INSTITUTIONAL POLICY: GA-14

Category:	General Administration
Subject:	Title IX, Sexual Harassment, and Discrimination
Effective Date:	October 30, 2026
Updated:	

GA 14-1. Authority

1.1 W. Va. Code § 18B-1-6

1.2 34 C.F.R. § 106

GA 14-2. Title IX Nondiscrimination Policy Statement

The West Virginia School of Osteopathic Medicine ("WVSOM") does not discriminate on the basis of sex in the education program or activity that it operates. WVSOM, as a recipient of federal financial assistance, is required by Title IX of the Education Amendments of 1972 ("Title IX") and 34 C.F.R. § 106 ("Title IX regulations") not to discriminate in such a manner. The requirement not to discriminate in WVSOM's education programs or activities extends to admission and employment, and inquiries about the application of Title IX and the Title IX regulations to WVSOM may be referred to WVSOM's Title IX Coordinator or the Assistant Secretary, Office of Civil Rights, U.S. Department of Education, or both.[1]

GA 14-3. Applicability

3.1 This policy applies[2] to applicants for admission and employment, students, and employees of WVSOM concerning sexual harassment in an education program or activity of WVSOM,[3] whether on or off campus.

3.2 The requirements set forth in this policy apply only to sex discrimination occurring against a person in the United States.[4]

GA 14-4. Definitions

4.1 "Actual knowledge"[5] means notice of sexual harassment or allegations of sexual harassment to WVSOM's Title IX Coordinator or any official of WVSOM who has authority to institute corrective measures on behalf of WVSOM. As used in this policy, "official of WVSOM who has authority to institute corrective measures on behalf of WVSOM" means the

[1] 106.8(b)(1).
[2] 106.8(a).
[3] 106.44(a).
[4] 106.8(d).
[5] 106.30(a).

President and each Vice President of WVSOM. 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 WVSOM 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 WVSOM. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in the Title IX regulations at § 106.8(a).

4.2 "Appeals Officer" means the President of WVSOM.

4.3 "Complainant"[6] means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

4.4 "Consent"[7] means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.[8]

4.5 "Education program or activity"[9] means locations, events, or circumstances over which WVSOM exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by WVSOM.

4.6 "Formal complaint"[10] means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that WVSOM investigate the allegation of sexual harassment. At the time of filing a formal complaint with

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[6] 106.30(a).
[7] 106.30(a).
[8] The following rules apply to the term "consent" as defined in this policy:

a. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the sexual activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual activity.
b. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the individual initiating or furthering the sexual harassment was intoxicated and, therefore, did not realize the incapacity of the other.
c. The definition of consent also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.
d. Consent to some sexual contact, such as kissing or, criminal sexual contact, cannot be presumed to be consent for other sexual activity, such as intercourse. A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.
e. In the State of West Virginia, a minor cannot consent to sexual activity. Thus, sexual contact by an adult with a person younger than 16 years old is a crime as well as a violation of this policy, even if the minor wanted to engage in the act.

[9] 106.44(a).
[10] 106.30(a).

WVSOM, a complainant must be participating in or attempting to participate in the education program or activity of WVSOM. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by e-mail, by using the contact information listed for the Title IX Coordinator, and by any additional method designated by WVSOM. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by e-mail) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under the Title IX regulations, part § 106, or under § 106.45, and must comply with the requirements of the Title IX regulations, part § 106, including § 106.45(b)(1)(iii).

4.7 "Respondent"[11] means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

4.8 "Sexual harassment"[12] means conduct on the basis of sex that satisfies one or more of the following:

4.8.1 An employee of WVSOM conditioning the provision of an aid, benefit, or service of WVSOM on an individual's participation in unwelcome sexual conduct;

4.8.2 Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the WVSOM's education program or activity; or "Sexual assault"[13] as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence"[14] as defined in 34 U.S.C. 12291(a)(10),

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[11] 106.30(a).

[12] 106.30(a).

[13] "Sexual Assault" means an offense classified as a sex offense under the uniform crime reporting system of the FBI (https://le.fbi.gov/file-repository/nibrs-user-manual-2025-0-062625.pdf/view)). The following offenses are classified as sex offenses:

- Rape (except statutory rape): The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Sodomy: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Criminal sexual contact: The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation; or The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the same purposes. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.
- Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

[14] "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.

