

**Fairmont State University Board of Governors
Policy GA-06
Effective Date: February 18, 2021**

TITLE: POLICY REGARDING TITLE IX SEXUAL HARASSMENT.

SECTION 1: GENERAL.

- 1.1 Scope: This policy is regarding sexual harassment as defined by federal regulations related to Title IX (34 U.S.C. § 106 *et seq.*).
 - 1.2 Responsible Unit: Office of the President.
 - 1.3 Filing Date:
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SECTION 2: PURPOSE AND SCOPE:

- 2.1 Fairmont State University is committed to providing a learning and working environment free from discrimination and harassment and one that is safe and inclusive for all members of the campus community.
 - 2.2 This Policy sets forth the prohibited conduct under the Title IX of the Education Amendments of 1972 ("Title IX") federal regulations.
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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 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.

3.2.1 All employees have a responsibility to discourage Prohibited Conduct and are mandated to report Prohibited Conduct to the Coordinator, as noted in Section 5. Further, those in supervisory positions have a special responsibility to discourage Prohibited Conduct, to implement and enforce this Policy and, as required by Section 5, report such behavior to the Coordinator.

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 any combination of disciplinary action as may be appropriate.

3.3.2 Any Student who violates this Policy shall be subject to appropriate disciplinary action in accordance with the Student Code of Conduct, including but not limited to, 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) 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 Allegations of misconduct that meet both the definition of Title IX Sexual Harassment under this Policy and Sexual Harassment as defined in Fairmont State University Board of Governor's Policy GA-01 shall be governed by this Policy.

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: JURISDICTION.

4.1 Statement of Prohibited Conduct.

4.1.1 The University prohibits Title IX Sexual Harassment 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 Jurisdiction. This Title IX Sexual Harassment Policy applies when: (1) the University has actual knowledge (as defined below) of Title IX Sexual Harassment; (2) the Title IX Sexual Harassment occurred within the University's Education Programs or Activities; and (3) the Title IX Sexual Harassment is against a person within the United States.

4.2.1 A Complainant should report misconduct under this Policy regardless of where the incident occurred, or who is alleged to have committed it. If the University determines that it does not have jurisdiction over the incident, the University will still offer resources to assist the Complainant in continuing with the University's Education Programs or Activities.

4.3 Title IX Sexual Harassment. "Title IX Sexual Harassment" for the purpose of this Policy means conduct on the basis of sex that satisfies one or more of the following:

4.3.1 A University employee conditioning the provision of aid, benefit, or service on a person's participation in unwelcome sexual conduct (typically referred to as "Quid Pro Quo Harassment" by an employee); or

4.3.2 Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Programs or Activities; or

4.3.3 Conduct prohibited under the Clery Act and the Violence Against Women Act as defined by statute.

4.3.3.1 Sexual assault as defined in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act," specifically 20 U.S.C. 1092(f)(6)(A)(v)) which means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation including:

(i) Rape, defined as the carnal knowledge of a person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;

(ii) Sodomy, defined as oral or anal sexual intercourse with another person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;

(iii) Sexual Assault With An Object, defined as the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her youth or because of age or because of temporary or permanent mental or physical incapacity;

(iv) Fondling, defined as the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the person, including instances where the victim is incapable of giving consent because of his/her youth or because of age or because of temporary or permanent mental or physical incapacity;

(v) Incest, defined as nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;

(vi) Statutory Rape, defined as nonforcible sexual intercourse with a person who is under the statutory age of consent.

4.3.3.2 Dating violence as defined in Violence Against Women Act (“VAWA,” specifically 34 U.S.C. 12291(a)(10)) which means violence committed by a person–

(i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) where the existence of such a relationship shall be determined based on the consideration of the following factors:

- a) The length of the relationship;
- b) The type of relationship; and
- c) The frequency of interaction between the persons involved in the relationship.

4.3.3.3 Domestic violence as defined in VAWA (34 U.S.C. 12291(a)(8)), which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitation with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family laws of the jurisdiction.

4.3.3.4 Stalking as defined in VAWA (34 U.S.C. 12291(a)(30)) which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- (i) fear for their own safety or the safety of others; or
- (ii) suffer substantial emotional distress.

4.4 Retaliation.

4.4.1 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.

4.4.2 “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.

4.4.2.1 This includes, but is not limited to, 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.

4.5 False Statements. This Policy prohibits knowingly making false statements, including knowingly submitting false information in a report or during the course and/or resolution of the grievance process.

