



INSTITUTIONAL POLICY: GA-14

Category:	General Administration
Subject:	Equal Opportunity, Nondiscrimination, Sexual Misconduct, and Other Forms of Harassment
Effective Date:	October 2, 2017
Updated:	February 26, 2018

GA 14-1. Authority

W. Va. Code § 18B-1-6

GA 14-2. Definitions

- 2.1 “Bullying” means repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a Protected Category.
- 2.2 “Consent” means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.
- 2.3 “Dating Violence/Domestic Violence/Intimate Partner Violence” means violence between those in an intimate relationship to each other, including dating, domestic and/or relationship violence.
- 2.4 “Discrimination” means actions that deprive others of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a Protected Category.
- 2.5 “EEO/Equity/AA/ADA/504 Coordinator” means the Associate Vice President of Human Resources, who serves as the Equal Employment Opportunity/Equity/Affirmative Action Coordinator and the Americans with Disabilities Act/504 Coordinator and oversees implementation of WVSOM’s Affirmative Action and Equal Opportunity plan, disability compliance, and WVSOM’s policy on discrimination and harassment.
- 2.6 “Hazing” means acts likely to cause physical or psychological harm or social ostracism to any person within the WVSOM community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity on the basis of actual or perceived membership in a Protected Category.
- 2.7 “Hostile Environment” means an environment created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent, or pervasive and objectively offensive so as to interfere with, limit, or deny the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits, or opportunities.

- 2.8 “Incapacitation” means as a state where a person cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent (e.g., to understand the who, what, when, where, why or how of his or her sexual interaction).
- 2.9 “Intimidation” means implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a Protected Category.
- 2.10 “Minor” means a person under the age of 16 years.
- 2.11 “Non-Consensual Sexual Contact” means any intentional Sexual Touching, however slight, with any object, by a person upon another person, that is without consent and/or by force.
- 2.12 “Non-Consensual Sexual Intercourse” means any Sexual Penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force.
- 2.13 “Protected Category” means a category under which an individual falls or is perceived to fall that is protected under federal, state, or local anti-discrimination laws, such as race, ethnicity, color, religion, sex (including pregnancy), gender, gender identity, sexual orientation, national origin, age, marital status, veteran or military status, disability, or genetic information.
- 2.14 “Retaliation” means any adverse action that unreasonably interferes with an individual’s educational or work experience or performance taken against a person who complained about , supported an individual involved in the complaint process concerning , or assisted in providing information relevant to any act prohibited by this policy because of that person’s participation in filing such complaint, support of such individual involved in the complaint process, or for assistance in providing such information.
- 2.15 “Sexual Exploitation” means a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact. The term includes, but is not limited to, the following situations:
- 2.15.1 Sexual voyeurism, such as watching a person undressing, using the bathroom or engaging in sexual acts without the consent of the person observed;
- 2.15.2 Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent, such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent;
- 2.15.3 Deriving financial or related benefit from the prostitution of another;
- 2.15.4 Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection; and

- 2.15.5 Administering alcohol or drugs (such as date rape drugs) to another person without his or her knowledge or consent for the purpose of engaging in sexually-related activity with that person.
- 2.16 “Sexual Harassment” means any unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual or gendered nature. A form of sexual harassment occurs when submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or academic status, submission to or rejection of such conduct by an individual is used as the basis of employment or academic decisions affecting such individual, or such conduct creates a Hostile Environment.
- 2.17 “Sexual Penetration” means vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.
- 2.18 “Sexual Touching” means any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.
- 2.19 “Stalking” means a course of conduct (i.e., repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of another) directed at a specific person that is unwelcome and would cause a reasonable person to feel fear.
- 2.20 “Title IX” means Title IX of the Education Amendments of 1972, including its implementing regulations, which prohibits discrimination based on sex in education programs and activities at educational institutions that receive federal financial assistance.
- 2.21 “Title IX Coordinator” means the Assistant Dean of Student Affairs who is responsible for coordinating WVSOM’s compliance with federal and state sex discrimination and sexual harassment laws and whose general responsibilities include providing educational programs regarding sex discrimination and sexual harassment prevention; responding to, investigating, and seeking resolution to allegations of sex discrimination and sexual harassment; overseeing all Title IX complaints and reports of sexual misconduct, including sex discrimination and sexual harassment, as they impact students, employees, or the academic/work environment.

