

# WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS

## West Virginia State University

### BOG Policy #14

#### **Policy and Procedures on Unlawful Discrimination and Harassment, Sexual Harassment, Grievance Procedures, Child Abuse and Neglect Reporting and Relationships.**

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

- 1.1. Scope: This policy addresses unlawful protected class discrimination, harassment, sexual harassment, domestic misconduct, stalking and hazing by individuals based on protected class, retaliation, child abuse and neglect reporting and certain relationships at West Virginia State University.
- 1.2. Authority: West Virginia Code § 18B-1-6.
- 1.3. Application: This policy shall apply to the entire West Virginia State University community and campus.
- 1.4. Effective Date: February 4, 2021.
- 1.5. This policy amends, repeals and replaces Board of Governors Policy 14, Sexual Harassment October 22, 2020.

##### **Section 2. Overview.**

- 2.1. West Virginia State University (University or WVSU) is committed to providing a working and learning environment free from unlawful discrimination and harassment. This Policy sets forth how discrimination, harassment, sexual harassment, stalking and hazing by individuals based on protected class status, domestic misconduct, sexual exploitation, retaliation, child abuse and neglect reporting and certain relationships will be addressed by the University, including sexual harassment prohibited by Title IX and discrimination and harassment prohibited by Title VII.

##### **Section 3. Definitions.**

The phrases and words as used in this policy shall have the meanings set forth below:

- 3.1. "Actual Knowledge" means notice of Title IX Sexual Harassment to THE UNIVERSITY's Title IX Coordinator or any Official with Authority. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge for the purposes of Title IX Sexual Harassment. This standard is not met for Title IX Sexual Harassment when the only official of THE UNIVERSITY with actual knowledge is the accused individual and/or Respondent. The mere ability or obligation to report Title IX

Sexual Harassment or to inform an individual about how to report sexual harassment, or having been trained to do so, does not qualify an individual as an Official with Authority.

- 3.2. “Confidential Reporting Resource” means professional, licensed counselors and pastoral counselors who provide mental health counseling (including those who act in that role under the supervision of a licensed counselor).
- 3.3. “Consensual Relationship” means a mutually acceptable romantic, amorous, dating, or sexual relationship between individuals.
- 3.4. “Education Program or Activity” includes locations, events, or circumstances over which the University exercises substantial control over both the accused and the alleged victim and the context in which the sexual harassment occurs including but not limited to employment, employment benefits, academic, extracurricular and athletic programs. Education program or activity also includes any building owned or controlled by a Student organization that is officially recognized by the University.
- 3.5. “Faculty” means all faculty classifications as defined in *West Virginia Higher Education Policy Commission, Procedural Rule Title 133 Series 9, Academic Freedom, Professional Responsibility, Promotion, and Tenure*.
- 3.6. “Formal Complaint” means any writing, electronic submission (such as by electronic mail, facsimile 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 submitting the writing and requesting an investigation by the University. At the time of filing of a formal Complaint, a Complainant must be participating in or attempting to participate in a University Education Program or Activity.
- 3.7. “Member of the University Community” means (i) an individual engaged in any University activity or program, whether on or off campus; (ii) any individual lawfully on University property; (iii) any individual that is a University Student, Faculty, Staff Employee, University official, University volunteer, or a University visitor; and (iv) any vendor or contractor, including that vendor’s or contractor’s Staff Employees and independent contractors, who are working on campus.
- 3.8. “Official with Authority” means a Staff Employee of the University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the University. The mere ability or obligation to report discrimination, harassment or retaliation or to inform an individual about how to report discrimination, harassment, retaliation or having been trained to do so, does not qualify an individual as an Official with Authority. For Title IX Sexual Harassment, imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute notice and the notice standard is not met when the only official of the University with notice or knowledge is the accused individual and/or Respondent. The Title IX Coordinator will maintain a list of

employees designated as Officials with Authority which will be available in that office and online at: <https://www.wvstateu.edu/about/title-ix.aspx>

- 3.9. “On the Basis of Sex” or “Based on Sex” means gender, gender identity, including transgender status, sexual orientation and/or stereotypical notions of what is female/feminine versus male/masculine or a failure to conform to those gender stereotypes.
- 3.10. “President” means the President of West Virginia State University or his or her designee.
- 3.11. “Protected Class” means groups protected from employment discrimination by law or by this policy. Various State and Federal laws prohibit unlawful discrimination and harassment of certain Protected Classes including but not limited to the following:
- USC 1324 et seq., (Immigration Reform and Control Act of 1986).
  - 20 USC 1681 et. seq (Title IX of the Education Amendments of 1972)
  - 29 USC 206(d) et seq., (Equal Pay Act of 1963, as amended).
  - 29 USC 621, et seq., (Age Discrimination in Employment Act of 1967, as amended).
  - 29 USC 701 et seq., (Rehabilitation Act of 1973).
  - 29 USC 791 et seq., (Rehabilitation Act of 1992).
  - West Virginia Code § 5.11.1, et seq. (West Virginia Human Rights Act)
  - 38 USC 4301 et seq., (Uniform Services Employment and Re-employment Rights Act of 1994).
  - 42 USC 1981 et seq., (Civil Rights Act of 1991).
  - 42 USC 12101 et seq., (Americans with Disabilities Act of 1990-ADA).
  - 42 USCA 12101 et seq., (Americans with Disabilities Act Amendments Act of 2008).
  - 42 USC 2000e(k) (Pregnancy Discrimination Act of 1978).
  - 42 USC 2000d-2000d-7, (Civil Rights Remedies Equalization Act of 1986).
  - 42 USC 2000e et seq., (Title VII of the U.S. Civil Rights Act of 1964, as amended).
  - 42 USC 2000ff et seq., (Genetic Information Nondiscrimination Act of 2008-GINA).
- 3.12. “Reporting Party” means any individual that reports an incident of Prohibited Conduct to the Title IX Coordinator.
- 3.13. “Respondent” means an individual reported to be the perpetrator of Prohibited Conduct. “Sexual intercourse” means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.
- 3.14. “Student” means an individual subject to the West Virginia State University Board of Governors Policy 21 (or its successor Rule), University Student Rights and Responsibilities Policy: Student Conduct.

