



PROCEDURE FOR INSTITUTIONAL POLICY GA-14: TITLE IX, SEXUAL HARASSMENT, AND DISCRIMINATION

1. PURPOSE

- 1.1 In accordance with the Title IX regulations, the purpose of these grievance procedures is to set forth the process by which Institutional Policy GA-14: Title IX, Sexual Harassment, and Discrimination will be implemented.
- 1.2 These grievance procedures provide for the prompt and equitable resolution of student and employee complaints, including formal complaints as defined in these grievance procedures, alleging any action that would be prohibited by the Title IX regulations.¹

2. APPLICABILITY

- 2.1 These grievance procedures apply² to applicants for admission and employment, students, and employees of WVSOM concerning sexual harassment in an education program or activity of WVSOM,³ whether on or off campus.
- 2.2 The requirements set forth in these grievance procedures apply only to sex discrimination occurring against a person in the United States.⁴
- 2.3 WVSOM shall provide to its applicants for admission and employment, students, and employees notice of these grievance procedures and grievance process set forth herein, including the following:
 - 2.3.1 How to report or file a complaint of sex discrimination,
 - 2.3.2 How to report or file a formal complaint of sexual harassment, and
 - 2.3.3 How WVSOM will respond.⁵
- 2.4 Where a grievance process involves more than one complainant or more than one respondent, reference in these grievance procedures to the singular "party," "complainant," or "respondent" include the plural, as applicable.⁶

3. DEFINITIONS

For purposes of these grievance procedures, the terms used in herein have the meanings assigned to them in Institutional Policy GA-14: Title IX, Sexual Harassment, and Discrimination.

4. TITLE IX COORDINATOR

- 4.1 WVSOM has designated and authorized Leslie Bicksler, Vice President of Human Resources, as Interim Title IX Coordinator to coordinate WVSOM's efforts to comply with its responsibilities under Title IX, 34 C.F.R. § 106,⁷ and other federal and state sex discrimination and sexual harassment laws. The Interim Title IX Coordinator's contact information⁸ is as follows:

¹ 106.8(c).

² 106.8(a).

³ 106.44(a).

⁴ 106.8(d).

⁵ 106.8(c).

⁶ 106.45(b)(4).

⁷ 106.8(a).

⁸ 106.8(a).

Campus office address: Room A230 Main Building
E-mail address: lbicksler@osteo.wvsom.edu
Title IX report/complaint email address: TitleIX@osteo.wvsom.edu
Office telephone number: (304) 647-6279

- 4.2 WVSOM may designate and authorize designee(s) to serve as Title IX Coordinator in the absence of the Vice President of Human Resources. 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 2 above.⁹

5. REPORTING OF SEX DISCRIMINATION

- 5.1 Sex discrimination, including sexual harassment, is prohibited. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator in Section 4.1 above, 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.¹⁰
- 5.2 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.

6. RESPONSE TO NOTICE OF SEXUAL HARASSMENT

- 6.1 Reports of sexual harassment or allegations of sexual harassment should be made promptly as follows:
- 6.1.1 Reports should be made to the Title IX Coordinator. The Title IX Coordinator is designated to formally investigate notice of sexual harassment or allegations of sexual harassment. Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator constitutes actual knowledge of WVSOM, as defined in Institutional Policy GA-14, Section 4.1.
 - 6.1.2 Reports of violations involving the Title IX Coordinator should be made to the Vice President for Academic Affairs/Dean.
 - 6.1.3 Reports of violations involving the Vice President for Academic Affairs/Dean should be made to the President of WVSOM.
 - 6.1.4 Reports of violations involving the President of WVSOM should be made to the Chair of the WVSOM Board of Governors.
 - 6.1.5 If the President or any Vice President of WVSOM, who are officials of WVSOM who have authority to institute corrective measures on behalf of WVSOM, receive notice of sexual harassment or allegations of sexual harassment, such notice constitutes actual knowledge of WVSOM, as defined in Institutional Policy GA-14, Section 4.1. Such official must promptly report the sexual harassment or allegations of sexual harassment to the Title IX Coordinator.
- 6.2 If a reporting individual believes that an immediate threat of harm exists to self or others or that an individual has violated federal, state, or local law, the reporting individual should immediately contact law enforcement.

⁹ 106.8(a) & 106.8(b)(2).

¹⁰ 106.8(a).

