

**WEST VIRGINIA UNIVERSITY  
BOARD OF GOVERNORS  
POLICY 44**

**POLICY REGARDING SEXUAL MISCONDUCT**

**Section 1: General.**

- 1.1 Scope: This rule sets forth West Virginia University's policy regarding sexual misconduct, including sexual violence and other forms of non-violent sexual harassment, all of which are forms of discrimination based on sex. West Virginia University is committed to providing a work and educational environment free from all forms of sexual discrimination. Therefore, sexual discrimination, in any manner or form, is expressly prohibited.
- 1.2 Authority: W. Va. Code §§ 18B-1-6, 18B-2A-4; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681; and the West Virginia Human Rights Act, W. Va. Code §§ 5-11-1 to -20.
- 1.3 Effective Date: June 2, 2006; amended June 7, 2012.

**Section 2: Accountability.**

- 2.1 Under the West Virginia University ("University") President, the Executive Officer for Social Justice, in conjunction with the Deans, Vice Presidents, Office of Student Conduct, and the appropriate members of the divisional campuses, shall implement and ensure compliance with this policy.

**Section 3: Definitions.**

- 3.1 "Sexual misconduct," as defined for purposes of this Policy, is meant to include "sexual harassment," "non-consensual sexual contact," "non-consensual sexual intercourse," and "sexual exploitation," as defined below.
- 3.2 "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature on or off campus that is sufficiently severe or pervasive when (i) submission to such conduct is made either explicitly or implicitly a condition of an individual's employment or academic performance or participation in University programs or activities; or (ii) submission to or rejection of such conduct is used as the basis for employment decisions or for academic evaluation, grades, or advancement; or (iii) such conduct has the purpose or effect of unreasonably interfering with an individual's educational experience, work or academic performance, or creates an educational experience or academic or work environment that a reasonable person would find intimidating or hostile.

- 3.3 “Sexual Contact” means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person’s body by the actor’s sex organs.
- 3.4 “Non-consensual sexual contact” means sexual contact that occurs without consent.
- 3.5 “Sexual intercourse” is defined as anal, oral, or vaginal penetration, however slight, by an inanimate object or another’s body part, including, but not limited to a penis, tongue, or finger.
- 3.6 “Non-consensual sexual intercourse” means sexual intercourse that occurs without consent.
- 3.7 “Consent” is defined as agreement, approval, or permission as to some act or purpose that is given knowingly, willingly, and voluntarily by a competent person. A person is not competent and therefore lacks the ability to consent where there is either forcible compulsion or incapacity to consent. A person is deemed incapable of consent when that person is either less than sixteen years old, mentally incapacitated, or physically unable to resist.
- 3.8 “Complainant” means, for purposes of this policy, any individual that makes or files a complaint of sexual misconduct against another individual with the University or any individual that is the victim of sexual misconduct and the sexual misconduct is reported to the University.
- 3.9 “Respondent” means, for purposes of this policy, an individual accused of sexual misconduct.
- 3.10 “Retaliate” means to take an adverse action against an individual because of something he or she did to further the University’s policy against sexual discrimination or misconduct, including but not limited to filing a sexual misconduct complaint or being a witness in or supporter of or against a sexual misconduct complaint.
- 3.11 “Member of the University community,” for purposes of this policy only, means an individual engaged in any University activity or program, whether on or off campus, or any individual lawfully on University property, including, but not limited to, any person who is a student, staff, faculty member, other University official, or a visitor.
- 3.12 “Sexual exploitation” means taking sexual advantage of another person without consent. Sexual advantage includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third parties to observe private sexual acts; and engaging in voyeurism.

- 3.13 “Student” means, for purposes of this policy, an individual subject to the West Virginia University Board of Governors Policy 31, University Student Conduct and Discipline Policy.
- 3.14 “Consensual relationship” means a mutually acceptable romantic, dating, or sexual relationship between individuals.

#### **Section 4: Sexual Misconduct Prohibited.**

##### 4.1 General.

The University prohibits sexual misconduct by or against any member of the University community that occurs on University premises or in connection with a University sponsored activity; off-campus sexual misconduct that unreasonably interferes with the educational or orderly operation of the University community, its mission, or its objectives determined by a reasonable person; and off-campus conduct that, in light of all of the facts and circumstances, would endanger the health and safety of the University community. As a result, any individual found to have committed an act of sexual misconduct against another is subject to appropriate discipline.

In determining whether alleged conduct constitutes sexual misconduct, consideration shall be given to the record as a whole and to the totality of the circumstances, including the nature of sexual behavior and the context in which the alleged incident(s) occurred. Sexual misconduct may occur between people of the same gender or people of different genders.