GA 14-3. General Provisions

- 3.1 The West Virginia School of Osteopathic Medicine (“WVSOM”) is committed to promoting the goals of fairness and equity in all aspects of the educational enterprise.
- 3.2 This policy applies to behaviors that take place on campus, at WVSOM sponsored events, and may also apply off-campus and to actions online when the EEO/Equity/AA/ADA/504 Coordinator or the Title IX Coordinator determines that the off-campus conduct affects a substantial WVSOM interest. A substantial WVSOM interest includes, but is not limited to, the following:
- 3.2.1 Any action that constitutes a criminal offense as defined by federal or state law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where WVSOM is located;

- 3.2.2 Any situation where it appears that the accused individual may present a danger or threat to the health or safety of him/herself or others;
 - 3.2.3 Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder;
 - 3.2.4 Any situation that is detrimental to the educational interests of WVSOM; or
 - 3.2.5 Any online postings or other electronic communication, including cyber-bullying, cyberstalking, cyber-harassment, etc. occurring within WVSOM's control (e.g. WVSOM networks, websites or between WVSOM email accounts). Any online postings or other electronic communication, including cyber-bullying, cyberstalking, cyber-harassment, etc. occurring outside of WVSOM's control jurisdiction will be investigated when those online behaviors can be shown to cause a substantial on-campus disruption.
- 3.3 Inquiries about this policy may be made internally to either Leslie Bicksler, the EEO/Equity/AA/ADA/504 Coordinator, in person in Room A230 in the "A" Building on WVSOM's campus, via telephone at (304)-647-6279, or via email at lbicksler@osteowvsom.edu, or Dr. Rebecca Morrow, the Title IX Coordinator, in person in Room B217B in "B" Building on WVSOM's campus, via telephone at (304)-793-6591, or via email at rmorrow@osteowvsom.edu, or their successors as may be designated by the President of WVSOM pursuant to Section 18 of this policy. Contact information for these individuals is also located on the WVSOM website, at <http://www.wvsom.edu>.
- 3.4 Inquiries may be made externally to the Office for Civil Rights, at <http://www.ed.gov/ocr>.

GA 14-4. WVSOM Equal Opportunity & Affirmative Action

- 4.1 WVSOM subscribes to the principles and regulations pertaining to equal opportunity and affirmative action.
- 4.2 In compliance with these regulations, WVSOM shall maintain an Equal Opportunity and Affirmative Action Committee which is chaired by the EEO/Equity/AA/ADA/504 Coordinator and advisory to the President.
- 4.3 The EEO/Equity/AA/ADA/504 Coordinator is responsible for ensuring that the affirmative action manual is completed as required and reviewed by the Equal Opportunity and Affirmative Action Committee. The affirmative action manual is located in the Office of Human Resources.

GA 14-5. Nondiscrimination

- 5.1 Pursuant to Title IX and other applicable federal, state, and local anti-discrimination laws, WVSOM will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, ethnicity, color, religion, sex (including pregnancy), gender, gender identity, sexual orientation, national origin, age, marital status, veteran or military status, disability, genetic information, or other category that is protected under federal, state, or local anti-discrimination laws.

- 5.2 This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the WVSOM community, guest or visitor who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the WVSOM community on the basis of their actual or perceived membership in a Protected Category is in violation of this policy on nondiscrimination.

GA 14-6. Accommodation of Disabilities

- 6.1 WVSOM is committed to compliance with the Americans With Disabilities Act of 1990 (“ADA”) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by WVSOM whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.
- 6.2 The EEO/Equity/AA/ADA/504 Coordinator is responsible for coordinating efforts to comply with the disability laws set forth in Section 6.1, including investigation of any employee complaint alleging noncompliance.
- 6.3 Students with Disabilities
- 6.3.1 Pursuant to the ADA, WVSOM will provide reasonable accommodations and support to all students that have a qualifying disability to ensure equal access to the programs and activities of WVSOM.
- 6.3.2 All accommodations are made on a case-by-case basis by the Associate Dean for Preclinical Education for students in Years 1 and 2 or the Associate Dean for Predoctoral Clinical Education for students in Years 3 and 4 (“the appropriate Associate Dean”). Students requesting any accommodation should contact the appropriate Associate Dean, who will review documentation provided by the student and in consultation with the student and other appropriate resources, determine which accommodation, if any, is appropriate to the student’s particular needs and programs. Accommodations for student examinations must be made pursuant to WVSOM’s policy on accommodations for examinations.
- 6.4 Employees with Disabilities
- 6.4.1 Pursuant to the ADA, WVSOM will provide reasonable accommodations to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.
- 6.4.2 An employee with a disability is responsible for requesting an accommodation in writing from his or her supervisor, who will consult with the individual and the EEO/Equity/AA/ADA/504 Coordinator to identify which essential functions are

affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

- 6.4.3 Employees requesting accommodation may be required to provide medical certification from the employee's health care provider that includes: (1) identification of the health care provider; (2) the health care provider's diagnosis of the disabling condition; (3) specific limitations and/or suggested restrictions and their relation to the disability; and (4) suggested accommodations.

GA 14-7. Discriminatory Harassment

7.1 WVSOM is committed to providing a work and educational environment free of discriminatory harassment. This harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters.

7.2 The following forms of harassment are prohibited under this policy:

7.2.1 Discriminatory and Bias-Related Harassment

- (i) Harassment constitutes a form of discrimination that is prohibited by law. This policy explicitly prohibits any form of harassment on the basis of actual or perceived membership in a Protected Category, by any member or group of the WVSOM community, which creates a Hostile Environment, both objectively and subjectively. Merely offensive conduct and/or harassment of a generic nature not on the basis of an actual or perceived membership in a Protected Category is not prohibited by this policy, and should be addressed with civil confrontation or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, contact the WVSOM Office of Human Resources. Harassment that does not rise to the level of creating a Hostile Environment is still a concern to WVSOM and should be reported so that appropriate intervention and remedies can be implemented, if needed.
- (ii) WVSOM will not tolerate discriminatory harassment against any employee, student, visitor, or guest on the basis of his or her actual or perceived membership in a Protected Category.

7.2.2 Sexual Harassment

Sexual Harassment, which applies to employer and employees and students, is a form of discrimination based on sex or gender, is an unlawful discriminatory practice, and is a violation of this policy.

GA 14-8. Additional Misconduct Offenses

8.1 Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a Protected Category;

8.2 Intimidation;

- 8.3 Hazing (see WVSOM's Institutional Policy ST-07: Antihazing);
- 8.4 Bullying;
- 8.5 Dating Violence/Domestic Violence/Intimate Partner Violence;
- 8.6 Stalking; and
- 8.7 Violating any other WVSOM policies or procedures, when such violation is motivated by the actual or perceived membership of the victim in a Protected Category.

GA 14-9. Consensual Relationships

- 9.1 There are inherent risks in any romantic or intimate relationship between individuals in unequal positions. Thus, except as otherwise provided in Section 9.2, any romantic or intimate relationships in which power differentials are inherent are prohibited, which include, but are not limited to, the following:
 - 9.1.1 relationships between students or applicants for admission and administrators, faculty, preceptors, standardized patients, or any WVSOM employee where a direct power differential exists between the student or applicant for admission and the employee;
 - 9.1.2 relationships between a WVSOM employee holding a direct or indirect supervisory and/or evaluative role over the other person in the relationship; or
 - 9.1.3 any other romantic or intimate relationship between students or applicants for admission and employees or between employees where any employment-related power differential exists between the persons in the relationship.
- 9.2 Notwithstanding the prohibitions in Section 9.1, any romantic or intimate relationship prohibited in Section 9.1 that exists prior to the creation of a power differential between the individuals involved in the romantic or intimate relationship shall not violate this policy if (i) the individuals in the relationship report the existence of the relationship as required in Section 9.4 before the power differential is created and (ii) the individuals consent to the removal of any potential power differential that could exist, which may require appropriate administrative action, including but not limited to, shifting or otherwise relocating an employee within a separate department or reporting capacity from the other individual involved in the relationship or the shifting of grading or other decision-making responsibilities of a faculty member which affect a particular student in the case of a pre-existing relationship with that student.
- 9.3 Issues may also arise in the educational setting or workplace from romantic or intimate relationships between students or applicants for admission and WVSOM employees or between WVSOM employees where a direct or indirect supervisory and/or evaluative role or other power differential does not exist between the persons in the relationship. Thus, while not prohibited, such relationships are highly discouraged.
- 9.4 If a relationship develops that falls under Sections 9.2 or 9.3, the student, applicant for admission, or employee involved in the relationship must timely report the existence and

termination, if any, of such relationship as follows: applicants for admission and students in Years 1 and 2 shall report to the Associate Dean for Preclinical Education; students in Years 3 and 4 shall report to the Associate Dean for Predoctoral Clinical Education; employees shall report to the Associate Vice President of Human Resources.

