

SEXUAL MISCONDUCT IN EDUCATION POLICY

SECTION 1: PURPOSE, POLICY STATEMENT & SCOPE.

1.1. Purpose

1.1.1. This policy expresses West Virginia University Hospitals, Inc. (WVUH)'s commitment to equal opportunity in its educational programs and activities, and establishes a procedure for addressing reports of sex discrimination, sexual harassment, sexual violence, and retaliation in those programs and activities. This policy reflects WVUH's compliance with Title IX of the Education Amendments of 1972, as amended, and all other relevant laws and regulations.

1.2. Policy

1.2.1. WVUH prohibits all forms of discrimination 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.

1.2.2. Prohibited Conduct under this policy includes sex discrimination, sexual harassment, sexual violence, and retaliation, as those terms are defined herein.

1.3. Scope

1.3.1. This policy applies to all individuals participating in WVUH educational programs and activities, including, without limitation, employees, faculty, instructors, preceptors, students enrolled in WVUH programs, and third parties (such as patients, vendors and visitors). This policy applies to conduct at WVUH locations, events, or in circumstances where WVUH exercises substantial control over the person alleged to have engaged in the conduct and the context in which it occurred.

1.3.2. WVUH recognizes that certain participants in its educational programs and activities are affiliated with West Virginia University or other universities, colleges, and schools that also have sexual misconduct policies. When another institution's policy may be implicated by conduct prohibited under this policy, WVUH will cooperate with that institution to ensure fairness to all parties.

SECTION 2: DEFINITIONS.

2.1. Consensual Relationship

2.1.1. A mutually acceptable romantic, amorous, dating, or sexual relationship between individuals.

2.2. Consent

2.2.1. Informed, freely given and clearly communicated willingness to engage in sexual activity. Both words and actions can express consent, but they must create mutually understood permission to engage in the sexual activity. Consent to one form of sexual activity does not, by itself, constitute consent to another

form of sexual activity. Silence, without more, is not consent. Consent may be withdrawn at any time through clear words or actions. Once consent is withdrawn, the sexual activity must cease immediately. Consent is absent when force is used, when an individual is incapacitated, in cases of incest or when a person is too young under applicable law to consent to the sexual activity.

2.3. Educational Program or Activity

2.3.1. Any program or activity that receives federal funds offered at WVUH by WVUH employees or contractors in the scope of their duties that is educational in nature beyond on-the-job training, general interest, or routine continuing education programs.

2.3.2. Factors in determining whether a program or activity is educational include whether it is structured through a particular course of study; whether participants earn academic credit toward a degree or certificate, or qualify to sit for professional exams; or whether a program provides instructors, exams or other evaluation processes.

2.3.3. Educational programs and activities include, without limitation, WVUH's Imaging Science Education Programs, Radiography, Radiation Therapy, Magnetic Resonance Imaging, Nuclear Medicine, Diagnostic Medical Sonography, Nutrition and Dietetics, and any other degree- or certificate-granting programs offered by WVUH that receive federal funds directly or indirectly, as through federally-guaranteed student loans or grants.

2.4. Force

2.4.1. Includes physical violence, abuse of power, threats, intimidation, and/or coercion.

2.5. Incapacity

2.5.1. Occurs when an individual is impaired temporarily or permanently by a mental and/or physical deficiency, disability, illness, or by the use of drugs or alcohol to the extent that the person lacks sufficient understanding or the ability to make or act on considered decisions to engage in sexual activity. A person violates this policy when they know or should know, based on what a reasonable sober person would have known, that the individual seemingly giving consent is incapacitated.

2.6. Responsible Employee

2.6.1. An employee who has the authority to address reports of prohibited conduct as defined in this policy. Program directors, administrators, supervisors, program and project managers, coordinators, clinical instructors, clinical educators, fieldwork instructors, fieldwork educators, principal investigators, mentors, preceptors and faculty members are responsible employees, unless they are considered a confidential resource. Confidential resources are professional counselors, pastoral counselors and health care providers, serving in their capacity as counselors and health care providers and any employee designated as a confidential resource by their institute or department.

2.7. Retaliation

2.7.1. Any adverse action or attempt to intimidate, threaten, coerce, discriminate against or seek retribution against an individual because of the individual's report, participation in an investigation or resolution of an allegation of Prohibited Conduct as defined in this policy, or exercise of any other right under this policy.