- 3.15. “Staff Employee” means any Classified or Non-Classified Staff Employee, as defined in Board of Governors Policy 19, and any individual employed as a University Temporary Staff Employee or volunteer.
- 3.16. “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 or after the filing of a Formal Complaint or where no Formal Complaint has been filed.
- 3.17. “Title IX” means Title IX of the Education Amendments of 1972. Title IX prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance.
- 3.18. “Title VII” means Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e Title VII, SEC. 2000e- 2. [Section 703] which states in pertinent part it shall be an unlawful employment practice for an employer:
  - (a) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

#### **Section 4. Notice of Nondiscrimination.**

- 4.1. Title IX of the Education Amendments of 1972 and other state and federal laws prohibit Unlawful discrimination on the basis of sex. In accordance with The West Virginia Higher Education Policy Commission (HEPC), and Board of Governors Policy #17, the University considers race, color, religion, sex/gender, national origin, ancestry, age, blindness, disability, pregnancy, genetic information, sexual orientation, gender identity, and veteran or military status or any other category that is protected under federal, state, or local anti-discrimination laws as protected characteristics and will not permit unlawful discrimination or harassment.
- 4.2. WVSU’s Notice of Nondiscrimination will be made available to all applicants for admission and employment; Students; off-campus program participants; dual credit Students; parents or legal guardians of elementary and secondary school Students participating in a WVSU education program or activity; and Staff Employees. WVSU will provide all of the aforementioned individuals with either a copy of this policy and any reporting and complaint procedures enacted to implement this policy or will provide them with information on how to obtain a copy of either. Board of Governors Policy 17, Equal

Employment Opportunity and Affirmative Action Section 2.4.1 includes additional notice and posting requirements for the University's Equal Employment Opportunity and Affirmative Action statements. This Policy and Policy 17 are available in the Office of Human Resources, the Office of Enrollment Management and Student Affairs and online at:

<https://wvstateu.edu/about/administration/human-resources.aspx>

and

: <https://wvstateu.edu/about/administration/>

### **Section 5. Title IX Coordinator and Equal Employment Opportunity Officer.**

- 5.1. The President will appoint an employee as the Title IX Coordinator to coordinate the University's efforts to comply with its responsibilities under this Policy, Title IX and 34 C.F.R. Part 106 (2020). The duties of the Title IX Coordinator will be determined by the President or designee, will be consistent with 34 C.F.R. Part 106 (2020) and are set forth more fully in detail in Appendix A.
- 5.2. The President will appoint an employee as the Equal Employment Opportunity (EEO) Compliance Officer to coordinate the University's efforts to comply with this Policy, and State and Federal Equal Employment Opportunity laws. The duties of the EEO Compliance Officer will be determined by the President or designee.

### **Section 6. Prohibited Conduct.**

- 6.1. **Prohibited Conduct.** The University prohibits Protected Class Discrimination and Harassment; Title IX Sexual Harassment, Sexual Exploitation, Domestic Misconduct, Stalking and Hazing based on Protected Class (collectively referred to as "Prohibited Conduct") by or against any Member of the University Community. Individuals engaging in Prohibited Conduct are subject to disciplinary action up to and including academic/employment suspension, expulsion and employment termination consistent with the procedures set forth in Appendix A.
- 6.2. **Providing Materially False Information in Bad Faith.** Knowingly providing materially false information in bad faith in a report, Formal Complaint or as part of the procedures set forth in Appendix A, including but not limited to providing materially false information, or testimony during the prehearing investigation, live hearing or at any stage of the formal or informal resolution process is prohibited. Individuals engaging in providing materially false information in bad faith are subject to disciplinary action up to and including academic/employment suspension, expulsion and employment termination consistent with the procedures set forth in Appendix A provided that a decision on responsibility alone is not enough to support an allegation an individual provided false information in bad faith.

## **Section 7. Jurisdiction.**

- 7.1. **Title IX Jurisdiction.** Title IX applies to Title IX Sexual Harassment occurring against an individual in the United States. The University will respond promptly to Title IX Sexual Harassment when the Title IX Coordinator or any Official with Authority has Actual Knowledge of the Title IX Sexual Harassment allegation. The University will address Title IX Sexual using the procedures set forth in Appendix A.
- 7.2. **General Jurisdiction.** General Jurisdiction applies to all other Prohibited Conduct occurring within an Education Program or Activity against an individual inside or outside the United States, regardless of citizenship, not covered by Title IX Jurisdiction. Jurisdiction extends to electronic discrimination and harassment if it occurs within an Education Program or Activity. Protected Class Discrimination and Harassment prohibited by Title VII falls under General Jurisdiction. Protected Class Discrimination, Harassment, Sexual Assault, Domestic Misconduct, Stalking and Hazing based on Protected Class Status and Sexual Exploitation occurring against an individual outside the United States, regardless of citizenship within an Education Program or Activity fall under General Jurisdiction. The University will address all Prohibited Conduct not included in Title IX Sexual Harassment Jurisdiction using the procedures set forth in Appendix A.
- 7.3. **Conduct Occurring Outside an Education Program or Activity.** Prohibited Conduct occurring outside the context of an Education Program or Activity against an individual inside or outside the United States may be addressed at the University's discretion under General Jurisdiction if it: (a) occurs off-campus and would unreasonably interfere with the Education or orderly operation of the University community, its mission, or its objectives as determined by a reasonable person; or (b) occurs off-campus and in light of all of the facts and circumstances, would endanger the health and safety of the University community; or (c) the conduct affects a substantial school/university interest. Prohibited Conduct occurring outside the context of an Education Program or Activity may also constitute misconduct under other University rules, regulations, policies or procedures and may at the University's discretion be addressed using those procedures or the procedures set forth in Appendix A.
- 7.4. Jurisdiction is further explained in Appendix A.