- 9.5 Once a relationship is reported under Section 9.4, the Associate Dean for Preclinical Education, the Associate Dean for Predoctoral Clinical Education, and the Associate Vice President of Human Resources, respectively, shall inform the persons involved in the relationship of WVSOM's standards concerning consensual relationships, may set parameters while the persons are on campus, and make take other steps as appropriate.
- 9.6 Persons who engage in any relationship prohibited by Section 9.1 or who engage in any relationship listed in Sections 9.2 and 9.3 and who fail to timely report shall be subject to administrative action, up to and including termination of employment or dismissal from WVSOM, as applicable.

GA 14-10. Sexual Misconduct

10.1 Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. The following acts of sexual misconduct are prohibited:

10.1.1 Sexual Harassment, as set forth in Section 7.2.2 of this policy;

10.1.2 Non-Consensual Sexual Intercourse;

10.1.3 Non-Consensual Sexual Contact; and

10.1.4 Sexual Exploitation.

10.2 Consent

10.2.1 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.

10.2.2 A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the individual initiating or furthering the sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other.

10.2.3 This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.

10.2.4 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.

10.2.5 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.

10.3 Receipt of Notice of Allegations and Complaints

10.3.1 Receipt of Notice of Allegations. Regardless of whether a complaint is filed under Section 10.3.2, if an employee of WVSOM receives notice concerning alleged sexual misconduct or other violation of this policy falling under Title IX, then that employee shall report to the Title IX Coordinator that much of the information contained in the notice as that employee is permitted to report under applicable confidentiality laws or that has not been requested by the victim to be specifically withheld, unless an immediate threat of harm exists to self or others. If known, such information should include, at a minimum, the following: the name of the person impacted by the alleged incident, the name of the accused individual, other individuals involved in the alleged incident, as well as relevant facts, including the date, time and location. Upon receipt of the notice, the Title IX Coordinator shall investigate the information contained in the notice, determine what sexual misconduct or other violation of this policy occurred, if any, and respond appropriately.

10.3.2 Filing of Complaints.

- (i) To file a complaint of sexual misconduct or other violation of this policy falling under Title IX, an employee, student, or applicant may complete a Sexual Misconduct Complaint Form. Forms may be obtained from the Office of Student Affairs, the Office of Human Resources, or on the WVSOM website. The Title IX Coordinator will provide assistance in completing the form.
- (ii) Completed Sexual Misconduct Complaint Forms shall be submitted to the Title IX Coordinator as soon as possible after the incident. If a complaint is against the Title IX Coordinator, the Sexual Misconduct Complaint Form shall be filed with the Vice President for Academic Affairs and Dean, who will immediately designate a person to begin an investigation consistent with this policy.
- (iii) A reporting party has the right, and can expect, to have reports taken seriously by WVSOM when formally reported, and to have those incidents investigated and properly resolved through this policy.

10.3.3 Handling of Victim Requests. If a victim does not wish for his or her name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, WVSOM will likely be unable to honor a request for

confidentiality. In cases where the victim requests confidentiality and the circumstances allow WVSOM to honor that request, WVSOM will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action.

10.3.4 Timeframe for Resolution

- (i) WVSOM aims to bring all allegations to a resolution within a sixty (60) calendar day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties.
- (ii) WVSOM's administrative investigation and resolution process 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.

10.4 Informal and Formal Investigation Processes

10.4.1 Informal Resolution. Before pursuing the formal resolution process set forth in Section 10.4.2 below, every reasonable effort should be made to constructively resolve conflicts with students and/or employees.