SECTION 5: DUTY TO REPORT.

5.1 All “Officials with Authority” (also referred to as OWA) and University employees, except those designated as a Confidential Reporting Resource, who witness or learn of Prohibited Conduct **must** report such incidents 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

5.2 Failure to notify the Coordinator as required in Sections 5.1 may result in disciplinary action up to and including termination of employment.

SECTION 6: PROCEDURES FOR FILING COMPLAINT.

6.1 Anyone, including members of the University Community, who believes they have been subject to Prohibited Conduct may file a complaint. Where appropriate, the Title IX Coordinator may also file a complaint on behalf of a Complainant.

6.2 The University will adopt and publish a grievance procedure to investigate and respond to all complaints regarding alleged misconduct in violation of this Policy.

6.3 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.

- 6.3.1** If a student has been accused of Prohibited Conduct, the complaint will be handled pursuant the Title IX Sexual Harassment Resolution Process and the applicable campus Student Code of Conduct, which can be found at: <https://www.fairmontstate.edu/stulife/student-conduct>
- 6.3.2** 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 University Title IX Sexual Harassment Resolution Process. The complaints of Prohibited Conduct which do not fall under Title IX jurisdiction will be handled in accordance with the Fairmont State University's Board of Governor's Policy GA-01 and Student Code of Conduct, for students, or Fairmont State University Board of Governor's Policy 64, for employees.
- 6.3.3** Any investigation resulting from a complaint will be separate from and in addition to any criminal investigation that may result.
- 6.4** 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.
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SECTION 7: CONFIDENTIALITY AND ANONYMOUS REPORTING.

7.1 Confidentiality Limitations within the University.

- 7.1.1** The University respects the privacy of those reporting Prohibited Conduct and will endeavor to respect requests for confidentiality if possible.
- 7.1.1.1** However, the University has certain legal obligations to address Prohibited Conduct and to prevent its recurrence and, as a result, cannot guarantee confidentiality.
- 7.1.1.2** 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.
- 7.1.1.3** 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.

7.2 Available Confidential Resources.

- 7.2.1** Members of the University Community who have experienced Prohibited Conduct seeking complete confidential assistance without sharing information and without making a report to the University may do so by speaking with a Confidential Reporting Resource.

7.3 Anonymous Reporting at the University.

- 7.3.1** Any individual may make an anonymous report of Prohibited Conduct to the Coordinator, to law enforcement including the University Campus Police or to the United States Department of Education Office for Civil Rights without disclosing their name, without identifying the Respondent or accused, and/or without requesting any action. Because the accused individual is entitled to certain due process including but not limited to the right to confront the individual's accuser, the University's ability to address alleged misconduct reported by anonymous sources is significantly limited. The University's ability to respond to an anonymous report also may be limited depending on the level of information available regarding the incident or individuals involved.
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SECTION 8: FREE EXPRESSION, ACADEMIC FREEDOM, AND ACCOUNTABILITY.

- 8.1** 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.
- 8.2** 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 9: DEFINITIONS.

- 9.1** "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to a school's Title IX Coordinator or any official of the school who has authority to institute corrective measures on behalf of the school.
- 9.2** "Confidential Reporting Resource" means professional, licensed counselors and pastoral counselors who provide mental health counseling.
- 9.3** "Complainant" means an individual who is the alleged victim of conduct prohibited by Rule that is reported to the University.
- 9.4** "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.
- 9.5** "Faculty" means all faculty classifications as defined in current BOG Policy 17.

- 9.6** “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.
- 9.7** “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.
- 9.8** “Official with Authority” means any employee of the University explicitly vested with the responsibility to corrective measures for harassment, discrimination, and/or retaliation on behalf of the University. The mere ability or obligation to report Prohibited Conduct or to inform an individual about how to report Prohibited Conduct or having been trained to do so, does not qualify an individual as an Official with Authority.
- 9.9** “President” means the President of Fairmont State University or his or her designee.
- 9.10** “Reporter” means any individual that reports an incident of Prohibited Conduct to the University Coordinator.
- 9.11** “Respondent” means an individual reported to be the perpetrator of Prohibited Conduct.
- 9.12** “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.
- 9.13** “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.
- 9.14** “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.
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SECTION 10: DELEGATION.¹

- 10.1** 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.
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SECTION 11: AUTHORITY.

- 11.1** 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.

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.