## **Section 8. Discrimination.**

- 8.1. "Discrimination" is conduct based on Protected Class occurring within an Education Program or Activity against an individual inside or outside the United States, including but not limited to discrimination based on sex that is not Title IX Sexual Harassment, discrimination falling under Title VII, and is conduct that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in an Education Program or Activity.
  - 8.1.a. Examples of Discrimination include, without limitation: (1) denying a

person admission or employment based upon a protected characteristic, (2) denying pay increases, benefits, or promotions based on a protected characteristic, (3) subjecting a person to different academic standards or employment conditions because of a protected characteristic, or (4) failure and refusal to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities and/or to provide reasonable religious accommodations.

8.1.b. Discrimination does not, however, include programs or activities specifically exempt by law. See, e.g., 20 U.S.C. § 1681(a).

8.2. All Protected Class Discrimination, including Title IX Sexual Harassment, will be addressed using the procedures set forth in Appendix A.

### **Section 9. Harassment.**

9.1. “Harassment” is a form of discrimination based on Protected Class occurring within an Education Program or Activity inside or outside the United States, including but not limited to harassment based on sex falling under Title VII and is conduct that creates a hostile environment. Harassment becomes unlawful where: (1) enduring the offensive conduct becomes a condition of continued employment or participation in an Education Program or Activity, or (2) the conduct is severe or pervasive enough to create a working, learning or living environment that a reasonable person would consider intimidating, hostile, or abusive.

9.2. Harassment may take various forms, including, but not limited to, name-calling, graphic or written/electronic statements (including the use of social media, text messages, e-mail, or other similar forms), offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work and/or Education performance or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not necessarily have to include intent to harm, be directed at a specific target, or involve repeated incidents. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct. In the employment context, the harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-Staff Employee and may occur without economic injury to, or discharge of, the victim.

### **Section 10. Title IX Sexual Harassment.**

10.1. Title IX Sexual Harassment is conduct within an Education Program or Activity, against a person in the United States, on the basis of sex, that satisfies one or more of the following:

10.1.a. Conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct that is carried out by a Faculty (*Quid Pro Quo*). *Quid Pro Quo* harassment constitutes *per se* harassment

and does not require the elements of severity, pervasiveness, or objective offensiveness.

- 10.1.b. Unwelcomed conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an Education Program or Activity regardless of the intent to cause harm. Severity, pervasiveness, and objective offensiveness is evaluated in light of the known circumstances and depend on the facts of each situation, and is determined from the perspective of a reasonable person standing in the shoes of the Complainant. Unwelcome conduct so severe, pervasive, and objectively offensive that it denies a person equal Education opportunity is actionable sexual harassment regardless of the Respondent's intent to cause harm.
- 10.1.c. Sexual assault as defined by 20 U.S.C. 1092(f)(6)(A)(v) and Section 10 of this Policy.
- 10.1.d. Dating violence as defined in 34 U.S.C. 12291(a)(10) and Section 12 of this Policy.
- 10.1.e. Domestic violence as defined in 34 U.S.C. 12291(a)(8) and Section 12 of this Policy.
- 10.1.f. Stalking on the basis of sex as defined in 34 U.S.C. 12291(a)(30) and Section 13 of this Policy.
- 10.1.g. Sexual Exploitation to the extent the Sexual Exploitation meets the definition of Title IX Sexual Harassment.
- 10.2. All Title IX Sexual Harassment will be addressed using the procedures set forth in Appendix A.

## **Section 11. Sexual Assault.**

- 11.1. Sexual assault is any offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation and includes all of the following:
  - 11.1.a. Sex Offenses-Forcible - Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving Consent. Forcible sex offenses include the following:
  - 11.1.b. Forcible Rape - The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against that person's will where the victim is incapable of giving Consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

- 11.1.b.1. Forcible Sodomy - Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against that person's will where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- 11.1.b.2. Sexual Assault With An Object - The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that persons will; or not forcibly against the persons will where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary or permanent mental or physical in capacity.
- 11.1.b.3. Forcible Fondling - The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or not forcibly or against that person's will where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary mental incapacity.

11.1.c. Non-Forcible Sex Offenses-Unlawful Non-Forcible Sexual Intercourse.

- 11.2.c.1. Incest – Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 11.2.c.2. Statutory Rape - Non-forcible sexual intercourse with a person who is under the statutory age of Consent. In the State of West Virginia, it is illegal someone 18 or older to have sex with a minor who is younger than 16 years old. *See West Virginia Code § 61-8B-2(b)(2).*

11.3. Sexual Assault constitutes *per se* harassment and does not require the elements of severity, pervasiveness, or objective offensiveness.