- (i) The person impacted should keep all relevant evidence of the incident, including, but not limited to, a list of persons present, dates/times of events, text messages, pictures, notes, and other written or electronic evidence to aid in any later investigation and resolution, criminal proceeding, protective order or other proceeding. The person impacted should also keep a written log that can aid in the investigation.
- (ii) Upon notice or receipt of a complaint, the Title IX Coordinator shall contact the person impacted, if known, to gather all relevant information.
- (iii) Whenever possible and safe, the problematic behavior, conflict or misconduct should first be discussed by the person impacted with the person engaged in the problematic behavior, conflict, or misconduct. The Title IX Coordinator will facilitate such conversations, upon request, and monitor them for safety. WVSOM does not require an impacted party to contact the person involved or that person's supervisor if doing so is impracticable, or if the impacted party believes that the conduct cannot be affectively addressed through informal means.
- (iv) Various conflict resolution mechanisms are available, including mediation. Mediation is not used when violent behavior is involved, when the Title IX Coordinator determines a situation is not eligible, or the parties are reluctant to participate in good faith.

- (v) If informal efforts are unsuccessful, the formal resolution process may be initiated. Either party has the right to end the informal process and begin the formal process at any time prior to resolution.

10.4.2 Formal Resolution Process. The Title IX Coordinator is designated to formally investigate notice or complaints of alleged violations of this policy.

- (i) If the reporting party or the Title IX Coordinator, based upon an alleged policy violation, wishes to pursue a formal resolution, then the Title IX Coordinator shall appoint trained Title IX investigators (typically using a team of two investigators), to conduct a prompt, thorough, reliable, and impartial investigation.
 - a. WVSOM is committed to ensuring that its resolution processes are free from actual or perceived bias or conflicts of interest that would materially impact the outcome. Any party who feels that there is actual or perceived bias or conflict of interest that would materially impact the outcome may submit a written petition for the person's removal from the process. The petition shall include specifics as to the actual or perceived bias or conflict of interest, as to why the petitioner believes the bias or conflict could materially impact the outcome. Such petitions should be made to the Title IX Coordinator, or, in the event that the potential conflict or bias involves the Title IX Coordinator, to the President.
 - b. The Title IX Coordinator, Title IX Investigators, Appeals Officer and other implementing this policy will be trained at least annually. This training will include, but is not limited to: the content of this policy; how to appropriately remedy, investigate, render findings, and determine appropriate sanctions concerning alleged violations of this policy; confidentiality and privacy; and applicable laws, regulations, and federal regulatory guidance.
 - c. The investigators shall:
 - 1. Determine the identity and contact information of the reporting party;
 - 2. Initiate and, on an ongoing basis throughout the investigation, monitor and modify, as needed, any necessary remedial actions as detailed in Section 13 below;
 - 3. Identify the exact policies allegedly violated;
 - 4. Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the responding party and what policy violations 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;
 - 5. Meet with the reporting party to finalize their statement;
 - 6. Prepare the notice of charges on the basis of the initial inquiry;
 - 7. Provide the person impacted and the accused individual with notice of investigation;

8. Commence a 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 opportunity to provide witnesses and evidence to the investigators during the investigation;
 9. Provide regular updates to the person impacted and the accused individual, as appropriate, throughout the investigation;
 10. Complete the investigation promptly; and
 11. Make a finding based on a preponderance of the evidence (whether a policy violation is more likely than not).
- (ii) The person impacted and the accused individual are each allowed to have an advisor of their choice who may assist them through the investigation process.
 - (iii) Both the reporting party and the responding party will have the opportunity to provide witnesses and evidence to the investigators during the investigation.
 - (iv) If at any point during the investigation it is determined there is no reasonable cause to believe that this policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.
 - (v) Both the person impacted and the accused individual will have the opportunity to review a summary of the evidence used to make a determination, with any necessary redactions, prior to the disposition of the complaint.
 - (vi) Upon completion of the investigation, the Title IX Coordinator shall provide a written report of investigation, which will set forth the final determination of the complaint on the basis of a preponderance of the evidence. Parties will be notified simultaneously and in writing of the disposition of the complaint and the process for appeal.
 - (vii) WVSOM may, depending upon the circumstances, choose to hold parties who participate in the investigation immune from disciplinary charges for minor violations that are discovered during the course of the investigation and related to the incident(s) being investigated.

