



Fairmont State University Board of Governors
Policy GA-01
Effective Date: August 14, 2020

TITLE: POLICY REGARDING DISCRIMINATION, HARASSMENT SEXUAL HARASSMENT, SEXUAL MISCONDUCT, DOMESTIC MISCONDUCT, STALKING, RETALIATION, AND RELATIONSHIPS.

SECTION 1: GENERAL.

- 1.1 Scope: This policy is regarding discrimination, harassment, sexual harassment, sexual misconduct, domestic misconduct, stalking, retaliation, and other relationships at Fairmont State University.
- 1.2 Responsible Unit: Office of the President.
- 1.3 Filing Date:
- 1.4 Effective Date:

SECTION 2: PURPOSE AND SCOPE:

- 2.1 Fairmont State University is committed to fostering a diverse and inclusive culture by promoting diversity, inclusion, equality, and intercultural and intercommunity outreach.
- 2.2 The University does not discriminate on the basis of race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression in the administration of any of its educational programs, activities, or with respect to admission or employment.
- 2.3 This Policy sets forth how discrimination, harassment, sexual harassment, sexual misconduct, domestic misconduct, stalking, retaliation, and certain relationships will be addressed by the University, including sexual harassment prohibited by Title IX. The allegations are subject to resolution using the University Process A or Process B as described by the Coordinator in the Title IX Process and Procedure document.



SECTION 3: COORDINATION, AND DISCIPLINARY ACTION.

3.1 Coordination.

- 3.1.1 The President shall appoint a University employee to serve as the University's Coordinator for this Policy. This person will also serve as the University's Title IX Coordinator and the University's Americans with Disabilities Act (ADA) Coordinator. The Coordinator may also appoint deputy coordinators to assist in the implementation of this Policy.
- 3.1.2 The University shall design and administer a comprehensive anti-discrimination and Title IX program that:
 - 3.1.2.1 Develops appropriate procedures for the reporting of complaints regarding allegations of Prohibited Conduct including specific grievance procedures for complaints covered by Title IX jurisdiction;
 - 3.1.2.2 Reviews and investigates complaints and reports of Prohibited Conduct;
 - 3.1.2.3 Identifies and addresses systemic patterns of Prohibited Conduct;
 - 3.1.2.4 Provides appropriate resources or supportive measures to those involved in a complaint or investigation; and
 - 3.1.2.5 Develops appropriate training, education, and communication regarding this Policy, including what constitutes Prohibited Conduct, the training required by the Title IX regulations, the complaint and investigation process, and preventative education for Members of the University Community. These efforts may be coordinated with other units and groups on-campus.

3.2 Role of Supervisor. All employees have been designated by the University as Responsible Employees mandated to report conduct with falls under this rule, as noted in Section 6. Further, those in supervisory positions have a special responsibility to discourage Prohibited Conduct, to implement and enforce this Policy and, as required by Section 6, report such behavior.

3.3 Corrective Action for Violations.

- 3.3.1 Any Faculty, Staff, or University volunteer who violates this Policy shall be subject to appropriate disciplinary action, including suspension, termination, or other disciplinary action as may be appropriate.

- 3.3.2 Any Student who violates this Policy shall be subject to appropriate disciplinary action, including, in accordance with the Student Code of Conduct, suspension, expulsion, or other disciplinary action as may be appropriate.
- 3.3.3 Other Members of the University Community (excluding Faculty, Staff, Students, and University volunteers which are discussed above) who violate this Policy shall be subject to appropriate corrective action, including, but not limited to, issuance of a no trespass order or cancellation of relationship with the University.
- 3.3.4 The University encouraged Complainants to contact local law enforcement to report incidents of Prohibited Conduct that may also be crimes under criminal statutes. In addition, where appropriate under the circumstances, Prohibited Conduct that constitutes a criminal law violation will be referred to the authorities for prosecution.
- 3.3.5 Furthermore, although conduct may not violate this Policy, it may still be prohibited by the University under a different Rule, policy, or standard of behavior. Accordingly, the University reserves the right to take any appropriate action.

SECTION 4: PROHIBITED CONDUCT AND JURISDICTION.