- 4.1.1 To further this policy, all members of the University community are expected to engage in conduct that meets professional standards; take appropriate action to prevent sexual misconduct; and avoid behavior that a reasonable person would construe as sexual misconduct.
- 4.1.2 Those in supervisory positions have a special responsibility to discourage sexual misconduct as well as to implement and enforce this policy.

##### 4.2 Consequences.

Violators of this policy are subject to appropriate disciplinary action that may include sanctions as severe as discharge of an employee, expulsion of a student in accord with the Student Code of Conduct, or other action depending on the particular circumstances. In addition, sexual misconduct that constitutes a criminal law violation will be referred to the appropriate authorities for prosecution.

#### 4.3 Consensual Relationships.

Although consensual relationships are within the purview of individual privacy, those engaging in such relationships that occur between persons in inherently unequal and closely related positions at the University or employees within the same reporting line, including those between supervisors and supervisees, must remain aware that such relationships could lead to circumstances that result in sexual misconduct.

In these specific cases of consensual relationships, the individuals shall notify their immediate supervisor or other appropriate administrator. The supervisor or administrator shall be responsible for making arrangements to eliminate or to mitigate any conflict of interest or other legitimate occupational interest related to employment, the consequences of which might prove detrimental to the University or to either party in the relationship. In some instances, if no suitable way to eliminate or mitigate the conflict is reasonably feasible, one or both individuals may be separated from employment at the University.

It is important to note that these types of consensual relationships also may result in a hostile or offensive environment affecting other employees or students. For example, others may perceive a person involved in the consensual relationship as receiving favorable treatment in employment or educational decisions and actions.

#### 4.4 Teacher-Student Relationships.

A faculty member or instructor is prohibited from engaging in consensual relationship with a student whom the faculty member or instructor evaluates, supervises, instructs, or advises.

Where there is a pre-existing consensual relationship, the faculty member or instructor shall notify his or her immediate supervisor or other appropriate administrator. The supervisor or other appropriate administrator shall be responsible for making arrangements to eliminate or to mitigate any conflict, the consequences of which might prove detrimental to the University or to either party in the relationship.

#### 4.5 Title IX Coordinator.

The President shall appoint an administrator to act as the University's Title IX Coordinator. The Title IX Coordinator will oversee all complaints filed under this policy generally and identify and address any patterns or systemic problems that arise during the review of such complaints. The Title IX Coordinator is further responsible for coordination of training, education, communications, and administration of sexual misconduct complaint procedures for faculty, staff, students, and other members of the University community. The Title IX Coordinator may also appoint deputy coordinators to assist the University in furthering this policy.

## **Section 5: Sexual Misconduct Complaints.**

### **5.1 Complaints.**

Any member of the University community who believes he or she has been subject to sexual misconduct may file a sexual misconduct complaint in any manner set forth in the applicable Procedure Regarding Sexual Misconduct, as discussed below. If a complaint of sexual misconduct is received, it shall be forwarded to the appropriate department for investigation and disposition.

### **5.2 Investigation.**

All matters of sexual misconduct shall be investigated by the President's Office for Social Justice or by the appropriate representatives of the divisional campuses with the support of the President's Office for Social Justice.

If a student has been accused of sexual misconduct, the President's Office for Social Justice will work jointly with the appropriate Student Code Administrator, as defined in the applicable code of student conduct, in investigating the complaint pursuant to West Virginia University Board of Governors Policy 31. This investigation will be separate from and in addition to any criminal investigation that may be a result of the complaint.

### **5.3 Procedure.**

The President or his or her designee(s) shall formulate a complaint procedure to respond to all complaints of sexual misconduct. In all cases, complaints of sexual misconduct will be handled in such a manner so as to achieve a prompt and equitable resolution. Further, the University will take the appropriate steps to end the misconduct, prevent any further misconduct or retaliation, remedy the effects of misconduct, and eliminate any hostile environment that has been created.

### **5.4 Disclosure and Confidentiality.**

The University respects the privacy of those reporting sexual misconduct and will endeavor to respect requests for confidentiality to the extent permissible by law. However, the University has certain legal obligations to address sexual misconduct and to prevent its recurrence and, as a result, cannot guarantee confidentiality to a complainant.

### **5.5 Dishonest or Frivolous Complaints.**

If a complainant is found to have intentionally or maliciously been dishonest, reckless, or frivolous in making the allegations, the complainant shall be subject to appropriate disciplinary action.

**Section 6: Retaliation Prohibited.**

6.1 No individual may retaliate against any complainant, any person that assists a complainant in the filing of a complaint of sexual misconduct, or a witness to sexual misconduct. Complaints of retaliation for such activities will be treated the same way as complaints for sexual misconduct.