"domestic violence"[15] as defined in 34 U.S.C. 12291(a)(8), or "stalking"[16] as defined in 34 U.S.C. 12291(a)(30).

4.9 "Supportive Measures"[17] 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. Such measures are designed to restore or preserve equal access to WVSOM's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or WVSOM's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. WVSOM must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of WVSOM to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.
- Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

[15] "Domestic violence" means a felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- 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;
- 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.

[16] "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition:

- Course of conduct 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.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

[17] 106.30(a).

GA 14-5. Title IX Coordinator

5.1 WVSOM has designated and authorized Dr. Aaron Phillips, Associate Dean of Student Affairs, as Title IX Coordinator to coordinate WVSOM's efforts to comply with its responsibilities under Title IX, 34 C.F.R. § 106,[18] and other federal and state sex discrimination and sexual harassment laws. The Title IX Coordinator's contact information[19] is as follows:

Campus office address: Room SC101E Student Center
E-mail address: aphillips2@osteo.wvsom.edu
Title IX report/complaint email address: TitleIX@osteo.wvsom.edu
Office telephone number: (304) 793-6836

5.2 WVSOM may designate and authorize designee(s) to serve as Title IX Coordinator in the absence of the Associate Dean of Student Affairs. In such event, notice of such designation and authorization, along with name(s)/title(s), office address(es), e-mail address(es), and office telephone number(s) will be provided to the applicable groups set forth in Section 3 above.[20]

GA 14-6. Publication Requirements

6.1 WVSOM shall prominently display the contact information for the Title IX Coordinator set forth in Section 5 above and the nondiscrimination policy statement set forth in Section 2 above on the WVSOM website and in the WVSOM Catalog and WVSOM Student, Faculty, and Employee Handbooks.[21]

6.2 WVSOM shall not use or distribute a publication stating that WVSOM treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX or the Title IX regulations.[22]

GA 14-7. Adoption of Grievance Procedures

7.1 WVSOM shall adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by the Title IX regulations and a grievance process that complies with the Title IX regulations, § 106.45 for formal complaints as defined in this policy.[23]

7.2 WVSOM shall provide to its applicants for admission and employment, students, and employees notice of WVSOM's grievance procedures and grievance process, including the following:

7.2.1 How to report or file a complaint of sex discrimination,

[18] 106.8(a).
[19] 106.8(a).
[20] 106.8(a) & 106.8(b)(2).
[21] 106.8(b)(2).
[22] 106.8(b)(2)(ii).
[23] 106.8(c).

7.2.2 How to report or file a formal complaint of sexual harassment, and

7.2.3 How WVSOM will respond.[24]

GA 14-8. Reporting of Sex Discrimination Generally

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX 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 e-mail address, or by mail to the office address, listed for the Title IX Coordinator.[25]

GA 14-9. Response to Sexual Harassment

9.1 Sexual harassment is prohibited.

9.2 Should WVSOM have actual knowledge of sexual harassment in an education program or activity of WVSOM against a person in the United States, WVSOM shall respond in a manner that is not deliberately indifferent. WVSOM would be deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.[26]

9.3 WVSOM's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with the Title IX regulations, § 106.45, before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.[27]

9.4 Reports of violations of this policy should be made promptly as follows:

9.4.1 Reports of sexual harassment or other violations of this policy falling under Title IX should be made to the Title IX Coordinator;

9.4.2 Reports of violations of this policy involving the Title IX Coordinator should be made to the Vice President of Academic Affairs/Dean;

9.4.3 Reports of violations of this policy involving the Vice President of Academic Affairs/Dean should be made to the President of WVSOM;

9.4.4 Reports of violations of this policy involving the President of WVSOM should be made to the Chair of the WVSOM Board of Governors; and

9.4.5 Reports of violations of this policy involving the Chair of the WVSOM Board of Governors should be made to the West Virginia Higher Education Policy Commission.

[24] 106.8(c).
[25] 106.8(a).
[26] 106.44(a).
[27] 106.44(a).

9.5 If a reporting individual believes that an immediate threat of harm exists to self or others or that an individual has violated federal, state, or local law, the reporting individual should immediately contact law enforcement.