- 4.1 **Statement of Prohibited Conduct.** The University prohibits Discrimination, Harassment (which includes Sexual Harassment), Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined below (collectively referred to as “Prohibited Conduct”) by or against any Member of the University Community occurring within the University’s Jurisdiction.
- 4.2 **Jursidiction.** There are two types of jurisdiction covered by this Rule: Title IX Jurisdiction and General Jurisdiction.
- 4.2.1 Formal Complaints of “Sexual Harassment (Quid Pro Quo)”, “Sexual Harassment (Hostile Environment)”, “Sexual Assault”, “Domestic Misconduct”, and “Stalking” that occur in a University Education Program or Activity and within the United States will be covered by Title IX jurisdiction and subject to the grievance procedures discussed below in Section 7.3. Those instances are referred to as “Title IX Sexual Harassment.”
- 4.2.2 All other complaints of Prohibited Conduct will be within the University’s jurisdiction if the behavior (a) occurs on University premises; (b) occurs off-campus and would unreasonably interfere with the educational or orderly operation of the University community, its mission, or its objectives determined

by a reasonable person; or (c) occurs off-campus and in light of all of the facts and circumstances, would endanger the health and safety of the University community.

- 4.2.3 A finding of responsibility for quid pro quo harassment or the three Clery Act/VAWA (sexual assault, domestic misconduct, stalking) offenses constitute *per se* actionable sexual harassment, and does not require an evaluation for severity, pervasiveness, and objectiveness, or denial of equal educational access.

4.3 Discrimination.

- 4.3.1 “Discrimination” is conduct that is based upon an individual’s race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression and excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual’s employment, education, living environment or participation in a University program or activity.
- 4.3.2 This includes failure and refusal to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities. It does not, however, include programs or activities specifically exempt by law. *See, e.g.*, 20 U.S.C. § 1681(a) (2020).

4.4 Harassment.

- 4.4.1 “Harassment” is conduct that creates a Hostile Environment, as defined below, and is based upon an individual’s race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression.
- 4.4.2 Harassment may take various forms, including, but not limited to, name-calling, graphic or written statements (including the use of social media, text messages, e-mail, or other similar forms), or other conduct that may be physically threatening, harmful, or humiliating.
- 4.4.3 Harassment does not necessarily have to include intent to harm, be directed at a specific target, or involve repeated incidents.

4.4.4 “Sex-based Harassment” includes Sexual Harassment and non-sexual harassment based on stereotypical notions of what is female/feminine versus male/masculine or a failure to conform to those gender stereotypes.

4.4.5 “Hostile Environment” means a situation where an individual is subjected to any conduct based on the reasons set forth in Sections 4.3 or 4.4 and that conduct, determined by a reasonable person, is so severe, or pervasive, or objectively offensive, that it effectively denies a person equal access to the University’s educational program or activity.

4.4.5.1 A Hostile Environment can be created by anyone involved in a University program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a Hostile Environment. Although repeated incidents increase the likelihood that Harassment has created a Hostile Environment, a serious incident, even if isolated, can be sufficient to create a Hostile Environment.

4.4.5.2 In determining whether Harassment has created a Hostile Environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation to the Complainant would have perceived the conduct as severe, pervasive, and objectively offensive. Also, the following factors will be considered:

4.4.5.2.1 The degree to which the conduct affected one or more students’ education or individual’s employment;

4.4.5.2.2 The nature, scope, frequency, duration, and location of incident or incidents; and

4.4.5.2.3 The identity, number, and relationships of persons involved.

4.5 Sexual Harassment.

4.5.1 “Sexual Harassment” may occur between people of the same sex or people of different sexes. Examples of Sexual Harassment may include, but are not limited to, unsolicited, deliberate, or repeated touching, sexual flirtation, advances or propositions which are not welcomed and/or desired; unwelcome jokes, stories, comments, innuendos, or other sexually oriented statements which are specifically designed to embarrass or humiliate through their sexual subject matter content; unwelcome sexual communication such as graphic or degrading



comments about one's gender related to personal appearance; unwelcome display of sexually explicit materials, objects, or pictures in an individual's place of work or study, such as viewing material on computers or other electronic devices where others can see. Importantly, these and any other examples in this Policy, are provided only for illustration purposes and all conduct must still meet the applicable definitions in the Rule before rising to the level of prohibited conduct.