- 6.3 The Title IX Coordinator, or other applicable administrator listed in Section 6.1 above or his/her designee, shall promptly contact the complainant to:
- 6.3.1 Discuss the availability of supportive measures, as defined in Institutional Policy GA-14, Section 4.9;
 - 6.3.2 Consider the complainant's wishes with respect to supportive measures;
 - 6.3.3 Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
 - 6.3.4 Explain to the complainant the process for filing a formal complaint.¹¹
- 6.4 *Supportive measures.* Supportive measures, as defined in Institutional Policy GA-14, Section 4.9, are designed to restore or preserve equal access to WVSOM's education program or activity.
- 6.4.1 The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. The Title IX Coordinator shall implement initial supportive measures upon actual knowledge of sexual harassment that falls under the scope of Institutional Policy GA-14. Supportive measures are available to complainants and respondents.¹²
 - 6.4.2 Supportive measures are intended to address the short-term effects of sexual harassment, i.e., to redress harm to the alleged victim and the community and to attempt to prevent further violations. Supportive measures may include, but are not limited to:
 - a. Referral to counseling and health services;
 - b. Education to the WVSOM community;
 - c. Altering work arrangements for employees;
 - d. Increased security and monitoring of certain areas of campus;
 - e. Implementing contact limitations between the parties, including mutual no contact;
 - f. Offering adjustments to academic deadlines, course schedules, leaves of absence, etc.
 - 6.4.3 WVSOM will maintain as confidential, to the extent possible, any supportive measures, provided confidentiality does not impair WVSOM's ability to provide the supportive measures.
- 6.5 Should WVSOM have actual knowledge, as defined in Institutional Policy GA-14, Section 4.1, of sexual harassment in an education program or activity of WVSOM against a person in the United States, WVSOM shall respond in a manner that is not deliberately indifferent. WVSOM would be deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.¹³
- 6.6 WVSOM's response must treat complainants and respondents equitably by offering supportive measures, as defined in Institutional Policy GA-14, Section 4.9, to a complainant. WVSOM must follow the grievance process set forth in this Title IX grievance procedure before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.¹⁴
- 6.7 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.
- 6.8 With or without a formal complaint, WVSOM must comply with its response to notice of sexual harassment requirements set forth in this Section 6.

¹¹ 106.44(a).

¹² 106.45(b)(1)(ix).

¹³ 106.44(a).

¹⁴ 106.44(a).

7. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

7.1 *Emergency removal.* WVSOM may remove a respondent from WVSOM's education program or activity on an emergency basis, provided that WVSOM:

- 7.1.1 Undertakes an individualized safety and risk analysis;
- 7.1.2 Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
- 7.1.3 Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.¹⁵

7.2 *Administrative leave.* WVSOM may place a non-student employee respondent on administrative leave during the pendency of the grievance process for formal complaints of sexual harassment.¹⁶

8. FILING OF AND RESPONSE TO A FORMAL COMPLAINT

8.1 Formal complaints of sexual harassment or allegations of sexual harassment must be filed with the Title IX Coordinator. Individuals wishing to file a formal complaint are encouraged to complete a Sexual Harassment Complaint Form, which may be obtained from the Office of Student Affairs, the Office of Human Resources, or on the WVSOM website. If requested, the Title IX coordinator shall provide assistance in completing the form.

8.2 Formal complaints should be submitted to the Title IX Coordinator as soon as possible after the incident. If a formal complaint is against the Title IX Coordinator, Vice President for Academic Affairs/Dean, President, or Chair of the WVSOM Board of Governors, then the formal complaint shall be submitted to the appropriate administrator specified in Section 6.1 above, who will immediately designate investigators to begin an investigation consistent with these grievance procedures.

8.3 WVSOM may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.¹⁷

8.4 WVSOM will investigate the allegations in a formal complaint.¹⁸ Upon receipt of a formal complaint, the Title IX Coordinator, or other applicable administrator listed in Section 6.1 above or his/her designee, must provide the following written notice to the parties who are known:¹⁹

8.4.1 Notice of WVSOM's grievance process set forth in this procedure.²⁰

8.4.2 Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in Institutional Policy GA-14, Section 4.8, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.²¹

- a. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment as defined in Institutional Policy GA-14, Section 4.8, and the date and location of the alleged incident, if known.

¹⁵ 106.44(c).

¹⁶ 106.44(d).

¹⁷ 106.45(b)(4).

¹⁸ 106.45(b)(3)(i).

¹⁹ 106.45(b)(2).

²⁰ 106.45(b)(2)(A).

