



## INSTITUTIONAL POLICY: GA-14

Category: General Administration  
Subject: Title IX, ~~Sexual~~Sex-Based Harassment, and Discrimination  
Effective Date: ~~November 6, 2020~~August 1, 2024  
Updated: ~~January 24, 2023~~ N/A

### 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<sup>1</sup> 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 ~~effor~~ Civil Rights, U.S. Department of Education, or both.<sup>2</sup>

### GA 14-3. Applicability

- 3.1 This policy applies<sup>3</sup> to applicants for admission and employment, students, and employees of WVSOM concerning ~~sexual harassment~~sex discrimination in an education program or activity of WVSOM,<sup>4</sup> 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 ~~under WVSOM’s education program or activity including all conduct subject to WVSOM’s disciplinary authority. WVSOM shall address sex-based hostile environments even when some of the conduct alleged to be contributing to the hostile environment occurred outside of WVSOM’s education program or activity or outside the United States.~~<sup>5</sup>

### GA 14-4. Definitions

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<sup>1</sup> Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. 106.10.

<sup>2</sup> 106.8(~~bc~~)(1).

<sup>3</sup> 106.8(a).

<sup>4</sup> 106.44(a).

<sup>5</sup> 106.8(~~d~~)-11.

4.1 ~~“Actual knowledge”<sup>6</sup> 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 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).~~

4.24.1 “Appeals Officer” means the President of WVSOM or designee.

4.34.2 “Complainant”<sup>7</sup> means ~~an individual~~ a student or employee who is alleged to be the victim of have been subjected to conduct that could constitute sex discrimination under this policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute ~~sexual harassment~~sex discrimination under this policy and who was participating or attempting to participate in WVSOM’s education program or activity at the time of the alleged sex discrimination.

4.3 “Complaint”<sup>8</sup> means an oral or written request to WVSOM that can objectively be understood as a request for WVSOM to investigate and make a determination about the alleged policy violation(s).

4.4 “Confidential employee”<sup>9</sup> means an employee of WVSOM whose communications are privileged or confidential under federal or state law. The employee’s confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; an employee of WVSOM whom WVSOM has designated as confidential for the purpose of providing services to persons related to sex discrimination; and an employee who is conducting an institutional review board-approved human-subjects study designed to gather information about sex-discrimination.

4.44.5 “Consent”<sup>10</sup> means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity.<sup>11</sup>

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<sup>6</sup> ~~106.30(a).~~

<sup>7</sup> ~~106.30(a)-2.~~

<sup>8</sup> 106.2.

<sup>9</sup> 106.2.

<sup>10</sup> 106.30(a).

<sup>11</sup> 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.

4.54.6 “Education program or activity”<sup>12</sup> means locations, events, or circumstances over which WVSOM exercised substantial control over both the respondent and the context in which the ~~sexual harassment occurs~~ sex discrimination occurred, and also includes any building owned or controlled by a student organization that is officially recognized by WVSOM.

4.6 ~~“Formal complaint”<sup>13</sup> 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 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 “Knowledge”<sup>14</sup> means when WVSOM receives notice of conduct that reasonably may constitute sex discrimination in its education program or activity.

4.8 “Notice”<sup>15</sup> means notice of sex discrimination or allegations of sex discrimination to WVSOM’s Title IX Coordinator or any WVSOM employee who is not a confidential employee and who either has authority to institute corrective measures on behalf of WVSOM or has responsibility for administrative leadership, teaching, or advising in WVSOM’s education program or activity to notify the Title IX Coordinator when the employee has

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- b. A person cannot consent if ~~he or she is~~they are 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~~sex-based 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 fondling, 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.

<sup>12</sup> 106.44(a).2.

<sup>13</sup> ~~106.30(a).~~

<sup>14</sup> 106.44(a).

<sup>15</sup> 106.44(c)(2).

information about conduct that reasonably may constitute sex discrimination under Title IX or the Title IX regulations.

4.9 “Pregnancy or related conditions”<sup>16</sup> means pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.

4.10 “Relevant”<sup>17</sup> means related to the allegations of sex discrimination under investigation as part of the grievance procedures under § 106.45, and if applicable § 106.46. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision-maker in determining whether alleged sex discrimination occurred.

4.11 “Respondent”<sup>18</sup> means a person who is alleged to have violated WVSOM’s prohibition on sex discrimination.

4.12 “Sex discrimination” means conduct that is based upon an individual’s sex that excludes an individual ~~who has been reported to be the perpetrator of conduct that could constitute sexual~~ from participation in, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of an individual’s employment, education, or participation in a WVSOM program or activity. This includes failing to provide reasonable modifications, consistent with the Title IX regulations, for pregnancy or related conditions. It does not, however, include programs or activities specifically exempt by law. *See, e.g.,* 20 U.S.C. § 1681(a) (2015).

4.74.13 “Sex-based harassment”<sup>19</sup> is a sub-category of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in Section 2 that is:

4.8—“SexualQuid pro quo harassment”<sup>20</sup> ~~means conduct on the basis of sex that satisfies one or more of the following:~~

4.8.14.13.1 An employee ~~of,~~ agent, or other person authorized by WVSOM to provide an aid, benefit, or service under WVSOM’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service ~~of WVSOM on an individual’s~~ a person’s participation in unwelcome sexual conduct;

4.8.24.13.2 ‘Hostile environment harassment’<sup>21</sup> Unwelcome sex-based conduct ~~determined by a reasonable person to be so severe, pervasive,~~ that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it ~~effectively~~ limits or denies a ~~person equal access to the person’s~~ ability to participate in or benefit from WVSOM’s education program or activity; ~~or~~ (*i.e.,* creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

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<sup>16</sup> 106.2.

<sup>17</sup> 106.2.

<sup>18</sup> 106.30(a).2.

<sup>19</sup> 106.2.

<sup>20</sup> 106.30(a).2.

<sup>21</sup> 106.2.

- (i) The degree to which the conduct affected the complainant’s ability to access WVSOM’s education program or activity,
- (ii) The type, frequency, and duration of the conduct,
- (iii) The parties’ ages, roles within WVSOM’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct,
- (iv) The location of the conduct and the context in which the conduct occurred, and
- (v) Other sex-based harassment in WVSOM’s education program or activity; or

#### 4.13.3 “Specific offenses”<sup>22</sup>

- (i) “Sexual assault”<sup>23</sup> meaning an offense classified as ~~defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation,~~
- (ii) “Dating violence”<sup>24</sup> ~~as defined in 34 U.S.C. 12291(a)(10), “meaning violence committed by a person:~~
  - a. Who has been in a social relationship of a romantic or intimate nature with the victim, and

<sup>22</sup> 106.2.

<sup>23</sup> “Sexual Assault” means an offense classified as a sex offense under the uniform crime reporting system of the FBI (<https://www.fbi.gov/file-repository/ucr/ucr-2019-1-nibrs-user-manual.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.~~
- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, 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.
- 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.

<sup>24</sup> ~~“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.~~

- ~~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. 106.2.

- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  1. The length of the relationship,
  2. The type of relationship, and
  3. The frequency of interaction between the person involved in the relationship; or
- (iii) “Domestic violence”<sup>25</sup> meaning felony or misdemeanor crimes committed by a person who:
  - a. Is a current or former spouse or intimate partner of the victim under the family or domestic violence<sup>26</sup> laws of West Virginia, or a person similarly situated to a spouse of the victim,
  - b. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner,
  - c. Shares a child in common with the victim, or
  - d. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of West Virginia; or
- (iv) “Stalking”<sup>27</sup> meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - a. Fear for the person’s safety or the safety of others, or
  - b. Suffer substantial emotional distress.

4.94.14 “Remedies”<sup>28</sup> means measures provided, as defined in 34 U.S.C. 12291(a)(8), or “stalking”<sup>29</sup> appropriate, to a complainant or any other person WVSOM identifies as defined

<sup>25</sup> 106.2.

<sup>26</sup> ~~“Domestic violence” mean 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.~~

<sup>27</sup> 106.2.

<sup>28</sup> 106.2.