**Section 12. Sexual Exploitation.**

12.1. Sexual Exploitation means taking sexual advantage of another person without Consent.

- 12.1.a. Sexual advantage includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third parties to observe private sexual acts; disclosing, causing to be disclosed or threatening to disclose, with the intent to harass,

intimidate, threaten, humiliate, embarrass, or coerce, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed; and engaging in voyeurism.

- 12.2. Sexual Exploitation that does not meet the definition of Title IX Sexual Harassment occurring within an Education Program or Activity, occurring against an individual regardless of citizenship inside or outside the United States, falls under the University's General Jurisdiction and will be addressed using the procedures set forth in Appendix A.

### **Section 13. Domestic Misconduct.**

- 13.1. "Domestic Misconduct" means "Domestic Violence" and "Dating Violence" as defined below.

13.1.a. Domestic Violence" means Domestic Violence as defined under the Clery Act and W. Va. State law.

13.1.a.1. Under the Clery Act, Domestic Violence means a felony or misdemeanor crime of violence committed -- (A) By a current or former spouse or intimate partner of the victim; (B) By a person with whom the victim shares a child in common; (C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

13.1.a.2. Under W. Va. State law, "Domestic Violence" or "Abuse" means the occurrence of one or more of the following acts between Family or Household Members, as defined under W. Va. Code: (1) Intentionally making physical contact of an insulting or provoking nature or intentionally causing physical harm; (2) Attempting to commit a violent injury or committing an act causing reasonable apprehension of immediately receiving a violent injury; (3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts; (4) Committing either sexual assault or sexual abuse as defined in W. Va. Code; and (5) Holding, confining, detaining or abducting another person against that person's will.

13.1.a.3. For purposes of this subsection, "Family or Household Members" means persons who: (1) are or were married to each other; (2) are or

were living together as spouses; (3) are or were sexual or intimate partners; (4) are or were dating; provided, that a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship; (5) are or were residing together in the same household; (6) have a child in common regardless of whether they have ever married or lived together; or (7) have the relationships described in W. Va. Code § 48-27-204.

- 13.2. “Dating Violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. The view of the Complainant shall generally be controlling in determining whether such a relationship existed. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence, for purposes of this Policy, does not include emotional abuse.
- 13.3. Domestic Misconduct occurring within an Education Program or Activity against an individual outside the United States regardless of citizenship falls under the University’s General Jurisdiction and will be addressed using the procedures set forth in Appendix A.
- 12.4. Domestic Misconduct is *per se* harassment and does not require the elements of severity, pervasiveness, or objective offensiveness.

#### **Section 14 Stalking.**

- 14.1. “Stalking” means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to: (i) fear for his or her safety or the safety of others; or (ii) suffer Substantial Emotional Distress.
- 14.2. “Course of Conduct” for the purposes of Stalking means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- 14.3. A “Reasonable Person,” for purposes of Stalking, means a reasonable person under similar circumstances and with similar identities to the Complainant.
- 14.4. “Substantial Emotional Distress,” for purposes of Stalking, means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- 14.5. Stalking based on Protected Class occurring within an Education Program or Activity against a person outside the United States regardless of citizenship falls under the University’s General Jurisdiction and will be addressed using the procedures set forth in Appendix A.

## **Section 15. Hazing by Individuals.**

- 15.1. Hazing by an individual means to cause any action or situation which recklessly or intentionally endangers the mental or physical health or safety of another person or persons or causes another person or persons to destroy or remove public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization the members of which are primarily Students or alumni of an institution of higher education. The term includes, but is not limited to, acts of a physical nature, such as whipping, beating, branding, required consumption of any food, liquor, drug, or other substance, or any other required physical activity which could reasonably be deemed to adversely affect the physical health and safety of the person or persons so treated, and includes any activity which would subject the person or persons so treated to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, required conduct which could result in extreme embarrassment, or any other required activity which could reasonably be deemed to adversely affect the mental health or dignity of the person or persons so treated, or any willful destruction or removal of public or private property. Bullying and verbal or written abuse may also constitute hazing.
- 15.2 The implied or expressed consent or willingness of a person or persons to hazing is not a defense to Hazing.
- 15.3 Hazing based on Protected Class occurring inside or outside the United States within an Education Program or Activity regardless of citizenship committed by an individual falls under the University's General Jurisdiction and will be addressed using the procedures set forth in Appendix A.
- 15.4 Hazing based on Protected Class committed by individuals is addressed using the procedures set forth in Appendix A. The procedure for reporting and filing complaints of Hazing based on Protected Class Status against recognized student organizations is addressed using the procedures set forth in the Student Conduct Code.

## **Section 16. Sexual Exploitation.**

- 16.1. Sexual Exploitation is an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Sexual exploitation may constitute Title IX or Title VII Sexual Harassment depending upon the severity and/or pervasiveness. Examples of Sexual Exploitation includes but are not limited to:
  - 16.1.a. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)

- 16.1.b. Invasion of sexual privacy
- 16.1.c. Taking pictures, video, or audio recordings of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
- 16.1.d. Prostituting another person
- 16.1.e. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
- 16.1.f. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- 16.1.g. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
- 16.1.h. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- 16.1.i. Knowingly soliciting an individual under the age of 16 for sexual activity
- 16.1.j. Engaging in sex trafficking
- 16.1.k. Creation, possession, or dissemination of child pornography
  - 16.1.l. "Revenge posting" in which a person threatens to post -- or actually does post -- images, audio, or video of their partner participating in sexual activity without permission.
- 16.2. Sexual Exploitation that does meet the definition of Title IX Sexual Harassment occurring within an Education Program or Activity occurring against a person regardless of citizenship inside or outside the United States falls under the University's General Jurisdiction and will be addressed using the procedures set forth in Appendix A.