4.5.2 "Sexual Harassment (Quid Pro Quo)" means a University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

4.5.3 "Sexual Harassment (Hostile Environment)" means Harassment that creates a Hostile Environment (as defined in 4.4.5) based on sex, which includes, but is not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

4.6. Title IX Sexual Harassment.

4.6.1. Title IX Sexual Harassment means unwelcome conduct determined by a reasonable person to be so severe, and pervasive, and objectively offensive that it effectively denies a person equal access to an educational program or activity.

4.6.2 Title IX Sexual Harassment is harassment which is prohibited by the U.S. Department of Education regulations. This includes more severe allegations of sexual harassment and conduct prohibited by the Clery Act and VAWA including, but not limited to violations of domestic misconduct, sexual misconduct, sexual assault, stalking and sexual exploitation.

4.6.3 For the purposes of this Policy, Title IX Sexual Harassment standard applies to "Sexual Harassment (Quid Pro Quo)", "Sexual Harassment (Hostile Environment)", "Sexual Assault", Domestic Misconduct", and "Stalking."

4.6.4 In determining whether alleged conduct constitutes Sexual Harassment and/or Title IX Sexual Harassment, 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.

4.7 Sexual Misconduct.

4.7.1 "Sexual Misconduct" means "Sexual Assault" or "Sexual Exploitation," as defined below. It is a broad term used to encompass unwelcome behavior of a sexual nature that is prohibited by Title IX, the Clery Act, and Fairmont State University.

- 4.7.2 “Sexual Assault” means “Sexual Intercourse” or “Sexual Contact” that occurs without “Consent.” “Sexual Assault” also includes “Sexual Intercourse” between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 4.7.3 “Sexual Contact” means any (i) intentional touching, either directly, through clothing, or with an object, of the breasts, buttocks, anus or any part of the sex organs of another person; or (ii) intentional touching of any part of another person’s body by the actor’s sex organs.
- 4.7.4 “Sexual Intercourse” is defined as anal, oral, or vaginal penetration, however slight, by an inanimate object or another’s body part.
- 4.7.4.1 “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. Silence, by itself, cannot constitute Consent. Consent to one sexual act does not constitute or imply consent to a different sexual act. Previous consent cannot imply consent to future sexual acts. Consent is required regardless of the parties’ relationship status or sexual history together.
- 4.7.4.2 A person is not competent and therefore lacks the ability to “Consent” where there is either “Forcible Compulsion” or “Incapacity to Consent.”
- 4.7.4.2.1 “Forcible Compulsion” means (i) physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; (ii) threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or (iii) threat or intimidation, express or implied, that the aggressor will retaliate or cause damage to the victim’s reputation if the victim does not give into the aggressor’s sexual advances
- 4.7.4.2.2 “Incapacity to Consent” means that person is (i) either less than sixteen years old; (ii) mentally incapacitated; (iii) physically unable to resist; or (iv) is so intoxicated as to be incapacitated (i.e., unable to knowingly and intentionally make decisions for him or herself).
- 4.7.4.2.3 Intoxication from alcohol or drug use, alone, does not bar Consent.

4.7.4.2.4 Incapacitation negates Consent when the alleged perpetrator knows, or a reasonable person, under the circumstances, should know, that the alleged victim is incapacitated.

4.7.5 “Sexual Exploitation” means taking sexual advantage of another person without his or her consent.

4.7.5.1 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; disclosing, causing to be disclosed or threatening to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed; and engaging in voyeurism.

4.8 Domestic Misconduct.

4.8.1 “Domestic Misconduct” means “Domestic Violence” and “Dating Violence” as defined below.

4.8.1.1 “Domestic Violence” means Domestic Violence as defined under the Clery Act and W. Va. state law.

4.8.1.1.1 Under the Clery Act, Domestic Violence means a felony or misdemeanor crime of violence committed -- (A) By a current or former spouse or intimate partner of the victim; (B) By a person with whom the victim shares a child in common; (C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (E) By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

4.8.1.1.2 Under W. Va. state law, “Domestic Violence” or “Abuse” means the occurrence of one or more of the following acts between Family or

Household Members, as defined under W. Va. Code: (1) Intentionally making physical contact of an insulting or provoking nature or intentionally causing physical harm; (2) Attempting to commit a violent injury or committing an act causing reasonable apprehension of immediately receiving a violent injury; (3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts; (4) Committing either sexual assault or sexual abuse as defined in W. Va. Code; and (5) Holding, confining, detaining or abducting another person against that person's will.