<sup>29</sup> ~~“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.~~

~~in 34 U.S.C. 12291(a)(30).having had their equal access to WVSOM’s education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person’s access to WVSOM’s education program or activity after WVSOM determines that sex discrimination occurred.~~

4.15 “Supportive Measures”<sup>30</sup> means ~~non-disciplinary, non-punitive~~ individualized ~~services~~measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, 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:

- (i) Restore or preserve ~~equal~~that party’s access to WVSOM’s education program or activity ~~without unreasonably burdening the other party,~~ including measures that are designed to protect the safety of ~~all~~the 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.
- (ii) Provide support during WVSOM’s grievance procedures under § 106.45, and if applicable § 106.46, or during the informal resolution process under § 106.44(k).

#### GA 14-5. Title IX Coordinator

5.1 WVSOM has designated and authorized Dr. Dawn Roberts, Associate Dean for Multicultural and Student Affairs, as Title IX Coordinator to coordinate WVSOM’s efforts to comply with its responsibilities under Title IX, 34 C.F.R. § 106,<sup>31</sup> and other federal and state sex discrimination and sexual harassment laws. ~~The Title IX Coordinator’s contact information<sup>32</sup> is as follows:~~

Campus office address: ~~-Room SC101E Student Center~~

E-mail address: ~~-~~ [Droberts@osteo.wvsom.edu](mailto:Droberts@osteo.wvsom.edu)

Title IX report/complaint email address:

~~TitleIX@osteo.wvsom.edu~~ [TitleIX@osteo.wvsom.edu](mailto:TitleIX@osteo.wvsom.edu)

Office telephone number: ~~-~~ (304) 647-6591

~~• Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.~~

<sup>30</sup> 106.30(a).2.

<sup>31</sup> 106.8(a).

<sup>32</sup> 106.8(ac)(1).

5.2 WVSOM may designate and authorize designee(s) to serve as Title IX Coordinator in the absence of the Associate Dean for Multicultural and 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.<sup>33</sup>

#### **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, on all application forms, in the WVSOM Catalog, and in~~ WVSOM Student, Faculty, and Employee Handbooks.<sup>34</sup>

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.<sup>35</sup>

#### **GA 14-7. Adoption of Grievance Procedures**

7.1 WVSOM shall adopt ~~and~~, publish, and implement grievance procedures that provide for the prompt and equitable resolution of ~~student and employee~~ complaints made by students, employees, or other individuals who are participating or attempting to participate in WVSOM's education program or activity, or by the Title IX Coordinator, 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.~~<sup>36</sup>

7.2 WVSOM shall provide ~~to its~~ a notice of nondiscrimination to students, employees, and applicants for admission and employment.; ~~students, and employees notice of WVSOM's grievance procedures and grievance process, including the following:~~ The notice of nondiscrimination will include:

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

7.2.2 How to report or file a ~~formal~~ complaint of ~~sexual~~sex-based harassment, and

7.2.3 How WVSOM will respond.<sup>37</sup>

#### **GA 14-8. Employee Training and Reporting Requirements**

8.1 WVSOM shall train all WVSOM employees related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX or the Title IX

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<sup>33</sup> 106.8(a)(2) & 106.8(b)(2c)(1).

<sup>34</sup> 106.8(b)(2).

<sup>35</sup> 106.8(b)(2)(iii).

<sup>36</sup> 106.8(eb)(2).

<sup>37</sup> 106.8(c)(1).



regulations, and annually thereafter.<sup>38</sup> The training shall not rely on sex stereotypes.<sup>39</sup> Training will be provided as follows:

8.1.1 WVSOM shall ensure that all employees receive training on WVSOM's obligation to address sex discrimination in its education program or activity; the scope of conduct that constitutes sex discrimination under Title IX and the Title IX regulations, including the definition of sex-based harassment; and all applicable notification and information requirements under the Title IX regulations.<sup>40</sup>

8.1.2 In addition to the responsibilities outlined in Section 8.1.1 above, WVSOM shall ensure that investigators, decision-makers, and other persons who are responsible for implementing WVSOM's grievance procedures or have the authority to modify or terminate supportive measures receive training on WVSOM's obligations under § 106.44; WVSOM's grievance procedures under § 106.45 and § 106.46; how to serve impartially, including by avoiding a prejudgment of the facts at issue, conflicts of interest, and bias; and the meaning and application of the term relevant in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under § 106.45 and § 106.46.<sup>41</sup>

8.1.3 In addition to the training requirements in Section 8.1.1, all facilitators of an informal resolution process under § 106.44(k) shall be trained on the rules and practices associated with WVSOM's informal resolution process and on how to serve impartially, including avoiding conflicts of interest and bias.<sup>42</sup>

8.1.4 In addition to the training requirements outlined in Sections 8.1.1, 8.1.2, and 8.1.3 above, WVSOM shall ensure that the Title IX Coordinator and any designees receive training on WVSOM's recordkeeping system, and other training necessary to coordinate WVSOM's compliance with Title IX.<sup>43</sup>

8.1.5 Any materials used to train WVSOM employees shall be made available upon request for inspection by members of the public.<sup>44</sup>

8.2 WVSOM shall require its employees to respond to a notice of sex discrimination in the following manner:

8.2.1 All WVSOM employees who are not confidential employees and who either have authority to institute corrective measures on behalf of WVSOM or have responsibility for administrative leadership, teaching, or advising in WVSOM's education program or activity must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or the Title IX regulations.<sup>45</sup>

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<sup>38</sup> 106.8(d).

<sup>39</sup> 106.8(d).

<sup>40</sup> 108.8(d)(1).

<sup>41</sup> 106.8(d)(2).

<sup>42</sup> 106.8(d)(3).

<sup>43</sup> 106.8(d)(4).

<sup>44</sup> 106.8(f)(3).

<sup>45</sup> 106.44(c)(2)(i).

8.2.2 All other employees who are not confidential employees and not employees as specified in Section 8.2.1 above must:

- (i) Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or the Title IX regulations, or
- (ii) Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination under Title IX or the Title IX regulations.<sup>46</sup>

8.2.3 WVSOM must reasonably determine and specify whether and under what circumstances a person who is both a student and an employee is subject to the requirements in this section.<sup>47</sup>

8.2.4 These reporting requirements do not apply to employees who have personally been subject to conduct that reasonably may constitute sex discrimination under Title IX or the Title IX regulations.<sup>48</sup>

8.2.5 WVSOM shall notify all participants in WVSOM's education program or activity how to contact its confidential employees.<sup>49</sup> Confidential employees are required to explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination under Title IX or the Title IX regulations:

- (i) The employee's status as confidential for purposes of the Title IX regulations, including circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination,<sup>50</sup>
- (ii) How to contact WVSOM's Title IX Coordinator and how to make a complaint of sex discrimination,<sup>51</sup> and
- (iii) That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the applicable grievance process.<sup>52</sup>

8.2.6 When WVSOM's Title IX Coordinator is notified of information about conduct that reasonably may constitute sex-based harassment under Title IX or the Title IX regulations that was provided by a person during a public event to raise awareness about sex-based harassment that was held on WVSOM's campus or through an online platform sponsored by WVSOM, WVSOM shall not act in response to the

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<sup>46</sup> 106.44(c)(2)(ii).

<sup>47</sup> 106.44(c)(3).

<sup>48</sup> 106.44(c)(4).

<sup>49</sup> 106.44(d)(1).

<sup>50</sup> 106.44(d)(2)(i).

<sup>51</sup> 106.44(d)(2)(ii).

<sup>52</sup> 106.44(d)(2)(iii).

information, unless it indicates an imminent and serious threat to the health or safety of a complainant, any students, employees, or other persons.<sup>53</sup>

8.2.7 WVSOM shall require all WVSOM employees to inform students who disclose a pregnancy or related condition, or persons who have a legal right to act on behalf of the student who discloses a student's pregnancy or related condition, to provide that person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to WVSOM's education program or activity.<sup>54</sup>

### ~~GA-14-8.~~GA 14-9. Reporting of Sex Discrimination Generally

Any person may report sex discrimination, including ~~sexual~~sex-based harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or ~~sexual~~sex-based 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.~~<sup>55</sup>

### ~~GA-14-9.~~GA 14-10. Response to ~~Sexual Harassment~~Notices of Sex Discrimination

~~9.1~~10.1 ~~Sexual~~Sex discrimination, sex-based harassment ~~is~~, and retaliation are prohibited.