## **Section 17. Retaliation.**

- 17.1. Retaliation is prohibited by this Policy. No person may intimidate, threaten, coerce, or discriminate against any individual either in person, virtually, electronically or through a third-party for the purpose of interfering with any right or privilege secured by this Policy or Title IX or because the individual has made a report or filed a Formal Complaint, testified, assisted, or participated or refused to participate in any manner in the grievance procedures including but not limited to the informal resolution process, set forth in Appendix A.
- 17.2. Retaliation against any person requesting accommodations, or who engages in other protected activity is also prohibited.
- 17.3. Intimidation, threats, coercion, including charges against an individual for violations that do not involve Protected Class Discrimination and Harassment but arise out of the same facts or circumstances as a report or Formal Complaint of Protected Class Discrimination and Harassment including but not limited to Title IX Sexual Harassment, for the purpose of interfering with any right or privilege secured by this Policy and/or any other State or Federal anti-discrimination law including but not limited to Title IX, constitutes retaliation.
- 17.4. Retaliation may include, but is not limited to, interfering with the reporting of or the investigation of Prohibited Conduct, such as tampering with or destroying relevant evidence; intimidating, threatening or attempting to influence, in any way, the testimony or information of anyone who files a complaint, a witness or otherwise participates in the grievance procedures set forth in Appendix A and/or adverse any employment or educational actions based on the exercise of rights created by this Policy, Title IX or any other State or Federal anti-discrimination law.
- 17.5. Charging an individual with a violation for making a materially false statement in bad faith in accordance with Section 5.2 of this Policy does not constitute Retaliation prohibited by this section.
- 17.6. The exercise of rights protected under the First Amendment does not constitute prohibited retaliation.
- 17.7. Adverse personnel, academic or other disciplinary action against a Staff Employee, Faculty or Student whose conduct or performance warrants such action for reasons unrelated to the reporting of Prohibited Conduct or other protected activity will not be considered Retaliation or a violation of this policy.
- 17.8. Retaliation reports and Formal Complaints are filed with the Title IX Coordinator and are investigated in accordance with the procedures set forth in Appendix A.

## **Section 18. Reporting and Grievance Procedures.**

- 18.1. Any person may report Prohibited Conduct, including discrimination based on sex and Title IX Sexual Harassment, (whether or not the person reporting is the person alleged to be the victim of Prohibited Conduct regardless of the specific type), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator in Section 18 of this Policy.
- 18.2. Any individual may make an anonymous report of Prohibited Conduct to the Title IX Coordinator, to law enforcement including the University Campus Police or to the United States Department of Education Office for Civil Rights without disclosing their name, without identifying the Respondent or accused, and/or without requesting any action. Because the accused individual is entitled to certain due process including but not limited to the right to confront the individual's accuser, the University's ability to address alleged misconduct reported by anonymous sources is significantly limited. The University's ability to respond to an anonymous report also may be limited depending on the level of information available regarding the incident or individuals involved.
- 18.3. The University will adopt and publish grievance procedures that provide for the prompt and equitable resolution of reports and Formal Complaints made by Members of Campus Community alleging Prohibited Conduct including grievance procedures for reporting and filing Title IX Sexual Harassment Formal Complaints that comply with 34 C.F.R. Part 106 (2020), specifically 34 C.F.R. §§ 106.44, 106.45 (applicable to reports and Formal Complaints against employees and students) and that provide immediate and appropriate corrective action in response to harassment based on Protected Class including based on sex occurring in the workplace. The grievance procedures may include informal and formal resolution options, as applicable and allowed by law, and shall include Supportive Measures for reporting parties, Complainants and Respondents as applicable and required by law. The University's grievance procedures for all Protected Class discrimination and harassment including Title IX Sexual Harassment and Retaliation, are set forth in Exhibit A, *Unlawful Discrimination and Harassment and Title IX Sexual Harassment Grievance Procedure*.
  - 17.3.a. For the purposes of Title IX Sexual Harassment, the University's response obligations under this Policy and the Appendix A procedures are not triggered until the Title IX Coordinator or an Official with Authority has Actual Knowledge of the alleged Title IX Sexual Harassment.
- 18.4. Prohibited Conduct may also constitute violations of criminal law. An individual may, but is not required, to report alleged criminal conduct to law enforcement. Any individual who wishes to report criminal conduct should call 9-1-1 in an emergency or contact law enforcement directly in non-emergency situations. The University encourages individuals to contact local law enforcement to report incidents of Prohibited Conduct that may also be crimes under criminal statutes. Reports to law enforcement made by alleged victims may be made in addition to reporting Prohibited Conduct in accordance with this Policy. Grievance

procedures adopted in accordance with Section 7 may be carried out prior to, simultaneously with, or following off-campus civil or criminal law enforcement proceedings. Reporting Prohibited Conduct that may also constitute criminal conduct to law enforcement is not required to report Prohibited Conduct to the Coordinator. The outcome of law enforcement investigation or external criminal or civil proceeding is not determinative of whether an individual is responsible for violating this Policy.

18.5. External reports or complaints of Prohibited Conduct, including but not limited to Title IX Sexual Harassment may be made at any time by contacting external agencies responsible for enforcing Federal and State anti-discrimination laws.