9.6 The Title IX Coordinator, or other applicable administrator listed in Section 9.4 above or his/her designee, shall promptly contact the complainant to:

9.6.1 Discuss the availability of supportive measures,

9.6.2 Consider the complainant's wishes with respect to supportive measures,

9.6.3 Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and

9.6.4 Explain to the complainant the process for filing a formal complaint.[28]

9.7 Although reports of violations of this policy should be made promptly, there is no time limitation on the filing of reports, as long as the accused individual remains subject to WVSOM's jurisdiction.

9.8 Additional information on reporting options can be found on WVSOM's website, at http://www.wvsom.edu, under the "Human Resources" link or the "Students" link.

9.9 The U.S. Department of Education may not deem WVSOM to have satisfied WVSOM's duty to not be deliberately indifferent under the Title IX regulations, part 106, based on WVSOM's restrictions of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.[29]

GA 14-10. Response to a Formal Complaint

10.1 In response to a formal complaint, WVSOM shall follow a grievance process that complies with the Title IX regulations, § 106.45.[30]

10.2 With or without a formal complaint, WVSOM must comply with Section 9 above.[31]

10.3 The Assistant Secretary, Office of Civil Rights, U.S. Department of Education, will not deem WVSOM's determination regarding responsibility to be evidence of deliberate indifference by WVSOM, or otherwise evidence of discrimination under Title IX by WVSOM, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.[32]

GA 14-11. Emergency Removal and Administrative Leave

11.1 *Emergency removal.* WVSOM may remove a respondent from WVSOM's education program or activity on an emergency basis, provided that WVSOM undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical

[28] 106.44(a).
[29] 106.44(a).
[30] 106.44(b)(1).
[31] 106.44(b)(1).
[32] 106.44(b)(2).

health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.[33] This provision may not be construed to modify any rights under the Individuals with Disabilities in Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.[34]

11.2 *Administrative leave.* WVSOM may place a non-student employee respondent on administrative leave during the pendency of the grievance process for formal complaints of sexual harassment.[35] This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.[36]

GA 14-12. Grievance Process for Formal Complaints of Sexual Harassment

Requirements for Grievance Process. WVSOM's grievance process shall:

12.1 Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following its grievance process set forth in this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to WVSOM's education program or activity. Such remedies may include the same individual services described in the definition of "supportive measures" above; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.[37]

12.2 Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.[38]

12.3 Require that any individual designated by WVSOM as a Title IX Coordinator, investigator, or decision-maker, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.[39]

12.3.1 WVSOM shall ensure that the Title IX Coordinators, investigators, and decision-makers receive training on the definition of sexual harassment set forth in Section 4.8 above, the scope of WVSOM's education program or activity, how to conduct an investigation and grievance process including hearings and appeals, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.[40]

12.3.2 WVSOM shall ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including

[33] 106.44(c).
[34] 106.44(c).
[35] 106.44(d).
[36] 106.44(d).
[37] 106.45(b)(1)(i).
[38] 106.45(b)(1)(ii).
[39] 106.45(b)(1)(iii).
[40] 106.45(b)(1)(iii).

when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in Section 13.5.[41]

12.3.3 WVSOM must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence as set forth in the Title IX regulations, § 106.45(b)(5)(vii).[42]

12.3.4 Any materials used to train Title IX Coordinators, investigators, and decision-makers must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.[43]

12.4 Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.[44]

12.5 Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. 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.[45]

12.6 Describe the range of possible disciplinary sanctions that WVSOM may implement following any determination of responsibility.[46]

12.7 State that the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard and apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment.[47]

12.8 Include the procedures and permissible bases for the complainant and respondent to appeal.[48]

12.9 Describe the range of supportive measures available to complainants and respondents.[49]

12.10 Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.[50]

[41] 106.45(b)(1)(iii).
[42] 106.45(b)(1)(iii).
[43] 106.45(b)(1)(iii).
[44] 106.45(b)(1)(iv).
[45] 106.45(b)(1)(v).
[46] 106.45(b)(1)(vi).
[47] 106.45(b)(1)(vii).
[48] 106.45(b)(1)(viii).
[49] 106.45(b)(1)(ix).
[50] 106.45(b)(1)(x).