~~9.2~~10.2 Should WVSOM have ~~actual~~knowledge of ~~sexual harassment~~sex discrimination 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~~promptly and effectively.<sup>56</sup>

~~9.3~~10.3 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, and if applicable §106.46, before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.<sup>57</sup>

~~9.4~~10.4 Reports of violations of this policy should be made promptly as follows:

~~9.4.1~~10.4.1 Reports of ~~sexual harassment~~sex discrimination or other violations of this policy falling under Title IX should be made to the Title IX Coordinator;

~~9.4.2~~10.4.2 Reports of violations of this policy involving the Title IX Coordinator should be made to the Vice President for Academic Affairs/Dean;

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<sup>53</sup> 106.44(e).

<sup>54</sup> 106.40(b)(2).

<sup>55</sup> 106.8(ac).

<sup>56</sup> 106.44(a).

<sup>57</sup> 106.44(af).

- ~~9.4.3~~10.4.3 Reports of violations of this policy involving the Vice President for Academic Affairs/Dean should be made to the President of WVSOM~~;~~,
- ~~9.4.4~~10.4.4 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~~10.4.5 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.
- 9.510.5 If a reporting individual believes that an ~~immediate~~imminent and serious 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.
- 9.610.6 The Title IX Coordinator, or other applicable administrator listed in Section 910.4 above or ~~his/her~~their designee, shall promptly contact the complainant to:
- ~~9.6.1~~10.6.1 ~~Discuss the availability of Offer and coordinate~~ supportive measures, as appropriate, for the complainant,
- ~~9.6.2~~—Consider the complainant’s wishes with respect to supportive measures,
- ~~9.6.3~~—~~Inform~~Notify the complainant, or if the complainant ~~is unknown~~, the availability of supportive measures with or without individual who reported the ~~filing of a formal complaint~~, and
- ~~9.6.4~~10.6.2 Explain ~~to the complainant~~conduct, of the grievance procedures under § 106.45, and if applicable § 106.46, and the informal resolution process ~~for filing a formal complaint~~, if applicable and appropriate.<sup>58</sup>
- 9.710.7 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.
- 9.810.8 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.<sup>59</sup>

~~GA 14-10.~~—**Response to a Formal Complaint**

**GA 14-11. Response to a Complaint**

<sup>58</sup> 106.44(a)(1).

<sup>59</sup> ~~106.44(a).~~

11.1 When WVSOM has knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity, WVSOM must respond promptly and effectively and comply with the Title IX regulations to address sex discrimination in its education program or activity.<sup>60</sup>

11.2 In response to a ~~formal~~ complaint, WVSOM shall ~~follow a~~ notify the respondent of the grievance ~~process~~ procedures under § 106.45, and if applicable § 106.46, and the informal resolution process, if available and appropriate, and initiate the grievance procedures under § 106.45, and if applicable § 106.46, or the informal resolution process, if available and appropriate and requested by all parties.<sup>61</sup>

~~10.1~~11.3 In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, WVSOM's Title IX Coordinator shall determine whether to initiate a complaint of sex discrimination that complies with the ~~Title IX regulations~~, grievance procedures under § 106.45, and if applicable § 106.46.<sup>62</sup>

~~10.2~~ With or without a formal complaint, WVSOM must comply with Section 9 above.<sup>63</sup>

11.3.1 To make this fact-specific determination, WVSOM's Title IX Coordinator must consider the following factors:

- (i) The complainant's request not to proceed with initiation of a complaint,
- (ii) The complainant's reasonable safety concerns regarding initiation of a complaint,
- (iii) The risk that additional acts of sex discrimination would occur if a complaint were not initiated,
- (iv) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence,
- (v) The age and relationship of the parties, including whether the respondent is an employee of WVSOM,
- (vi) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals,
- (vii) The availability of evidence to assist a decision-maker in determining whether sex discrimination occurred, and

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<sup>60</sup> 106.44(a)(1) & 106.44(a)(2).

<sup>61</sup> 106.44(f)(1)(iii)(B) and 106.44(f)(1)(iv).

<sup>62</sup> 106.44(~~bk~~)(f)(1-)(v).

<sup>63</sup> ~~106.44(b)(1)~~.

(viii) Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures under § 106.45, and if applicable § 106.46.<sup>64</sup>

11.3.2 If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health and safety of the complainant or other person, or that the conduct as alleged prevents WVSOM from ensuring equal access on the basis of sex in its education program or activity, the Title IX Coordinator may initiate a complaint.<sup>65</sup>

11.3.3 Regardless of whether a complaint is initiated, the Title IX Coordinator shall take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within WVSOM's education program or activity.<sup>66</sup>

11.3.4 When the Title IX Coordinator determines that the alleged conduct could not constitute sex discrimination, the Title IX Coordinator shall not initiate a complaint.<sup>67</sup>

~~10.311.4~~ 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,~~ WVSOM to have violated § 106.47 solely because the Assistant Secretary would have reached a different determination in a particular complaint alleging sex-based harassment than WVSOM would have reached under § 106.45, and if applicable § 106.46, based on ~~an~~ the Assistant Secretary's independent weighing of the evidence.<sup>68</sup>

## ~~GA-14-11.~~ GA 14-12. Emergency Removal and Administrative Leave

~~11.12.1~~ *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~~ imminent and serious threat to the ~~physical~~ health or safety of a complainant or any ~~students~~ students, employees, or other ~~individual~~ persons arising from the allegations of ~~sexual harassment~~ sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.<sup>69</sup> -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, 29 U.S.C. 794, or the Americans with Disabilities Act.<sup>70</sup>

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<sup>64</sup> 104.44(f)(1)(v)(A).

<sup>65</sup> 106.44(f)(1)(vi).

<sup>66</sup> 106.44(f)(1)(vii).

<sup>67</sup> 106.44(f)(2).

<sup>68</sup> 106.44(b)(2).47.

<sup>69</sup> 106.44(c).

<sup>70</sup> 106.44(eh).

~~11.2~~12.2 *Administrative leave.* -WVSOM may place a non-student employee respondent on administrative leave ~~from employment responsibilities~~ during the pendency of the grievance ~~process for formal complaints of sexual harassment.~~<sup>71</sup> ~~procedures.~~<sup>72</sup> This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, 20 U.S.C. 794, or the Americans with Disabilities Act.<sup>73</sup>

## ~~GA-14-12.~~GA 14-13. § 106.45 Grievance Process for ~~Formal~~—Complaints of ~~Sexual Harassment~~Sex Discrimination

~~Requirements for Grievance Process.~~—WVSOM’s § 106.45 compliant 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 individuals 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.<sup>74</sup>

~~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.<sup>75</sup>

13.1 ~~Require that any individual~~Treat complainants and respondents equitably.<sup>76</sup>

~~12.3~~13.2 Require that any person 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.<sup>77</sup> The decision-maker may be the same person as the Title IX Coordinator or investigator.<sup>78</sup>

~~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.<sup>79</sup>

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<sup>71</sup> 106.44(d).

<sup>72</sup> 106.44(i).

<sup>73</sup> 106.44(d).

<sup>74</sup> 106.45(b)(1)(i).

<sup>75</sup> 106.45(b)(1)(ii).

<sup>76</sup> 106.45(b)(1).

<sup>77</sup> 106.45(b)(1)(iii).

<sup>78</sup> 106.45(b)(2).

<sup>79</sup> 106.45(b)(1)(iii).