4.8.1.1.3 For purposes of this subsection, "Family or Household Members" means persons who: (i) are or were married to each other; (ii) are or were living together as spouses; (iii) are or were sexual or intimate partners; (iv) are or were dating: provided, that a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship; (v) are or were residing together in the same household; (vi) have a child in common regardless of whether they have ever married or lived together; or (vi) have the relationships described in W. Va. Code § 48-27-204.

4.8.1.2 "Dating Violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

4.8.1.2.1 The view of the Complainant shall generally be controlling in determining whether such a relationship existed.

4.8.1.2.2 Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence, for purposes of this Policy, does not include emotional abuse.

4.9 Stalking.

4.9.1 "Stalking" means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to: (i) fear for his or her safety or the safety of others; or (ii) suffer Substantial Emotional Distress.

4.9.1.1 "Course of Conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action,



method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

4.9.1.2 A "Reasonable Person," for purposes of this definition, means a reasonable person under similar circumstances and with similar identities to the Complainant.

4.9.1.3 "Substantial Emotional Distress," for purposes of this definition, means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

4.10 Retaliation.

4.10.1 No individual may retaliate against another person. Complaints of retaliation for such activities will be treated the same way as other complaints under this Policy.

4.10.2 "Retaliate" means to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege at the University because the individual has made a report or complaint, testified, assisted, or participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

4.10.2.1 This includes interfering with the reporting of or the investigation of prohibited behavior, such as tampering with or destroying relevant evidence; intimidating, threatening or attempting to influence, in any way, the testimony or information of a Reporter, Complainant, Respondent or witness.

4.11 False Statements. This policy prohibits knowingly making false statements, including knowingly submitting false information during the course and/or resolution of the grievance process.

SECTION 5: RELATIONSHIPS.

5.1 Consensual Relationships Between Members of the University Community.

5.1.1 If Members of the University Community engage in a Consensual Relationship involving: (i) persons in inherently unequal and closely related positions at the University; (ii) employees within the same reporting line; or (iii) where one individual has influence or control over another, including those between supervisors and supervisees, the individuals involved in the Consensual Relationship shall notify their immediate supervisor.



5.1.2 The supervisor shall notify Human Resources (when Staff involved) or the Provost's Office (when Faculty involved) of the reported Consensual Relationship.

5.1.2.1 In consultation with Human Resources or the Provost's Office, as appropriate, the supervisor shall make arrangements to eliminate or to mitigate any conflict of interest, disruption, or other legitimate occupational or educational interest.

5.1.2.2 However, 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.

5.1.2.3 Those involved in these types of Consensual Relationships must remain aware that such relationships could lead to circumstances that result in Harassment, Sexual Misconduct, or Domestic Misconduct. Additionally, others may perceive a person involved in the Consensual Relationship as receiving favorable treatment in employment or educational decisions.

5.1.3 Failing to disclose a Consensual Relationship or not complying with arrangements that have been made is prohibited and may result in disciplinary action up to and including termination.

5.2 Relationships Involving Students.

5.2.1 Faculty, Staff, or other Members of the University Community are prohibited from or attempting to initiate, pursue, or engage in a relationship (consensual or non-consensual) with a Student whom the individual evaluates, supervises, instructs, advises, or otherwise has authority or control over.

5.3 Pre-existing Relationships Involving Students.

5.3.1 Where there is a pre-existing Consensual Relationship with a Student, the individual shall notify his or her immediate supervisor. The supervisor shall notify Human Resources (when Staff involved) or the Provost's Office (when Faculty involved) of the reported Consensual Relationship.

5.3.1.1 In consultation with Human Resources or the Provost's Office, as appropriate, the supervisor shall make arrangements to eliminate or to mitigate any conflict of interest, disruption, or other legitimate occupational or educational interest.

5.3.1.2 However, if no suitable way to eliminate or mitigate the conflict is reasonably feasible, the employee may be separated from employment at the University.



5.3.1.3 Those involved in pre-existing Consensual Relationships with Students must remain aware that such relationships could lead to circumstances that result in Harassment, Sexual Misconduct, or Domestic Misconduct. Additionally, others may perceive a person involved in the pre-existing Consensual Relationship as receiving favorable treatment in employment or educational decisions.