1.5.a. The U.S. Department of Education's Office for Civil Rights (OCR) enforces several federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the United States Department of Education, including but not limited to, Title IX. Information about OCR, the laws it enforces and the OCR external complaint process is available by contacting:

Office of Civil Rights  
U.S. Department of Education  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Telephone: 215-656-8541  
FAX: 215-656-8605;  
TDD: 877-521-2172  
Email: [OCR\\_Philadelphia@ed.gov](mailto:OCR_Philadelphia@ed.gov)  
Website: <http://www2.ed.gov/about/offices/list/ocr/index.html>

18.5.b. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate or harass Staff Employees or applicants for employment on the basis of, among other things, sex. Information about the EEOC and its external complaint process is available online or by contacting:

United States Equal Employment Opportunity Commission  
801 Market Street, Suite 1300  
Philadelphia, PA 19107-3127  
Telephone: 866-408-8075.  
Fax: 215-440-2606  
TTY: 800-669-6820  
Website: <http://www.eeoc.gov/>

18.5.c. The West Virginia Human Rights Commission (WHRC) is responsible for enforcing the West Virginia Human Rights Act. Information about the WVHRC and its external complaint procedures is available online or by contacting:

West Virginia Human Rights Commission  
1321 Plaza East, Room 108  
Charleston, WV 25301

Phone: (304) 558-2616  
Toll Free: (888) 676-5546  
Fax: (304) 558-0085  
<https://hrc.wv.gov/>

- 18.5.d. Employees may use the statutory grievance procedure to challenge adverse employment actions. Information about the statutory grievance procedure is available in the Human Resources Office or by contacting:

WV Public Employees  
Grievance Board  
1701 5th Avenue  
Suite 2  
Charleston, WV 25387  
Phone: 304-558-3361  
Toll Free: 866-747-6743  
Fax: 304-558-1106  
[wvgb@wv.gov](mailto:wvgb@wv.gov)

- 18.5.e. The State of West Virginia Equal Employment Opportunity Office (WV-EEEO) provides guidance to State employers and employees about discrimination and harassment. Information about the WV-EEEO and its complaint procedures is available online and by contacting:

State of West Virginia  
Equal Employment Opportunity Office  
1900 Kanawha Blvd., East  
Building 5, Room A-125  
Charleston, WV 25305  
Phone: 304.558.0400  
<https://eeo.wv.gov/Pages/aboutus.aspx>

## **Section 19. Duty to Report and Reporting Child Abuse or Neglect.**

- 19.1. All Officials with Authority (OWA) who witness Prohibited Conduct including Title IX Sexual Harassment and Retaliation or who receive a verbal or written report of Title IX Sexual Harassment or other Prohibited Conduct including Retaliation are required notify the Title IX Coordinator of the Prohibited Conduct at:

Title IX Coordinator  
416 Wallace Hall

West Virginia State University  
PO Box 1000  
Institute, WV 25112  
(304) 204-4018  
[titleixcoordinator2@wvstateu.edu](mailto:titleixcoordinator2@wvstateu.edu)

- 19.2. All other University Staff Employees and Faculty except any Staff Employee or Faculty designated as a Confidential Reporting Resource in accordance with Section VII of Appendix A and as defined in this policy who witness Prohibited Conduct including Title IX Sexual Harassment and Retaliation or who receive a verbal or written report of Title IX Sexual Harassment or other Prohibited Conduct including Retaliation are required to notify the Title IX Coordinator of the Prohibited Conduct using the contact information set forth in this policy. Notice of Title IX Sexual Harassment to individuals not designated as an “OWA does not constitute Actual Knowledge for the purposes of triggering the University’s Title IX obligations.
- 19.3. Failure to notify the Coordinator as required by may result in disciplinary action up to and including termination of employment.
- 19.4. Any other Member of the University Community who has witnessed or is aware of any Prohibited Conduct is strongly encouraged to report any concerns to the Coordinator and should advise individuals of where to find this policy.
- 19.5. Staff Employees and Faculty may also be required to make a report in accordance with the University’s Clery Act reporting procedures.
- 19.6. Staff and/or if applicable in accordance with State mandatory child abuse and sexual abuse reporting laws. The University’s reporting requirements within this Policy do not supersede or exempt individuals from the requirements placed on individuals by law. West Virginia’s mandatory child abuse and sexual abuse reporting obligations can currently be found at W. Va. Code §§ 49-2-801 to -814 (2017), which can be found at: <http://www.legis.state.wv.us/WVCODE/Code.cfm>.
- 19.7. Reporting Child Abuse or Neglect. West Virginia State University is committed to providing for protection of children on the University’s premises or involved in University sponsored programs at all geographic locations.
  - 19.7.a. If any Member of the University Community observes, or has reasonable cause to suspect, any type of Child Abuse or Neglect, including physical or Sexual Abuse, he or she must immediately report the circumstances to the Title IX Coordinator. “Child Abuse or Neglect” for the purposes of this section means Sexual Abuse, physical injury, mental or emotional injury, sale or attempted sale, negligent treatment or maltreatment of a child by an adult, any other act that endangers or attempts to endanger the health, safety, or well-being of a child, or anything else that is otherwise prohibited by a West Virginia law intended to protect children.

“Sexual Abuse” for the purpose of this section is a form of Child Abuse or Neglect and means any wrongful or otherwise illegal act that involves the sexual molestation or exploitation of child or is otherwise sexual in nature, whether physical injuries are sustained or not.