~~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 when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in Section 13.5.<sup>80</sup>~~

~~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).<sup>81</sup>~~

~~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.<sup>82</sup>~~

12.413.3 Include a presumption that the respondent is not responsible for the alleged ~~conduct~~sex discrimination until a determination regarding responsibility is made at the conclusion of the grievance process for complaints of sex discrimination.<sup>83</sup>

~~12.5 Include~~Establish reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time framestimeframes for filing and resolving appeals, and the major stages of the grievance procedures, including a process that allows for the temporary delay of the grievance process or the limitedreasonable extension of time framestimeframes on a case-by-case basis for good cause with written notice to the complainant and the respondent of the delay or extension and the reasonsparties that includes the reason for the action. Good cause maydelay. Major stages 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.<sup>84</sup>

~~12.6 Describe the range of possible disciplinary sanctions that WVSOM may implement following anyexample, evaluation (i.e., WVSOM's decision whether to dismiss or investigate a complaint of sex discrimination); investigation; determination—of responsibility.<sup>85</sup>~~

~~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.<sup>86</sup>~~

12.813.4 Include the procedures and permissible bases for the complainant and respondent to; and appeal, if any.<sup>87</sup>

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<sup>80</sup> ~~106.45(b)(1)(iii).~~

<sup>81</sup> ~~106.45(b)(1)(iii).~~

<sup>82</sup> ~~106.45(b)(1)(iii).~~

<sup>83</sup> 106.45(b)(1)(iv)3).

<sup>84</sup> ~~106.45(b)(1)(v).~~

<sup>85</sup> ~~106.45(b)(1)(vi).~~

<sup>86</sup> ~~106.45(b)(1)(vii).~~

<sup>87</sup> 106.45(b)(1)(viii)4).



~~12.9 Describe the range of supportive measures available to complainants and respondents.<sup>88</sup>~~

~~13.5 Not require, allow, rely upon, Require WVSOM to take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the grievance process, provided the steps do not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise use questions prepare for or participate in the grievance procedures.<sup>89</sup>~~

~~13.6 Require an objective evaluation of all evidence that constitutes relevant, as defined in Section 4.10, and not otherwise impermissible as defined in Section 13.7—including both inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person’s status as a complainant, respondent, or seek disclosure of, information witness.<sup>90</sup>~~

~~13.7 Exclude the following types of evidence, and questions seeking that evidence, as impermissible (*i.e.*, must not be accessed or considered, except by WVSOM to determine whether an exception as outlined below applies; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant:~~

~~13.7.1 Evidence that is protected under a legally privilege as recognized privilege by federal or state law or evidence provided to a confidential employee, unless the person holding such to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality,~~

~~13.7.2 A party’s or witness’s records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless WVSOM obtains that party’s or witness’s voluntary, written consent for use in WVSOM’s grievance procedures, and~~

~~13.7.3 Evidence that relates to the complainant’s sexual interests or prior sexual conduct, unless evidence about the complainant’s prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant’s prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant’s consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.<sup>91</sup>~~

~~13.8 Articulate consistent principals for how WVSOM will determine which procedures apply to complaints of sex discrimination.<sup>92</sup>~~

~~13.9 For complaints alleging sex-based harassment, the grievance procedures must:~~

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<sup>88</sup> ~~106.45(b)(1)(ix).~~

<sup>89</sup> 106.45(b)(5).

<sup>90</sup> 106.45(b)(6).

<sup>91</sup> 106.45(b)(7).

<sup>92</sup> 106.45(b)(8).

13.9.1 Describe the range of supportive measures available to complainants and respondents, and

~~12.9.1~~13.9.2 List or describe the range of the possible disciplinary sanctions that WVSOM may impose and the remedies that WVSOM may provide following a determination that sex-based harassment occurred.<sup>93</sup>

#### ~~GA-14-13.~~GA 14-14. Notice of Allegations

~~13.1~~14.1 Upon ~~receipt of a formal complaint~~ initiation of WVSOM's grievance process, WVSOM must provide the following ~~written~~ notice to the parties ~~who whose~~ identities are known:<sup>94</sup>

14.1.1 ~~Notice of~~The notice must include:<sup>95</sup>

- (i) WVSOM's grievance ~~process that complies with~~ procedures under § 106.45 ~~of,~~ and if applicable § 106.46, and any informal resolution process,

~~13.1.1~~ Sufficient information available at the Title IX regulations and this policy.<sup>96</sup>

~~13.1.2~~ Notice of time to allow the parties to respond to 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.<sup>97</sup>

- (i)(ii). Sufficient ~~details include~~ information includes 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~~(s), the conduct alleged to constitute sex discrimination under Title IX or the Title IX regulations, and the date(s) and location(s) of the alleged incident, ~~if known~~(s), to the extent that information is available to WVSOM,
- (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~~A statement that retaliation is prohibited, and
- (iii) ~~A statement the parties that they may have an advisor of their choice, who may be, but is not required are entitled to be, an attorney, under Section 16.4 of this policy, an equal opportunity to access the relevant and may inspect and review not otherwise impermissible 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~~

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<sup>93</sup> 106.45(b)(1)(xl).

<sup>94</sup> 106.45(b)(2c).

<sup>95</sup> 106.45(c)(1).

<sup>96</sup> 106.45(b)(2)(A).

<sup>97</sup> 106.45(b)(2)(B).

~~false statements or knowingly submitting false information during the grievance process~~ an accurate description of this evidence.<sup>98</sup>

~~13.2~~14.2 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~~14.1 above, WVSOM must provide notice of the additional allegations to the parties whose identities are known.<sup>99</sup>

## ~~GA-14-14~~GA 14-15. Dismissal of a **Formal** Complaint

~~14.1~~ WVSOM must investigate the allegations in a formal complaint.<sup>100</sup>

~~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.<sup>101</sup>

~~14.1.2~~ Such a dismissal does not preclude action under another provision of WVSOM's code of conduct, handbook, or policy or procedure.<sup>102</sup>

~~14.2~~ WVSOM may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing.<sup>103</sup>

~~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;

15.1 WVSOM may dismiss a complaint of sex discrimination made through its grievance process under § 106.45, and if applicable § 106.46, for any of the following reasons:<sup>104</sup>

15.1.1 WVSOM is unable to identify the respondent after taking reasonable steps to do so,<sup>105</sup>

~~14.2.2~~15.1.2 The respondent is ~~no longer enrolled or~~ not participating in WVSOM's education program or activity and is not employed by WVSOM; ~~or,~~<sup>106</sup>

~~14.2.3~~ Specific circumstances prevent WVSOM from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.<sup>107</sup>

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<sup>98</sup> 106.45(b)(2)(Bc)(1).

<sup>99</sup> 106.45(c)(2).

<sup>100</sup> ~~106.45(b)(3)(i).~~

<sup>101</sup> ~~106.45(b)(3)(i).~~

<sup>102</sup> ~~106.45(b)(3)(i).~~

<sup>103</sup> ~~106.45(b)(3)(ii).~~

<sup>104</sup> 106.45(d)(1).

<sup>105</sup> 106.45(d)(1)(i).

<sup>106</sup> 106.45(d)(1)(ii).

<sup>107</sup> ~~106.45(b)(3)(ii).~~

- 15.1.3 The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and WVSOM determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX, or the Title IX regulations, even if proven,<sup>108</sup> or
- 15.1.4 WVSOM determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or the Title IX regulations.<sup>109</sup>
- 15.2 Upon ~~a dismissal required or permitted pursuant to Sections 14.1 or 14.2 above~~ dismissal, WVSOM ~~must~~ shall promptly send written notice of the notify the complainant of the basis for the dismissal. If the dismissal ~~and reason(s) therefor~~ occurs after the respondent has been notified of the allegations, then WVSOM shall also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.<sup>110</sup>
- 15.3 WVSOM shall notify the complainant that a dismissal may be appealed and provide the complainant with an opportunity to appeal the dismissal of a complaint on the basis set out in Section 22. If the dismissal occurs after the respondent has been notified of the allegations, WVSOM shall also notify the respondent that the dismissal may be appealed on the bases set out in Section 22.<sup>111</sup> If the dismissal is appealed, WVSOM shall:
- ~~14.2.4~~15.3.1 Notify the parties of any appeal, including notice of the allegations consistent with Section 14.1 if notice was not previously provided to the ~~parties~~ respondent,<sup>112</sup>
- 15.3.2 Implement appeal procedures equally for all parties,<sup>113</sup>
- 15.3.3 Ensure that the decision-maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint,<sup>114</sup>
- 15.3.4 Ensure that the decision-maker for the appeal has been trained as set forth in Section 8.1.2,<sup>115</sup>
- 15.3.5 Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome,<sup>116</sup> and
- 15.3.6 Notify the parties in writing of the result of the appeal and the rationale for the result.<sup>117</sup>
- 15.4 When a complaint is dismissed, WVSOM shall:

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<sup>108</sup> 106.45(d)(1)(iii).