GA 14-13. Notice of Allegations

13.1 Upon receipt of a formal complaint, WVSOM must provide the following written notice to the parties who are known:[51]

13.1.1 Notice of WVSOM's grievance process that complies with § 106.45 of the Title IX regulations and this policy.[52]

13.1.2 Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in Section 4.8 of this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.[53]

(i) Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment as defined in Section 4.8 of this policy, and the date and location of the alleged incident, if known.

(ii) The written notice must 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.

(iii) The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under Section 16.4 of this policy, and may inspect and review evidence under Section 16.6 of this policy.

(iv) The written notice must inform the parties of any provision of WVSOM's code of conduct, handbook, or policy or procedure that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.[54]

13.2 If, in the course of an investigation, WVSOM decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to Section 13.1 above, WVSOM must provide notice of the additional allegations to the parties whose identities are known.

GA 14-14. Dismissal of a Formal Complaint

14.1 WVSOM must investigate the allegations in a formal complaint.[55]

14.1.1 If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in Section 4.8 of this policy even if proved, did not occur in WVSOM's education program or activity, or did not occur against a person in the United States, then WVSOM must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or the Title IX regulations.[56]

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[51] 106.45(b)(2).
[52] 106.45(b)(2)(A).
[53] 106.45(b)(2)(B).
[54] 106.45(b)(2)(B).
[55] 106.45(b)(3)(i).
[56] 106.45(b)(3)(i).

14.1.2 Such a dismissal does not preclude action under another provision of WVSOM's code of conduct, handbook, or policy or procedure.[57]

14.2 WVSOM may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:[58]

14.2.1 A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

14.2.2 The respondent is no longer enrolled or employed by WVSOM; or

14.2.3 Specific circumstances prevent WVSOM from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.[59]

14.3 Upon a dismissal required or permitted pursuant to Sections 14.1 or 14.2 above, WVSOM must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.[60]

GA 14-15. Consolidation of Formal Complaints

15.1 WVSOM may consolidate formal complaints as to allegations of sexual harassment 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.[61]

15.2 Where a grievance process involves more than one complainant or more than one respondent, reference in this policy to the singular "party," "complainant," or "respondent" include the plural, as applicable.[62]

GA 14-16. Investigation of a Formal Complaint

When investigating a formal complaint and throughout the grievance process, WVSOM must:[63]

16.1 Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on WVSOM and not on the parties, provided that WVSOM cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless WVSOM obtains that party's voluntary, written consent to do so for a grievance process under Section 7 above (if a party is not an "eligible student" as

[57] 106.45(b)(3)(i).
[58] 106.45(b)(3)(ii).
[59] 106.45(b)(3)(ii).
[60] 106.45(b)(3)(iii).
[61] 106.45(b)(4).
[62] 106.45(b)(4).
[63] 106.45(b)(5).

defined in 34 C.F.R. § 99.3, then WVSOM must obtain the voluntary, written consent of a "parent," as defined in 34 C.F.R. § 99.3).[64]

16.2 Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.[65]

16.3 Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.[66]

16.4 Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, WVSOM may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.[67]

16.5 Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.[68]

16.6 Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which WVSOM does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.[69]

16.6.1 Prior to completion of the investigative report, WVSOM must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.[70]

16.6.2 WVSOM must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.[71]

16.7 Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party

[64] 106.45(b)(5)(i).
[65] 106.45(b)(5)(ii).
[66] 106.45(b)(5)(iii).
[67] 106.45(b)(5)(iv).
[68] 106.45(b)(5)(v).
[69] 106.45(b)(5)(vi).
[70] 106.45(b)(5)(vi).
[71] 106.45(b)(5)(vi).

and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.[72]

GA 14-17. Hearings

17.1 WVSOM's grievance process must provide for a live hearing.[73]

17.2 At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.[74]

17.2.1 Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of WVSOM under Section 16.4 above to otherwise restrict the extent to which advisors may participate in the proceedings.[75]

17.2.2 Only relevant cross-examination and other questions may be asked of a party or witness.[76]

17.2.3 Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.[77]

17.3 At the request of either party, WVSOM must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.[78]

17.4 If a party does not have an advisor present at the live hearing, WVSOM must provide without fee or charge to that party, an advisor of WVSOM's choice to conduct cross-examination on behalf of that party.[79]

17.5 Questions and evidence about the complainant's sexual predisposition or prior sexual behavior is 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.