²¹ 106.45(b)(2)(B).

- b. 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.
 - c. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under Section 8.8.3 below, and may inspect and review evidence under Section 8.5.10 below.
 - d. The written notice must inform the parties of any provision of WVSOM's code of conduct, handbook, or policy or procedure that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.²²
- 8.5 Upon receipt of a formal complaint, the Title IX Coordinator shall appoint trained Title IX investigators, typically using a team of two investigators, to conduct a prompt, fair, thorough, reliable, and impartial investigation. The investigators shall:
- 8.5.1 Determine the identity and contact information of the reporting party;
 - 8.5.2 Recommend to the Title IX Coordinator the initiation and, on an ongoing basis throughout the investigation, monitoring and modification, as needed, of any necessary supportive measures as detailed in Institutional Policy GA-14, Section 4.9;
 - 8.5.3 Identify the exact policy provisions allegedly violated;
 - 8.5.4 Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the responding party and what policy violation(s) should be alleged as part of the charge; if there is insufficient evidence to support reasonable cause, the report should be closed with no further action pursuant to Section 9 below;
 - 8.5.5 Meet with the reporting party to finalize their formal complaint, if needed;
 - 8.5.6 Prepare the notice of charges on the basis of the initial inquiry;
 - 8.5.7 Provide the person impacted and the accused individual with notice of investigation;
 - 8.5.8 Commence a prompt, fair, thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party; both the person impacted and the accused individual shall have the equal opportunity to provide witnesses, including fact and expert witnesses and other inculpatory and exculpatory evidence to the investigators during the investigation;
 - 8.5.9 Provide regular updates to the person impacted and the accused individual, as appropriate, throughout the investigation; and
 - 8.5.10 Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which WVSOM does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.²³
 - a. Prior to completion of the investigative report, WVSOM must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 calendar days to submit a written

²² 106.45(b)(2)(B).

²³ 106.45(b)(5)(vi).

response, which the investigator will consider prior to completion of the investigative report.²⁴

- b. 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.²⁵

8.5.11 Complete the investigation promptly.

8.5.12 Create an investigative report that fairly summarizes relevant evidence and, at least 10 calendar 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.²⁶

8.6 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 8.4 above, WVSOM must provide notice of the additional allegations to the parties whose identities are known.

8.7 The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests 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 the grievance process set forth in this procedure. If a party is not an "eligible student" as 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. § 99.3.²⁷

8.8 When investigating a formal complaint and throughout the grievance process set forth in this procedure, WVSOM shall:²⁸

8.8.1 Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.²⁹

8.8.2 Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.³⁰

8.8.3 Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, WVSOM may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.³¹

8.8.4 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.³²

²⁴ 106.45(b)(5)(vi).

²⁵ 106.45(b)(5)(vi).

²⁶ 106.45(b)(5)(vii).

²⁷ 106.45(b)(5)(i).

²⁸ 106.45(b)(5).

²⁹ 106.45(b)(5)(ii).

³⁰ 106.45(b)(5)(iii).

³¹ 106.45(b)(5)(iv).

³² 106.45(b)(5)(v).

- 8.8.5 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 the grievance process set forth in this procedure before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to WVSOM's education program or activity. Such remedies may include the same individual services described in the definition of "supportive measures" above; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.³³
 - 8.8.6 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.³⁴
 - 8.8.7 Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.³⁵
 - 8.8.8 Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.³⁶
 - 8.8.9 Ensure that the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard and that the standard is used for formal complaints of sexual harassment against either students or employees, including faculty.³⁷
 - 8.8.10 Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.³⁸
- 8.9 WVSOM's administrative investigation and resolution process set forth in these grievance procedures is entirely separate from a criminal investigation or proceeding undertaken by law enforcement. WVSOM's resolution will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. However, WVSOM may undertake a short delay (several days to a few weeks, but typically no longer than 10 calendar days) in its investigation or resolution process, to comply with a law enforcement request for cooperation (e.g., to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated.

9. DISMISSAL OF A FORMAL COMPLAINT

- 9.1 After investigating the allegations in a formal complaint, WVSOM must dismiss the formal complaint, or applicable allegations therein, for purposes of Title IX or the Title IX regulations, if:
 - 9.1.1 The conduct alleged in the formal complaint would not constitute sexual harassment as defined in Institutional Policy GA-14, Section 4.8, even if proved;
 - 9.1.2 The conduct did not occur in WVSOM's education program or activity; or

³³ 106.45(b)(1)(i).