<sup>109</sup> 106.45(d)(1)(iv).

<sup>110</sup> 106.45(d)(2).

<sup>111</sup> 106.45(d)(3).

<sup>112</sup> 106.45(~~bd~~)(3)(~~iii~~).

<sup>113</sup> 106.45(d)(3)(ii).

<sup>114</sup> 106.45(d)(3)(iii).

<sup>115</sup> 106.45(d)(3)(iv).

<sup>116</sup> 106.45(d)(3)(v).

<sup>117</sup> 106.45(d)(3)(vi).

- 15.4.1 Offer supportive measures to the complainant as appropriate,<sup>118</sup>
- 15.4.2 When a respondent has been notified of the allegations, offer supportive measures to the respondent, as appropriate,<sup>119</sup> and
- 15.4.3 Require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within WVSOM's education program or activity.<sup>120</sup>

**GA 14-15.GA 14-16. Consolidation of ~~Formal~~ Complaints**

~~15.1~~16.1 WVSOM may consolidate ~~formal~~ complaints as to allegations of ~~sexual harassment~~sex discrimination 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~~sex discrimination arise out of the same facts or circumstances.<sup>121</sup>

16.2 If one of the complaints to be consolidated is a complaint of sex-based harassment involving a student complainant or student respondent, the grievance procedures for investigating and resolving the consolidated complaint will follow the grievance process set forth in Section 19 below.<sup>122</sup>

~~15.2~~16.3 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.<sup>123</sup>

**GA 14-16.GA 14-17. Investigation of a ~~Formal~~ Complaint of Sex Discrimination**

WVSOM shall provide for adequate, reliable, and impartial investigation of complaints.<sup>124</sup> When investigating a ~~formal~~ complaint and throughout the grievance process, WVSOM ~~must:~~<sup>125</sup> shall:

~~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~~

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<sup>118</sup> 106.45(d)(4)(i).

<sup>119</sup> 106.45(d)(4)(ii).

<sup>120</sup> 106.45(d)(4)(iii).

<sup>121</sup> 106.45(~~b~~)(4e).

<sup>122</sup> 106.45(e)

<sup>123</sup> 106.45(~~b~~)(4e).

<sup>124</sup> 106.45(f).

<sup>125</sup> 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).<sup>126</sup>~~

- 17.1 Ensure that the burden is on WVSOM, not the parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred,<sup>127</sup>
- ~~16.2~~17.2 Provide an equal opportunity for the parties to present ~~fact witnesses, including fact and expert witnesses,~~ and other inculpatory and exculpatory evidence ~~that are relevant and not otherwise impermissible,~~<sup>128</sup>
- 17.3 ~~Not restrict~~Review all evidence gathered through the ~~ability~~investigation and determine what evidence is relevant and what evidence is impermissible regardless of ~~either~~relevance,<sup>129</sup> and
- 17.4 Provide each party with an equal opportunity to ~~discuss~~access the evidence that is relevant to the ~~allegations~~ of sex discrimination and not otherwise impermissible,<sup>130</sup> in the following manner:
  - 17.4.1 Provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. Where a description of this evidence is provided, WVSOM will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party,<sup>131</sup>
  - 17.4.2 Provide a reasonable opportunity to respond to the relevant and not otherwise impermissible evidence,<sup>132</sup> and
  - 17.4.3 Take reasonable steps to prevent and address the parties’ unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint sex discrimination are authorized.<sup>133</sup>

#### **GA 14-18. Determination Regarding Responsibility for Complaints of Sex Discrimination Under § 106.45**

- 18.1 WVSOM’s grievance process shall provide a process that enables the decision-maker to question parties and witnesses to adequately assess a party’s or witness’s credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.<sup>134</sup>

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<sup>126</sup> ~~106.45(b)(5)(i).~~

<sup>127</sup> 106.45(f)(1).

<sup>128</sup> ~~106.45(b)(5)(iii)(2).~~

<sup>129</sup> 106.45(f)(3).

<sup>130</sup> 106.45(f)(4).

<sup>131</sup> 106.45(f)(4)(i).

<sup>132</sup> 106.45(f)(4)(ii).

<sup>133</sup> 106.45(f)(4)(iii).

<sup>134</sup> 106.45(g).

18.2 For each complaint that is filed and not dismissed ~~under investigation or to gather and~~ Section 15, WVSOM shall evaluate all relevant and not otherwise impermissible evidence and.<sup>135</sup>

18.2.1 Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. This standard of proof requires the decision-maker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness; if the decision-maker is not persuaded under the preponderance of the evidence standard that sex discrimination occurred, whatever the quantity of the evidence is, the decision-maker must not determine that sex discrimination occurred.<sup>136</sup>

18.2.2 Notify the parties in writing of the determination whether sex discrimination occurred under Title IX or the Title IX regulations including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal.<sup>137</sup>

18.2.3 If there is a determination that sex discrimination occurred, as appropriate, require the Title IX Coordinator:

- (i) Coordinate the provision and implementation of remedies to a complainant and other individuals whose access to WVSOM's education program were limited or denied by sex discrimination,
- (ii) Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions, and
- (iii) Require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within WVSOM's education program or activity.<sup>138</sup>

18.2.4 WVSOM shall not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of WVSOM's grievance process that the respondent engaged in prohibited sex discrimination.<sup>139</sup>

18.2.5 WVSOM shall not discipline a party, witness, or others participating in WVSOM's grievance process for making a false statement or for engaging in consensual sexual conduct based solely on WVSOM's determination whether sex discrimination occurred.<sup>140</sup>

18.2.6 WVSOM shall offer the parties an appeal process as set forth in Section 22 below.<sup>141</sup>

#### **GA 14-19. § 106.46 Grievance Process for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents**

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<sup>135</sup> 106.45(h).

<sup>136</sup> 106.45(h)(1).

<sup>137</sup> 106.45(h)(2).

<sup>138</sup> 106.45(h)(3).

<sup>139</sup> 106.45(h)(3).

<sup>140</sup> 106.45(h)(5).

<sup>141</sup> 106.45(i).

Complaints of sex-based harassment involving a student complainant or a student respondent shall incorporate the requirements outlined in Sections 11-18 and this section.<sup>142</sup>

19.1 When a complainant or respondent is both a student and an employee, WVSOM shall make a fact-specific inquiry to determine whether the requirements of this section apply. In making this determination, WVSOM shall consider whether the party's primary relationship with WVSOM is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.<sup>143</sup>

19.2 Upon initiation of the grievance process under this section, WVSOM shall provide written notice to the parties whose identities are known with sufficient time for the parties to prepare a response before any initial interview.<sup>144</sup>

19.2.1 The written notice shall include all information outlined in Section 14<sup>145</sup> and inform the parties that:

- (i) The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance process under this section and that prior to the determination, the parties will have an opportunity to present relevant evidence and not otherwise impermissible evidence to a trained, impartial decision-maker.<sup>146</sup>
- (ii) The parties may have an advisor of choice who may be, but is not required to be, an attorney.<sup>147</sup>
- (iii) The parties shall have an equal opportunity to access the relevant and not otherwise impermissible evidence and an investigative report that accurately summarizes the evidence.<sup>148</sup>

19.2.2 If, in the course of an investigation, WVSOM decides to investigate additional allegations of sex-based harassment by the respondent toward the complainant that are not included in the written notice outlined in Section 19.2.1, or that are included in a complaint that is consolidated under Section 16, WVSOM shall provide written notice of the additional allegations to the parties whose identities are known.<sup>149</sup>

19.2.3 In instances where WVSOM has reasonable concerns for the safety of any person as a result of providing written notice to the parties, WVSOM may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns shall be based on an individualized safety and risk analysis and not on speculation or stereotypes.<sup>150</sup>

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<sup>142</sup> 106.46(a).