2.8. Sex Discrimination

2.8.1. Behavior or action that denies or limits a person's ability to benefit from, or fully participate in, educational programs or activities or related employment opportunities because of a person's sex, including gender, gender identity, gender expression, or sexual orientation. Examples of the type of discrimination

that are covered under Title IX include, but are not limited to, sexual harassment, sexual violence, failure to provide equal opportunity in educational and co-curricular programs, discrimination based on pregnancy, and employment discrimination based on sex in educational and co-curricular programs. Some types of sex discrimination are also considered sexual violence.

2.9. Sexual Harassment

2.9.1. Conduct on the basis of sex, including gender, gender identity, gender expression or sexual orientation, when:

2.9.1.1. Submission to such conduct is made either explicitly or implicitly a condition of an individual's participation in WVUH's educational programs or activities by an employee of WVUH;

2.9.1.2. Submission to or rejection of such conduct is used as the basis for educational evaluation, grades, or advancement by an employee of WVUH;

2.9.1.3. Such conduct is unwelcome and would be determined by a reasonable person to be so severe, pervasive and objectively offensive that it creates a hostile environment that effectively denies a person equal access to WVUH's educational programs or activities; or

2.9.1.4. Such conduct constitutes sexual violence as defined herein.

2.9.2. Sexual harassment may include, but is not limited to: unsolicited, deliberate, or repeated touching, sexual flirtation, leering, advances or propositions which are not welcomed and/or desired; unwelcome jokes, stories, comments, innuendos, gestures, nicknames, 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 an individual's body, sexual prowess, sexual deficiencies, or gender-related comments about one's anatomy or personal appearance; unwelcome displays of sexually suggestive objects or pictures, offensive images on computers or in email or text messages; and other physical, verbal or visual conduct of a sexual nature.

2.10. Sexual Violence

Under this policy, sexual violence includes sexual assault, relationship violence, sexual exploitation, and stalking.

2.10.1. Sexual assault

2.10.1.1. Sexual contact or sexual intercourse without consent, through threat or use of force, or when an individual is incapacitated. Sexual contact is intentional contact, directly, over clothing or with an object, however slight, with the breasts, buttocks, groin or genitals of another, touching another with any of these body parts, or compelling another to touch his or her own body parts or the body parts of another in a sexual manner. Sexual intercourse is sexual penetration, however slight, with any body part or object, by an individual upon another.

2.10.2. Relationship Violence

2.10.2.1. Physical, sexual, or psychological violence or abuse, including acts of intimidation and coercion, by a current or former partner in an intimate relationship upon the other partner. Relationship violence may be referred to as domestic violence when it involves current or former spouses, individuals who are or were cohabitating or individuals who share a child in common. Relationship violence may be referred to as dating violence when it involves another form of intimate relationship. The existence of an intimate relationship will be evaluated considering the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

2.10.3. Sexual Exploitation

2.10.3.1. Taking sexual advantage of another person without his or her 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; 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.

2.10.4. Stalking

2.10.4.1. A course of conduct or repeated acts directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Stalking may include repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or by any other action, device or method.

2.11. WVUH Community

2.11.1. Members of the WVUH Community include:

2.11.1.1. Individuals engaged in any WVUH educational activity or program, whether on or off WVUH Locations or property;

2.11.1.2. Individuals assigned to work or study at WVUH or otherwise lawfully on WVUH property;

2.11.1.3. Individuals that are WVUH Students, employees, board members, volunteers, or visitors; and

2.11.1.4. Vendors or contractors, including that vendors' or contractors' employees and independent contractors, who are working on property owned or leased by WVUH.

2.12. WVUH Locations

2.12.1. Includes J.W. Ruby Memorial Hospital, Children's Hospital, Chestnut Ridge Center, Physician Office Center, University Towne Center, other WVUH-owned or leased locations, and any other locations, events, or circumstances where WVUH exercises substantial control over the person alleged to have engaged in the conduct and the context in which it occurred.

2.13. WVUH Student

2.13.1. An individual enrolled in any WVUH Educational Program or Activity receiving federal funds.

SECTION 3: COORDINATOR, JURISDICTION, AND DISCIPLINARY ACTION.

3.1. Coordinator

3.1.1. WVUH has designated a WVUH employee to serve as WVUH's Title IX Coordinator. The Coordinator may also appoint deputy coordinators to assist in the implementation of this policy. The Coordinator is responsible for overseeing WVUH's response to reports of sex discrimination, sexual

harassment, sexual violence, and retaliation, and to identify and address any patterns or systemic problems. Questions or concerns regarding Title IX, sex discrimination, sexual harassment, sexual violence or retaliation in WVUH's educational programs and activities may be directed to the Title IX Coordinator.