³⁴ 106.45(b)(1)(ii).

³⁵ 106.45(b)(1)(iv).

³⁶ 106.45(b)(1)(v).

³⁷ 106.45(b)(1)(vii).

³⁸ 106.45(b)(1)(x).

- 9.1.3 The conduct did not occur against a person in the United States.³⁹
- 9.2 A dismissal under Section 9.1 above does not preclude action under another provision of WVSOM's code of conduct, handbook, or policy or procedure.⁴⁰
- 9.3 WVSOM may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:⁴¹
 - 9.3.1 A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - 9.3.2 The respondent is no longer enrolled or employed by WVSOM; or
 - 9.3.3 Specific circumstances prevent WVSOM from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.⁴²
- 9.4 Upon a dismissal required or permitted pursuant to Sections 9.1 or 9.3 above, WVSOM must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.⁴³

10. HEARINGS

- 10.1 No sooner than 10 calendar days after the parties and their advisors, if any, receive the investigative report⁴⁴ pursuant to Section 8.5.12 above, WVSOM must provide the parties a live hearing.⁴⁵
- 10.2 The live hearing shall be conducted by a panel of decision-makers, who shall include the Vice President for Academic Affairs and Dean, the Vice President of Human Resources, and the Vice President for Finance and Facilities, or in their absence or in the event of a conflict, their designee(s) as determined by the President ("Decision-Making Panel").
- 10.3 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.⁴⁶
- 10.4 At the request of either party, WVSOM must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Decision-Making Panel and parties to simultaneously see and hear the party or the witness answering questions.⁴⁷
- 10.5 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.⁴⁸
- 10.6 The live hearing shall be conducted as follows:
 - 10.6.1 The Decision-Making Panel shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.⁴⁹

³⁹ 106.45(b)(3)(i).

⁴⁰ 106.45(b)(3)(i).

⁴¹ 106.45(b)(3)(ii).

⁴² 106.45(b)(3)(ii).

⁴³ 106.45(b)(3)(iii).

⁴⁴ 106.45(b)(5)(vii).

⁴⁵ 106.45(b)(6)(i).

⁴⁶ 106.45(b)(6)(i).

⁴⁷ 106.45(b)(6)(i).

⁴⁸ 106.45(b)(6)(i).

⁴⁹ 106.45(b)(6)(i).

- 10.6.2 All cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice. No party is permitted to personally conduct cross-examination.⁵⁰
- 10.6.3 Only relevant cross-examination and other questions may be asked of a party or witness.⁵¹ Before a complainant, respondent, or witness answers a cross-examination or other question, the Decision-Making Panel shall first determine whether the question is relevant and explain any decision to exclude a question as not relevant.⁵²
- 10.6.4 If a party or witness does not submit to cross-examination at the live hearing, the Decision-Making Panel cannot rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Decision-Making Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.⁵³
- 10.6.5 Questions and evidence about the complainant's sexual predisposition or prior sexual behavior is not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- 10.6.6 The Decision-Making Panel may ask questions of any party or witness at any time.
- 10.6.7 WVSOM must create an audio or audiovisual recording, or transcript, of the live hearing and make it available to the parties for inspection and review.⁵⁴

11. DETERMINATION REGARDING RESPONSIBILITY

- 11.1 To reach a determination, the Decision-Making Panel must apply the preponderance of the evidence standard.⁵⁵
- 11.2 The Decision-Making Panel must issue a written determination regarding responsibility,⁵⁶ which shall include the following:⁵⁷
- 11.2.1 Identification of the allegations potentially constituting sexual harassment as defined in Institutional Policy GA-14, Section 4.8;⁵⁸
- 11.2.2 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;⁵⁹
- 11.2.3 Findings of fact supporting the determination;⁶⁰
- 11.2.4 Conclusions regarding the application of WVSOM's code of conduct, handbooks, and/or policies and procedures to the facts;⁶¹

⁵⁰ 106.45(b)(6)(i).

⁵¹ 106.45(b)(6)(i).

⁵² 106.45(b)(6)(i).

⁵³ 106.45(b)(6)(i).

⁵⁴ 106.45(b)(6)(i).

⁵⁵ 106.45(b)(7)(i).

⁵⁶ 106.45(b)(7)(i).

⁵⁷ 106.45(b)(7)(ii).

⁵⁸ 106.45(b)(7)(ii)(A).

⁵⁹ 106.45(b)(7)(ii)(B).