<sup>143</sup> 106.46(b).

<sup>144</sup> 106.45(c).

<sup>145</sup> 106.46(c)(1).

<sup>146</sup> 106.46(c)(1)(i).

<sup>147</sup> 106.46(c)(1)(ii).

<sup>148</sup> 106.46(c)(1)(iii).

<sup>149</sup> 105.46(c)(2).

<sup>150</sup> 106.46(c)(3).



19.2.4 When dismissing a complaint alleging sex-based harassment under this section, WVSOM shall:

- (i) Provide the parties, simultaneously, with written notice of the dismissal and the basis for the dismissal, if dismissing a complaint under any of the bases in Section 15, except if the dismissal occurs before the respondent has been notified of the allegations, in which case WVSOM shall provide such written notice only to the complainant,<sup>151</sup> and
- (ii) Obtain the complainant's withdrawal in writing if dismissing a complaint based on the complainant's voluntary withdrawal of the complaint or allegations under § 106.45.<sup>152</sup>

19.2.5 For investigations occurring under this section, WVSOM shall:

- (i) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate.<sup>153</sup>
- (ii) 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 ~~the~~ 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.~~<sup>154</sup>

~~16.3 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.~~<sup>155</sup>

- (iii) Provide the parties with the same opportunities, if any, to have persons other than the advisor of the parties' choice during any meeting or proceeding.<sup>156</sup>
- (iv) Allow for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the parties that includes the reason for the delay.<sup>157</sup>
- (v) Provide ~~both parties~~ each party and the party's advisor, if any, with an equal opportunity to ~~inspect~~ access the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible, in the following manner:

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<sup>151</sup> 106.46(d)(1).

<sup>152</sup> 106.46(d)(2).

<sup>153</sup> ~~106.45(b)(5)(iii)~~.46(e)(1).

<sup>154</sup> ~~106.45(b)(5)(iv)~~46(e)(2).

<sup>155</sup> ~~106.45(b)(5)(v)~~.

<sup>156</sup> 106.46(e)(3).

<sup>157</sup> 106.46(e)(5).

- a. The parties shall have an equal opportunity to access the relevant and not otherwise impermissible evidence and an investigative report that accurately summarizes the evidence,<sup>158</sup>
- b. The parties will be provided with a reasonable opportunity to review ~~any~~ and respond to the evidence and investigation report prior to the determination whether sex-based harassment occurred,<sup>159</sup>
- a.c. Take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained ~~as part of the investigation that is directly~~ solely through the sex-based harassment grievance process. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to ~~the allegations raised in a formal a 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.~~<sup>160</sup> of sex-based harassment are authorized.<sup>161</sup>

~~Prior to completion~~

**GA 14-20. Determination Regarding Responsibility for Complaints of ~~the investigative report,~~ Sex-Based Harassment Involving a Student Complainant or Student Respondent Under § 106.46**

20.1 WVSOM ~~must send to each party~~ shall provide a process that enables the decision-maker to question parties and ~~the~~ witnesses to adequately assess a party's ~~advisor, if any, the evidence subject~~ or witness's credibility to ~~inspection~~ the extent credibility is both in dispute and ~~review in an electronic format or a hard copy,~~ relevant to evaluating one or more allegations of sex-based harassment.<sup>162</sup> Questioning of the parties and witnesses shall incorporate ~~the parties must have at least 10 days to submit a written response, which~~ following provisions and occur prior to determining whether sex-based harassment occurred:

16.3.220.1.1 Allow the investigator ~~will consider prior to completion of the investigative report.~~<sup>163</sup> or decision-maker to ask relevant and not otherwise impermissible questions and follow up questions, including questions challenging credibility, during individual meetings with a party or witness;<sup>164</sup>

<sup>158</sup> 106.46(e)(6)(i).

<sup>159</sup> 106.46(e)(6)(ii).

<sup>160</sup> ~~106.45(b)(5)(vi).~~

<sup>161</sup> 106.46(e)(6)(iii).

<sup>162</sup> 106.46(f)(1).

<sup>163</sup> ~~106.45(b)(5)(vi).~~

<sup>164</sup> 106.46(f)(1)(i)(A).

~~16.3.3 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.<sup>165</sup>~~

~~16.4 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 and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.<sup>166</sup>~~

## ~~GA 14-17. Hearings~~

~~17.1 WVSOM's grievance process must provide for a live hearing.<sup>167</sup>~~

~~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 to propose such questions and follow-up questions, including those challenging credibility.<sup>168</sup>~~

~~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.<sup>169</sup>~~

~~17.2.2 Only relevant cross-examination and other questions may be that the party wants asked of any party or witness.<sup>170</sup>~~

~~20.1.2 Before a complainant, respondent, and have those questions asked by the investigator or decision-maker during one or more individual meetings, including follow-up meetings, with a party or witness answers a cross-examination;<sup>171</sup> and~~

~~20.1.3 Provide each party with an audio or other question; audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.<sup>172</sup>~~

~~17.320.2 The decision-maker(s) must first determine whether thea proposed question is relevant and not otherwise impermissible, prior to the question being posed, and must explain any decision to exclude a question as not relevant or otherwise impermissible.<sup>173</sup>~~

~~20.3 If When the decision-maker determines that a party's question is relevant and not otherwise impermissible, then the question must be permitted and posed.<sup>174</sup>~~

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<sup>165</sup> 106.45(b)(5)(vi).

<sup>166</sup> 106.45(b)(5)(vii).

<sup>167</sup> 106.45(b)(6)(i).

<sup>168</sup> 106.45(b)(6)(i).

<sup>169</sup> 106.45(b)(6)(i).

<sup>170</sup> 106.45(b)(6)(i).

<sup>171</sup> 106.46(f)(1)(i)(B).

<sup>172</sup> 106.46(f)(1)(i)(C).

<sup>173</sup> 106.45(b)(6)(i)46(f)(3).

<sup>174</sup> 106.46(f)(3).

20.4 Questions that are unclear or harassing are not permitted. The decision-maker shall give a party the opportunity to clarify or revise a question the decision-maker has determined is unclear or harassing, and if the party sufficiently clarifies or revises the question, the question shall be asked.<sup>175</sup>

~~17.420.5~~ The decision-maker may choose to place less or no weight upon statements by a party or witness ~~does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot~~ who refuses to respond to questions deemed relevant and not impermissible. The decision-maker shall not draw an inference about ~~the determination regarding responsibility~~ whether sex-based harassment occurred based solely on a party's or witness's ~~absence from the live hearing or refusal to answer cross-examination or other~~ respond to such questions.<sup>176</sup>

20.6 ~~At the request of~~ WVSOM shall provide a written determination as to whether sex-based harassment occurred simultaneously to the parties.<sup>177</sup> The written notice shall include:

20.6.1 A description of the alleged sex-based harassment,<sup>178</sup>

20.6.2 Information about the policies and procedures that WVSOM used to evaluate the allegations,<sup>179</sup>

20.6.3 The decision-maker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred,<sup>180</sup>

20.6.4 When the decision-maker finds that sex-based harassment occurred, any disciplinary sanctions WVSOM will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided to the complainant, and, to the extent appropriate, other students identified to be experiencing the effects of the sex-based harassment,<sup>181</sup> and

20.6.5 WVSOM's procedures for appeal.<sup>182</sup>

~~17.5~~—The determination regarding responsibility becomes final ~~either party,~~ on the date that 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.~~<sup>183</sup>

~~17.6~~—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.~~<sup>184</sup>

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<sup>175</sup> 106.46(f)(3).

<sup>176</sup> ~~106.45(b)(6)(4)~~ 106.46(f)(4).

<sup>177</sup> 106.46(h).

<sup>178</sup> 106.36(h)(1)(i).

<sup>179</sup> 106.46(h)(1)(ii).

<sup>180</sup> 106.46(h)(1)(iii).

<sup>181</sup> 106.46(h)(1)(iv).

<sup>182</sup> 106.46(h)(1)(v).