3.1.2. WVUH's Title IX Coordinator has authority to:

3.1.2.1. Accept all reports of sex discrimination, sexual harassment, sexual violence, and retaliation in WVUH's educational programs and activities;

3.1.2.2. Ensure that WVUH's response to all such reports is appropriate to stop the conduct, prevent its recurrence, and address its effects;

3.1.2.3. Provide for a prompt, adequate, and impartial investigation into reports when required;

3.1.2.4. Coordinate WVUH's Title IX education and training for all participants in its educational programs and activities;

3.1.2.5. Keep accurate, confidential records of all reports for seven years; and

3.1.2.6. Monitor institutional compliance in matters related to Title IX.

3.2. Role of Supervisor. Those in supervisory positions have a special responsibility to discourage Prohibited Conduct and to implement and enforce this policy.

3.3. Jurisdiction.

3.3.1. The Coordinator shall receive complaints and investigate Prohibited Conduct that:

3.3.1.1. Occurs at WVUH locations, on WVUH premises or in connection with a WVUH-sponsored activity;

3.3.1.2. Occurs off-premises and would unreasonably interfere with the orderly operation of WVUH, its educational programs, its mission, or its objectives determined by a reasonable person; or

3.3.1.3. Occurs off-premises and in light of all of the facts and circumstances, would endanger the health and safety of WVUH Community or diminish trust in the Employee's future performance.

3.4. Corrective Action for Violations.

3.4.1. Any WVUH employee or volunteer who violates this policy shall be subject to appropriate corrective action, including suspension, termination, or other corrective action as may be appropriate.

3.4.2. Any WVUH Student who violates this policy shall be subject to appropriate disciplinary action, including suspension, expulsion, or other disciplinary action as may be appropriate.

3.4.3. Other members of the WVUH Community (excluding Employees, volunteers, and WVUH Students, 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 WVUH.

3.4.4. In addition, Prohibited Conduct that constitutes a criminal law violation may be referred to the appropriate authorities for prosecution.

3.4.5. Furthermore, although conduct may not violate this policy, it may still be prohibited by WVUH under a different rule, policy, or standard of behavior. Accordingly, WVUH reserves the right to take any appropriate action.

SECTION 4: RELEVANT CONSIDERATIONS

4.1. Relationships involving authority or power

4.1.1. Relationships between two individuals in which one has responsibility over the other's professional or academic development, performance, or future are ethical violations. Consent can sometimes be difficult to discern in these types of relationships. Consent may be deemed impossible and may be construed as coercive. Such relationships also may have the potential to result in claims of sexual harassment.

4.1.2. If members of the WVUH Community involved in WVUH's educational programs or activities engage in a Consensual Relationship involving: (i) persons in inherently unequal and closely related positions at WVUH; (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.

4.1.3. The supervisor shall notify WVUH Human Resources of the reported Consensual Relationship.

4.1.3.1. In consultation with Human Resources, the supervisor shall make arrangements to eliminate or to mitigate any conflict of interest, disruption, or other legitimate occupational or educational interest.

4.1.3.2. However, if no suitable way to eliminate or mitigate the conflict is reasonably feasible, one or both individuals may be separated from employment at WVUH.

4.1.3.3. Those involved in these types of Consensual Relationships must remain aware that such relationships could lead to circumstances that result in sexual harassment, sexual violence or retaliation. Additionally, others may perceive a person involved in the Consensual Relationship as receiving favorable treatment in employment or educational decisions.

4.1.3.4. All WVUH employees must also comply with WVUH's Nepotism policy.

4.1.3.5. 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.

4.1.4. Relationships Involving WVUH Students.

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

4.1.5. Pre-existing Relationships Involving WVUH Students.

4.1.5.1. Where there is a pre-existing Consensual Relationship with a WVUH Student, the individual shall notify his or her immediate supervisor. The supervisor shall notify WVUH Human Resources (when an employee is involved) or the employee's supervisor of the reported Consensual Relationship.

4.1.5.1.1. In consultation with Human Resources and management, as appropriate, the supervisor shall make arrangements to eliminate or to mitigate any conflict of interest, disruption, or other legitimate occupational or educational interest.

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

4.1.5.1.3. Those involved in Pre-existing Consensual Relationships with WVUH Students must remain aware that such relationships could lead to circumstances that result in sexual harassment, sexual misconduct, or retaliation. Additionally, others may perceive a person involved in the Pre-existing Consensual Relationship as receiving favorable treatment in employment or educational decisions.