19.7.b. Under West Virginia state law, some individuals are considered Mandatory Reporters. Mandatory Reporters are required by West Virginia law to report any type of Child Abuse or Neglect, including physical or Sexual Abuse, in accordance with W. Va. Code §§ 49-2-801 to -814 (2017). In cases involving a Mandatory Reporter, reports of Child Abuse or Neglect should be immediately reported to each of the following:

\*West Virginia Department of Health and Human Resources or by contacting the Child Abuse and Neglect Hotline (1-800-352-6513), seven days a week, twenty-four hours a day see also:

<http://www.dhhr.wv.gov/bcf/Services/Pages/Centralized-Intake-for-Abuse-and-Neglect.aspx>;

\*West Virginia State Police at 304-293-6400 (Crimes Against Children Unit);

\*West Virginia State University Campus Police at (304) 766-3353 or other appropriate law enforcement agency; and

\*If the Mandatory Reporter is a Member of the University Community, the Title IX Coordinator.

19.7.b.1. If the reporter feels making a report of sexual abuse will expose the reporter, the child, the reporter's children or other children in the subject's household to an increased threat of serious bodily injury, the individual may delay the report while the individual takes measure to remove themselves or the affected children from the perceived threat of additional harm. The individual must make the report as soon as practical after the threat of harm has been reduced.

19.7.b.2. Upon receiving a report of Child Abuse or Neglect, the University's Title IX Coordinator shall take immediate action in order to protect children present on the University campus or participating in University sponsored programs.

19.7.c. Under *West Virginia Code* § 49-2-810 persons making a report in good faith are immune from civil or criminal liability.

19.7.c.1. The University's reporting requirements within this Policy do not supersede the requirements placed on individuals by law. West

Virginia's mandatory reporting obligations can currently be found at W. Va. Code §§ 49-2-801 to -814 (2017), available online at:

<http://www.legis.state.wv.us/WVCODE/Code.cfm>.

## **Section 20. Confidential Reporting Resources.**

- 20.1. Members of the University Community who have experienced Prohibited Conduct seeking complete confidential assistance without sharing information and without making a report to the University may do so by speaking with a Confidential Reporting Resource.
- 20.2. A Confidential Reporting Resource is not required to report Prohibited Conduct including but not limited to Title IX Sexual Harassment to the University, not even to the Title IX Coordinator, without the individual's permission, unless otherwise required or permitted to do so by law.
- 20.3. Information about on- and off-campus Confidential Reporting Resources is available in Appendix A and is also available by contacting the Title IX Coordinator or designee.

## **Section 21. Relation to Board of Governors Policy 21, Social Justice, Policy 23, Student Rights and Responsibilities, the Student Conduct Code and Any Other Institution Policies or Procedures.**

- 21.1. Conduct prohibited by this Policy (Prohibited Conduct) including but not limited to Title IX Sexual Harassment, hazing by individuals and stalking based on Protected Class status are also prohibited by other policies and procedures including but not limited to Board of Governors' policies 20 and 23, the Student Conduct Code and various other Staff Employee, Faculty, and Student academic and athletic program handbooks and/or other policies and procedures.
- 21.2. The grievance procedure for the reporting, investigation and disposition of Prohibited Conduct including but not limited to unlawful discrimination and harassment based on Protected Class including but not limited to Title IX Sexual Harassment established in accordance with Appendix A is the only procedure used to address reports or complaints of Prohibited Conduct based on Protected Class.

## **Section 22. Consensual Relationships.**

- 22.1. Consensual Relationships to which this Section applies are those romantic, intimate or sexual relationships where one of the parties has influence or control over another or is in a position to direct, grade, evaluate, or influence the academic progress or employment of a student or employee. WVSU is committed to maintaining a fair and professional working and learning environment free of conflicts of interest. Whether the Consensual Relationship is student/teacher or employee/employee, the working and academic relationship must be, and must remain, professional at all times. Romantic or sexual relationships where one of the parties is in a position to direct, grade, evaluate, or influence

the academic progress or employment of a student or employee may create an appearance of impropriety, may raise issues of conflicts of interest, abuse of authority, or favoritism, with potential to adversely impact not only the persons involved in the Consensual Relationship but others who may see themselves as disadvantaged by the Consensual Relationship. Because of the real or perceived power imbalance that may exist, such a relationship may also raise questions about the mutuality of consent. Such situations may cast doubt on the objectivity and fairness of the workplace and learning environment, damage workplace morale and/or subject the University to legal liability all of which are contrary to the interests of the University. This section should be interpreted in accordance with the University's objective of preserving the integrity of the University's working and learning environment and the educational process.

- 22.2. Consensual Relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor. The parties involved in pre-existing Consensual Relationships must remain aware that such relationships could lead to circumstances that could result in Harassment, Discrimination, Domestic Misconduct and/or other Prohibited Conduct. Additionally, others may perceive a person involved in the pre-existing Consensual Relationship as receiving favorable treatment in employment or education decisions.
  
- 22.3. Consensual Relationships involving Members of the University Community. The following provisions govern Consensual Relationships involving Members of the University Community where Members engage in a Consensual Relationship involving:
  - (i) persons in inherently unequal and closely related employment positions at the University;
  - (ii) employees within the same reporting line; or
  - (iii) where one individual has influence or is in a position to direct, evaluate, or influence the employment of an employee the individuals involved in the Consensual Relationship
  
- 22.3.a. The supervisor shall notify the Human Resources Office of the reported Consensual Relationship.
  