<sup>183</sup> ~~106.45(b)(6)(i).~~

<sup>184</sup> ~~106.45(b)(6)(i).~~

~~17.7 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.~~

~~17.8 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 appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.<sup>185</sup>~~

~~17.9 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.<sup>186</sup>~~

#### **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 that provides the parties with the written determination regarding responsibility.<sup>187</sup>~~

~~18.2 To reach a determination, WVSOM must apply the preponderance of the evidence standard.<sup>188</sup>~~

~~18.3 The written determination must include the following:<sup>189</sup>~~

~~18.3.1 Identification of the allegations potentially constituting sexual harassment as defined in Section 4.8 above;<sup>190</sup>~~

~~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;<sup>191</sup>~~

~~18.3.3 Findings of fact supporting the determination;<sup>192</sup>~~

~~18.3.4 Conclusions regarding the application of WVSOM's code of conduct, handbooks, and/or policies and procedures to the facts;<sup>193</sup>~~

~~18.420.7 A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions WVSOM imposes on the~~

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<sup>185</sup> 106.45(b)(6)(i).

<sup>186</sup> 106.45(b)(6)(i).

<sup>187</sup> 106.45(b)(7)(i).

<sup>188</sup> 106.45(b)(7)(i).

<sup>189</sup> 106.45(b)(7)(ii).

<sup>190</sup> 106.45(b)(7)(ii)(A).

<sup>191</sup> 106.45(b)(7)(ii)(B).

<sup>192</sup> 106.45(b)(7)(ii)(C).

<sup>193</sup> 106.45(b)(7)(ii)(D).

~~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;~~<sup>194</sup> and of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.<sup>195</sup>

~~18.4.1 WVSOM's procedures and permissible bases for the complainant and respondent to appeal.~~<sup>196</sup>

## **GA 14-21. Sanctions and Remedies**

~~18.521.1~~ Sanctions may be imposed upon any person under WVSOM's jurisdiction who is found to have violated this policy.<sup>197</sup> Any employee or student who is found to have violated this policy will be subject to administrative action, up to and including termination of employment or dismissal from WVSOM, as applicable.

~~18.5.121.1.1~~ 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

~~18.5.221.1.2~~ 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

~~18.5.321.1.3~~ Any person found responsible for violating the ~~sexual~~sex-based 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.

~~18.5.421.1.4~~ The range of sanctions may be broadened or lessened in the case of serious mitigating circumstances or egregiously offensive behavior. ~~–~~WVSOM will not

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<sup>194</sup> ~~106.45(b)(7)(ii)(E).~~

<sup>195</sup> 106.46(h)(2).

<sup>196</sup> ~~106.45(b)(7)(ii)(F).~~

<sup>197</sup> 106.45(l)(2).

deviate from the range of recommended sanctions unless compelling justification exists to do so.

~~18.6 WVSOM must provide the written Remedies are provided to restore or preserve access to WVSOM's education program or activity after a determination to the parties simultaneously.~~

~~18.7 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.<sup>198</sup>~~

~~18.821.2 The Title IX Coordinator is responsible for effective implementation of any remedies sex discrimination occurred.<sup>199</sup>~~

## ~~GA 14-19.~~ GA 14-22. Appeals

~~19.122.1~~ 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:<sup>200</sup>

~~19.1.122.1.1~~ A procedural irregularity that affected the outcome of the matter;<sup>201</sup>

~~19.1.222.1.2~~ New evidence that would change the outcome and that was not reasonably available ~~at the time~~ when the determination regarding responsibility whether sex discrimination occurred or dismissal was made, ~~that could affect the outcome of the matter;~~<sup>202</sup> and

~~19.1.322.1.3~~ 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~~ would change the outcome ~~of the matter.~~<sup>203</sup>

~~19.2~~ As to all appeals, WVSOM ~~must:~~<sup>204</sup>

~~22.2~~ Notify the other party shall, in writing ~~when~~, notify the parties:<sup>205</sup>

~~19.2.1~~ That an appeal ~~is~~ was filed ~~and implement appeal procedures equally for both parties;~~<sup>206</sup>

~~22.2.1~~ Ensure that, including notice of the Appeals Officer for allegations if notice was not previously provided to the ~~appeal is not~~ respondent,<sup>207</sup>

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<sup>198</sup> ~~106.45(b)(7)(iii).~~

<sup>199</sup> 106.45(b)(7)(iv)(3).

<sup>200</sup> ~~106.45(b)(8)(46(i).~~

<sup>201</sup> ~~106.45(b)(8)(46(i)(A1)(i).~~

<sup>202</sup> ~~106.45(b)(8)(46(i)(B1)(ii).~~

<sup>203</sup> ~~106.45(b)(8)(46(i)(C1)(iii).~~

<sup>204</sup> ~~106.45(b)(8)(iii).~~

<sup>205</sup> 106.45(b)(8)(iii).

<sup>206</sup> ~~106.45(b)(8)(iii)(A).~~

<sup>207</sup> 106.46(d)(3)(i).

~~19.2.2 That the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;<sup>208</sup>~~

~~19.2.3 Ensure that the Appeals Officer for the appeal complies with the standards set forth in Section 12.3 above;<sup>209</sup>~~

~~19.2.422.2 Give both parties have a reasonable, and equal opportunity to submitmake a written statement in support of, or challenging, the outcome;<sup>210</sup> and~~

~~19.2.522.3 Issue a written decision describing theThe result of the appeal and the rationale for the result;<sup>211</sup> and~~

~~19.2.6 Provide the written decision simultaneously to both parties.<sup>212</sup>~~

### **GA 14-23. Informal Resolution**

23.1 In lieu of resolving a complaint through the grievance processes outlined above, the parties may instead elect to participate in an informal resolution process.<sup>213</sup>

### **GA 14-24. Prohibited Disclosures of Personally Identifiable Information**

24.1 WVSOM must not disclose personally identifiable information obtained in the course of complying with the Title IX regulations, except in the following circumstances:<sup>214</sup>

24.1.1 When WVSOM has obtained prior written consent from a person with the legal right to consent to the disclosure,<sup>215</sup>

24.1.2 When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue,<sup>216</sup>

24.1.3 To carry out the purposes of the Title IX regulations, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in WVSOM's education program or activity,<sup>217</sup>

24.1.4 As required by federal law, federal regulations, or the terms and conditions of a federal award, including a grant award or other funding agreement,<sup>218</sup> or

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<sup>208</sup> 106.45(b)(8)(iii)(B).

<sup>209</sup> 106.45(b)(8)(iii)(C).

<sup>210</sup> 106.45(b)(8)(iii)(D)-d(3)(v).

<sup>211</sup> 106.45(b)(8)(iii)(E)d(3)(vi).

<sup>212</sup> 106.45(b)(8)(iii)(F).

<sup>213</sup> 106.44(k).

<sup>214</sup> 106.44(j).

<sup>215</sup> 106.44(j)(1).

<sup>216</sup> 106.44(j)(2).

<sup>217</sup> 106.44(j)(3).

<sup>218</sup> 106.44(j)(4).



24.1.5 To the extent such disclosures are not otherwise in conflict with Title IX or the Title IX regulations, when required by state or local law or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.<sup>219</sup>

## ~~GA-14-20.~~GA 14-25. Recordkeeping

~~20.125.1~~ WVSOM must maintain for a period of seven years records of:<sup>220</sup>

~~20.1.1 Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under 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;~~<sup>221</sup>

~~20.1.2 Any appeal and the result therefrom;~~<sup>222</sup>

25.1.1 Each complaint of sex discrimination, records documenting the grievance procedures under § 106.45, and if applicable § 106.46, and the resulting outcome.<sup>223</sup>

25.1.2 For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or the Title IX regulations, records documenting the actions WVSOM took to meet its obligations under § 106.44.<sup>224</sup>

~~20.1.3 All materials used to train Title IX Coordinators, investigators, and decision makers. WVSOM must provide training as outlined in Section 8. WVSOM shall make these training materials publically available on its website.~~<sup>225</sup>

~~20.2 For each response required under Section 9 through Section 11 above, WVSOM must create, and maintain upon request 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.~~<sup>226</sup>

~~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.~~<sup>227</sup>

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 inspection by members of the known circumstances.<sup>228</sup>

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<sup>219</sup> 106.44(j)(5).