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

4.2. Intention vs. Impact

4.2.1. Prohibited conduct, as defined in this policy, can occur even if the individual engaging in such conduct did not intend to engage in such conduct. All parties within WVUH's educational community are expected to understand the conduct that constitutes a violation of this policy. Alleged violations will be evaluated using a reasonable person's understanding of this policy.

4.3. Academic Freedom

4.3.1. The intent of this policy is not to restrict academic freedom in WVUH's educational endeavors. Educational topics with sexual content may be appropriate, but their presentation must not interfere with the rights of others not to be sexually harassed. Anyone with concerns that educational material is being used to sexually discriminate or harass should report those concerns.

SECTION 5: REPORTING.

5.1. Reporting Options

5.1.1. Any person may report sex discrimination, sexual harassment, sexual violence or retaliation in WVUH's educational programs or activities.

5.1.2. All participants in, or applicants to, WVUH's educational programs and activities who believe that they have been subjected to sex discrimination, sexual harassment, sexual violence, or retaliation are strongly encouraged to make a report. Prompt reporting allows WVUH to provide resources to the participant and facilitates an appropriate response. Reports may be made at any time, but delayed reports may limit the availability of evidence and witnesses, and make it difficult for WVUH to respond in an effective and fair matter. Reports may be made to WVUH's Title IX Coordinator, to a confidential resource, through WVUH's anonymous reporting hotline, to law enforcement, or to a state or federal agency with jurisdiction over the relevant educational program or activity, including the U.S. Department of Education Office of Civil Rights.

5.2. Duty to Report

5.2.1. All Responsible Employees who become aware of information that leads them to reasonably believe that a participant in an educational program or activity has been subject to prohibited conduct under this policy must promptly make a report to the Title IX Coordinator. All other WVUH employees, except confidential resources, are strongly encouraged to make such a report

5.2.2. All Responsible Employees must report incidents of Prohibited Conduct to the Coordinator at:

Title IX Coordinator
PO Box 8121
Morgantown, WV 26506-8121

Phone: 304-285-3049
Toll Free: 833-599-2100
Email: TitleIX@wvumedicine.org

5.2.3. Employees of West Virginia University and other universities, colleges, and schools whose students participate in WVUH educational programs and activities are encouraged to report to WVUH's Title IX Coordinator any information that leads them to reasonably believe that a participant in a WVUH educational program or activity has been subject to prohibited conduct under this policy.

5.3. Confidentiality

5.3.1. WVUH will maintain confidentiality of reports to the extent reasonably possible consistent with its responsibility to provide a safe educational and work environment, to provide a prompt, equitable and fair response, investigation and resolution of the report and to comply with applicable laws related to reporting. An individual's requests for confidentiality will be considered in determining an appropriate response.

5.4. Available Confidential Resources.

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

5.4.2. Confidential resources are available for Members of WVUH Community who have been subject to Prohibited Conduct. Specifically, individuals may contact:

WVUH Chaplains

Interfaith chaplains at WVUH offer confidential and compassionate support in responding to emergency or crisis situations, and giving support during decision-making. Chaplains can be contacted 24/7 by paging 0590 or during normal business hours at 304-598-4185.

WVUH Employee Assistance Program (EAP)

Services are confidential and available 24 hours a day, 7 days a week, for counseling, consultation, appointment scheduling, and referrals. For more information, call 1-833-599-2100.

The Rape and Domestic Violence Information Center (RDVIC)

P.O. Box 4228
Morgantown WV, 2650
RDVIC 24-hour crisis hotline (304) 292-5100

Ruby Memorial Hospital

Emergency Department
304-598-4172
<http://wvuhealthcare.com/hospitals-and-clinics/student-health/>

Monongalia General Hospital, Emergency Department

304-598-1460
www.mongeneral.com

5.5. Anonymous Reporting at WVUH.

5.5.1. Any person may report sex discrimination, sexual harassment, sexual violence or retaliation in WVUH's educational programs or activities anonymously through WVUH's Compliance hotline. An individual may report the incident without disclosing their name, identifying the accused, or requesting any action. Depending on the level of information available about the incident or the individuals involved, anonymous reporting may limit WVUH's ability to respond to or pursue appropriate action.

5.5.2. Anonymous reports can be made through the Compliance Hotline at 1-855-236-2041 or online at www.wvuhs.alertline.com. Both are available 24 hours per day, 7 days a week.

- 5.6. WVUH will develop procedures to address reports of prohibited conduct under this policy. The procedures shall address supportive measures to be taken to protect all parties to a report, processes for informal resolution and formal investigation of reports and the rights of parties in a resolution process.

REFERENCES

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

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