5.3.2 Failing to disclose a pre-existing Consensual Relationship with Students or not complying with arrangements that have been made is prohibited and may result in disciplinary action up to and including termination.

SECTION 6: DUTY TO REPORT.

6.1 Any Member of the University Community who is not designated under this policy as a mandatory reporter and who has witnessed or is aware of any of the Prohibited Conduct is strongly encouraged to report any concerns to the Coordinator under this Policy.

6.2 All Responsible Employees **must** report incidents of Prohibited Conduct to the Coordinator at:

Title IX Coordinator/ADA Coordinator and Compliance Specialist
208 A Hardway Building
Fairmont State University
1201 Locust Avenue
Fairmont, West Virginia 26554
(304) 367-4689
titleIX@fairmontstate.edu

SECTION 7: PROCEDURES FOR FILING COMPLAINT.

7.1 Any Member of the University Community who believes he or she has been subject to any of the Prohibited Conduct may file a complaint, including a Formal Complaint of Title IX Sexual Harassment. Where appropriate, the Title IX Coordinator may also file a complaint, including a Formal Complaint of Title IX Sexual Harassment, on behalf of a Complainant.

7.2 The University shall formulate a procedure to investigate and respond to all complaints regarding alleged misconduct in violation of this Policy.



- 7.3 For any Title IX Sexual Harassment, as referenced above in section 4.6, the University shall adopt grievance procedure that meet the requirements of 34 C.F.R. Part 106, specifically 34 C.F.R. §§ 106.44, 106.45.
- 7.4 In all cases, complaints 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.
- 7.4.1 If a student has been accused of Prohibited Conduct, including Title IX Sexual Harassment, the complaint will be handled pursuant to Fairmont State University Board of Governors Policy 17, and the applicable campus Student Code of Conduct, which can be found at:
- <https://www.fairmontstate.edu/stulife/student-conduct>
- 7.4.2 If a non-student, including an employee, vendor, or visitor has been accused of Prohibited Conduct, the complaint will be handled pursuant to the Fairmont State – Complaint and Investigation Process. The Title IX Sexual Harassments complaints will be handled in accordance with the Title IX grievance procedures. The complaints of Prohibited Conduct which do not fall under Title IX jurisdiction will be handled in accordance with the Student Code of Conduct, for students, or Fairmont State University Board of Governor’s Policy 64, for employees.
- 7.4.3 Any investigation resulting from a complaint will be separate from and in addition to any criminal investigation that may result.
- 7.5 If any Member of the University Community is found to have intentionally or maliciously been dishonest, reckless, or frivolous in making allegations of a violation under this Policy, they shall be subject to appropriate disciplinary action up to and including termination.

SECTION 8: CONFIDENTIALITY AND ANONYMOUS REPORTING.

8.1 Confidentiality Limitations within the University.

- 8.1.1 The University respects the privacy of those reporting Prohibited Conduct and will endeavor to respect requests for confidentiality if possible.



8.1.1.1 However, the University has certain legal obligations to address Prohibited Conduct and to prevent its recurrence and, as a result, cannot guarantee confidentiality.

8.1.1.2 When the University must proceed with an investigation against the wishes of a Complainant, the University will take necessary steps to address any safety and other considerations relevant under the circumstances.

8.1.1.3 In determining whether a Complainant's request for confidentiality can be maintained, the University may consider a range of factors and evaluate the request in the context of its responsibility to provide a safe and nondiscriminatory environment for all members of the University community.

8.2 Available Confidential Resources.

8.2.1 There are places where an individual can receive services without having to risk confidentiality.

8.2.2 Confidential resources are available for Members of the University Community who have been subject to Prohibited Conduct. Specifically, individuals may contact the University's Coordinator, or their designee, who will then direct the individual to the appropriate resource.

8.3 Anonymous Reporting at the University.

8.3.1 In order to ensure that Members of the University Community can discuss their options candidly, the University's Coordinator may designate certain individuals as anonymous resources.

8.3.2 An individual designated as an anonymous resource is not required to report Title IX concerns to the Title IX Coordinator under this Policy. However, that individual may have other reporting obligations dictated by state or federal law.