<sup>220</sup> ~~106.45(b)(10)(i)(8)(f).~~

<sup>221</sup> ~~106.45(b)(10)(i)(A).~~

<sup>222</sup> ~~106.45(b)(10)(i)(B).~~

<sup>223</sup> 106.8(f)(1).

<sup>224</sup> 106.8(f)(2).

<sup>225</sup> ~~106.45(b)(10)(i)(D).~~

<sup>226</sup> ~~106.45(b)(10)(ii).~~

<sup>227</sup> ~~106.45(b)(10)(ii).~~

<sup>228</sup> ~~106.45(b)(10)(ii).~~

~~20.2.325.1.3 The documentation of certain bases or measures does not limit WVSOM in the future from providing additional explanations or detailing additional measures taken public.~~<sup>229</sup>

## ~~GA-14-21.~~GA 14-26. Retaliation

~~21.1.26.1~~ Retaliation, including peer retaliation, is prohibited in WVSOM's education program or activity.<sup>230</sup>

~~26.1.1~~ Peer retaliation is retaliation by a student against another student.<sup>231</sup>

~~21.1.126.1.2~~ Neither WVSOM nor other person may intimidate, threaten, coerce, or discriminate against any ~~individual~~person 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.<sup>232</sup>

~~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.<sup>233</sup>

~~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.<sup>234</sup>

~~21.1.4~~ Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required under Section 7 above.<sup>235</sup>

### ~~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.<sup>236</sup>

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<sup>229</sup> ~~106.45(b)(10)(ii)(f)(3).~~

<sup>230</sup> ~~106.71(a).~~

<sup>231</sup> ~~106.2.~~

<sup>232</sup> ~~106.71(a).2.~~

<sup>233</sup> ~~106.71(a).~~

<sup>234</sup> ~~106.71(a).~~

<sup>235</sup> ~~106.71(a).~~

<sup>236</sup> ~~106.71(b)(1).~~

~~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.<sup>237</sup>~~

26.1.3 Upon receiving a complaint alleging retaliation, WVSOM shall initiate its grievance procedures under § 106.45, or as appropriate, an informal resolution process. When retaliation complaints are consolidated with a complaint of sex-based harassment involving a student complainant or student respondent, the grievance procedures initiated by the consolidated complaint shall comply with the requirements of both § § 106.45 and 106.46.<sup>238</sup>

### ~~GA-14-22.~~GA 14-27. 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 14-28. Pregnancy or Related Conditions and Pre-Employment Inquiries

WVSOM shall not adopt or implement any policy, practice, or procedure concerning a student's or employee's current, potential, or past parental, family, or marital status that treats students or employees differently on the basis of sex.<sup>239</sup>

28.1 WVSOM shall not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions. WVSOM shall not engage in prohibited discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education program or activity and will ensure that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.<sup>240</sup>

28.2 Upon notice of a student's pregnancy or related condition, the Title IX Coordinator shall take specific actions to effectively prevent sex discrimination and ensure equal access to WVSOM's education program or activity. These specific actions include:

28.2.1 Provide the student, and if applicable, the person who notified the Title IX Coordinator of the student's pregnancy or related condition and has a legal right to act on behalf of the student, with WVSOM's notice of nondiscrimination.<sup>241</sup>

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<sup>237</sup> ~~106.71(b)(2).~~

<sup>238</sup> 106.71.

<sup>239</sup> 106.40(a) & 106.57(b).

<sup>240</sup> 106.40(b)(1).

<sup>241</sup> 106.40(b)(3)(i).

28.2.2 Make reasonable modifications to WVSOM’s policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to WVSOM’s education program or activity. Each reasonable modification must be based on the student’s individualized needs. WVSOM shall consult with the student to determine what modifications are required. Modifications that fundamentally alter the nature of WVSOM’s education program or activity are not reasonable.<sup>242</sup>

- (i) The student has discretion to accept or decline each reasonable modification offered by WVSOM. When the student accepts the offered reasonable modification, WVSOM shall implement it.<sup>243</sup>
- (ii) Reasonable modifications may include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.<sup>244</sup>

28.2.3 WVSOM shall allow the student to voluntarily access any separate and comparable portion of WVSOM’s education program or activity.<sup>245</sup>

28.2.4 WVSOM shall allow the student to voluntarily take a leave of absence from WVSOM’s education program or activity to cover, at minimum, the period of time deemed medically necessary by the student’s licensed healthcare provider. To the extent that a student qualifies for leave under a leave policy maintained by WVSOM that allows a greater period of time than the medically necessary period, WVSOM shall permit the student to take voluntary leave under that policy instead if the student so chooses. When the student returns to WVSOM’s education program or activity, the student shall be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.<sup>246</sup>

28.2.5 WVSOM shall ensure that students and employees can access a lactation space, other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.<sup>247</sup>

28.2.6 WVSOM must not require supporting documentation unless the documentation is necessary and reasonable for WVSOM to determine the reasonable modifications to make or whether to take additional specific actions. Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to, when the student’s need for a specific action is obvious, such as when

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<sup>242</sup> 106.40(b)(3)(ii)(A).

<sup>243</sup> 106.40(b)(3)(ii)(B).

<sup>244</sup> 106.40(b)(3)(ii)(C).

<sup>245</sup> 106.40(b)(3)(iii).

<sup>246</sup> 106.40(b)(3)(iv).

<sup>247</sup> 106.40(b)(3)(v) & 106.57(e)(2).

a student who is pregnant needs a bigger uniform; when the student has previously provided WVSOM with sufficient supporting documentation; when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the specific action is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.<sup>248</sup>

28.2.7 WVSOM shall treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy WVSOM administers, operates, offers, or participates in with respect to students admitted to WVSOM's education program or activity.<sup>249</sup>

28.2.8 WVSOM shall not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in WVSOM's class, program, or extracurricular activity unless:

- (i) The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity,
- (ii) WVSOM requires such certification of all students participating in the class, program, or extracurricular activity; and
- (iii) The information obtained is not used as a basis for discrimination prohibited by the Title IX regulations.<sup>250</sup>

28.2.9 WVSOM shall not adopt or implement any policy, practice, or procedure, to take any employment action, on the basis of sex:<sup>251</sup>

- (i) Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently.<sup>252</sup>
- (ii) That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.<sup>253</sup>

28.2.10 WVSOM shall treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.<sup>254</sup>

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<sup>248</sup> 106.40(b)(3)(vi).

<sup>249</sup> 106.40(b)(4).

<sup>250</sup> 106.40(b)(5).

<sup>251</sup> 106.57(a).

<sup>252</sup> 106.57(a)(1).

<sup>253</sup> 106.57(a)(2).

<sup>254</sup> 106.57(c).

28.2.11 Where WVSOM does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, WVSOM shall treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.<sup>255</sup>

28.2.12 WVSOM shall provide reasonable break time for an employee to express breast milk or breastfeed as needed.<sup>256</sup>

28.2.13 WVSOM shall not make pre-employment inquiries as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.”<sup>257</sup>

28.2.14 WVSOM may ask an applicant for employment to self-identify their sex, but only when the question is asked of all applicants and the response is not used as a basis for discrimination prohibited by Title IX or the Title IX regulations.<sup>258</sup>

#### **GA-14-23.GA 14-29. Federal Timely Warning Obligations**

Victims of ~~sexual~~sex-based 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.GA 14-30. 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.

#### **GA-14-25.GA 14-31. 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.GA 14-32. Superseding Provisions**

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<sup>255</sup> 106.57(d).

<sup>256</sup> 106.57(e)(1).

<sup>257</sup> 106.60(a).

<sup>258</sup> 106.60(b).

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.

### **GA 14-33. Revision of this Policy**

This policy succeeds any previous policy addressing sex discrimination for incidents occurring on or after August 1, 2024. The Title IX Coordinator will regularly review and update this policy. WVSOM reserves the right to make changes to this document as necessary and will follow the policy approval process to make necessary changes. If governing laws or regulations change or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent governing laws or regulations or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.