17.6 Live hearings may be conducted with all parties physically present in the same geographic location or, at WVSOM's discretion, any or all parties, witnesses, and other participants may

[72] 106.45(b)(5)(vii).
[73] 106.45(b)(6)(i).
[74] 106.45(b)(6)(i).
[75] 106.45(b)(6)(i).
[76] 106.45(b)(6)(i).
[77] 106.45(b)(6)(i).
[78] 106.45(b)(6)(i).
[79] 106.45(b)(6)(i).

appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.[80]

17.7 WVSOM must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.[81]

GA 14-18. Determination Regarding Responsibility

18.1 The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility.[82]

18.2 To reach a determination, WVSOM must apply the preponderance of the evidence standard.[83]

18.3 The written determination must include the following:[84]

18.3.1 Identification of the allegations potentially constituting sexual harassment as defined in Section 4.8 above;[85]

18.3.2 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;[86]

18.3.3 Findings of fact supporting the determination;[87]

18.3.4 Conclusions regarding the application of WVSOM's code of conduct, handbooks, and/or policies and procedures to the facts;[88]

18.3.5 A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions WVSOM imposes on the respondent consistent with Section 18.4 below, and whether remedies designed to restore or preserve equal access to WVSOM's education program or activity will be provided by WVSOM to the complainant;[89] and

18.3.6 WVSOM's procedures and permissible bases for the complainant and respondent to appeal.[90]

18.4 Sanctions may be imposed upon any person under WVSOM's jurisdiction who is found to have violated this policy. Any employee or student who is found to have violated this policy

[80] 106.45(b)(6)(i).
[81] 106.45(b)(6)(i).
[82] 106.45(b)(7)(i).
[83] 106.45(b)(7)(i).
[84] 106.45(b)(7)(ii).
[85] 106.45(b)(7)(ii)(A).
[86] 106.45(b)(7)(ii)(B).
[87] 106.45(b)(7)(ii)(C).
[88] 106.45(b)(7)(ii)(D).
[89] 106.45(b)(7)(ii)(E).
[90] 106.45(b)(7)(ii)(F).

will be subject to administrative action, up to and including termination of employment or dismissal from WVSOM, as applicable.

18.4.1 Typical student sanctions that may be imposed singly or in combination include, but are not limited to the following:

(i) Admonition

(ii) Warning

(iii) Disciplinary Probation

(iv) Restitution

(v) Suspension

(vi) Expulsion

18.4.2 Typical employee sanctions that may be imposed singly or in combination include, but are not limited to the following:

(i) Discussion

(ii) Verbal Warning

(iii) Written Warning

(iv) Suspension

(v) Termination of Employment

18.4.3 Any person found responsible for violating the sexual harassment prohibitions in this policy will likely face a sanction ranging from admonition/discussion to expulsion/termination of employment, depending on the severity of the incident, and taking into account any previous disciplinary violations.

18.4.4 The range of sanctions may be broadened or lessened in the case of serious mitigating circumstances or egregiously offensive behavior. WVSOM will not deviate from the range of recommended sanctions unless compelling justification exists to do so.

18.5 WVSOM must provide the written determination to the parties simultaneously.

18.6 The determination regarding responsibility becomes final either on the date that WVSOM provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.[91]

18.7 The Title IX Coordinator is responsible for effective implementation of any remedies.[92]

[91] 106.45(b)(7)(iii).
[92] 106.45(b)(7)(iv).

GA 14-19. Appeals

19.1 WVSOM must offer both parties an appeal from a determination regarding responsibility, and from WVSOM's dismissal of a formal complaint or any allegations therein, on the following bases:[93]

19.1.1 A procedural irregularity that affected the outcome of the matter;[94]

19.1.2 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;[95] and

19.1.3 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.[96]

19.2 As to all appeals, WVSOM must:[97]

19.2.1 Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;[98]

19.2.2 Ensure that the Appeals Officer for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;[99]

19.2.3 Ensure that the Appeals Officer for the appeal complies with the standards set forth in Section 12.3 above;[100]

19.2.4 Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;[101]

19.2.5 Issue a written decision describing the result of the appeal and the rationale for the result;[102] and

19.2.6 Provide the written decision simultaneously to both parties.[103]

GA 14-20. Recordkeeping

20.1 WVSOM must maintain for a period of seven years records of:[104]

20.1.1 Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under

[93] 106.45(b)(8)(i).
[94] 106.45(b)(8)(i)(A).
[95] 106.45(b)(8)(i)(B).
[96] 106.45(b)(8)(i)(C).
[97] 106.45(b)(8)(iii).
[98] 106.45(b)(8)(iii)(A).
[99] 106.45(b)(8)(iii)(B).
[100] 106.45(b)(8)(iii)(C).
[101] 106.45(b)(8)(iii)(D).
[102] 106.45(b)(8)(iii)(E).
[103] 106.45(b)(8)(iii)(F).
[104] 106.45(b)(10)(i).