8.3.3 Any developed procedures should identify anonymous resources that do not have mandatory reporting obligations, consistent with state and federal law.

8.3.4 Please note that an anonymous report is not the same as a Formal Complaint of Title IX Sexual Harassment. See definition of Formal Complaint below Section 10.5.



SECTION 9: FREE EXPRESSION, ACADEMIC FREEDOM, AND ACCOUNTABILITY.

- 9.1 Free expression and academic freedom at the University are necessary to enable the institution to reach its goals to engage students in a challenging academic environment; excel in creative activity, and innovation in all disciplines; foster diversity and inclusion; advance international activity and global engagement; and enhance the well-being and the quality of life of the people of West Virginia.
 - 9.2 Consequently, while this Policy seeks to protect members of the University community from discrimination, harassment, sexual and domestic misconduct, certain consensual relationships, stalking, and retaliation, it should be read in conjunction with Board of Governors Policy 7: Ethics.
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SECTION 10: DEFINITIONS.

- 10.1 “Complainant” means an individual who is the alleged victim of conduct prohibited by Rule that is reported to the University.
- 10.2 “Consensual Relationship” means a mutually acceptable romantic, amorous, dating, or sexual relationship between individuals.
- 10.3 “Educational Program or Activity” activity includes locations, events, or circumstances, whether on campus or off campus, over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurs. It also includes any building owned or controlled by an officially recognized student organization.
- 10.4 “Faculty” means all faculty classifications as defined in current BOG Policy 17.
- 10.5 “Formal Complaint” means a document (including electronic submission) filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint or signed by the Title IX Coordinator, which alleges sexual harassment against a respondent about conduct within Fairmont State University’s education program or activity or requests initiation of Title IX procedures.
- 10.6 “Member of the University Community” means (i) an individual engaged in any University activity or program, whether on or off campus; (ii) any individual lawfully on University property; (iii) any individual that is a University student, faculty, staff, University official, University volunteer, or a University visitor; and



(iv) any vendor or contractor, including that vendor's or contractor's employees and independent contractors, who are working on campus.

- 10.7 "President" means the President of Fairmont State University or his or her designee.
- 10.8 "Reporter" means any individual that reports an incident of Prohibited Conduct to the University Coordinator.
- 10.9 "Respondent" means an individual reported to be the perpetrator of Prohibited Conduct.
- 10.10 "Responsible Employees" are those employees in a leadership or supervisory position, or who have significant responsibility for the welfare of students or employees. Specifically, this term includes: Title IX Coordinator; Deputy Title IX Coordinators; University Police Officers; Senior Administrators in Residence Life, Student Life, and Athletics; University Senior Administrators, including Senior Administrators within each College or School; Resident Assistants; Faculty; and Athletic Team Coaches and their Staff.
- 10.11 "Staff" means any Classified or Non-Classified Employee, as defined in Board of Governors Policy 17, and any individual employed as a University Temporary Employee.
- 10.12 "Student" means an individual subject to the Fairmont State University Board of Governors Policy 17 (or its successor Rule), University Student Rights and Responsibilities Policy: Student Conduct.

SECTION 11: DELEGATION.¹

- 11.1 The Board of Governors delegates to the President the authority to adopt additional internal anti-discrimination policies and procedures to effectuate the implementation of this Board of Governors Rule or in furtherance of any other authority that the Board of Governors has specifically delegated to the President pursuant to this Policy, including adopting any Title IX grievance procedures required by the federal regulations. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Policy.

¹ The Board of Governors specifically delegates the authority to the Coordinator to update any contact information for specific University units or outside entities listed within this Policy without going through the Board's formal rulemaking procedures. The same applies equally to any website links contained within this Policy.

SECTION 12: AUTHORITY.

- 12.1 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; the West Virginia Human Rights Act, W. Va. Code §§ 5-11-1 to -20; the Campus Sexual Violence Elimination Act, 20 U.S.C. § 1092, and the Violence Against Women Act of 1994, 42 U.S.C. § 13925; C.F.R. Part 106.
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SECTION 13: SUPERSEDING PROVISIONS.

- 13.1 This Policy also supersedes and replaces Fairmont State University Board of Governors Policy GA-01, and any internal policy or procedure which relates to the subject matter contained within this Policy.