves the right to remove any individual whose actions are disruptive to the proceedings. If an Advisor is removed for failure to abide by the hearing rules, the hearing will continue after a new Advisor is appointed by the University, who may or may not be an attorney.

a. If a party’s Advisor is also a witness, the party may have an alternative Advisor temporarily step-in to question the Advisor/witness.

b. If a party does not choose an Advisor or the chosen Advisor becomes unavailable, the University will appoint an Advisor for the party, who may or may not be an attorney.

3. **Determination by the Review Panel.** At the conclusion of the Live Hearing, the Review Panel must, by majority vote, issue a Final Outcome Letter and determination regarding responsibility. To reach this determination, the recipient must apply the preponderance of the standard of evidence.

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

a) Identification of the allegations potentially constituting sexual harassment;

b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

c) Findings of fact supporting the determination;

d) Conclusions regarding the application of the recipient’s code of conduct and policies to the facts;

e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and any whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the Complainant; and

f) The procedures and permissible bases for the Complainant and Respondent to appeal.

Once the Review Panel has determined that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility under the Policy, it will refer the matter for sanctioning. No decision will be communicated to the parties orally.

The written Final Outcome Letter issued to the parties must include the determination on responsibility AND the disciplinary sanction.

4. **Sanctions.** Where a finding of responsible is made, the matter will be referred to a trained Human Resource Office Designee – excluding the Director – to issue a sanction. The Human Resource Office designee may consult with: (i) Respondent’s supervisor; (ii) Office of the Provost (Faculty); (iii) the Vice President of Operations/Chief of Staff (Staff); and (iv) the Office of Equity Programs/the Title IX Coordinator prior to issuing sanctions.
Possible sanctions may include one or more of the following: informal and formal counseling, progressive disciplinary action, No-Contact Directive, transfer of position, removal of administrative appointment, demotion, suspension, and termination of employment.

The Policy prohibits a broad range of conduct, all of which is serious in nature. The propriety of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances. In keeping with the University’s commitment to foster and environment that is safe, inclusive, and free from discrimination and harassment, the decision-makers have and wide latitude in the imposition of sanctions tailored to the facts and circumstances of the Prohibited Conduct, the impact of the conduct on the Complainant and University community, and accountability for the Respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects, while supporting the University’s educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved or so deleterious to the educational process that it requires severe sanctions, including suspension or termination of employment from the University.

In determining the appropriate sanction(s), the decision-maker(s) will be guided by several considerations, including:

i. The severity, persistence or pervasiveness of the Prohibited Conduct;
ii. The nature or violence (if applicable) of the Prohibited Conduct;
iii. The impact of the Prohibited Conduct on the Complainant;
iv. The impact or implications of the Prohibited Conduct within the University community;
v. Prior misconduct by the Respondent, including the Respondent’s prior disciplinary history, at the University or elsewhere, and any criminal convictions;
vi. Whether the Respondent has accepted responsibility for the Prohibited Conduct;
vii. The maintenance of a safe, nondiscriminatory, and respectful environment conducive to learning; and
viii. Any other mitigating, aggravating, or compelling factors.

The trained Human Resource Office Designee may consult with: (i) the Respondent’s supervisor; (ii) the Office of the Provost (Faculty); (iii) the Vice President of Operations/Chief of Staff (Staff); and (iv) The Office of Equity Programs or the Title IX Coordinator prior to issuing sanctions to ensure that any disciplinary action is appropriate for the violation and consistent with the disciplinary procedures for the Employee type and prior University action for similar policy violations. The decision-maker(s) will also determine any other appropriate actions, which may include: (1) imposing or extending a No-Contact Directive; (2) imposing or extending University employment modifications; (3) other restorative remedies for the Respondent, such as formal referral for formal or informal counseling; (4) imposing or extending increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; (5) arranging for conducting targeted or broad-based education programming or training for relevant persons or groups; and/or (6) imposing any other remedial or protective measures that are tailored to achieve the goals of the Policy.
5. **Appeals of the Final Outcome Letter or Dismissal Letter.** Appeals are not new hearings. Rather, review will be limited to a record of the original hearing and supporting documents. Appeals must be in writing. Verbal appeals are not accepted.

a) **Who May Appeal.** The Complainant and/or the Respondent may appeal: (1) a decision of the Review Panel and (2) any mandatory or discretionary dismissal, in part or in full, of a Title IX Formal Complaint. The individual appealing is referred to as the appellant. In situations where more than one party appeals, they will be designated as Complainant/Appellant, Respondent/Appellant and/or Director Appellant as appropriate.