Section 17 above, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to WVSOM's education program or activity;[105]

20.1.2 Any appeal and the result therefrom;[106]

20.1.3 All materials used to train Title IX Coordinators, investigators, and decision-makers. WVSOM must make these training materials publicly available on its website.[107]

20.2 For each response required under Section 9 through Section 11 above, WVSOM must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.[108]

20.2.1 In each instance, WVSOM must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to WVSOM's education program or activity.[109]

20.2.2 If WVSOM does not provide a complainant with supportive measures, then WVSOM must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.[110]

20.2.3 The documentation of certain bases or measures does not limit WVSOM in the future from providing additional explanations or detailing additional measures taken.[111]

GA 14-21. Retaliation

21.1 Retaliation is prohibited.[112]

21.1.1 Neither WVSOM nor other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or the Title IX regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations.[113]

21.1.2 Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct, handbook, or policy or procedure violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or the Title IX regulations, constitutes retaliation.[114]

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[105] 106.45(b)(10)(i)(A).
[106] 106.45(b)(10)(i)(B).
[107] 106.45(b)(10)(i)(D).
[108] 106.45(b)(10)(ii).
[109] 106.45(b)(10)(ii).
[110] 106.45(b)(10)(ii).
[111] 106.45(b)(10)(ii).
[112] 106.71(a).
[113] 106.71(a).
[114] 106.71(a).

21.1.3 WVSOM must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. § 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of 34 C.F.R. part 106, including conduct of any investigation, hearing, or judicial proceeding arising thereunder.[115]

21.1.4 Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required under Section 7 above.[116]

21.2 Specific circumstances:

21.2.1 The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under Section 21.1 above.[117]

21.2.2 Charging an individual with a code of conduct, handbook, or policy or procedure violation for making a materially false statement in bad faith in the course of a grievance proceeding under the Title IX regulations does not constitute retaliation prohibited under Section 21.1 above; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.[118]

GA 14-22. False Reports

WVSOM will not tolerate intentional false reporting of incidents. Deliberately false and/or malicious accusations of violations of this policy, as opposed to complaints which, even if erroneous, are made in good faith, are just as serious an offense as a violation of this policy and will subject the false reporter to appropriate disciplinary action. Intentionally false reports may also violate criminal and civil laws.

GA 14-23. Federal Timely Warning Obligations

Victims of sexual harassment should be aware that WVSOM administrators must issue timely warnings to the WVSOM community for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. No such warning will identify a victim or contain information that could do so unless permitted by the victim.

GA 14-24. Prevention & Awareness Programs

WVSOM has educational programs and campaigns to promote the awareness of dating violence, domestic violence, sexual assault, and stalking. These programs can be found on the WVSOM website.

[115] 106.71(a).
[116] 106.71(a).
[117] 106.71(b)(1).
[118] 106.71(b)(2).

GA 14-25. Implementation of Policy

This policy will be implemented using applicable WVSOM policies and procedures, and WVSOM faculty, staff, and student handbooks. In the event the individual, name, title, or contact information changes for any of the individuals listed in this policy, the President of WVSOM may revise such information within this policy without resubmittal of this policy through the rulemaking process.

GA 14-26. Superseding Provisions

This policy supersedes the West Virginia Higher Education Policy Commission ("HEPC") Series 40 (W. Va. Code R. § 133-40), any other rule of HEPC which relates to the subject matter contained within this policy, and any conflicting provisions within the WVSOM Employee Handbook, the WVSOM Faculty Handbook, or any other WVSOM policies or procedures. This policy also repeals and supersedes WVSOM Institutional Policy GA-14: Equal Opportunity, Non-discrimination, Sexual Misconduct, and Other Forms of Harassment.