10.5 Sanctions

10.5.1 Sanctions may be imposed upon any person under WVSOM's jurisdiction who is found to have violated this policy.

- (i) Typical student sanctions that may be imposed singly or in combination include, but are not limited to the following (as defined in Institutional Policy ST-01):
 - a. Admonition
 - b. Warning
 - c. Disciplinary Probation
 - d. Restitution

- e. Suspension
- f. Expulsion
- (ii) Typical employee sanctions that may be imposed singly or in combination include, but are not limited to the following (as defined in the Employee Handbook):
 - a. Discussion
 - b. Verbal Warning
 - c. Written Warning
 - d. Suspension
 - e. Termination of Employment

10.5.2 Any person found responsible for violating the Non-Consensual Sexual Contact prohibition will likely face a recommended sanction ranging from a written warning to expulsion/termination of employment, depending on the severity of the incident, and taking into account any previous disciplinary violations.

10.5.3 Any person found responsible for violating the Non-Consensual Sexual Intercourse prohibition will likely face a recommended sanction of suspension or expulsion/termination of employment.

10.5.4 Any person found responsible for violating the Sexual Exploitation or Sexual Harassment prohibitions will likely face a recommended 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.

10.5.5 The range of recommended sanctions may be broadened or lessened in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the Title IX Coordinator nor the Appeals Officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

10.6 Appeal

10.6.1 Any party who wishes to appeal the recommendations contained in the report of investigation, as they relate to sexual misconduct or other violations of this policy falling under Title IX, including the sanctions imposed by the investigators, may do so by submitting that party's appeal in writing to the Vice President for Academic Affairs and Dean (hereinafter "Appeals Officer"). If a complaint is against the Vice President for Academic Affairs and Dean, the appeal shall be submitted to the President, who will immediately designate a person to assume the duties of Appeals Officer. Signed appeals should be hand-delivered or emailed in pdf format to the Appeals Officer within five (5) business days of the issuance of the final report of investigation. The Appeals Officer shall share a copy of the written appeal with the other party, who will be given an opportunity to respond to the appeal. All responses to the appeal must be submitted in writing to the Appeals Officer within five (5) business days of receiving the copy of the appeal from the Appeals Officer.

- 10.6.2 Recommendations not related to sexual misconduct or other violations of this policy falling under Title IX shall be addressed through applicable WVSOM policies and procedures, including handbooks, concerning employee and student conduct, as set forth in Section 17.
- 10.6.3 All appeals and responses are then reviewed by the Appeals Officer to determine if the appeal request meets the limited grounds and is timely. The original recommendations and sanctions will stand if the appeal is not timely or does not fall within the grounds for appeal set forth below, and the decision is final. The original recommendations and sanctions will also remain in effect pending the outcome of any appeal. If the appeal has standing, the Appeals Officer will consider the appeal. The party requesting the appeal has the burden of proving the error, as the original recommendations and sanctions are presumed to have been decided reasonably and appropriately. The only grounds for appeal are as follows:
- (i) A procedural or substantive error occurred that significantly impacted the outcome of the investigation, such as substantiated bias or material deviation from established procedures;
 - (ii) To consider new evidence, unavailable during the original investigation, that could substantially impact the original recommendations or sanctions (a detailed description of this new evidence and its potential impact must be included); or
 - (iii) The sanctions imposed are substantially disproportionate to the severity of the violation.
- 10.6.4 Within ten (10) business days of receiving the response(s) to the appeal(s), if any, the Appeals Officer will provide to both parties a Memorandum of Decision.
- 10.6.5 If the Appeals Officer determines that a material procedural or substantive error occurred, the Appeals Officer may return the matter to the original investigators with instructions to reconvene to cure the error. The results of a reconvened investigation cannot be appealed. In rare cases where the procedural or substantive error cannot be cured by the original investigators, as in cases of substantiated bias, the Appeals Officer may order a new investigation on the complaint with new investigators. The results of a new investigation can be appealed, once, on the applicable grounds for appeals.
- 10.6.6 If the Appeals Officer determines that new evidence should be considered, the Appeals Officer will return the matter to the original investigators to reconsider in light of the new evidence only. The reconsideration of the original investigators is not appealable.
- 10.6.7 If the Appeals Officer determines that the sanctions imposed are disproportionate to the severity of the violation, the Appeals Officer will return the matter to the investigators, who will modify the sanctions according to the directions of the Appeals Officer. The modified decision of the investigators is final.
- 10.6.8 Once an appeal is completed, the parties will be notified, simultaneously, of the final determination and any changes that result.