- 22.3.b. Human Resources in Consultation with the Provost's Office if a Faculty is involved will attempt to implement a Mitigation Plan. The Mitigation Plan will:
  - 22.3.b.1. Provide an alternative means for managing, supervising, teaching, evaluating and/or advising of the supervisee or otherwise mitigate the conflict of interest and the potential for exploitation or the appearance of exploitation or favoritism created by the Consensual Relationship;
  
  - 22.3.b.2. Give priority to the interest of the subordinate;
  
  - 22.3.b.3. Be in writing and signed by both parties to the Consensual Relationship;

- 22.3.b.4. Provide the individuals with notice of this Policy; and
  - 22.3.b.5. Be reassessed by Human Resources in consultation with the Provost's Office if applicable on an annual basis (or sooner if circumstances warrant) by the parties, and the applicable department/unit for necessary modification.
- 22.3.c. If no suitable way to eliminate or mitigate the conflict is reasonably feasible, one or both individuals may be separated from employment with the University and/or any other relationship with the University (if either party is not an Employee) may be terminated.
- 22.3.d. Failing to disclose a Consensual Relationship or to Comply with a Mitigation Plan is prohibited and may result in disciplinary action up to and including termination of employment. Violations of this section will be addressed using Board of Governors Policy 19, Personnel Policy.
- 22.3.e. Any Member of the Campus Community who becomes aware of a violation of this section should report it to:
- 22.4. Relationships Involving Students. Members of the University Community are prohibited from or attempting to initiate, pursue, or engage in a relationship with a Student whom the individual evaluates advises, grades, or otherwise has control or influence over the academic progress of the Student.
- 22.4.a. Pre-existing Relationships Involving Students. Where there is a pre-existing Consensual Relationship with a Student, the Member of the University Community involved in the Relationship shall notify the immediate supervisor. The supervisor shall notify the Office of the Provost of the reported Consensual Relationship.
- 22.4.b. Human Resources in consultation with the Provost's Office and if necessary the Office of Enrollment Management and Student Affairs will attempt to implement a Mitigation Plan to eliminate or mitigate any conflict of interest or other educational or occupational interest. The Mitigation Plan will:
- 22.4.b.1. Provide an alternative means for managing, supervising, teaching, evaluating and/or advising of the Student or otherwise mitigate the existing conflict of interest and the potential for exploitation or the appearance of exploitation or favoritism created by the Consensual Relationship;
  - 22.4.b.2. If a preexisting teacher/Student Consensual Relationship exists, provide instructions on avoiding any future conflict of interest and the potential for exploitation or appearance of exploitation or favoritism created by Consensual Relationship

- 22.4.b.3. Give priority to the interest of the Student;
  - 22.4.b.4. Be in writing and signed by both parties to the Consensual Relationship;
  - 22.4.b.5. Provide notice of this Policy; and
  - 22.4.b.6. Be reassessed by Human Resources in consultation with the Enrollment Management and Student Affairs Office if applicable on an annual basis (or sooner if circumstances warrant) by the parties, and the applicable department/unit for necessary modification
- 23.4.c. If no suitable way to eliminate or mitigate the conflict is reasonably feasible, the Member of the University Community may be separated from employment with the University and/or any other relationship with the University may be terminated.
- 23.4.d. Failing to disclose a pre-existing Consensual Relationship with a Student or not complying with a Mitigation Plan is prohibited and may result in disciplinary action up to and including termination of employment or termination of any other relationship with the University.
- 23.4.e. Any Member of the University Community who is notified, or becomes aware of, an alleged violation of this section should timely report the violations to:

VP of Academic Affairs  
131 Ferrell Hall  
(304) 766-3148

## **Section 24. Academic Freedom and Freedom of Speech.**

- 24.1. Free expression and academic freedom at the institution are necessary to enable the institution to reach its goals to engage Students in a challenging academic environment; excel in research, creative activity, and innovation in all disciplines; foster diversity and inclusion; advance international activity and global engagement; and enhance the well-being and the quality of life of the people of West Virginia.
- 24.2. While this Policy seeks to protect Members of the University Community from discrimination, harassment, sexual and domestic misconduct, certain consensual relationships, stalking, and retaliation, it should be read in conjunction with Board of Governor Rules regarding free expression and academic freedom.
- 24.3. Nothing in this policy requires the institution to restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution.

- (b) national origin.

### **Section 25. Delegation and Amendments.**

- 25.1. The President or President's designee may establish administrative procedures and/or forms to implement this policy including any additional grievance procedures for the reporting, investigation and disposition of complaints of Prohibited Conduct.
- 25.2 This Policy may be amended to change names, links to information and contact information without resorting to the rulemaking process.
- 25.3. Federal and State laws, rules and regulations change. Any portion of this Policy or the Appendix A procedures may be modified in practice to ensure the due process rights of the individuals involved are provided and to conform with any current Federal and State law, rules and regulations and guidance. Subject to the institution's rulemaking rule, the institution will change this Policy and Appendix A procedures to conform to the most current laws and regulations within a reasonable time of discovering the change.

### **Section 26. Policy Limitations.**

- 26.1. Nothing in this policy should be construed to extend "Protected Class" status or give rise to a cause of action beyond that otherwise provided by law.

### **Section 27. Supercedes.**

- 27.1. This policy and Appendix A, including but not limited to the grievance procedure and any record retention guidelines and schedules set forth in Appendix A, repeals and replaces Board of Governors Policy 14 [2015] and supersede all other University Protected Class unlawful discrimination and harassment, sexual harassment, and records retention policies and grievance procedures to the extent those policies, guidelines, schedules and procedures are inconsistent with this policy.