b) **Bases for Appeal and Content of Appeal Statements.** The Appellant must base the appeal exclusively on one or more of the following grounds:
   i. Procedural irregularity that affected the outcome of the matter;
      1. Relevance determinations made by either the Investigator or the Review Panel may be appealed;
   ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
   iii. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

c) **Statement of Appeal.** The Appellant must submit a Statement of Appeal to the Title IX Coordinator within five business days of receipt of the Final Outcome Letter or Dismissal Letter. Upon showing of good cause, an extension may be requested in writing and may be granted by the Title IX Coordinator.

d) **Notification of Appeal.** Upon receipt of a Statement of Appeal, the Title IX Coordinator must:
   i. Notify the other party in writing when an appeal is filed and must implement appeal procedures equally for both parties;
   ii. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) from the Review Panel which reached a determination regarding responsibility or sanction, the Investigator(s), or the Title IX Coordinator.
   iii. Ensure that the final decision-maker(s) for the appeal complies with the University Procedures.
   iv. Give both parties an opportunity to submit a written statement in support of or challenging the Statement of Appeal. The Title IX Coordinator will submit the Statement of Appeals to the non-appealing party to make a written response to the Statement of Appeal.
      1. The responses from a non-appealing party must be submitted to the Title IX Coordinator within five (5) business days.

e) **Sanction Held in Abeyance Pending Appeal.** The effective date of any sanction, not already imposed, will be held in abeyance (temporarily delayed) automatically during the period in which an appeal may be filed and until the Title IX Coordinator reaches a decision on any appeal filed; however, the Title IX Coordinator has the right to retain certain conditions or restrictions, particularly those related to life-safety issues and “no contact” directives.
f) **Appeal Must be Timely Filed.** If no appeal is filed, or an appeal is not timely, the original finding will stand, effective on the date the appeal period expires. The Title IX Coordinator will determine if the appeal is timely.

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

i. Appoint an Appeal Officer to decide the appeal. The Appeal Officer is independent of the previous process, including from any dismissal appeal that may have been heard earlier in the process.

ii. Provide the identity and contact information for the Appeal Officer to the parties.

iii. If both parties submit appeals, the same Appeal Officer will decide both appeals individually, but contemporaneously. The same Appeal Officer will decide any appeals arising from the same facts and circumstances.

**g) Assignment to Appeal Officer (Director of Human Resources, or designee).** When the Title IX Coordinator receives a Statement of Appeals which complies with the bases for appeals as found in these procedures, the Title IX Coordinator will assign the matter to an Appeal Officer to make a final decision for the matter. The Title IX Coordinator will make available the following items to the Appeal Officer including, but not limited to the:

i. Investigative Report,

ii. Review Panel’s Live Hearing recordings and all documents reviewed and received at the Live Hearing,

iii. Impact and Mitigation Statements,

iv. Final Outcome Letter from the Review Panel,

v. Dismissal Letter from Title IX Coordinator,

vi. Statement of Appeal, and


**h) Authority of the Appeal Officer.** Upon receipt of the appeal documents, the Appeal Officer will issue a written decision describing the result of the appeal and the rationale for the result which may:

i. **Dismiss** the appeal for failure to meet the grounds of appeal, upholding the initial outcome and sanction(s), if applicable.

ii. **Affirm** the action, at which time the matter will be considered final and binding upon all involved.

iii. **Reverse** the action taken by the Review Board and dismiss the case. A case will be dismissed only in rare and extreme circumstances.

iv. **Remand** the case to the Review Board or Investigator based upon new evidence or procedural irregularities, with specific instructions on the remanded issue(s)

v. **Recommend** an increase or decrease any sanctions imposed based on information presented during the appeal process, with a rationale supporting the modification.

**i) Timing of Final Decision.** Within ten (10) business days of receipt of the Statement of Appeal, the final decision will be communicated to all parties in writing.

**j) Extension of Issuing a Decision.** The time period for the Appeal Officer’s decision may be extended upon agreement of the Respondent and Complainant.
k) Decision of the Appeal Officer is Final. The decision of the Human Resource Director or designee serving as the Appeal Officer is final.

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

http://www.pegb.wv.gov/links/Pages/default.aspx;
the West Virginia Human Rights Commission;
the Office of Civil Rights;
and the Equal Opportunity Employment Commission.

B. INFORMAL RESOLUTION

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

Participation in Informal Resolution (including any specific form of Informal Resolution) is voluntary. The University will not compel a Complainant or Respondent to engage in Informal Resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from an Informal Resolution for any reason within forty-five (45) days of signing the Informal Resolution. Any party wishing to withdraw an Informal Resolution after forty-five (45) days of signing the Alternative Resolution must show good cause reason for the withdrawal and good cause reason that the Informal Resolution was not working appropriately. The University may decline the request for Informal Resolution in any particular case and may terminate an ongoing Alternative Resolution process at any time. Pursuing Informal Resolution does not preclude later use of Formal Resolution, if the Informal Resolution fails to achieve a resolution acceptable to the parties and the University. Where the Complainant or the Respondent withdraws from Informal Resolution or Informal Resolution is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the Informal Resolution may be considered in a subsequent investigation and Formal Resolution.