⁶⁰ 106.45(b)(7)(ii)(C).

⁶¹ 106.45(b)(7)(ii)(D).

- 11.2.5 A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions WVSOM imposes on the respondent consistent with Section 11.3 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;⁶² and
- 11.2.6 WVSOM's procedures and permissible bases for the complainant and respondent to appeal, as set forth in Section 12 below.⁶³
- 11.3 Sanctions may be imposed upon any person under WVSOM's jurisdiction who is found to have violated WVSOM's Institutional Policy GA-14: Title IX, Sexual Harassment, and Discrimination, or these grievance procedures. Any employee or student who is found to have violated Institutional Policy GA-14 or these grievance procedures will be subject to administrative action, up to and including termination of employment or dismissal from WVSOM, as applicable.
- 11.3.1 Typical student sanctions that may be imposed singly or in combination include, but are not limited to the following:
- a. Admonition
 - b. Warning
 - c. Disciplinary Probation
 - d. Restitution
 - e. Suspension
 - f. Expulsion
- 11.3.2 Typical employee sanctions that may be imposed singly or in combination include, but are not limited to the following:
- a. Discussion
 - b. Verbal Warning
 - c. Written Warning
 - d. Suspension
 - e. Termination of Employment
- 11.3.3 Any person found responsible for violating the sexual harassment prohibitions in Institutional Policy GA-14 or these grievance procedures 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.
- 11.3.4 The range of sanctions may be broadened or lessened in the case of serious mitigating circumstances or egregiously offensive behavior. WVSOM will not deviate from the range of recommended sanctions unless compelling justification exists to do so.
- 11.3.5 These grievance procedures should not be interpreted as amending or affecting the requirements set forth in the West Virginia Public Employees Grievance Board Procedures.
- 11.4 The Decision-Making Panel or its designee must provide the written determination to the parties simultaneously.

⁶² 106.45(b)(7)(ii)(E).

⁶³ 106.45(b)(7)(ii)(F).

11.5 The Title IX Coordinator is responsible for effective implementation of any remedies set forth in the Decision-Making Panel's written determination.⁶⁴

12. APPEALS

12.1 Both parties may appeal WVSOM's dismissal of a formal complaint or any allegations therein and the Decision-Making Panel's written determination regarding responsibility.

12.2 Appeals may only be considered on the following bases:⁶⁵

12.2.1 A procedural irregularity that affected the outcome of the matter;⁶⁶

12.2.2 New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;⁶⁷ and

12.2.3 The Title IX Coordinator, investigator(s), or a member of the Decision-Making Panel had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.⁶⁸

12.3 The party requesting the appeal has the burden of proving the error, as the Decision-Making Panel's written determination regarding responsibility is presumed to have been decided reasonably and appropriately.

12.4 A party wishing to appeal under Section 12.1 above must submit a written, signed appeal to the President of WVSOM ("Appeals Officer") within five (5) business days of receiving the dismissal or the written determination regarding responsibility, as applicable. If the complaint is against the President, the party wishing to appeal must submit the written, signed appeal to the Chair of the WVSOM Board of Governors, who will immediately designate a person to assume the duties of Appeals Officer. The appeal must either be hand-delivered or emailed in pdf format to the Appeals Officer or designee.

12.5 When an appeal is filed, the Appeals Officer or designee must:

12.5.1 Notify the other party in writing of the appeal;

12.5.2 Provide a copy of the written appeal to that party; and

12.5.3 Provide that party an opportunity to respond in writing to the appeal. For a response to be considered, the response must be:

a. In writing, signed by the responding party;

b. Hand-delivered or emailed in pdf format to the Appeals Officer or designee; and

c. Received by the Appeals Officer or designee within five (5) business days of the responding party's receipt of the written appeal.

12.6 The Appeals Officer will then review all appeals and responses to determine if the appeal request meets the limited grounds set forth in Section 12.2 above and is timely as required by Section 12.4 above.

12.6.1 If the appeal does not meet the limited grounds or is untimely, the Appeals Officer will dismiss the appeal. In such case, the Decision-Making Panel's written determination regarding responsibility will stand and the decision is final.

⁶⁴ 106.45(b)(7)(iv).

⁶⁵ 106.45(b)(8)(i).

⁶⁶ 106.45(b)(8)(i)(A).

⁶⁷ 106.45(b)(8)(i)(B).

⁶⁸ 106.45(b)(8)(i)(C).