GA 14-11. Reporting of Violations

- 11.1 Reports of violations of this policy should be made promptly as follows:
 - 11.1.1 Reports of discrimination, harassment, retaliation, or other violations of this policy should be made to the EEO/Equity/AA/ADA/504 Coordinator;
 - 11.1.2 Reports of sexual misconduct or other violations of this policy falling under Title IX should be made to the Title IX Coordinator;
 - 11.1.3 Reports of violations of this policy involving the EEO/Equity/AA/ADA/504 Coordinator or the Title IX Coordinator should be made to the Vice President for Academic Affairs/Dean;
 - 11.1.4 Reports of violations of this policy involving the Vice President for Academic Affairs/Dean should be made to the President of WVSOM;
 - 11.1.5 Reports of violations of this policy involving the President of WVSOM should be made to the Chair of the WVSOM Board of Governors; and
 - 11.1.6 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.
- 11.2 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.
- 11.3 Upon receiving a report of an alleged violation of this policy, the appropriate administrator listed in Section 11.1 shall promptly investigate the alleged violation contained in the report.
- 11.4 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.
- 11.5 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.

GA 14-12. Retaliation

Retaliation is a serious violation of this policy, will be treated as another possible instance of harassment, discrimination, or other violation of this policy, and should be reported immediately as set forth in Section 11.1. WVSOM will take appropriate steps to protect individuals who fear that they may be subjected to Retaliation.

GA 14-13. Remedial Action

- 13.1 WVSOM will implement initial remedial and responsive actions upon notice of alleged harassment, retaliation, or discrimination, and will take additional prompt remedial and/or disciplinary action with respect to any member of the WVSOM community, guest, or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. These remedies are intended to address the short-term effects of harassment, discrimination and/or

retaliation, i.e., to redress harm to the alleged victim and the community and to attempt to prevent further violations. These remedies may include, but are not limited to:

- Referral to counseling and health services;
- Referral to the Employee Assistance Program;
- Education to the WVSOM community;
- Assisting with the identification of alternate housing;
- Altering work arrangements for employees;
- Providing campus escorts;
- Implementing contact limitations between the parties, including mutual no contact;
- Offering adjustments to academic deadlines, course schedules, etc.

13.2 WVSOM will maintain as confidential, to the extent possible, any accommodations or protective measures, provided confidentiality does not impair WVSOM's ability to provide the accommodations or protective measures.

GA 14-14. 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 14-15. Confidentiality of Reported Information

Individuals wishing to report violations of this policy must be aware that WVSOM administrators, depending on their roles, have varying reporting responsibilities and abilities to maintain the confidentiality of the individual making the report. Prior to reporting a violation of this policy to a particular administrator, an individual should inquire as to whether that administrator is bound by certain confidentiality and mandatory reporting requirements. Some WVSOM resources may be able to maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless the reporting person requested information to be shared or the information indicates an immediate threat of harm to self or others. 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 Title IX.

GA 14-16. Federal Timely Warning Obligations

Victims of sexual misconduct 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 14-17. Violations of Policy

- 17.1 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.
- 17.2 Except as provided in Section 10 of this policy concerning sexual misconduct or other violations of this policy falling under Title IX, violations of this policy shall be addressed as follows:
 - 17.2.1 Violations by students shall be addressed through WVSOM policies and procedures on student conduct.
 - 17.2.2 Violations by employees shall be addressed through WVSOM policies and procedures on employee conduct, including applicable faculty and staff handbooks.
- 17.3 Failure of a non-confidential employee to report an allegation of sexual misconduct or other violation of this policy falling under Title IX of which he or she becomes aware, is a violation of this policy and may subject the employee to disciplinary action.

GA 14-18. 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 14-19. Superseding Provisions

This policy supersedes the West Virginia Higher Education Policy Commission (“HEPC”) Series 40 (W. Va. Code R. § 133-40), any other rule of HEPC which relates to the subject matter contained within this policy, and any conflicting provisions within the WVSOM Employee Handbook, the WVSOM Faculty Handbook, or any other WVSOM policies or procedures. This policy also repeals and supersedes WVSOM Institutional Policy GA-14: Equal Opportunity, Non-discrimination, Sexual Misconduct, and Other Forms of Harassment (effective January 10, 1998; last revised on January 19, 2017).