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

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

A. One-on-One Communication: If a Complainant wishes to address a situation with a Respondent without the direct involvement of a third party, the Complainant may
communicate directly with the Respondent. This form of Informal Resolution is appropriate only if the Complainant does not feel threatened, there is no risk of physical harm, and the Complainant reasonably believes the Respondent will be receptive to the communication. Complainants are NOT required to engage in one-on-one communication before seeking the third-party assistance or other help.

B. Resolution with the Assistance of an Informal Resolution Facilitator: A Complainant may seek assistance in informally resolving a report of Prohibited Conduct from: (i) Complainant’s supervisor, if the Complainant is an Employee; (ii) Respondent’s supervisor; (iii) the Human Resources Office; (iv) the Office of the Provost (Faculty); (v) the Office of Equity Programs or the Title IX Coordinator; or (vi) other third party as agreed to by the parties. The availability of this form of Informal Resolution, and any resolution reached through such form of Informal Resolution, is subject to the agreement of the Title IX Coordinator, the Complainant and the Respondent. This form of Informal Resolution may not be used in all allegations of Prohibited Conduct.

C. Interventions and Remedies: Informal Resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant’s access to educational, extracurricular, and/or University employment activities; increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or University housing modifications for Student Complainants; workplace modifications for Employee Complainants; one or more of the restorative remedies or other sanctions described in these Procedures; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the Policy.

Any form or combination of Informal Resolution and any interventions or remedies may be utilized. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the terms of the agreement are implemented and the matter is resolved and closed. If an agreement is not reached, and the Title IX Coordinator determines that further action is necessary, or if a Respondent fails to comply with the terms of the Alternative Resolution, the matter may be referred for an investigation and Formal Resolution under these Procedures.

The Title IX Coordinator will maintain records of all reports and conduct referred for Alternative Resolution, which typically will be completed within thirty (30) calendar days.

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

X. RECORDS RETENTION

Unless prescribed elsewhere in the University’s record retention policies for personnel record documentation of disciplinary or other personnel actions the University shall retain all records relating to a report of Prohibited Conduct for a period of seven (7) years after the date the report was received, and the University shall retain all of such records for a period of seven (7) years in cases in which the Respondent was found responsible for Prohibited Conduct.
Appendix C

MARSHALL UNIVERSITY

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

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

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I. INTRODUCTION

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

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

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

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

II. REPORTING

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

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

Housing and Residence Life
1 John Marshall Drive
housing@marshall.edu
Ph: 304-696-6766

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

III. DEFINITIONS

1. “Level One Judicial Ban” occurs when a student fails to meet with a member of the Housing and Residence Life staff within three business days of being charged with a conduct violation. The Level One Judicial Ban prohibits the student from signing guests into a residence hall, checking out residence hall equipment and amenity keys.

2. “Level Two Judicial Ban” occurs when a student fails to meet with a member of the Housing and Residence Life staff within five business days of a Level One Judicial Ban being placed on the student. The Level Two Judicial Ban prohibits the student from being signed in as a guest in any residence hall, signing guests into a residence hall, checking out residence hall equipment and amenity keys.

3. “Student” means, for purposes of this Policy, an individual subject to the Marshall University Board of Governors Policy SA-1, The Code of Student Rights and Responsibilities.

IV. PROCEDURES

Housing and Residence Life Adjudication Process

1. Upon receipt of a report of an alleged violation, the Residence Director/Assistant Residence Director will notify the student(s) involved by sending a charge letter within two business days.

2. The student(s) are required to set up an appointment with their Residence Director/Assistant Residence Director within three business days of receiving notification of alleged violations.
   a. Student will receive an email confirming the day and time they are scheduled to meet with the Residence Director.
   b. If a meeting is not scheduled within the required time a level one judicial ban will be placed on the student until a meeting is held.
   c. If no meeting is scheduled within five business days of the Level One judicial ban being placed, the student will be sanctioned in absentia with failure to comply and will receive a level two judicial ban until a meeting is held with the Office of Student Conduct.

3. Student(s) who meet with their Residence Director will receive written notification by email of the meeting outcome including any sanction information.

4. Sanctions that are not completed or adhered to within the required time frame will result in a level two judicial ban being placed on the student until a meeting is held with the Office of Student Conduct.
V. SANCTIONS

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

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

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

**Housing Relocation:** Housing Relocation is a determination that a student is disruptive to the community in which they reside or involved in a situation such as prohibited conduct or other university conduct violations and a change is necessary for the betterment of that community and the individual in question.

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

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

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

VI. APPEALS

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

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