12.6.2 If the appeal does meet the limited grounds and is timely, the Appeals Officer will consider the appeal.

12.7 Within ten (10) business days of the deadline for submitting a response to the Appeals Officer, the Appeals Officer will simultaneously⁶⁹ provide to both parties a written Memorandum of Decision describing the result of the appeal and the rationale for the result.⁷⁰

12.7.1 If the Appeals Officer determines that a procedural irregularity affected the outcome of the matter, the Appeals Officer shall return the matter to the Decision-Making Panel to correct the irregularity. Correcting the irregularity may require a new investigation, a new hearing, or other steps as the Appeals Officer deems appropriate. In any such case, the Decision-Making Panel shall issue a new written determination regarding responsibility.

12.7.2 If the Appeals Officer determines that new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter, the Appeals Officer shall return the matter to the original investigators or the Decision-Making Panel, as the Appeals Officer deems appropriate, to reconsider in light of the new evidence only. Consideration of the new evidence may require a new investigation, a new hearing, or other steps as the Appeals Officer deems appropriate. In any such case, the Decision-Making Panel shall issue a new written determination regarding responsibility.

12.7.3 If the Appeals Officer determines that the Title IX Coordinator, investigator(s), or a member of the Decision-Making Panel had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter, then the Appeals Officer may order a new investigation on the complaint with new investigators, a new hearing with a new member or members of the Decision-Making Panel, or other steps as the Appeals Officer deems appropriate. In any such case, the Decision-Making Panel shall issue a new written determination regarding responsibility.

12.8 As to all appeals, the Appeals Officer or designee must:⁷¹

12.8.1 Apply the appeals procedures set forth in these grievance procedures equally for both parties;⁷²

12.8.2 Comply with the conflict of interest/bias and training standards set forth in Institutional Policy GA-14, Section 12.3;⁷³

12.8.3 Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the Decision-Making Panel;⁷⁴

13. DATE DETERMINATION OF RESPONSIBILITY BECOMES FINAL

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.⁷⁵

14. CONFLICTS OF INTEREST, BIAS, AND REQUIRED TRAINING

14.1 *Conflicts of interest; bias prohibited.* WVSOM shall require that any individual designated by WVSOM as a Title IX Coordinator, investigator, or member of the Decision-Making Panel not have a conflict of

⁶⁹ 106.45(b)(8)(iii)(F).

⁷⁰ 106.45(b)(8)(iii)(E), (F).

⁷¹ 106.45(b)(8)(iii).

⁷² 106.45(b)(8)(iii)(A).

⁷³ 106.45(b)(8)(iii)(C).

⁷⁴ 106.45(b)(8)(iii)(D).

⁷⁵ 106.45(b)(7)(iii).

interest or bias for or against complainants or respondents generally or an individual complainant or respondent as required by Institutional Policy GA-14, Section 12.3.⁷⁶

14.2 *Training required.* WVSOM shall ensure that the Title IX Coordinator, investigators, and members of the Decision-Making Panel receive all necessary training as required by Institutional Policy GA-14, Section 12.3.⁷⁷

15. RECORDKEEPING

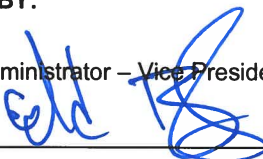
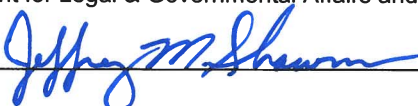
WVSOM shall maintain for a period of seven years all records required under Institutional Policy GA-14, Section 20.⁷⁸

16. RETALIATION

Complaints alleging retaliation, as described in Institutional Policy GA-14, Section 21, may be filed according to the notification and complaint process set forth in these grievance procedures.⁷⁹

17. CONFIDENTIALITY

WVSOM shall 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.⁸⁰

Procedure Title: <u>Procedure for Institutional Policy GA-14: Title IX, Sexual Harassment, and Discrimination</u>	
Effective Date: <u>September 2, 2022</u>	Time: <u>5:00 p.m.</u>
APPROVED BY:	
Approving Administrator – Vice President for Administration and External Relations: 	Date: <u>02 Sept 2022</u>
Vice President for Legal & Governmental Affairs and General Counsel: 	Date: <u>09-02-2022</u>

⁷⁶ 106.45(b)(1)(iii).

⁷⁷ 106.45(b)(1)(iii).

⁷⁸ 106.45(b)(10)(i).

⁷⁹ 106.71(a).

⁸⁰ 106.71(a).